

GREEN SALVATION HERALD 2003-2004

**The English supplement
to the Bulletin of the Ecological Society
Green Salvation**



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Finally, the Ecological Society Green Salvation wishes to thank all who helped us to prepare this issue.



From the Editor

**GREEN
SALVATION
HERALD**

The *Green Salvation Herald 2003-2004* is the fourth annual English-language digest and supplement to the *Bulletin of Green Salvation*, the journal of the Ecological Society Green Salvation, headquartered in Almaty, Kazakhstan. The materials found in the *Herald 2003-2004* cover the range of Green Salvation's activities over the course of 2003-2004: expert analyses, official letters and appeals, and the text of two award-winning documentary films. All of these activities are devoted to accomplishing the organization's primary mission: defending the right of Kazakhstan's citizens to a healthy environment, working with state bodies and non-governmental organizations to improve the environmental situation in the Republic of Kazakhstan and beyond, and spreading environmental awareness and appreciation among people of all ages.

Over the past three years, the *Green Salvation Herald* has reached an ever wider circle of readers, both within the former Soviet Union and beyond. Despite the increasing significance of Central Asia in the world arena, people in many parts of the world know little about Kazakhstan and the other former Soviet republics in the region, and still less about the details of the social and environmental problems that they face. We hope that these materials will provide readers with new information, new understanding, and, perhaps, a fresh will to support the efforts of Green Salvation and other organizations of its kind, in Kazakhstan and elsewhere.

The *Herald 2003-2004* is divided into three main sections, each illuminating a different aspect of the environmental situation in Kazakhstan. The first section, "Ecological Problems of Kazakhstan," deals directly with some of the crucial issues facing the country and its citizens today. The opening article, by Valery Krylov, deals with the issue of Kazakhstan's rare and precious forest resources—both the potential benefits that they can bring if used properly, and the manner in which the nation's forests and the forestry sector have been neglected and abused in recent years. The second article, by a trio of senior environmental health experts, provides a detailed look at the hazards of lead pollution, a widespread problem in Kazakhstan, and specifically the dangers of lead poisoning to children. Finally, "On the Creation of a Special Fund for Specially Protected Natural Territories in Parks," by Green Salvation's chairman, Sergey Kuratov, tackles the issue of public financing for nature conservation. The old system for

funding environmental protection, inherited by Kazakhstan from the Soviet Union, has broken down completely; Kuratov proposes a plan by which support for the country's protected territories can be restored.

The second section, "Legal Problems of Nature Protection," addresses the issue of environmental policy and legislation. Valery Nestorenko's article examines the revised version of the Kazakhstani government's Concept of Environmental Security, setting forth the state's strategic goals in the sphere of environmental protection, citizens' welfare, and preservation of biodiversity. In Nestorenko's opinion, the version of the Concept that was finally approved is both incomplete and lacking in focus; he provides a set of proposals regarding both the topics that should be covered by such a document, and the measures by which the stated goals might be achieved. The following article, "Environmental Expertise," by Green Salvation member Semen Svitelman, deals with the topic of state environmental expertise—the official system for assessing the environmental impact of activities ranging from proposed legislation to planned construction projects. Svitelman shows the ways in which this system has been both ignored and exploited by Kazakhstani authorities and private companies, citing specific case studies of such abuses.

These abuses also form the subject of "Passengers in Forgotten Way Stations," a documentary film produced by Green Salvation in 2003. Taking the principles of the Aarhus Convention, an international accord to which Kazakhstan is a member, as its guide, the film illustrates three case studies from different regions of Kazakhstan, demonstrating how Kazakhstani citizens have been denied the basic rights guaranteed by the Aarhus Convention—access to information, public participation in decision-making, and access to justice. "Passengers in Forgotten Way Stations" and its predecessor, "The Riches of Nature—In Whose Hands?" were entrees in the Third Central Asian Festival of Environmental Journalism; Green Salvation was awarded second place for Kazakhstan in the competition's national round, and third place for Central Asia as a whole.

The third section of the *Herald*, "The Riches of Nature—In Whose Hands?," opens with the text of Green Salvation's documentary film by the same name, addressing the manner in which revenues from the exploitation of Kazakhstan's natural riches—specifically the country's oil wealth—are distributed, and the issue of how much benefit is received by ordinary citizens, including the question of Kazakhstan's newly created National Fund for oil revenues. The following articles are written by two of Green Salvation's American colleagues—Professor Rick Steiner of the University of Alaska, and Richard Fineberg, also from Alaska, an independent expert on oil revenue issues. Professor Steiner provides his reflections on the October 2003 Transparency Conference in Almaty, while

Fineberg looks at petroleum revenue-sharing and pipeline issues, using Alaska's past experience to illuminate potential developments in Kazakhstan.

One final feature of the *Herald 2003-2004* is the text of a brochure describing Ile-Alatau National Park, located in the Trans-Ili Alatau mountains near Almaty. Green Salvation has worked for years with the administration of Ile-Alatau National Park in order to defend the park and the natural environment there against increasing threats from without; the organization created the brochure and arranged for its publication, with support from the World Conservation Union.

The *Herald 2003-2004* contains a wide range of viewpoints, and tells an equally wide range of stories—from detailed legal issues, to personal opinions, to the concrete struggles of individuals, communities, and an entire nation. We hope that you will find it informative, thought-provoking, and helpful for understanding the environmental problems that Kazakhstan faces, as well as the ongoing search for solutions. As many have said before, environmental issues cross national boundaries, and the plight of nature is the plight of the Earth as a whole; only by learning and supporting one another can we hope to reach a better tomorrow.

By Glenn Kempf.



The Ecological Society Green Salvation

Green Salvation (GS) is a non-governmental, public organization, established in 1990 and registered as an Almaty city organization. Green Salvation's goal is to defend the human right to a healthy and fruitful life in harmony with nature, and to assist in improving socio-ecological conditions in Kazakhstan.

The activities of Green Salvation are guided by the following principles:

- asserting the universality, indivisibility and interdependence of all human rights;
- ensuring the rights of individuals in contemporary society and of future generations to a healthy and fruitful life in harmony with nature;
- fulfilling the need for general environmental education and awareness;
- enhancing cooperation among governmental bodies, private entities and non-governmental organizations to resolve environmental problems.

The main areas of Green Salvation's activities include:

1. Participation in the development of legislation for environmental protection in the Republic of Kazakhstan. The organization has participated in official discussions on the law "Protection of the Environment in the Kazakh SSR" (1991) and on the laws of the Republic of Kazakhstan entitled "On Environmental Protection" (1997), "On Environmental Expertise" (1997), "On Specially Protected Natural Territories" (1997), "On Radiation Safety for the Population" (1998), and the law "On Land" (2001) as well as the draft Forestry Code of the Republic of Kazakhstan. In 2002, at the request of the Committee on Issues of Ecology and the Use of Natural Resources in the lower house of Parliament, Green Salvation conducted non-governmental environmental expertise regarding the draft of the Forestry Code.

2. Since 2002, Green Salvation has defended human rights and the rights of nature in the legal arena. As a result of legal cases pursued in 2003 and 2004, two appeals were prepared and submitted to the Compliance Committee of the Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. Both appeals were accepted by the Committee for consideration.

3. The spread of environmental knowledge and information for sustainable development. Since 1992, Green Salvation has held seminars on humanitarian-ecological themes. Since 1995, the organization has published the officially registered *Bulletin of Green Salvation*; since 2000, this journal has been published

in English as well. The bulletin focuses on issues such as sustainable development, environmental education, environmental legislation, the administration of specially protected natural territories as well as other socio-environmental problems. In 2002, the organization opened a Web site in Russian and English. In the same year, Green Salvation began a video program, aimed at preparing video films on socio-ecological themes. In 2003, two films produced by the organization were awarded prizes at environmental film festivals in Almaty and Dushanbe.

4. Promotion of environmental education and the inclusion of environmental perspectives in thinking about current social and economic issues and culture. GS devised a special course “Conception of Sustainable Development” for students of higher educational institutions. The information was published as a textbook in 1997. Informational and consulting support is provided to schoolchildren, students, teachers and lecturers of higher educational institutions. From 1996 to 2001, an annual summer environmental camp was held in the mountains of Ile-Alatau National Park.

5. Environmental action. Green Salvation is collaborating with the Ile-Alatau National Park administration in an effort to include the park on the list of World Heritage Sites. The organization is an active participant in the Anti-Nuclear Campaign of non-governmental organizations of the Republic of Kazakhstan, which opposes plans for the import and burial of foreign radioactive waste on our country’s territory. GS also takes part in the international campaigns International Right to Know and Publish What You Pay.

6. Collection and dissemination of information about the environmental situation in the Republic of Kazakhstan. Green Salvation has gathered documents and reference materials on a wide spectrum of environmental problems, which is stored in an electronic database and a library.

Since 1993, the organization has belonged to the Association “Environmental Education”. Green Salvation cooperates with the International Socio-Ecological Union (SEU), the International Society for Ecological Economics (ISEE), and a number of environmental NGOs in Kazakhstan, Central Asia, and Russia, as well as other countries. GS collaborates with subdivisions of the Ministry of Environment, other governmental structures and officials at all governmental levels.

The Ecological Society Green Salvation is ready to collaborate on efforts within the aforementioned areas.

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**RATIONAL USE OF THE BENEFICIAL PROPERTIES
OF THE FOREST—THE BASIS FOR CONSERVING
AND INCREASING ITS PRODUCTIVITY**

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Almaty, Kazakhstan.*

Received 27 April 2004

In recent years, the following question has become an urgent one: to cut down or not to cut down the forest, a question that recalls Shakespeare's own sacramental query—"To be, or not to be?" Only this one sounds more alarming: how should we treat the forest, which creates the conditions for life on earth?

Over the last 200-300 years, the area of forested land on our planet has shrunk by half. Many lands formerly occupied by forest are now deforested. It has shrunk in Kazakhstan as well; beneath the onslaught of human economic activity, the lower boundary of the coniferous forests in the mountainous regions of our republic has risen 100-200 meters.

The destruction of the forests has an impact on the planet's climate, and leads to the desertification of large territories. In order to counteract these negative phenomena, the international community has adopted conventions on biodiversity, climate change, desertification, the Kyoto Protocol, and principles for the rational use and conservation of the forests. These documents have been ratified or approved by Kazakhstan, which has thus accepted well-defined obligations for carrying them out.

As of July 1, 2003, forests in the Republic of Kazakhstan occupy 12.4 million hectares, or 4.6% of the country's total surface area. However, valuable, tall-timber forests (coniferous, deciduous softwood, and deciduous hardwood) grow on only 25.3% of forested land. The remaining territory is occupied by sparse

stands of saxaul (49.7%), other varieties of timber (1.1%), and low-growing bushes of little value (23.9%).

In their time, our republic's foresters made a worthy contribution to the cause of forest conservation. Every tenth hectare—constituting more than a million hectares of artificially created forests—was planted by hand. However, in the last decade and a half, forestry in Kazakhstan, shamefully enough, has suffered a crisis. The area of plantings has fallen by several times, and the number of fires has grown. According to official reports, in the period from 1998 to 2003 alone, the area of burned land and perished plantings increased by 64,100 hectares. At the present time, burned and clear-cut land totals 450,900 hectares. During the same period, the area of previously created artificial plantings shrunk by 147,000 hectares, and that of “unclosed”* forest plantings, by 104,900 hectares.

The administrative system for this sector has been disrupted. Following the liquidation of the Ministry of Forestry, it resembles a ship without a rudder or sails, which on the stormy ocean of ambition is knocked against first one shore, then the other. It is enough to say that in the last ten years, the forestry sector has been transferred three times from one ministry to another, and been independent for only one year. The activities of the main productive link in the chain, the forestry farms (now called “state forestry establishments”), have been practically paralyzed. Work on forest recultivation has fallen sharply. The majority of tree nurseries stand abandoned and inactive. Compared to the 1980s, cuttings for primary use** have dropped to a quarter of their former volume (from 1.93 million cubic meters to 505,000), or one-sixth of the permissible level of logging (estimated forest cuttings).

All of this has appeared as the result of the unjustified lack of attention paid to the republic's forests, which, in our harsh natural conditions, is of immeasurable significance.

What cause lies behind such an abrupt decline in the level of forestry operations? Above all, the reasons may be found in the absence of a well-developed and confirmed forest policy, and the sharp decrease in funding.

Analysts have noted that the strategic breakthrough in the development of forestry activities in many developed industrial powers began with the development and adoption of a state forest policy. This includes such countries as the United States, Canada, Japan, the United Kingdom, China, the Scandinavian countries (particularly Finland), and others. Our neighbor, Kyrgyzstan, relying on their experience, also began by determining its forest policy, and then developed a Forest Code.

In contrast to the aforementioned countries, Kazakhstan has not adopted a

forest policy in the entire period of its independent development. In 2002, without any weighty grounds and without clearly defined goals, the preparation of a new Forest Code was begun to replace the existing one, which had been in force since 1993. Work on the draft for the new law proceeded with difficulty. The initial conception of the draft Forest Code, presented to the government and to Parliament, was fundamentally altered in the course of its consideration—a fact that forest scientists and activists from non-governmental organizations repeatedly called attention to in their appeals to various government bodies. However, in spite of this, the code adopted in 2003 nevertheless failed to create legal mechanisms for resolving many problems existing in the forestry sector.

Why did such a scornful attitude toward the forestry sector appear?

Above all, this resulted from an underestimation of the forests' worth. An elementary calculation shows that the core timber alone is valued at 158.8 trillion tenge [at current rates, over US \$1 trillion—Ed.]. If we taken into account that this constitutes only 7.5% of the value of all of the forest's beneficial properties (including the production of oxygen and the absorption of carbon dioxide—that is, deposition of carbon), and also take heed of its water-conserving, sanitary and hygienic, soil-conserving, and other functions, the total worth of Kazakhstan's forests will equal 2.2 quadrillion tenge. The mean annual growth in timber alone is estimated at 2.5 billion tenge. Thus, the forest is a genuine national treasure; however, we are not dealing with this property wisely.

This was stated in general terms in President Nursultan Nazarbayev's address to the nation ("Kazakhstan-2030: Prosperity, Security, and Ever-Growing Welfare of All Kazakhstanis"): "Our natural resources are an enormous wealth. Yet, paradoxical as it is, world experience testifies to the fact that many a country possessing substantial natural resources failed to dispose of them in the best possible way and, consequently, to this day they rate as poor."

Underestimating the value of forests means that the labor of forestry employees is undervalued as well.

On average, each forestry worker in Kazakhstan preserves core timber worth 52 million tenge (according to the minimum, not the market, price). To this sum must be added the "worth" of the animal world and other resources that they guard. At the same time, they receive a miserable salary, and are not given modern means of transportation, equipment, or weaponry. If a forestry worker is injured or killed, they have no social guarantees of any kind.

Forestry scientists have repeatedly raised this issue, hoping that with the passage of the new Forest Code, these problems will be resolved. Alas, however, forestry workers received no social guarantees whatsoever. Everything was dumped into the bureaucratic formulation: "in accordance with legislation."

At the same time, employees in the tax service, the financial police, and firefighters are guaranteed reliable social and legal protection by law. Thus, forest wardens, protecting state property against thieves and poachers, are somehow classified as employees carrying out second-class duties, even though in practice their work is no less difficult and dangerous than that of the aforementioned services. They are frequently forced, in solitude, far from populated areas and virtually weaponless, to combat poachers armed to the teeth. Firefighters, police, and employees of the financial and tax police enjoy more favorable conditions: among people, in populated areas, with access to transportation, communications, and all possible forms of protection.

By economizing on a few million tenge for the salaries and social guarantees of forestry workers, the state loses many billions, as forest conservation is worsened greatly: the number of fires, deliberate arson, arbitrary cuttings, and thefts of timber grows. As a result, irreparable harm is inflicted on the unique coniferous forest strips and other valuable plantings, the forest loses its protective functions, and unplanned expenditures for its restoration increase. As the saying goes, “a miser pays double.”

It should be recalled that in the law “On the National Security of the Republic of Kazakhstan,” an “acute worsening of the environmental situation, natural disasters, and other emergencies of a natural or technogenic character” are acknowledged as a threat to national security (Article 5, point 9), and that “protection of the environment and the rational use and conservation of natural resources” are the obligation of the appropriate state bodies and organizations (Article 21).

However, the measures taken by the state have not yielded the desired result. The effects of the lack of a clear forest policy, determined by the fundamental priorities of forestry activities, and taking into account the highly varied and specific conditions of different regions of Kazakhstan, are plain to see.

For example, in response to massive forest cuttings, officials have thought of nothing better than to ban the export of timber outside Kazakhstan’s borders, and to prohibit the felling of saxaul groves.

Another dubious undertaking has been the incorporation of large massifs of the most productive forests into specially protected natural territories, regardless of whether analogous natural systems are already represented in existing protected territories. Other ecosystems, of great significance for the preservation of biodiversity, but not containing large forest reserves, are assigned protected status more rarely, which speaks of the lack of a clear strategy for the creation of a network of protected territories. Thus, many natural sites have not been given the attention that they deserve: the saxaul groves, the birch forests of Northern Kazakhstan, the flood plains of the Irtysh and Ural rivers, the thick riverbank

forests (*tugai*) along the Syr Darya and the Ili, portions of the deserts and steppes of Southern and Central Kazakhstan...

At the same time, the strips of pine forest declared in Government Resolution No. 254 (February 19, 2001) to be especially valuable forest areas (883,100 hectares in all), and where, in connection with this ruling, primary logging was banned, after two years received the status of specially protected natural territories (Government Resolution No. 75, January 22, 2003), including the forestry farms located within them, which had been largely or almost entirely destroyed by fire. A legal question thus arises: what is the point of “specially protecting” ashes?

However, in spite of the measures taken, as the forests burned before, so they burn now. Unauthorized logging has not ceased. Clearly, what is needed is to combat the causes giving rise to fires and poaching, and not with their consequences. It is not possible to prohibit the use of the forest!

According to the teachings of Professor M.M. Orlov, a respected scientist and leading specialist in the field of forest management, the two primary signs of its rational organization are the good condition of the forests, and also their stable and high profitability.

“Management” (of any kind) is understood throughout the world to mean an activity aimed at the cultivation of material benefits and the receipt of revenue. Forestry is a branch of plant cultivation, one of the features of which consists in its lengthy production cycle. All forms of management connected in one way or another with the earth should bring revenues, which presupposes the sale of goods on the market.

Previously, the forester was the de facto producer, acting to cultivate the forest’s resources. Now, with the transformation of forestry farms into official establishments and their loss of the right to prepare lumber for sale—that is, to remove the harvest that has been raised—the forester is seen as an official, a petty bureaucrat, occupied merely with the administration of economic activity and the distribution of forest resources.

With the adoption of the new Forest Code, the procedure for providing timber resources for use has been fundamentally changed, and not for the better. If the previous Code stipulated, for all users, a variety of rights for the cutting of mature timber (including both short-term and long-term use), the current Code has retained only long-term usage.

However, the 1992 Caracas Declaration, the UN Conference on Environment and Development (Rio de Janeiro, 1992), and the conclusions of the Forest Committee at the World Summit on Sustainable Development (Johannesburg, South Africa, 2002) all acknowledge the right of the local population to have access to and to manage forest resources, to receive the benefits from their use, and to take part in decision-making.

The recommendations of the Fourth World Congress on National Parks and Protected Areas state that “protected areas cannot coexist with human communities that are hostile to them,” and that “the creation and content of protected areas and the use of resources within them and around them should correspond to the interests of society (Recommendation 6).

Here it is also noted that “only certain landscape features may be set aside for strict conservation, prohibiting human activity; the majority of regional territories inevitably require the retention of high levels of economic activity and impact on the natural environment, and this only heightens the need to develop programs for cooperation” (Recommendation 10).

At the Fifth World Parks Congress, held in Durban, South Africa on September 8-17, 2003, it was also noted that in the organization of protected territories, “local communities bear most of the costs but receive few of the benefits, while society as a whole gains the benefits but bears few of the costs.” In this context, the congress felt that it was necessary to acknowledge and respect “the rights of indigenous peoples, including mobile indigenous peoples, and local communities...in relation to natural resources and biodiversity conservation”, and also to draw them into the process of organizing and administering specially protected natural areas.

Kazakhstani legislators have prohibited state forest managers from cutting mature timber** (Forest Code, Article 24). According to the law at the present time, this right may be obtained through a complex procedure of tenders and licensing, and only in the form of long-term use (Forest Code, Articles 28 and 89.) “Graciously” granting the population the opportunity to satisfy its need for timber through the cutting of exits, sanitary cuttings, and the clearing away of tree litter outside of cutting areas will not solve the problems. In Kazakhstan, 73.6% of the area covered by forest is occupied by saxaul groves and bushes, where exit routes are not cut. Mature timber cut in these regions are used only for fuel. In theory, local communities might be able to purchase wood not from state forest managers, but from renters, who have leased forest resources for long-term use.

However, the situation with regard to long-term use of forest resources, especially the saxaul groves, is far from simple. Even in the event that one finds a bold entrepreneur who decides to take this step, he is forced to reflect seriously on the profitability of such a “business”. If he cuts mature timber, he will be required, first of all, to restore the forest cover on these plots (Forest Code, Article 38, subpoint 13), and, second, to plant trees on an area “exceeding the area of forest cut by a factor of two” (Article 38, subpoint 12). Thus, having gathered timber from one hectare, he should plant three. This is very attractive

for the forest managers, but not for the loggers.

In their current state, Kazakhstan's saxaul groves yield an average of only 3.8 cubic meters of timber per hectare of mature forest. At the same time, only 40% of the saxaul is marketable. If it is sold at a price of 500 tenge per cubic meter, it will have a total value of 750 tenge ($1.5 \text{ m}^3 \times 500 \text{ tenge}$). In selling on the market, one must also take into account the costs of preparing and transporting the timber. Such losses are inevitable, although they will naturally increase the wholesale price.

However, the following must not be forgotten: in order to comply with the requirements of the Forest Code, a logger, having received such "enormous profits," should plant three hectares of forest. The average cost of such planting work for one hectare totals 8,000 tenge. Thus restoring three hectares of forest will cost the entrepreneur 24,000 tenge ($8,000 \text{ tenge} \times 3 \text{ ha}$).

Consequently, the logger must attain a cost of 16,000 tenge for every cubic meter of timber (24,000 from 1.5 ha), which is several times greater than the price of coal. Where might such eccentric kamikazi-businessmen be found? The local population will not buy wood at such prices. Is such a business even possible? However, since, one way or another, there is no fuel to be found in these regions, the flawed nature of the legislation will provoke the local population to break the law. Did somebody think about this when such provisions were added to the Forest Code?

On the other hand, the state, having banned the cutting of saxaul, permits forest managers to carry out "sanitary" (?) cuttings without paying anything, and without conducting restoration work. Such "sanitary cuttings" and "cutting of exits" have received the title of "revenue cuttings" from specialists. And it is the forest itself that suffers from them. Who, once again, is the deceiver? The state!

It is evident that in many regions, the transfer of forests to long-term use does not permit the normal cutting of timber for trade.

Indeed, the long-term renting of forest land itself has long been a dubious affair, because the cultivating a forest is a long-term process, and in evaluating the economic activities of renters and the quality of the property (forest) cultivated by them, certain difficulties inevitably arise. The goal of the renter is to obtain revenue at any cost, and the quicker the better. It is not for nothing that leading specialists in the field of forest management have written: "The leasing of forests for rent is the most foolish and most costly means of forest management... Placing forested land at the disposal of another individual, not directly interested in its preservation, cannot be arranged under conditions that... would guarantee the conservation of the forest" (Shutov).

Many economists believe that tracts of forest designated for cutting—that is, tracts of mature forest, which is the main trade good for forestry—should be

made available on the open market. This would not give rise to conflicts, open access to timber for the entire local population, or push the latter to carry out illegal cutting. The leasing of forests for rent gives nothing to the state, except large-scale losses.

We will now return to the main question now facing some non-governmental organizations: to cut or not to cut the forest? At first glance, they care about the conservation of our natural riches. However, the forest, like any living organism, lives and dies. Arguments that forest ecosystems have existed for million of years without human interference, and may develop further on their own, are not entirely correct.

After long years of violence inflicted on nature, climatic and hydrological conditions have changed, to say nothing of atmospheric pollution. All of this has a devastating effect on the forests and their renewal. The use and conservation of any natural resource is an endless quest for a golden medium. Only by strictly observing the principle of “rational, continuous, and non-exhausting use” can “sustainable forest development,” as declared in the Forest Code (Article 3) be guaranteed.

The concept of “sustainable development,” which came into circulation following the resolutions of the United Nations Conference on Environment and Development in Rio de Janeiro (1992), signifies “development that satisfies present needs, but does not threaten the ability of future generations to satisfy their own needs.”

Scientists note that over the last few decades, in some regions of the world, measures taken to ban the cutting of forests have led to the opposite result. Stands of trees have aged, and consequently current growth*** has decreased, lowering its environmental sustainability. Timely renewal, which dictates the need to reconstruct a certain portion of the older stands that no longer correspond to their functional role, has been hindered. Aging and weakened plantings are subject to the attacks of parasites, which further worsens the sanitary state of the forests.

The most productive forests are those of “transition age”—from young saplings to middle-aged trees, when the current growth of timber takes place at the fastest rates. During this period, plantings absorb the highest amount of carbon dioxide, depositing carbon and giving off the maximum volume of oxygen. A forest of this age is of the greatest environmental value.

What is the situation in Kazakhstan?

Saplings of Class 1 growth**** constitute only 3.7% of the total, at the same time that mature and over-mature plantings for 31.2%, or when grouped

with maturing stands, 53.4%. Thus, more than half of forest plantings are at a stage of development in which their protective functions have decreased.

Felling of mature timber is permitted on only 38.6% of the area covered by forest. On the remaining area (61.4%), no logging takes place. At the same time, only 8.8% of the overall forested area lies within specially protected natural territories, functioning on the lands of the country's forest reserves. The remaining area belongs to other categories of forest, where logging is also not carried out.

In the meantime, well-known economists and forestry scientists believe that such mismanagement would hardly be possible in any other country in the world. In the majority of European countries, despite their small degree of forest cover, logging is carried out over significantly larger territories than in Kazakhstan. For example, in Austria, where mountain forests predominate, 75.2% of forested area is exploited, while 22.9% belongs to protective (anti-erosion) forests, where logging is also permitted (carried out in narrow strips or in areas where new planting is taking place), and 1.7% of forests serve water-conservation functions.

In the densely populated European states, protected areas occupy from 3% to 7% of the countries' territories. Primary cutting protected natural areas is forbidden. All of the remaining forest is used for economic purposes, above all for the logging of timber by cutting, guaranteeing the forest's renewal. Plantings are not allowed to age too far, since this would lead to a decrease in their protective functions.

It is not in vain that the leading forest expert G.F. Morozov, respected by foresters throughout the world, believes that "the cutting of the forest and the renewal of the forest are synonyms."

The question is not to cut or not to cut, but *how* to cut. It is not the cutting of the mature part of tree stands that is terrible, but the destruction of the surface layer of the soil during transporting operations. The most important point is not to allow the compaction of the soil and the development of erosion. In the majority of cases, loggers using heavy equipment (bulldozers, tractor trailers), especially on mountain slopes, cause great damage to them, leading to the rapid formation of gullies and washes. In mountain conditions, new means are needed for transporting timber from cutting areas to major transportation routes, means that ensure that the slopes are protected from erosion.

In their time, scientists in the East Kazakhstan region conducted detailed studies of the effects of logging on the hydrological regimes of rivers. The tributaries of the Irtysh, fed by water from several regions of Kazakhstan (East Kazakhstan, Pavlodar, Akmola, Karaganda), as well as from a number of regions in the Russian Federation, were investigated. At these sites, standard logging techniques were employed. The scientists concluded that as a result

of logging, the river's water regimes had worsened. Thus, the average annual flow of the Bukhtarmy River fell by 567 million cubic meters, while that of the Uby River fell by 504 million cubic meters. Water erosion of mountain slopes increased significantly. This is the price of technology. At the same time, special research established that the effect of the soil-conservation functions of the forests alone exceeded the value of the timber by 16.5 times (*Forest and Environmental Protection*).

Thus, one may say that supporting the protective functions of the forests at their maximum level is a difficult task, requiring fundamental changes in forest conservation methods.

Professor M.M. Orlov believes that prohibiting primary cuttings is impermissible, since the forest is a living organism, and in the process of its development and renewal, neither these nor other measures can be avoided. Cutting of exits, and still more, sanitary cuttings, can never take the place of primary cuttings in the arsenal of capabilities and approaches developed throughout the long history of forestry. Sanitary and other cuttings (complete removal of burned trees and stands damaged by parasite or disease), which have proven so attractive to our managers in the past decade, are, in the pithy expression of classical forestry scholars (Arnold, Rudzky, Orlov), "management of a corpse" (Moiseyev and Chuyenkov).

No one denies that different forests, depending on their environmental significance, require the use of differentiated methods.

What forests are the most important for Kazakhstan?

There is no doubt that special attention should be paid to natural old-growth forests that have not been subjected to industrial logging, and that do not possess permanent infrastructure or settlements on their territory. Their preservation is necessary, because here genetic riches are concentrated. They support all of the functions of the primeval forest ecosystems, which are important for the life of a healthy forest, able to survive under changing conditions. These forests are also important from the scientific point of view; their study will make it possible to develop practical methods of forest management that ensure the sustainability of the forest complex in the future. For these reasons, such forests, first and foremost, should be declared specially protected territories, and not those where industrial logging has been conducted ten times over, nor enormous areas damaged by fire and clear-cutting.

At the present time, the entire world is faced with the urgent question of conserving its reserves of fresh water, protecting the soil from erosion, and supporting the hydrological regimes of rivers, lakes, and other bodies of water. In Kazakhstan, with its arid climate, forests that possess water-conserving and

protective functions must be treated with great care. In these forests, a special management system should be employed, making it possible to ensure their reproduction (including their timely renewal) and continuous functioning. However, despite their primary importance for Kazakhstan, such forests are given little priority in the Forest Code.

Unfortunately, the Code lacks an economic mechanism for rational forest use and conservation. For example, the value of the water-conserving functions of the forests—that is, their impact on the hydrological regime of water bodies—can be determined in monetary terms; however, this is not done. In the meantime, in accordance with water- and forest-related legislation, water-conserving strips are designated along all rivers, where primary cutting is forbidden. Due to this, the forestry industry suffers losses. The question arises as to why payments are made for “the volume of electrical energy consumed, the volume of loads transported by water, and the volume of fish catches,” although the water itself is not spent! However, for the multiplication and conservation of water resources by the forests, and for the forests’ other beneficial properties, no payment is stipulated, which is impermissible in a market economy.

Forests absorb gigantic quantities of CO₂, discharged into the atmosphere by industrial and power plants, as well as that created by the combustion of natural gas and the like. This beneficial work of the forests may be estimated as well; to do so, one should be guided by the principles for trading emissions spelled out in the 1999 Kyoto Protocol, and know their volumes and the mean amount of carbon absorbed by the forests. The price of such “services” significantly exceeds the financing of forestry activity in Kazakhstan.

Articles 5 and 105 of the Forest Code only declare the principle of payment for the forest’s beneficial properties (emission of oxygen, absorption of carbon dioxide, protection of soils from water and wind erosion, transfer of surface water flows into the soil, balneological and climate-regulating properties); however, in practice, the Tax Code (Article 470) stipulates no payments of any kind.

Under such a non-market attitude toward the beneficial properties of the forest, when foresters do not have the right to dispose of their own production, forestry will inevitably be subsidized. Therefore, immediately following the adoption of the new Forest Code, the question arose once again of the need to improve forest-related and tax legislation.

One more urgent problem for forest management is the preparation of qualified employees. Unfortunately, in recent times the profession of forester has lost its prestige. Specialists have been pushed aside into administrative and even engineering or technical positions, and been replaced by non-professionals. However, forestry is a sector requiring in-depth, multifaceted knowledge and,

most importantly, experience, since the fate of the forest depends on the decisions and actions of the foresters. Their mistakes become obvious only after 50 or 100 years, and are reflected in the well-being of our children and grandchildren. It should be noted that well-trained specialists, having solid experience in production, are few in number in the upper echelons of the sector's administration as well.

The recruitment of students for the specialty of "forestry" has dropped significantly. The smooth functioning of the system for conducting academic and on-the-job practice has been disrupted, and its quality has fallen. The demand for forestry specialists has fallen to almost zero. For example, in the past decade only in the 2001-2002 academic year did the Agrarian University receive applications for four graduates.

In the final analysis, all of this is reflected in the level at which forest management is conducted.

In concluding, I would like to present some excerpts from a draft document proposed by Russian specialists, "Principles and Criteria for Sustainable, Environmentally and Socially Responsible Forestry and Forest Use in Russia", which demonstrate better than any other the global and identical nature of the tasks facing the foresters of all countries, and the need to harmonize forest-related legislation and unite our efforts to preserve the forests of the world.

1. "The forest, as an aggregate of natural ecosystems, fulfills a large number of environment-creating, conservation, and social functions; it is the common property of the nation, and any use of concrete material resources that damages the fulfillment of these functions should be carried out with account taken of present and future national interests and the interests of all groups and levels of the local population, and should be open to independent monitoring on the part of experts, media representatives, and non-governmental organizations."

2. "A decision on the expediency or in expediency of one form of use of the forest's natural resources or another should be made with a calculation of both the benefit obtained from the use of such material resources, and the costs borne by other material (hunting, water, atmosphere, fishing, plant life, recreation, etc.) and non-material (natural, aesthetic, historical and cultural, and other) values. In the event that substantial material benefits are lacking, and/or a substantial threat to the non-material values of the forest exists, the material resource in question should not be used."

3. "Economic activities in forests crucial from the standpoint of water conservation (regardless of whether areas with a special regime for natural resource use have been distinguished there or not), should be aimed at the maximum conservation of the forest's water-conserving function. It is impermissible to remove these forests (or other lands within the forest reserve)

for construction, the organization of auxiliary activities, or other forms of intensive economic activity...The permissible intensity for the removal of timber from these forests, should ensure the preservation of natural mechanisms, for support (restoration)...of soil microrelief, reserves of nonliving organic matter and moisture capacity in the soil and leaf litter, and a minimum level of technogenic impact on the soil and leaf litter.”

4. “Any removal of timber from natural forest ecosystems should be carried out with account taken of the role of sustainable natural forests as one of the crucial factors for the regulation of carbon dioxide in the atmosphere and deposition of carbon. Forests developing over the course of long periods of time without human impact, and having large reserves of deposited carbon in the form of windfalls, rotting wood, old and dry stands, or large amounts of leaf litter and nonliving organic matter in the soil, should be excluded from intensive use (capable of leading to the destruction or reduction of the carbon reserves deposited in them) to the extent possible.”

5. “The conservation regime for massifs of wild taiga [boreal forests—Ed.] should ensure the maximum development of natural ecosystems within their borders. It is impermissible to remove some form of material resources that would lead to substantial changed in the natural structural-dynamic organization of the protected ecosystems (large-scale removal of timber, leading to the destruction of the dynamics of tree stands connected to the fall of large older trees and the natural decomposition of fallen wood; extraction of mineral resources), as well as any economic activity that is a potential source of fires, technogenic pollution of a site, or changes in the hydrological regime of the territory.”

6. “Declarative conservation and social norms, ensured in current legislation (requirements for the non-exhaustive use of forest resources, safeguarding of the protective, recreational, conservation, and other functions of various...categories of forests) should be reinforced by corresponding normative documents for direct action, providing a mechanism for the realization of these requirements.”

7. “The system of payments for the use of forest resources should be based on the concept of forests as common national property, and take into account the rights of all groups and levels of the population to receive material benefits (or other mediated financial compensation) from the existence of forests and the use of forest resources. The sum total of payments for the use of forest resources entering local...and republican state budgets, and the mechanisms for calculating them, should reflect the direct and indirect costs from the loss by forests, as a result of such use, of their environment-creating, conservation, and social functions.”

References (in Russian):

IVth World Congress on National Parks and Protected Areas, February 10-21, 1992, Caracas, Venezuela: Declaration. Action Plan. Recommendations. Moscow, 1994.

Vth World Parks Congress, Durban, South Africa, September 8-17, 2003.

Account of the Forest Reserves [of Kazakhstan] as of July 1, 2003.

Boske, B., *The Environmental Taxation System in Russia. Economic and Environmental Protection: Problems and Their Solutions.* Moscow, 2002.

Code of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the State Budget," June 12, 2001. From the "Jurist" database, <www.zakon.kz>.

Constitution of the Republic of Kazakhstan. Almaty, 1995.

Convention on Biological Diversity. Rio de Janeiro, June 5, 1992. From the "Jurist" database, <www.zakon.kz>. Water Code of the Republic of Kazakhstan, July 9, 2003. From the "Jurist" database, <www.zakon.kz>.

Decree of the President of the Republic of Kazakhstan "On a Concept of Environmental Security for the Republic of Kazakhstan for 2004-2015." From the "Jurist" database, <www.zakon.kz>.

The Forest and Environmental Protection. Tartu, 1983.

Forest Code of the Republic of Kazakhstan, July 8, 2003. From the "Jurist" database, <www.zakon.kz>.

Global People's Forum: Conclusions of the Commission on Forests, August 29, 2002, Johannesburg, South Africa.

Klimov, O.G., "Forestry Production of the Future: Developments in Techniques and Technology," *Forestry*, 2003, no. 6.

The Kyoto Protocol: Responsibility and Prospects for Business. Moscow: Institute for Consulting on Environmental Projects, 2002.

Land Code of the Republic of Kazakhstan, June 20, 2003. From the "Jurist" database, <www.zakon.kz>.

Law of the Republic of Kazakhstan "On Environmental Protection," July 15, 1997. From the "Jurist" database, <www.zakon.kz>.

Law of the Republic of Kazakhstan "On the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan 'On Fire Safety'," December 29, 2003. From the "Jurist" database, <www.zakon.kz>.

Law of the Republic of Kazakhstan "On the National Security of the Republic of Kazakhstan," June 26, 1998. From the "Jurist" database, <www.zakon.kz>.

Law of the Republic of Kazakhstan "On Specially Protected Natural Territories," July 15, 1997. From the "Jurist" database, <www.zakon.kz>.

Materials from the International Scientific and Practical Conference "The Forest and Forestry Under Market Conditions: Problems and Prospects for Sustainable Development," Almaty, 2003.

Meiser, K., “Why Do We Preserve Ancient Forests?”, *Forest Bulletin*, January 2000, no. 13.

Moiseyev, N.A. and Chuyenkov, V.S., “Classification of Forests by Target Assignment, and a Regime for Their Use,” *Forestry*, 2003, no. 6.

Nazabayev, N.A., Address from the President to the People of Kazakhstan “Kazakhstan-2030: Prosperity, Security, and Ever-Growing Welfare of All Kazakhstanis,” October 10, 1997. From the “Jurist” database, <www.zakon.kz>.

Oblivin, A.N., “Basic Propositions for Russia’s National Forest Policy,” *Forestry*, 2002, no. 1.

Rakhmanov, V.V., *The Water-Conserving Role of Forests*. Moscow, 1962.

Rational Forest Management and Protective Forest Cultivation: A Collection of Scientific Works. Almaty, 1993.

Report on the Grounds for Environmentally Acceptable Logging in Mixed-Age Fir Forests of the East Kazakhstan Region (final). Almaty, 1989.

Report of the UN Conference on Environment and Development, Rio de Janeiro, June 2-14, 1992. Vol. 1: Resolutions Adopted at the UN Conference. New York, 1993.

Resolution of the Government of the Republic of Kazakhstan No. 1692, November 10, 2000, “On a Concept for the Development and Placement of Specially Protected Natural Territories in the Republic of Kazakhstan Through 2030.” From the “Jurist” database, <www.zakon.kz>.

Resolution of the Government of the Republic of Kazakhstan No. 254, February 19, 2001, “On Intruding Additions and Amendments to Resolution No. 182 of the Soviet of Ministers of the Kazakh SSR, Jan. 17, 1981.” From the “Jurist” database, <www.zakon.kz>.

Resolution of the Government of the Republic of Kazakhstan No. 1571, December 5, 2001, “On Imposing a Ban on the Export of Round Timber Materials from Coniferous Species and Timber Fuel in the form of Coniferous Logs.” From the “Jurist” database, <www.zakon.kz>.

Resolution of the Government of the Republic of Kazakhstan, July 16, 2002, “On a Ban on the Export of Certain Types of Timber Materials, Pressed Timber Materials, and Certain Items Made from the Wood of Coniferous and Deciduous Species.” From the “Jurist” database, <www.zakon.kz>.

Resolution of the Government of the Republic of Kazakhstan No. 942, August 23, 2002, “On Measures for the Conservation of Saxaul Plantings.” From the “Jurist” database, <www.zakon.kz>.

Resolution of the Government of the Republic of Kazakhstan No. 75, January 22, 2003, ‘On the Reorganization of Certain Government Bodies in the Committee on Forestry and Hunting of the Ministry of Agriculture of the Republic of Kazakhstan.’ From the “Jurist” database, <www.zakon.kz>.

Resolution of the Government of the Republic of Kazakhstan No. 910, September 8, 2003, “On Confirming the Rules for Transferring Land to Specially Protected Natural Territories and Reserving Land for These Territories.” From the “Jurist” database, <www.zakon.kz>.

Shutov, I.V., *On the Forest Revenues of Russia*. Book on CD-ROM.

Smith, W., *Forest and Atmosphere*. Moscow, 1985.

State Account of Forest Reserves of the Republic of Kazakhstan as of January 1, 1998.

* “Unclosed” forest plantings are young plantings in which the crowns of the trees have not yet closed up.

** “Primary use” cutting refers to the stocking of mature timber.

*** Current growth—growth over the most recent period.

**** Each class of growth is equal to 20 years for coniferous trees, or 10 years for deciduous trees.



**DECREASING THE DANGERS OF THE IMPACT OF
LEAD ON CHILDREN IN THE REPUBLIC OF
KAZAKHSTAN**

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Lead and its toxic compounds are dangerous environmental pollutants. The influence of these substances on the health of human beings, especially children, who are the most vulnerable to the harmful impact of lead, is worthy of special study, for the following reasons:

- lead is widespread (practically everywhere) in places where people reside;
- lead, even in extremely low concentrations in the environment, is capable of having a negative impact on children's health;
- lead causes significant damage to the human nervous system, which has a negative effect on the intellectual development of the growing generation;
- the primary sources of pollution by lead and lead compounds are of

anthropogenic origin, creating the opportunity, through the efforts of society, of regulating such pollution and decreasing the risk to health.

Lead and lead compounds are polytrophic poisons (that is, they act on various organs and body systems), and primarily cause changes in the nervous and circulatory systems, as well as disrupting fermentation reactions and vitamin exchange, and lowering immunobiological activity.

The majority of children subjected to the chemical impact of lead and lead compounds suffer from subclinical effects—that is, effects that have not yet appeared in the form of illness, but which already take their toll on body functions. The results of research show that poisoning by even small doses of lead leads to a disruption of motor and coordination skills in children (including hand-eye coordination), as well as of hearing and sleep, and a stunting of physical development (Perlstein, Attala; Bellinger et al.; Rabinowits et al.; NRC). In its publications, the World Health Organization has repeatedly emphasized that lead is of no chemical or biological importance for the human body. The illnesses caused by lead and toxic lead compounds have a negative effect on the development of society as a whole, since the number of highly gifted individuals is lowered, and the number of people with decreased intellectual abilities is increased (*Lead and Health*).

It has been discovered that an increase of 1 mcg/dl in the lead content of the blood of preschool-age children leads to a decrease of 0.25-0.50 points in the coefficient of a child's intellectual development. In addition, the consequences of lead poisoning may appear many years later. For instance, as a result of the study of a group of children in whose blood increased levels of lead were found at the age of two years, disruptions in nervous system activity were discovered ten years later (Markowitz). At the present time, the threshold level of lead poisoning for preschool-age children is considered to be a level of lead in the blood equal to 10 mcg/dl.

The primary sources of lead pollution are discharges from industrial enterprises (Nazarbayev), leaded gasoline (Perlstein, Attala), and lead-containing paints and finishes used in construction and in the manufacture of dishware, toys, and other everyday objects (Bellinger et al.). Other sources also exist (for example, Ayurvedic medicines, traditional forms of cosmetics, and others), but these are encountered only in certain countries of the world.

Long-term research has confirmed the direct cause-and-effect connection between the appearance of the early stages of lead poisoning in children, taking the form of disruption of the central nervous system, and the lead content in dust entering the child's body orally, through dirty hands. In order for such negative effects to appear in children, the falling of tiny particles of paint, contaminated soil, etc. into the dust is sufficient. In this context, hygienic

measures play a significant role in preventing the negative effects of lead on children's health. The use of therapeutic medicines is less effective, since it has been proven that they temporarily lower the level of lead in the blood, but do not remove it from bone tissues.

In various countries of the world, significant positive experience has been accumulated with regard to decreasing the impact of lead on the health of children. In the United States, thanks to the existence of a special comprehensive program over the course of 20 years, the average lead content in the blood of preschool-age children has been reduced by 80% (Brody et al.). In the Landskron region of Sweden, where the largest center for the processing of lead batteries in Europe is located, the average lead content in the population's blood was reduced in 10 years from 6.5 to 3.05 mcg/dl (Farago et al.). Over the course of two years, in the city of Zlatna (Rumania), the average concentration of lead in children's blood was reduced from 40 mcg/dl to 28 mcg/dl, in spite of the fact that discharges from industrial enterprises did not fall during that period (Activity report...).

For the Republic of Kazakhstan, the problem of lead pollution is especially urgent. Not only are deposits of lead ore refined within the country, but large metallurgical enterprises are in operation as well (the Ust-Kamenogorsk Lead and Zinc Combine, the Yuzhpolimetall company, and others). However, to date no unified program has been developed in Kazakhstan to prevent the effects of lead on children's health.

An analysis of the extent to which the problem has been studied show that Kazakhstani scientists, over the course of decades, have conducted ongoing research into the hygienic aspects of environmental lead in various regions of the country (Granovsky). However, the majority of such studies have been devoted to individual regions or industrial enterprises. Moreover, as a result of the different laboratory methods used by various authors, it is difficult to compare the data obtained.

From 1996 to 2003, a study was conducted in the Republic of Kazakhstan with the support of the Civil Research and Development Fund (CRDF, USA) and the Ministry of Science and Higher Education of the Republic of Kazakhstan, in order to estimate the effect of lead pollution on children's health. The chief agencies conducting the study were the Center for Healthcare and Environmental Design (Almaty, Kazakhstan) and SHARE International, Inc. (USA). Their research involved the comprehensive study of all possible forms of impact by lead on the health of children in various regions of Kazakhstan. The work was carried out using a unique set of portable equipment (NITON XL-700, ESA LeadCare, Kaulson Laboratories Hematofluorometer, and so forth), as well as stationary laboratory complexes in the United States, including a computerized chemical electron microscope (ElectroMicroProbe), enabling researchers to

determine the chemical compounds in which lead was found.

Studies were conducted in the cities of Almaty, Shymkent, Ust-Kamenogorsk, Taldykorgan, Tekeli, Pavlodar, Ekibastuz, and Kyzylorda; more than 1100 children and 27 preschool establishments were examined, more than 5000 analyses of the quality of paints, toys, and dishes performed, and 800 express-surveys of soil pollution taken.

The data obtained showed that the mean level of lead contained in the blood of the preschool-age children examined was 8.82 ± 0.26 mcg/dl. At the same time, lead content higher than the norm was found in the blood of 20.7% of the children. The mean amount by which the level of lead exceeded the norm was 2.4 mcg/dl per child. If we take this level as average for Kazakhstan, the overall loss in intellectual development, calculated for all preschoolers, totals approximately 600,000 IQ points**. The highest number of children with increased lead levels was found in Shymkent (65%), the lowest in Pavlodar (4%).

The loss from an increase in the concentration of lead in the blood of 1 mcg/dl per child is estimated in the United States to be approximately \$1200 US (Lead and Health).

As noted above, the primary sources of pollution of the environment by lead and its toxic compounds in Kazakhstan are the following: industrial enterprises, leaded gasoline, and lead-based paints and finishes.

Industrial enterprises

As a rule, such pollution is localized in the zone where the polluting enterprises are located. In the given case, the effects of lead on children's health may be prevented through planning aimed at reducing the negative environmental consequences of industrial operations, observance of basic hygienic requirements, and provision of special training and information to employees of preschool establishments, medical workers, and parents. In some instances, it is necessary to change the profile of the preschools or move them to a different neighborhood, and also work to restore the damaged environment.

Lead content in paints and finishes

In the majority of Kazakhstan's regions, increases in the level of lead in blood are observed only in individual children. In most cases, this is tied to the use of lead-based paints in the manufacture of toys (above all those of Chinese manufacture), the use of certain kinds of paints and enamels for decorating homes and courtyards (primarily browns, yellows, or greens), and the use of lead-based finishes in the production of dishware (mainly ceramics from China, Russia, and Kazakhstan).

Such cases of the effect of lead on children's health may be prevented by strengthening controls over the quality of building materials and household items (in the first place, increasing the role of the Sanitary-Epidemiological Service

in the mandatory certification of production, as well as creating specialized and well-equipped laboratories), observing individual hygiene, and improving training and information for preschool employees, medical workers, and parents. Within the framework of the research undertaken in Kazakhstan in 1996-2001, recommendations were developed and employed in the city of Pavlodar, enabling the mean level of lead in the blood of children attending preschool establishments to be reduced by half.

Leaded gasoline

Despite the fact that leaded gasoline, containing tetraethyl lead, is one of the sources of environmental pollution, to date no unified normative legal act regulating its use has been passed in Kazakhstan. The use of leaded gasoline is prohibited only in certain regions of the republic.

It is necessary to prohibit the use of leaded gasoline throughout the Kazakhstan, and to create an active system for monitoring and enforcement. Experience has shown that a complete withdrawal from the use of leaded gasoline—for example, that carried out in the United States from 1976-1991—has led to a reduction of lead levels in the population's blood of 77%, and a twofold reduction of the concentration of lead in leaded gasoline led to a decrease of 20% in the level of lead in the blood of the population of Great Britain (U.S. Environmental Protection Agency).

In our opinion, in order for a substantial reduction to take place in the effects of lead and toxic lead compounds on the health of children in Kazakhstan, a number of measures must be taken.

1. Improvement in the situation with regard to polluting industrial enterprises.

Many of Kazakhstan's industrial enterprises continue to make use of obsolete technology, the complete replacement of which is either not possible at this time, or not justifiable in economic terms. Therefore, these enterprises are unable to strictly observe modern environmental norms.

2. Instruction, distribution of information, and prophylactic measures.

The impact of lead on children's health depends largely on individual behavior. Therefore, we recommend that the following basic hygienic requirements be observed:

- conducting daily cleanings, with water, of residential dwellings, carefully cleaning carpeting with a vacuum cleaner;
- changing footwear (and preferably clothing as well) upon entering a home from outside;
- forbidden children to accept food on the street;
- making sure that children wash their hands after returning from outside and

before eating;

- not permitting children into building where repairs are taking place, and so forth.

In order to carry out the aforementioned measures, leaders and specialists at agencies of the Sanitary-Epidemiological Service, children's polyclinics, and educational establishments must not only understand the gravity of the problem, but must possess corresponding qualifications and necessary experience in dealing with it.

Educational seminars should be held for parents as well. Information regarding the dangers of lead intoxication in children and means for preventing it should be distributed widely in the mass media. With the aim of reducing the threat of lead poisoning in children, we recommend the following:

- avoid iron deficiencies in their diet;
- daily intake of up to one gram of calcium.

In formulating a government order for scientific research, priority should be given to hygienic research aimed at developing measures for preventing lead poisoning.

3. Comprehensive research and monitoring.

In light of the diverse pathways by which lead can penetrate the body, it is necessary to develop a system of constant monitoring, and to conduct regular and comprehensive studies in order to discover children suffering from the danger of lead intoxication. Throughout the world, the widely accepted practice is to simultaneously conduct observations both of the state of the environment and of the lead content in children's blood, as a primary marker of pollution. The impact of lead on children is highly individual in nature; two children from the same family may have different levels of lead in their blood, depending on the specific details of their behavior.

4. Solutions for urban planning and construction, as well as the recultivation (restoration) of soil and plant cover.

The implementation of a program for decreasing the danger of lead poisoning in children requires the adoption of specific solutions for urban design and construction, and the restoration of the natural environment (above all, the soil) at sites that have been subjected to technogenic disruption.

5. Medical examination and treatment.

At the present time, no truly effective methods exist for treating children suffering from lead poisoning.

Relying on the criteria developed by the World Health Organization, we can assert that among all of the children studied in Kazakhstan, approximately 5.7% (having lead blood levels higher than 25 mcg/dl) require careful medical

examination, and some 0.4% (with lead blood levels of over 55 mcg/dl) are in need of immediate treatment.

6. Improvements in the framework of official norms and legislation, as well as organizational measures.

The improvement of the current normative and legislative framework in Kazakhstan is of critical importance for programs aimed at decreasing the threat of lead poisoning in children, as current legislation fails to meet the needs of the times.

Taking into account all of the aforementioned issues, specialists at the Ministry of Public Health of the Republic of Kazakhstan have developed a concept and program for the comprehensive study and reduction of the dangers of the impact of lead on the health of the children of Kazakhstan (Decree No. 859, September 16, 2002). The implementation of this program will make it possible to have a real impact on the current situation, to attract investors, and to guarantee that the plans developed by the country's scientists are adopted and put into practice.

References (in Russian):

Granovsky, E.I. *Pollution of the Environment and the Human Body by Lead in Kazakhstan: An Analytical Survey*. Almaty: KAZGOSINTI, 1998.

Nazarbayev, N.A. Message by the President of the Country to the People of Kazakhstan, "Kazakhstan-2030: Prosperity, Security, and Ever-Growing Welfare for All Kazakhstanis." Almaty, 1997. From the "Jurist" database, <www.zakon.kz>.

References (in English):

Activity report # 45. Summary of Activities in Zlatna, Romania, 1994-1997: A Cross-Sectoral Approach to Environmental and Occupational Health Improvements. USAID, 1998.

Bellinger D.C., Stiles, K.M., Needelman H.L. Low level lead exposure, intelligence, and academic achievement: a long-term follow-up study. *Pediatrics*. 1992; 90: 855-861.

Brody D.J., Pirkle J.L., Kramer R.A. et al. Blood lead level in the US population. *JAMA*. 1994; 272: 277-283.

Farago M.E., Thornton I., White N.D. et al. Environmental impacts of a secondary lead smelting in Landskrona, Southern Sweden. *Environ Geochem Health*. 1999; 21/1: 67-82.

Markowitz M. Lead Poisoning // *Pediatrics in Review*, v. 21, no. 10, October, 2000.

Lead and Health. WHO, 1995.

NRC (National Research Council). *Measuring Lead Exposure in Infants, Children and Other Sensitive Population*. Washington, D.C., National Academy Press, 1993.

Perlstein M.A., Attala R. Neurologic sequelae of plumbism in children. *Clin Pediatr.* – 1966; 5: 292-298.

Rabinowits M.B., Wetherill G.W., Kopple J.D. Kinetic analysis of lead metabolism in healthy humans. – *J Clin Invest*, 1976; 58: 260-270.

U.S. Environmental Protection Agency. *Costs and Benefits of Reducing Lead in Gasoline: Final Regulatory Impact Analysis*. – Washington, D.C., Environmental Protection Agency, 1985.

* mcg/dl — microgram per deciliter.

** IQ — intelligence quotient.



**ON THE QUESTION OF THE CREATION OF FUNDS
FOR SPECIALLY PROTECTED NATURAL
TERRITORIES IN THE REPUBLIC OF
KAZAKHSTAN (THESES)**

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I. Is the Creation of Funds for Protected Territories Needed?

Kazakhstan undoubtedly has a need for such funds, as a number of unresolved financial, legal, organizational, and economic problems stand in the way of the development of specially protected natural territories.

These problems can be clearly demonstrated using the example of the situation that has formed in Ile-Alatau State National Nature Park, created in 1996 (Government Resolution No. 228, February 22, 1996; the park's territory is 202,292 hectares).

1. The chief environmental problems of Ile-Alatau National Park are as follows: pollution of the atmospheric basin; pollution of the surfaces of glaciers; pollution of rivers; and a significant reduction in the reproductive abilities of relict forests as a result of environmental pollution. Areas adjacent to the city of Almaty have suffered especially badly, due to the intensive development of mountain territories. Cases of arbitrary seizure and inappropriate use of land, illegal construction of economic objects (roads, restaurants, campsites, and so forth), and illegal forest cuttings have been noted in the park.

Large-scale and poorly organized tourism harms the park's ecosystems (due to large quantities of garbage, washing of automobile in the rivers, lighting of bonfires in prohibited areas, cutting of trees and bushes). The park suffers from

the unregulated gathering of mushrooms, berries, as medicinal plants, as well as illegal hunting. In recent years, its forests have been severely damaged by fires.

2. Unresolved legal questions. To date, the provisions of Government Resolution No. 228 of February 22, 1996, which authorized the park's creation, have yet to be fully implemented. The park's directors have not yet received a legal act regarding the allocation of land for the territory of the park*. Land use by outsiders continues in the park as before. The park's borders have not been marked. Local authorities have been empowered to interfere in the park's conservation activities.

In light of the absence of a protected (buffer) zone designated in accordance with the law, and of any resolution regarding such a zone, the park's territory has been subjected to intensive economic impact on the part of economic objects adjacent to its borders. One example is the organization of the Medeu Nature Park, virtually within the national park itself.

3. Park administration. Repeated reorganization of the bodies administering protected territories (included the Ministry of Environmental Protection) and numerous changes in the park's own leadership have hindered normal activity. Legal and social protection for the park's employees is not sufficiently guaranteed.

4. Park finances. Ile-Alatau National Park has insufficient means to finance its basic activities, as the level of financing has not changed, while the park's functions have been greatly expanded, compared with those of the forestry service. The employees are poorly paid. Payments for the protection and restoration of natural resources have been liquidated; in this manner, one of the chief services provided by protected territories is not paid for at all.

In connection with the coming into force of the law "On Taxes and Other Mandatory Payments to the State Budget" on January 1, 2002, new financial problems have arisen, since Article 478 of this law stipulated that payments for the use of specially protected natural territories be sent directly to the state budget, contradicting Article 78, Point 1 of the law "On Specially Protected Natural Territories," which, with the introduction of the new tax code (see Article 2, Point 4 of that law), has ceased to have any force.

Government Resolution No. 119 of February 12, 1999, likewise does not allow additional financing. In the latter resolution, Point 5.3 of the "Sample Charter for State Enterprises" states that revenues received by state enterprises will be sent to the state budget. No information is available to the public on how funds received from the use of specially protected natural territories of republican status will be used in turn.

5. Ile-Alatau National Park has been entered in a preliminary listing of sites nominated by the Republic of Kazakhstan for inclusion on the World Heritage

List. However, the aforementioned problems significantly lower the possibility that the park will be included on the list.

6. Ben Steinberg, the director of ACDI/VOCA (Volunteers in Overseas Cooperative Assistance), who organized consulting assistance from ACDI/VOCA to Ile-Alatau National Park in 1996-7, has spoken of the need to create a fund for the park's development.

To varying degrees, all of the problems noted above are typical for all of Kazakhstan's protected territories.

II. Legal Foundations for the Activity of Funds in the Republic of Kazakhstan.

The experience of the activities of environmental protection funds in the Republic of Kazakhstan shows the following. The procedure for forming state funds for protected territories is set forth in the law "On Specially Protected Natural Territories." As a result of later amendments to this law, only one point, on the government's authority to confirm the provisions of state funds for protected territories (Article 8) was retained; other articles regulating the funds' activities were removed. To date, not one fund of this type has been created in Kazakhstan. The law says nothing about non-governmental, private, or other funds.

In accordance with the laws "On Environmental Protection in the KazSSR" of 1991 and "On Environmental Protection" of 1997, state and non-governmental funds (both republican and local) for the protection of nature (in 1997, for environmental protection) were made legal. The state funds became the primary institutions. In 1993, in accordance with a decision by the Central Asian heads of state, the International Fund to Save the Aral was created.

According to the 1997 law "On Environmental Protection," revenues in state environmental protection funds should be used only for environmental goals, including "the creation and establishment of specially protected natural territories" (Article 34, Point 7).

The chief problem in the activities of environmental funds is the inappropriate use of the funds' revenues. Extra-budgetary funds were included within local government budgets, from which they then received allocations. Only 30% of the revenues designated for environmental goals were in fact used for this purpose; the remainder vanished irretrievably into the local budgets. In 1998, this practice was legalized by corresponding amendments to the law "On Environmental Protection," and in 2001 all environmental protection funds were liquidated. The payments used to form the funds became one of the articles for supplementing the budget.

Mention should also be made of the National Fund of the Republic of Kazakhstan, which was formed on the basis of payments from twelve resource-extracting companies. If the National Fund is taken as an example, the flaws in

the current legal system for regulating the activities of such funds are clearly visible.

At the present time, the funds' activities are regulated by the following laws of Kazakhstan:

- Law of the Republic of Kazakhstan No. 162-1 "On Specially Protected Natural Territories," July 15, 1997 (with amendments introduced in accordance with Laws of the RK No. 381-1, May 11, 1999; No. 151-II, January 23, 2001; and No. 276-II, December 24, 2001);

- Civil Code of the Republic of Kazakhstan No. 409-1 ZRK, July 1, 1999 (Special Section) (with amendments introduced by Laws of the RK No. 486-1, November 29, 1999; No. 42-II, March 29, 2000; No. 75-II, July 5, 2000; No. 128-II, December 18, 2000; No. 260-II, December 6, 2001; No. 276-II, December 24, 2001; No. 323-II, May 21, 2002; No. 376-II, January 8, 2003; and No. 394-II, March 3, 2003);

- Law of the Republic of Kazakhstan No. 142-II, "On Non-Commercial Organizations," January 16, 2001 (with amendments introduced by Law of the RK No. 276-II, December 24, 2001).

A large number of serious obstacles exist to the creation and functioning of environmental funds in Kazakhstan. In a country with more than a decade of independent existence, a state environmental policy, which should be approved by Parliament, has yet to be developed. In spite of countless announcements by officials of adherence to the principle of Rio-92, to date no strategy for sustainable development exists, nor has a national Agenda 21 been prepared. At the present time, the republic has not yet confirmed the National Environmental Action Plan, and no program for the rational use of natural resources has been adopted. In light of the absence of a clear environmental policy, economic mechanisms for stimulating rational natural resource use and environmental protection, which had only begun to form in independent Kazakhstan, have been virtually eliminated, with the goal of stimulating economic growth.

The massive violation of environmental legislation has become a standard practice in Kazakhstan—not only by ordinary citizens and businessmen, but also by government officials at all levels. In connection with this, the funds meet with a mass of difficult legal issues in carrying out their activities.

Another problem is imperfect environmental legislation. The executive branch of government in Kazakhstan effectively dominated the representative branch; Parliament is practically excluded from resolving the country's environmental problems. No clear division of authority or right of ownership between the various branched of state power exists. A clear mechanism for calling environmental violators into account is absent. The republic has not devoted proper attention to the fulfillment of international conventions.

The idea of the creation of independent funds is hardly likely to receive practical support from the corresponding ministries and agencies.

III. Steps Needed for the Creation of Funds.

1. Foreign aid to specially protected natural territories must be made more effective, better coordinated, and better targeted. Submitted projects must be carefully analyzed (the projects should be of an applied and concrete nature); a clear system for accountability needs to be developed; mechanisms must be created that permit monitoring of the decision-making process with regard to provision of assistance and use of funds; provision of assistance should be tied to the observance of human rights in Kazakhstan. The high level of corruption in Kazakhstan, which cannot help being reflected in the system for distributing foreign aid, should be taken into account.

2. To ensure the activity of environmental funds, an inter-governmental agreement should be signed between interested countries and Kazakhstan at the time of their creation. A similar agreement should be concluded with major international organizations involved in the funds' creation.

3. One of the most difficult tasks is the introduction of amendments to Kazakhstani legislation aimed at ensuring the functioning of such funds. Therefore, it will be necessary to create a group of experts who would develop the legal, organizational, and other foundations for the funds' work, taking into account the specific features of the Republic of Kazakhstan.

4. It would be more expedient to create funds for financing individual sites, than large-scale funds covering an entire set of territories. Perhaps it would be best to begin with the creation of funds to support the sites nominated for the World Heritage List—for instance, Ile-Alatau National Park, within its expanded boundaries, and the Almaty Nature Preserve. It may be worthwhile to raise the question of creating a trans-border World Heritage territory jointly with Kyrgyzstan.

Taking into account the specific features of our republic, funds should first be created according to the first model (cash funds)***, and then a gradual transition made to funds according to the third model (revolving funds)**. Each fund should be administered by a council including representatives of the protected territories, sponsors, state bodies, scientific establishments, and non-governmental organizations.

5. The question should be raised of including the given territories in the World Heritage Convention as soon as possible. If they are added to the World Heritage List, both the territories and their funds will become more attractive to potential donors. Therefore, it is crucial to activate the work of the World Heritage Center and the World Conservation Union in helping to speed the process of including the given territories on the World Heritage List.

6. Negotiations with sponsors regarding the funds' creation should be started in advance. It may be worthwhile to begin negotiations with transnational corporations working in Kazakhstan regarding support for the funds and protected territories. Some of these corporations have a good reputation among environmentalists—the Body Shop company, for example.

7. Extensive work should be conducted with Parliament, the government, the Ministry of Environmental Protection, the Ministry of Agriculture, and other interested ministries and agencies to explain the goals, tasks, and results of the activity of such funds: it is vital to show the benefits that Kazakhstan can receive.

*As of October 1, 2004, the park administration had received legal ownership of the majority of the land included in the park's territory.

**Alain Lambert. "Environmental Funds: Much More Than Financial Mechanisms." Prepared for the DFID workshop on "Economic and Financial Management Tools," Cuiaba (Brazil), March 22-23, 2000.



**ON THE NEW VERSION OF THE CONCEPT OF
ENVIRONMENTAL SECURITY OF THE REPUBLIC
OF KAZAKHSTAN FOR 2004 – 2015**

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Under the conditions of the transition to a market economy in the Republic of Kazakhstan, many environmental problems have been exacerbated. The weakening of administrative regulation of economic actors and the growing role of profit have led to a worsening of the environmental situation.

Taking these factors into account, in April 1996 the Security Council approved a Concept of Environmental Security of the Republic of Kazakhstan, which defined the strategic goal of state policy. The government’s efforts were to be aimed at ensuring and supporting a healthy environment for human beings at an optimal level, with the mandatory condition that biological diversity be preserved (with protection of both living organisms and landscapes stipulated as being of equal importance).

This goal was to be attained through the creation of an effective system for administering the use of natural resources, based on environmental limits on resource use for specific territories and ecosystems.

Since the Concept was first approved in 1996, significant changes have taken place in the socioeconomic life of society: the fall in production has been halted, and its sustainable growth has been noted; living conditions for the republic’s population have stabilized; and new opportunities have appeared for financing some environmental programs.

Under these circumstances, the need has arisen to reconsider the statutes of the Concept of Environmental Security, without altering its goals or underlying principles.

Taking into account the current situation, the Security Council ordered the Ministry of Environmental Protection to make corrections and present a new version of the Concept for consideration; this was carried out at the beginning of 2003.

However, an analysis of the new version shows that within it, an attempt has been made to unite environmental security and state environmental policy. As a result, a document has appeared that requires a conceptual reworking.

As defined in the law “On the National Security of the Republic of Kazakhstan,” “environmental security is the state of protection of the vital interests and rights of individuals, society, and the state from threats arising as result of anthropogenic or other impacts on the environment” (Article 1). Therefore, we feel that the Concept of Environmental Security should be reasonably clear and concise. It should guarantee the organization of natural resource use as a whole, without causing irreparable damage to the environment or harming the population’s health. Proceeding from this, the goals, tasks, and principles of the country’s environmental security should be formulated in the first section of the Concept.

Questions concerning the state of the environment, prioritizing of environmental problems, and determining the course for their solution should be covered in another basic document—the Fundamentals of State Environmental Policy of the Republic of Kazakhstan, which should be approved by Parliament.

The second section of the Concept, in our view, should identify the development of a new, modern system for administering the use of natural resource use as the primary condition for guaranteeing environmental security. Here, a foundation should be provided for the principles of rational resource use, according to which the level of anthropogenic impact should correspond to the ability of ecosystems to neutralize its consequences.

This principle should be realized through a system of territorial environmental norms (limits) for resource use, calculated on the basis of norms for environmental impact established for the primary ecosystems of the Republic of Kazakhstan.

It is also necessary to amend the system of environmental norms for enterprises and make the transition to norms based on proportionate impact on the environment, calculated per unit of production. The current system of environmental norms, based on maximum permissible emissions and discharges, has outlived its usefulness and no longer corresponds to existing environmental conditions.

The second section of the Concept should also include a subsection on the environmental certification of individual territories of Kazakhstan. In implementing such certification, it will be necessary to establish the factual level of the anthropogenic “load” on the environment.

Here, principles must be developed for assessing environmental impact on individual territories, which should form the basis for all other elements of administering the use of natural resources. The state of the environment will be assessed by comparing the normative (taking into account the interests of the national economy) and actual levels of environmental impact.

The conclusion to the second section of the Concept should indicate the need to divide Kazakhstan into environmental districts, within the framework of which all of the aforementioned work will be conducted: setting territorial environmental norms, environmental certification, and environmental impact assessments.

The third section of the Concept should outline the means for improving the existing elements of the system for administering natural resource use:

- environmental planning;
- the system of environmental monitoring;
- state and public environmental oversight;
- state and public environmental expertise;
- the system for permits for the exploitation of natural resource potential;
- the economic mechanism for natural resource use.

The Concept should emphasize that in order to improve the system for environmental planning, it must be conducted at the territorial and production levels, and that in doing so, territorial planning should be the conclusive and determining factor.

Planning of production at enterprises will be carried out within the limits established for a given site in the process of territorial planning. In the course of this planning, long-term, mid-term and short-term programs are developed. Their preparation will be preceded by the development of comprehensive territorial schemes for environmental protection on the oblast level, which will define the path of economic and environmental development for a given territory.

Under the new conditions, state environmental monitoring should take into account the location and specific features of the ecosystems within each territory. This form of organization is necessary for the ongoing analysis of the observance of the territorial norms for natural resource use established for these ecosystems.

In order to improve the system of government oversight, it is necessary to include monitoring the observance of limits on natural resource use from a territorial standpoint among the obligations of oversight bodies, in addition to their current monitoring of the observance of environmental production norms.

The duties of agencies for environmental expertise should also be expanded. In addition to assessing the environmental impact of planned and existing enterprises, they must also put into practice the assessment of impact on the ecosystems of a given territory. This form of strategic environmental assessment, conducted in accordance with international standards, will make it possible to take well-grounded administrative decisions regarding the rational placement of specific branches of industry on the country's territory.

The system of permits for the exploitation of natural resource potential should also be amended. Ongoing oversight of the level of anthropogenic loads existing on a specific territory should be made the duty of state agencies for environmental expertise. This is necessary, so that the total volume of permits for natural resource use issued for a given territory does not exceed the environmental norms established for it. In the events that these are exceeded, a mechanism for compensation should come into force.

Improvement of the current economic mechanism for natural resource use must be conducted according to a specific sequence of actions.

The existing system for calculating the rates of fines for environmental pollution should be left unchanged until the division of the country into environmental districts has been completed, and the results of an assessment of the state of the environment in these territories has been obtained. There is no point for nationwide basic rates to be determined during this period, or for the government to approve them, since an objective assessment of the state of the environment is lacking. The oblasts will recalculate these rates as they see fit; that is, in practice the level of fines will remain the same as before. When, as a result of the creation of environmental districts, an objective assessment of the environmental condition of these territories and the ecosystems included within them has been obtained, the establishment of new base rates by the government will be, beyond a doubt, an expedient step. These will be recalculated into concrete rates through the application of regional coefficients, taking into account the environmental state of the given territories.

The fourth section of the Concept should be devoted to questions of ensuring environmental security in the event of emergency situations, both natural and technogenic in character. In our view, special attention should be paid in the section to improving the network of agencies for prediction, warning, and ameliorating the consequences of accidents, and natural disasters.

The realization of the new Concept of Environmental Security will require carrying out the measures outlined in the previous version.

The most fundamental of these, without a doubt, is the creation of normative and methodological documentation for the division of Kazakhstan into environmental districts, and its successful implementation.

At the present time, the basic normative and methodological documents for the creation of environmental districts are practically complete; after these documents have been discussed by the scientific and environmental public, they will ensure that our proposals are realized.

With the aim of improving the system for administration of natural resource use, the following work must be carried out more effectively:

- setting economic norms;
- planning measures for environmental protection;
- environmental oversight;
- environmental expertise;
- an economic mechanism for the use of natural resources.

After examining the draft for the Concept of Environmental Security of the Republic of Kazakhstan, one may draw an unambiguous conclusion—the proposed draft requires fundamental revision. In order to do this, the Ministry of Environmental Protection should create a working group, which should include its own employees, as well as representatives of the Ministry for Emergency Situations, scientific institutions, specialized consulting firms, non-governmental organizations, and natural resource users. Only if these conditions are observed can a document be developed that will correspond to the requirements of the current environmental and socioeconomic situation.



**THE MECHANISM AND CONSEQUENCES OF
VIOLATION OF THE LAW
“ON ENVIRONMENTAL EXPERTISE”**

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One of the primary causes of the worsening environmental situation in the Republic of Kazakhstan lies in the numerous violations of environmental legislation that continue to occur. In this article, using the law “On Environmental Expertise” as an example, the means by which this law is broken will be examined, as well as the consequences of its violation, which lead to the infringement of citizens’ interests, failure to observe their rights, damage to their property, and the destruction and pollution of the environment.

Goals, tasks, and subjects of state environmental expertise

Before beginning an examination of specific cases in which the law has been broken, we will recall briefly the goals, tasks, and subjects of state environmental expertise, as well as the role of the public in the process of carrying it out.

According to Law No. 85-1, “On Environmental Expertise,” passed on March 18, 1997, the goals of environmental expertise are as follows:

“1) Prevention of possible negative consequences from the implementation of planned administrative, economic, investment, and other activities on the health of the population and the environment;

2) Evaluating the correspondence between the environmental requirements of planned administrative, economic, investment, and other activities at stages prior to making decisions regarding their implementation, as well as in the process of their construction and implementation” (Article 3).

The tasks of environmental expertise are as follows:

“1) Determining the completeness and correctness of expertise conducted on subjects regarding the evaluation of the impact of planned administrative, economic, investment, and other activities on the environment and the health of the population, including an analysis of potential social, economic, and environmental consequences;

2) Organization of comprehensive, scientifically substantiated analysis and evaluation of the impact of planned administrative, economic, investment, and other activities on the environment and the health of the population;

3) Verification of compliance, in expert documentation, of the environmental requirements contained in the laws of the Republic of Kazakhstan, and standards, norms, and rules active on the territory of the Republic of Kazakhstan;

4) Preparation of the conclusions of environmental expertise, their transmission to organizations taking decisions regarding implementation of the subjects of expertise, and the presentation of necessary information to interested bodies and to the population” (Article 4).

According to the law, the subjects of environmental expertise are as follows:

“1) Pre-planning, pre-project, and project documentation, agreements, and contracts, including international ones, that concern the use of natural resources;

2) Drafts of legislative and other normative legal acts noted for passage in the Republic of Kazakhstan, that have an impact on the environment and the health of the population;

3) Materials for evaluation of compliance by the natural resource user of requirements concerning environmental protection and the health of the population (environmental audit) during the performance of economic activity” (Article 6).

The list of documents that must be submitted for state environmental expertise includes the following:

“1) A comprehensive socio-environmental and economic assessment of the impact of the planned activity on the state of the environment and the health of the population throughout the period that this activity is carried out, and a statement of the environmental consequences of this activity;

2) Documents of agreement regarding the realization of the planned activity with central and local executive bodies, as well as the results of a survey of public opinion, in accordance with the order established by the central executive bodies of the Republic of Kazakhstan in the sphere of environmental protection” (Article 15, point 1).

According to the law “On Normative Legal Acts,” drafts “of legislative and other normative legal acts, the consequences of whose passage create a threat to the environment, including threats involving radiation, safety, environmental

protection, are subject to mandatory environmental expertise” (Article 22, point 1-1). Such expertise is performed with the following goals:

“1) Evaluation of the quality, substantiation, timeliness, and legitimacy of the project, and of the project’s compliance with the human and civil rights secured by the Constitution of the Republic of Kazakhstan;

2) Determination of the possible effectiveness of the normative legal act;

3) Clarification of the project’s possible negative consequence, in the form of a normative legal act” (Article 22, point 2).

An analysis of existing legislation permits one to conclude that these laws, when strictly enforced, do a reasonably good job of guaranteeing compliance with environmental norms already at the stage of preparation of documentation, prior to the realization of any activity—from the drafting of legislation to strictly economic activities. However, in practice, not everything goes quite that smoothly.

Violation of the law “On Environmental Expertise” in the course of legislative activity

In recent years, the practice has become widespread of discussing draft laws not possessing the conclusions of state environmental expertise, or accompanied by purely formal conclusions.

The primary reason for the disdainful attitude toward the requirements of environmental legislation lies in the fact that despite the latter’s evident flaws, it hinders the uncontrolled, predatory use of the country’s natural resources, and thus fails to match the raw-materials orientation of the Kazakhstani economy.

The result of such an attitude toward the laws is that questions regarding the rational use of natural resources and protection of the environment have been almost completely ignored, above all by government bodies. In more than twelve years of Kazakhstan’s existence as an independent state, a state environmental policy has not been developed and passed by Parliament. The concept on environmental security prepared at the end of 2003 does not have the force of law, and in terms of its content is more descriptive than instructional in nature. Kazakhstan has demonstrated no particular zeal to enforce international conventions and agreements on environmental protection.

Therefore, it comes as no surprise that in 2003 (as of February 1, 2004), the drafts of laws such as “On Environmental Information,” “On Inserting Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan in the Area of Environmental Protection and Specially Protected Natural Territories,” “On the Protection, Reclamation, and Use of the Animal World,” and “On Amnesty in Connection with Legalization of Property” were submitted to Parliament without the conclusions of environmental expertise.

The drafts of the Forest, Land, and Tax Codes, discussed earlier, have been

subjected to state environmental expertise. These conclusions, especially those on the first two drafts, are highly indicative; therefore, we will publish them in full.

*Ministry of Natural Resources and Environmental Protection
of the Republic of Kazakhstan,
Committee for Environmental Protection*

*June 17, 2002
No. 09-1/204*

*Committee for Forestry,
Fisheries, and Hunting*

Conclusions of state environmental expertise with regard to the draft Forest Code of the Republic of Kazakhstan.

The draft Forest Code of the Republic of Kazakhstan has been submitted for state environmental expertise.

The draft Forest Code of the RK has been developed in accordance with the Plan for Work on Draft Legislation of the Government of the RK for 2002.

The given draft of the Forest Code of the Republic of Kazakhstan has been subjected to legal and scientific expertise.

The goal of the draft law is the regulation of legal relations with regard to forest lands in order to guarantee the protection, defense, and reclamation of forests, forest cultivation, rational and balanced use of the environmental and resource potential of forests, preservation of biological diversity and sites within the country's fund of natural preserves, as well as bringing [the latter—Ed.] into accordance with environmental and other legislation.

Conclusions:

The state environmental expertise, having examined the draft Forest Code of the Republic of Kazakhstan, approves it without changes.

*Chief State Environmental Expert
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Vakhit Keremkulov

*Ministry of Natural Resources and Environmental
Protection of the Republic of Kazakhstan,
Committee for Environmental Protection*

August 23, 2002

No. 09-2000

*Agency for Administration of Land Resources
of the Republic of Kazakhstan*

***Conclusions of state environmental expertise with regard to the
draft Land Code of the Republic of Kazakhstan.***

The state environmental expertise of the Republic of Kazakhstan, having examined the proposed draft Land Code of the RK, notes that this document has repeatedly passed through [the stage of—Ed.] agreement, and that its text has been amended in accordance with the remarks and suggestions earlier submitted by the Ministry of Natural Resources and Environmental Protection of the RK.

On the basis of the aforementioned, the state environmental expertise approves the draft Land Code of the RK.

Deputy Chairman of the Committee

Vakhit Keremkulov

The form and content of these conclusions do not correspond in the least with the requirements of the current “Instructions for the Performance of State Environmental Expertise Regarding Pre-Project and Project Materials in the Republic of Kazakhstan,” confirmed by the Ministry of Ecology and Bioresources* in 1997 [since 2002 the Ministry of Environmental Protection—Ed.]. Thus, from their context, it is impossible to determine either the composition of the documentation submitted for expertise, to know the opinions of experts on key environmental and socioeconomic questions, or to clarify the reasons why such complex projects are agreed upon nearly unanimously. It is also unclear whether or not an environmental impact statement, or another document containing an evaluation of “the possible negative consequences of the project’s approval, in the form of a normative legal act” (law “On Normative Legal Acts, Article 22). Later, during discussion of the codes in Parliament, numerous changes and additions were made to the various draft laws.

The manner in which these conclusions were legally registered also raises

questions, as they lack a number of attributes indicated in the “Instructions...” It is unclear whether the expertise was conducted by a single specialist, or by a commission of experts. The single signature at the bottom of these documents is also puzzling. We will recall that, according to points 7.1 and 7.2 of the “Instructions...”, for “the conducting of environmental expertise with regard to a specific object having a substantial impact on the environment” and “in considering especially important and complex projects,” an expert commission must be created. For analyzing such draft laws, this would have been the more correct decision.

Unfortunately, the flaws notes are not limited only to those expert conclusions and agreements issued from the desk of the Ministry of Environmental Protection. One vivid example is the conclusion of environmental expertise on the draft Forest Code, prepared by the Kazakh Research Institute for Forestry and Forest Reclamation. Instead of an analysis of the statutes of the draft Code, which regulates forestry activities, the institute conducted a scientific-legal expertise. If this document is carefully examined, it becomes clear that it was based on the conclusions of scientific-legal expertise conducted earlier by experts at the Institute for Legislation of the Kazakhstani Ministry of Justice; in other words, the prior document was simply recopied, with significant distortions made to the text.**

It is no surprise that, after receiving conclusions of state environmental expertise that possess so many flaws, members of Parliament are virtually forced to discuss draft laws from scratch. Nevertheless, Parliament cannot, or will not, strictly observe the requirements of the law, underestimating or ignoring the significance of environmental expertise in the lawmaking process. As a result, these laws lose their scientific and legal character, and acquire “dilettantish” features.

Parliamentary deputies should make decisions on the basis of full-fledged environmental expertise, performed both by governmental and by independent experts; take into account systematic predictions of the consequences of such laws’ passage, both for the natural world, and for the socioeconomic sphere; and take heed of public opinion. Deputies should operate on the basis of all documents presented for the performance of environmental expertise. Only then will the members of Parliament be capable of taking well-founded decisions, and not reading fortunes in tea leaves.

A similar situation arose in the discussion of the Code of the Republic of Kazakhstan “On Taxes and Other Mandatory Payments to the State Budget.” Without any scientific basis whatsoever, and in spite of the severe shortage of funds allocated for environmental protection, the parliamentarians rejected an entire series of payments for the use of non-woody plants, recreational resources,

and the atmosphere as a natural resource. At the same time, oil companies and mining enterprises were granted higher norms for deductions due to depreciation, as a hidden form of state subsidies to natural resource users.

A more original situation appeared with regard to payments for the conservation and restoration of natural resources. Article 30 of the law “On Environmental Protection” states that “in the procedure for compensating budget expenditures for the conservation and restoration of natural resources, fees will be charged to natural resource users in accordance with the Tax Code of the Republic of Kazakhstan.”

However, such fees are absent from the text of the Tax Code. In the conclusions of state environmental expertise with regard to the draft Tax Code, not a single one of its obvious failings were mentioned. The Code itself was passed without any special difficulty. The fact that taxes and fees may be used to stimulate the rational use of natural resources and environmental protection was hardly discussed. How could neither the experts, nor the parliamentarians notice that the Tax Code included no payments for the conservation and restoration of natural resources? Or was this done deliberately, in order to provide more hidden subsidies to resource users?

Violation of the principle of independence for state expertise

In a number of cases, interested parties were unable to avoid state environmental expertise, or to limit it to a merely formal conclusion. Therefore, clients and local authorities frequently resort to outright pressure on experts, in order to achieve a conclusion that will be profitable for them. No one is bothered by the fact that in doing so, they violate the principle of independent expertise, guaranteed by law (“On Environmental Expertise”, Article 18).

A vivid example of influence on the results of state environmental expertise can be found in Conclusion No. 3-8-144 from January 22, 2002 on the project for construction of a high-voltage (110 kV) surface power line through the Gornyi Gigant (Mountain Giant) district and the MVD settlement in Almaty. The line runs through residential blocks, next to homes and garden plots. Nevertheless, the conclusion asserts that the project was carried out in compliance with the following regulations, in force on the territory of the Republic of Kazakhstan:

“Rules for Protection of Electric Power Networks with Voltages Higher than 1000 Volts,” confirmed by Resolution of the Government of the Republic of the Kazakhstan No. 1436, October 10, 1996 (Rules);

Construction Norms and Rules (CNR) 2.07.01-89, “Urban Construction. Planning and Construction of Urban and Rural Settlement”;

CNR B 2.2.-1-96 “Planning and Construction in Districts with Individual Residential Construction.”

These assertions do not correspond to reality. In the Rules, it is stated that

“the passage of the route for surface and cable lines through residential territory in urban and rural settlements must be guided by the requirements stated in point 7.8-7.13 of CNR 2.07.01-89.” According to point 1.7 of CNR 2.07.01-89, “Residential territories are designated for the placement of residential dwellings, and of public buildings and structures.”

Appendix 2, point 2, CNR 2.07.01-89, “Anti-Fire Requirements,” prohibits the placements of high-voltage lines in a zone through which fire engines must pass.

In CNR B 2.2 -1-96, point 7.14 states that surface power lines with a voltage of 110 kV and higher must be placed outside the borders of territories of individual residential construction.

Moreover, the Rules stipulate the creation of a protective zone along 110 kV surface power lines in the form of plots of land and airspace, bounded by vertical surfaces standing on both sides of the line at a distance of 20 meters from the outer wires (in their upright position).

However, the presence of these clear directives (and their blatant violation) did not bother the authors of the conclusion for environmental expertise.

Following the construction of the high-voltage line through the Gornyi Gigant district and the MVD settlement, their narrow streets were decorated with garlands of high-voltage wires. Homes and yards, which more than 600 people lived, fell within the power line’s protective zone. Now people are forced to observe the line’s regime, in accordance with the requirements of the “Rules for Construction of Electric Power Installations.” Thus, as a result of the violation of the constitutional right of citizens to life, to a healthy living environment, and to the inviolability of their homes, people have suffered discrimination on the basis of their place of residence.

An analogous situation has taken shape in the city of Ust-Kamenogorsk, in the area of construction of Ash Pit No. 3 of the Ust-Kamenogorsk Thermal Power Station. The ash pit was placed only thirty meters from private homes.

In Amendment 2 to the “Sanitary Norms for the Project Design of Industrial Objects” 1.01.001-94, point 2.7 establishes the minimal sanitary protective zone for a power plant’s ash pit: no less than 500 meters (Class II danger) from plantings of trees and bushes along the perimeter. In addition, according to Amendment 2 (section II), point 2.6, the following note was added to the aforementioned sanitary norms: “The dimensions of the sanitary protective zone from a specific object may not be decreased if the background atmospheric pollution in that region, due to emissions on the part of the corresponding enterprises, central-heating boilers, and automobile transport exceed hygienic norms.” Pollution in the atmospheric basin of the city of Ust-Kamenogorsk, according to data from the Ministry for Environmental Protection, totaled 14.2 times the legal API in

2001.***

Nevertheless, the authors of the conclusion of state environmental expertise No. 09-1/294, September 13, 2002, regarding the project “Restoration of Ash Pit No. 3 of the Ust-Kamenogorsk Thermal Power Station” ignored these norms, and came to the following conclusions:

“1. The materials of the project “Restoration of Ash Pit No. 3 of the Ust-Kamenogorsk Thermal Power Station,” in their volume and content, correspond to the requirements of the legislation of the Republic of Kazakhstan in the field of environmental protection.

2. With regard to the materials presented, positive conclusions (agreement) have been provided by the corresponding bodies of republican inspection and oversight, in which grounds for permitting the planned activity are given.

The Ministry of Public Health of the Republic of Kazakhstan, in letter No. 07-2-73 on September 9, 2002, taking into account the relief of the site and the specific construction design features of the project, confirmed the conclusion of the Kazakh Republican Sanitary-Epidemiological Station and the East Kazakhstan department of the State Sanitary-Epidemiological Inspection regarding the placement of Ash Pit No. 3 of the Ust-Kamenogorsk Thermal Power Station at the existing construction site, without designation of a special sanitary-epidemiological zone (SEZ).”

The chief state sanitary doctor of the Republic of Kazakhstan, Anatoly Belonog, in letter No. 07-2-73 on September 9, 2002, provided the following clarification:

“In the given case, the dimensions of the SEZ have been decreased, and do not correspond to sanitary norms.

Together with this, taking into account the calculations for the spread of emissions of harmful substances into the atmosphere, the assessment of the ash pit’s environmental impact, and Article 37 of the law of the Republic of Kazakhstan “On Normative Legal Acts,” as well as the appeals by residents of the city of Ust-Kamenogorsk and the Akimat [governor’s office—Ed.] of the East Kazakhstan Region, the Ministry of Public Health of the Republic of Kazakhstan supports the conclusion of the Kazakh Republican Sanitary-Epidemiological Station and the East Kazakhstan department of the State Sanitary-Epidemiological Inspection regarding the placement of Ash Pit No. 3 of the Ust-Kamenogorsk Thermal Power Station at the existing construction site, **without designation of a special SEZ.**”

The letter by Kazakhstan’s chief sanitary doctor can be understood as follows: “If it’s not allowed, but you really want to, you can.” He confirmed the violation himself, and annulled it himself. True, the Specialized Inter-District Economic

Court of the city of Astana, on February 27, 2003, acknowledged that “the given letter does not possess any legal force, a fact that is not denied by the defendant’s representatives; therefore, it does not carry a mandatory character, as it does not alter, nor prevent or halt any form of activity—that is, it is not required to be put into effect. Furthermore, the ministry has not been granted the authority to public legal acts in the form of letters...” Nevertheless, the conclusions of state environmental expertise with regard to the project “Restoration of Ash Pit No. 3 of the Ust-Kamenogorsk Thermal Power Station” remain in force.

In reality, the conclusions of state environmental and sanitary-epidemiological expertise were done under pressure; in them, an inaccurate interpretation of the legal norms is given, which deprived the interested public of access to legal recourse.

Once again, as in the case of the construction of the high-voltage power line in Almaty, citizens’ constitutional rights were violated, property was damaged, and a threat to life and health was created.

Excesses of authority by territorial environmental protection agencies

Yet another form of blatant violation of the law takes place when territorial environmental protection agencies exceed their authority, and local government bodies refuse to recognize the authority of the Ministry of Environmental Protection.

One such violation involves the creation on October 1, 1999, of the Medeu State Nature Park on the outskirts of Almaty, immediately adjacent to Ile-Alatau National Park. The need for the new park’s creation was based on a resolution by the *akim* (mayor) of the city, determining the fate of land granted to Kazakhstan’s southern capital by Presidential Decree no. 3929, “On Changes to the Borders of the City of Almaty,” on April 29, 1998:

“1. The presence of valuable objects of the natural-reserve fund: botanical..., forest..., hydrological...and landscapes...;

2. ...The impermissibility of further chaotic construction activity, which may provoke anthropogenic catastrophes;

3. The massive onset of urban construction, growing transportation flows, and intensification of unorganized recreation;

4. The ongoing exacerbation of conflicts between land users and tourism firms.”

It was proposed that granting the given territory the status of a specially protected natural territory under local administration “will make it possible to truly preserve the people’s common property.”

This decision by local authorities aroused sharp criticism on the part of many specialists, and of the public as well. The reasons for this reaction were more than sufficient. First, the creation of Medeu Park meant lowering the

conservation status of part of Ile-Alatau National Park—lands that had been included in the newly restored protected territory; this contradicted Articles 12 and 13 of the law “On Specially Protected Natural Territories.” Second, portions of the buffer zone for Ile-Alatau National Park, as well as protective forest zones along the Little Almaty and Butakovka Rivers, were re-assigned to Medeu Park (in violation of Article 24). Third, a new administrative structure was created, which was to carry out the same functions as the existing national park administration. This immediately gave rise to a large number of conservation, legal, and financial problems.

However, none of these protests disturbed the akim in the slightest; nor did they disturb the obedient Almaty Territorial Department for Environmental Protection, which issued a positive conclusion of state environmental expertise regarding the creation of Medeu Park.

The history of Medeu Park might have ended quietly and peacefully, if an unforeseen obstacle had not appeared. The Ministry of Environmental Protection, having analyzed the situation, announced that “there is **no need** for the creation of the Medeu City Park” (letter of the Ministry of Environmental Protection No. 03-05-10/507, February 23, 2001). Responding to an inquiry by the Ecological Society Green Salvation, the ministry reported the following:

“The decision of the Akim of the City of Almaty regarding the creation of the Medeu State Nature Park was made in violation of the aforementioned norms of the Law; that is, without being submitted to and agreed upon with central executive bodies in the field of environmental protection.

The Ministry, in letter No. 02-05-10/1508 of May 16, 2001, in response to an official inquiry by the Akim, reported that in connection with the absence of sites belonging to the natural-preservation fund on the territory in question, the creation of the Medeu State Nature Park on this land is not well-founded. The same applies to the agreement on the natural-scientific and technical-economic grounds for the Medeu State Nature Park produced by the Almaty City Department for Environmental Protection, on the basis of the positive conclusions of state environmental expertise by the given administration, No. 3-46-383, issued on March 11, 2001. The Committee on Environmental Protection of the MNREP has confirmed the legality of the environmental expertise in question. However, the Order for Distribution of Authority between central bodies for state environmental expertise and territorial departments for environmental protection does not grant the latter authority to conduct expertise regarding projects for the organization of specially protected natural territories. Furthermore, the law “On Specially Protected Natural Territories,” Article 16, point 4, states directly that projects having a natural-scientific and

technical-economic basis, as well as the allocation of land from specially protected natural territories, are subject to state environmental expertise and approval by central executive bodies in the field of environmental protection.

*On the basis of the aforementioned, the Ministry considers that the decision of the Akim of the city of Almaty regarding the creation of Medeu State Nature Park **was adopted in violation of the norms** established by legislation of the Republic of Kazakhstan, and is subject to annulment, in accordance with established procedure” (Letter of the Ministry for Environmental Protection No. 02-05-10/375, February 6, 2002).*

Letter No. 03-05-08/585, sent to Green Salvation on February 24, 2003, confirms the following:

“...Resolution No. 906 of the Akim of the City of Almaty on October 1, 1999, regarding the creation of the Medeu State Nature Park, within the area of which lands from Ile-Alatau National Park, previously granted by a decree of the President of the RK to the akim of the city of Almaty, were included, was adopted in violation of legislative norms and is subject to annulment, in accordance with established procedure.”

However, the Ministry’s resistance to the all-powerful akim did not last for long. On August 20, 2003, it reported the following:

“The Establishment [Medeu Park—Ed.] was created with the goals of preserving and restoring the unique natural ecosystems of the Trans-Ili Alatau.

*...At the same time, state national nature parks belong to **the category of republican significance**. According to Article 41 of the Law of the Republic of Kazakhstan “On Specially Protected Natural Territories,” a state nature park is an analog of a state national nature park, setting the same goals and performing the same functions, but belonging to the category of specially protected natural territories **of local** significance, with the status of a conservation establishment.*

...Taking into account the fact that the territory of the Establishment is also a specially protected natural territory, and its status is analogous to that of Ile-Alatau National Park, we consider that the removal of land from the latter answers to the demands of current legislation...” (Letter of the Ministry for Environmental Protection No. 02-05-7/4061, August 20, 2003).

In this fashion, for the sake of reconciliation with local authorities, the ministry gave an arbitrary interpretation of the law, equalizing the status of specially protected territories at the local and national level. Moreover, the ministry, after acknowledging that the local authorities had broken the law, and that the Almaty City Department for Environmental Protection had exceeded its authority for conducting environmental expertise, did not even attempt to halt their illegal

activities. That is, it effectively justified all of the illegal acts by local authorities, and by the ministry's own subdivision.

The illegality of Medeu Park's creation was also confirmed by the office of the General Procurator (public prosecutor) of the Republic of Kazakhstan, which on August 16, 2000, conducted a check of the legality of activities involving specially protected natural territories. In a summary prepared for a joint collegium with the Ministry of Natural Resources and Environmental Protection, the General Procurator's office, in particular, wrote: "Two sites passed legal processing without the participation of the Ministry of Natural Resources: Medeu Nature Park and a zone of Baum's Grove Park."

At the same time, an extremely unfavorable social and environmental situation took shape in the Little Almaty Gorge and the adjoining territories of Ile-Alatau National Park. Territory that had been set aside for the protection and restoration of the unique natural ecosystems of the Trans-Ili Alatau was gradually transformed into an enormous construction zone for the city's elite, making it far more difficult for ordinary citizens to reach the national park itself. Medeu Park even acquired a nickname: "the park with one street and two fences."

Automobile transport on the new park's territory increased sharply, further increasing pollution of the atmospheric basin and of water sources, including glaciers on the territory of the national park (Seversky). The Minister of Environmental Protection, A.B. Samakova, in her speech of the Collegium of Ministers on February 28, 2003, was forced to acknowledge that the air in the region of Medeo (Medeu) and Chimbulak was severely polluted by exhaust gases from automobiles (Samakova).

The felling of wild fruit trees and bushes has significantly increased the danger of landslides, flash floods, and high water due to rain, from which a number of districts along the Little Almatinka River have suffered in recent years; the river itself flows through the territory of Medeu Park.

The situation with regard to crime in nearby regions has worsened as well. In particular, the number of thefts from dachas (summer homes) adjacent to the park has increased.

However, neither the ministry nor the local authorities have paid attention to these well-known facts. Even now, the increasing destruction of the ecosystem of Ile-Alatau National Park poses a threat to people's health and infringes on the rights of thousands upon thousands of citizens. The continued annihilation of nature in the national park can be given only one definition—it is an environmental crime against both current and future generations.

Conclusion: the consequences of breaking the law

The survey of violations provided above confirms once again that the law of

the Republic of Kazakhstan “On Environmental Expertise” occupies a key position in the country’s system of environmental legislation. However, it must be stated that, to date, state environmental expertise has not become an active instrument for the protection of human rights and the natural environment.

Several major problems, born of the systematic failure to comply with legal requirements, may be distinguished:

The absence or poor conducting of environmental expertise with regard to draft laws, beyond a doubt, is one of the primary reasons for the weakness and imperfection of environmental legislation in Kazakhstan.

For economic players, environmental expertise has become the object of trading, machinations, and corruption. In all of the cases examined above, users of natural resources considered it to be an indulgence that they needed to buy at any cost, in order to receive absolution for their future sins.

Government officials, in the majority of cases, look upon environmental expertise as an unpleasant procedure that must be observed, but no more than that. One especially alarming symptom lies in the fact that this law is broken by nearly all government bodies, beginning with local authorities and ending with those on the national level.

Judicial bodies deal poorly with the subtleties of expert procedures, and do not strive to delve into their essence. The conclusions of expertise are taken as the final truth. Even if in the course of legal proceedings the issue arises that such conclusions improperly interpret the norms of the law, or were made under pressure from an interested party, the Ministry of the Environment’s officials will fight to the death to save face, insisting upon its objectivity. As a result, such conclusions are forming the basis for the adoption of unjust and illegal decisions. We do not know of a single case in which the conclusions of state expertise have been annulled by judicial means.

Expertise, as a rule, is performed without taking public opinion into account; the latter is ignored, accounted for only formally, or simply falsified. This occurs not only due to failings on the part of officials, but also due to the fact that, despite the requirements of the Aarhus Convention (Articles 3 and 6) and the law “On Environmental Expertise” (Article 15), a process for taking public opinion into account, in accordance with these statutes, has not yet been developed. This concerns the collection of signatures, organization of public hearings, conducting of independent environmental expertise and monitoring, holding of referendums, and so forth.

Failure to comply with the requirements of the law “On Environmental Expertise” leads to serious consequences for both people and the environment. For this reason, it is essential that the public, as well as environmental and human rights organizations, fight for strict compliance with this law, which in

turn may become an effective instrument for the protection of the fundamental human right to a favorable environment.

References (in Russian):

Rules for Construction of Electrical Installations. Moscow, 1987.

Samakova, A.B., “Environmental Protection: A Summary of 2002 and Tasks for 2003,” *Environment and Sustainable Development*, no. 4, 2003, pp. 2-15.

Seversky, I.V., “Results of the Investigation of Polluted Snow Cover in the Basins of the Bolshaya and Malaya Almatinka Rivers,” in *International Economic Forum “Balkhash-2000”*, Almaty, 2000, issue 1, pp. 147-151.

*In the text, several names for the Ministry of Environmental Protection (since 2002), may be encountered: for example, Ministry of Natural Resources and Environmental Protection (since 1999), Ministry of Ecology and Bioresources (before 1999). This is explained by the fact that since its creation in 1989, the ministry’s name has been repeatedly changed.

** For more details regarding expertise on the draft Forest Code, see “Comments and Suggestions on the Draft Forest Code of September 23, 2002” at <www.greensalvation.org>.

*** API — comprehensive Atmospheric Pollution Index.



PASSENGERS IN FORGOTTEN WAY STATIONS

The Ecological Society Green Salvation and the Eremurus Environmental Club present

Film text and titles

October 23, 2003 will be the third anniversary of the Republic of Kazakhstan's ratification of the Aarhus Convention. As a country participating in the convention, Kazakhstan has taken upon itself the obligation to guarantee its citizens "the right of access to environmental information, public participation in decision-making, and justice in environmental matters."

However, in order to defend the rights guaranteed to them by their Constitution and by the Aarhus Convention, the people of Kazakhstan have been forced to fight a difficult battle.

A Helpless Giant

On the outskirts of the city of Almaty, there is a residential district by the name of Gornyi Gigant, or "Mountain Giant." Once it was praised for the green of its gardens, its clean air, and its wonderful view of the spectacular Trans-Ili Alatau mountain range. However, in recent years, uncontrolled construction, felling of trees, and dumping of garbage have transformed this site into yet another of the typically dirty suburbs of Almaty.

Three years ago, the city administration permitted the company Almaty Power Consolidated to run a high-power, 110-kilovolt surface transmission line through the district. As the authorities explained, the line was needed to supply electricity to one of the city's new districts. In fact, it was to replace a faulty underground cable, laid about ten years previously. The construction of the surface line was permitted because it was three times cheaper.

This decision contradicted not only common sense, but all official construction norms and rules as well. Running high-voltage lines over residential areas is categorically prohibited, since they are hazardous to people's life and

health. However, this bothered neither the city authorities, nor the power company.

The line began to be strung along the shortest possible path, with the towers placed next to homes, schools, a football field...without a glance at the fact that the cable hung over a gas pipeline, the roofs of houses, metal fences and garages.

Arkhip Timofeyevich Kupovtsev, resident of the Gornyi Gigant district: “And so now we’ve already begun to feel terrible on account of this misfortune. In general, we have death hanging over our heads. It’s like they’re telling me, a veteran of the war, to die!”

The workers built in a hurry, without taking people’s opinions into account, knocking down trees, breaking phone lines, moving fences without their owners’ knowledge, intruding into people’s yards.

Tatyana Mikhailovna Chaika, resident of the Gornyi Gigant district: “My brother died the night before, on June 17. He lay dying in my home, and the ambulance couldn’t get to us, because everything was dug up here. They couldn’t even get through. The ambulance was bad enough, but they also tore down the phone lines ten times over. We tried to call the ambulance, and the doctor couldn’t get through, because the mud was knee-deep. And when he died, they broke down that fence. They pushed their way in here, the bosses walked around, and they practically got down on their knees and said, “Let us tear down this fence; we’ll put everything back—we’ll even build you a new one.” I told them right off: “Don’t you make noise; my brother is dying and you’re taking me away from this, taking me away from that.” After all, I wasn’t leaving his side, not even for a minute. Then I was already so sick of it that I said, “Do what you want; just leave me in peace!”—and I left. Well, so they tore everything up, and after two hours my brother died. And we couldn’t even have a proper funeral; the hearse had to stand way over there.”

Many residents, in desperation, tried to sell their homes, but they found nobody willing to live under a high-voltage power line.

Nikolai Vladimirovich Tolstov, resident of the Gornyi Gigant district: “We’ve has our home for sale ever since, in order to leave for an environmentally clean zone, and not live here. But as you see, we can’t sell our home.”

Arkhip Timofeyevich Kupovtsev, resident of the Gornyi Gigant district: “They come here and they say, “The pole’s right there—we won’t take it!” Because of the pole. At first, there doesn’t seem to be any problem; then they look at where the column stands, and don’t discuss it any more.”

The violation of citizens’ basic constitutional rights by the city authorities and the power company aroused the displeasure of local residents. They appealed to the deputies of the Maslikhat, or city council, to members of Parliament, to their country’s president... In the course of three years, several court proceedings took place; the case was even examined by the Supreme

Court. However, the authorities remained deaf to their demands, and the most stubborn encountered the cudgels of the riot police and the stern looks of the judges.

Roza Imankulovna Jumalieva, resident of the Gornyi Gigant district: “The riot police brought 150 to 200 people, and all of these elderly, all of these elderly people, they beat them up.”

Iraida Nikolaevna Bendzya, resident of the Gornyi Gigant district: “They dragged them a hundred meters across the field.”

The construction approached its end. In order to create the appearance of legality, “public hearings” were held, but not one of the people living in the district were invited to them!

At the end of 2002, in response to the residents’ insistent request, a representative of the Almaty center of the Organization for Security and Cooperation in Europe visited Gornyi Gigant.

Aliya Orazovna Muratbaeva, resident of the Gornyi Gigant district: “We appealed to the deputies and to the government, spoke to the president on the air, but, in my opinion, this is all profitable to somebody; in general, I think that we aren’t taken into account—they don’t consider us to be people. Really, one kilometer of cable—it has to be such a process, that we need to appeal even to you at the OSCE, in order for someone to help us solve our problem? It’s a joke.”

Despite the fact that the line is already in use, the people have not lost their hope that justice will be restored.

Roza Imankulovna Jumalieva, resident of the Gornyi Gigant district: “This the public opinion of the residents of Gornyi Gigant itself and the MVD settlement, where more than 500 people live. We have the signatures of 582 people, in which they express their protest, their public opinion against the construction of this high-voltage line.”

A perfectly ordinary situation has passed beyond the boundaries of a single neighborhood, and become the property of the public, both nationally and internationally.

Armands Pupols, representative of the OSCE Center in Almaty: “Kazakhstan ratified the Aarhus Convention on access to information, access to justice, on public participation in decision-making. We also had questions on that score, so we spoke with the residents, and it turns out that many decisions, directly connected with the environment in which they live, were not fully agreed upon with them.”

However, the officials, as before, resolutely ignore the laws and international conventions, and the people are deprived of the opportunity to decide where and how they will live...because massive human right violations have become a market category. They are profitable!

An Idea for a Quarry.

Ust-Kamenogorsk is one of Kazakhstan's largest industrial centers, known well beyond the republic's borders. However, it is "famed" not only thanks to the production of its factories and workshops, but for the fact that it is one of the most environmentally hazardous cities in the country. Already suffering from severe pollution, especially of its atmospheric basin, in recent times the city has been literally "suffocated" by its environmental problems. The chief guilty parties are the city's industrial enterprises, which continue to employ obsolete technology and equipment, and to economize on environmental protection.

In the near future, interruptions in the city's heat supply may be added to all of the inhabitants' current misfortunes. Heat is provided by Ust-Kamenogorsk's Thermal Power Station, which recently became the property of the American transnational power company AEC. Over the many years of the plant's existence, its old ash pits were filled to overflowing, and the acute need arose to build new ones. Already in 1985, an old clay quarry, in a densely populated suburb of Ust-Kamenogorsk, was proposed as a temporary ash pit, which was planned to be used for no more than five years. The neighborhood in question was already considered an environmental hazard, known for such "points of interest" as a railroad, a tailings pile from the Ulbinsk Metallurgical Factory, and the KazZinc industrial site.

Therefore, the local population spoke out categorically against the appearance of yet another dangerous "neighbor."

Lidiya Aleksandrovna Bepalova, resident of the city of Ust-Kamenogorsk: "The residents were infuriated. I had to fly to Almaty five times. I was at the Council of Ministers, at the State Committee for Environmental Protection, at the Ministry of Health. Naturally, from all of these visits we have documentation prohibiting the construction of the ash pit. And that construction was definitely prohibited."

The construction was halted, as it failed to meet environmental requirements.

After the power station became the property of AEC, the new management decided to take another path.

Aleksandr Anatolievch Shitov, lawyer: "Of course, everyone knows about Ust-Kamenogorsk's problem, that Ash Pit No. 3 is now overflowing, that its further use is impossible, but in the given case the authorities decided to solve the city's problem by creating problems for other people."

Nikolai Anatolievch Prudnikov, resident of the city of Ust-Kamenogorsk: "In this village, like they used to say, it's worse than ever. They don't consider us to be people. It turns out that to the authorities, we *aren't* people. Well, what can you really do? That means the ash; I live in my own home, I don't have the right to take my own ash and tip it into a ravine, but these 63 hectares, that will be sending up clouds and dust around the clock—that's allowed. Well, how can

that be? Do we have authorities or not, in the final analysis? It's out of control!"

Three years ago, without informing local residents and without holding public hearings, the company began its construction.

In carrying out this work, not even elementary environmental, sanitary, or construction requirements were observed. In order to increase the area of the ash pit, the plant's new owners, using all proper and improper means, gained permission to decrease the sanitary protective zone from 500 to just a few meters. During the driving of piles into the bottom of the pit, more than 140 homes suffered from severe vibrations.

Lyubov Gavrilovna Ovechkina, resident of the city of Ust-Kamenogorsk: "When they pounded in these piles and packed down the bottom of the pit, we had such cataclysms that the foundation was broken, the walls were broken, and the roof was damaged. And when the house let the rain in, the roof tiles were all cracked. And now we need forty thousand tenge just to restore the roof. But where I'm going to get that from, if I make just six thousand tenge a month, I don't understand."

Raisa Yakovlevna Krivosheina, resident of the city of Ust-Kamenogorsk: "They pounded down the floor there. And then, since I'm a deputy and was at all of the hearings, they said that they needed a three-ton piledriver there, and a five-ton piledriver there, and all of our houses here were just dancing up and down. That means...well, you can see...Here the stove is all fallen in. Every day you have to clear away all of this plaster. Over there, everything's fallen down. And here are these cracks..."

Kulzia Rakishevna Nurzhanova, resident of the city of Ust-Kamenogorsk: "As a result of that powerful pounding, the wall of the chicken house pulled away, and we put a log in to prop it up."

The expansion and deepening of the pit has created a threat to the safe movement of trains along the main rail line from Ust-Kamenogorsk to Barnaul.

In addition to residential homes, a number of other establishments are located in immediate proximity to the ash pit's construction site.

Metta Karlovna Kopylova, resident of the city of Ust-Kamenogorsk: "They need to take people into account. We're people too! The tuberculosis clinic is next door, and the station for blood transfusion; on that side we have a school. What an appeal there was from the school! We have so many signatures! I sent all of the original documents to President Nazarbaev! But nobody responded—not a word. The letter was received and everything!"

Lidiya Aleksandrovna Bepalova, resident of the city of Ust-Kamenogorsk: "The twenty-first post on Zashchita's section of the railroad, they appealed to a higher court, demanding that the ash pit be prohibited, because during its dumping, it's not safe for trains to travel."

However, both the plant's owners and the project managers asserted with

one voice that the ash pit did not present any danger.

The construction was in full swing, but the Ministry of the Environment had not agreed to the project, since it required that the formalities be observed—that the outraged people be heard. In May of 2002, public hearings were organized.

Raisa Yakovlevna Krivosheina, resident of the city of Ust-Kamenogorsk: “Among the population, of course, there were those who said, ‘We’ll blow up your smokestacks! We won’t let you send that pulp here!’ The hearings, I have to say, were very, very stormy.”

Metta Karlovna Kopylova, resident of the city of Ust-Kamenogorsk: “Everyone, 99 percent, voted against the ash pit, but no one took that into account! And the construction continues. Now they’ve said, ‘And don’t run away; anywhere you go, there’s blank walls everywhere.’ That’s enough!”

Aleksandr Anatolievch Shitov, lawyer: “It must be noted that public opinion was not listened to. Although, in general, that’s a requirement; it’s established both in the current legislation of the Republic of Kazakhstan, and in international conventions ratified by Kazakhstan—the Aarhus Convention, for example. That is, in general, I think that the statutes of current legislation on the given issue, and of international obligations accepted by Kazakhstan—they’re not being observed.”

Prior to the public hearings, and before the ministry had agreed to the project, the regional fund for environmental protection had already allocated more than 170 million tenge for the ash pit’s construction. Could such a major power company as AEC really not have enough funding of its own?! Wouldn’t it have been better to use that money to relocate residents from the sanitary protective zone, since the company was clearly not distinguished by its generosity—it has not hurried even to pay compensation for the damaged homes. Of 140 homeowners who suffered losses during the construction, only 38 people received a few crumbs—10,000 tenge each.

Failing to find understanding among the authorities, the residents were forced to turn to the deputies on the city council, Committee on Environmental Issues in the Mazhlis, Kazakhstan’s lower house of Parliament, and, finally, to the courts, in order to defend their constitutional rights.

Aleksandr Anatolievch Shitov, lawyer: “Later, in order to protect citizens’ rights, we attempted to defend our rights in court, but those attempts, at the present time, have not led to anything. At the same time, I can say that I have also observed violations of citizen’s rights, in that they were not allowed access to legal recourse. The plaintiffs were not even permitted to enter the courtroom while the proceedings were underway. There were enormous difficulties in filing lawsuits to declare the results of expertise invalid. It was necessary to file the suit three times, and it was only accepted on the fourth attempt. That is, under various invented pretexts, the suit was returned without being considered.”

Metta Karlovna Kopylova, resident of the city of Ust-Kamenogorsk: “And all of the courts, the courts were such that they never let us into the courtroom. They drove us away like dogs in a church! No; we’ll take this to the end. I even have a document, in which I, Metta Karlovna Kopylova said that until we get our own, until then, we’ll fight!”

The management of the power plant asserts that there is no alternative to constructing the ash pit in the quarry, in spite of the fact that other options were suggested already fourteen years ago. Everything depends on what is understood by an “alternative.” If citizens’ rights and freedoms are the priority, and not the obtaining of profit through the humiliation and devastation of people, the destruction and pollution of the environment, then there is always an alternative.

Zone of Silence

The city of Ridder, in the recent past called Leninogorsk, is a small city in Eastern Kazakhstan, surrounded by picturesque mountain ranges. Through its quiet streets, the city’s inhabitants stroll without hurrying; children play, flowers blossom all around, and proud birds soar in the sky. It could become a Kazakhstani Switzerland, a Mecca for downhill skiers, a tourists’ paradise...

However, this idyllic landscape is disrupted by the smokestacks of the lead and zinc factories, smoking slag, abandoned mine shafts, lakes of sludge...

How do people live in this blessed place, created by nature, but bearing the weight of human destruction? Answering this question is not so easy. To do so, one must be well informed about the health of the people, and of nature.

According to the law “On Environmental Protection,” the state is responsible for collecting such information. In search of the institutions responsible for this task, we came upon an unassuming structure, which proved to be the Leninogorsk Comprehensive Laboratory for Monitoring of the Natural Environment.

Galina Alekseyevna Bulavina, engineer, Laboratory for Control of Environmental Pollution, city of Ridder: “Air samples are taken three times a day at stationary sites, which are located in accordance with the wind direction and the emissions from industrial enterprises. After an air sample has been taken, the samples are sent to the laboratory, where they are processed. The primary ingredients are analyzed in the city laboratory, and samples to test for heavy metals are sent to the city laboratory of Ust-Kamenogorsk for analysis. All of the information for the public can be obtained in the capital of East Kazakhstan, Ust-Kamenogorsk.”

...It was a surprise to us that it was necessary to go to Ust-Kamenogorsk to obtain environmental information about Ridder. That the determination of the content of heavy metals in the air was conducted not on-site, but in Ust-

Kamenogorsk. That the city had cut its number of observation points for air pollution in half.

We were no less astounded by the fact that at the Ridder City Inspectorate for Environmental Protection work only two employees, which, in the opinion of their superiors, successfully perform their duties.

Yet another surprise awaited us at the East Kazakhstan Regional Territorial Administration for Environmental Protection.

Nina Grigoryevna Danilova, head of the Department of Environmental Monitoring and Information, East Kazakhstan Regional Territorial Administration of Environmental Protection: “Today, the state of the atmosphere no longer arouses alarm in the city of Leninogorsk. From my standpoint, in East Kazakhstan, including the city of Ridder, access to information from state structures is completely open. There are no problems here. There *is* a problem of mutual understanding between public organizations, and, perhaps, some government bodies. There might be a problem of this kind: they’ve grown accustomed, you understand, the experience of the post-Soviet region still remains, that everyone hides things...But now there’s none of that.”

Having grown weary of surprises, we decided to clarify the situation by asking people who are interested in obtaining environmental information. So...is it possible to receive it, or not?

Valdimir Pavlovich Karmanov, Biosphere Environmental Club: “At the present time, the population does not receive any environmental information whatsoever from the Kazakhstani Hydro- and Meteorological Center, or from the laboratories at KazZinc, since those two organizations are not interested in presenting it to the public. It’s very important to keep the population in complete ignorance.”

Tatyana Viktorovna Butvilenye, Boomerang Cultural and Environmental Association: “Then I also turned to the Department of Ecology—we have a city branch as well—but I couldn’t get any information from them either. They kept citing the fact that we needed to appeal directly to the city of Ust-Kamenogorsk, since that’s the regional administration, and therefore they couldn’t give us anything without their permission.”

So, there is no access to information...that’s strange; after all, not long ago we heard the exact opposite.

Perhaps a deputy on the city council might clear up the situation?

Vladimir Trofimovich Darii, deputy, Ridder City Council: “No; a simple, ordinary resident can’t receive such information. They can only use the information that appears in the media. There are people who talk, but all the same they talk in their kitchens, talk over tea, talk over all other possible tables, launch campaigns, and so on. They talk about everything, but out in the open

they're simply afraid somehow, afraid to lose their jobs, because they have families, they have children, they need to feed them.”

Valdimir Pavlovich Karmanov, Biosphere Environmental Club: “Unfortunately, the people are scared, because people are afraid of losing their jobs, and the retirees are frightened that their children might be subjected to corresponding repression on the part of the management of the polluting enterprises under the name of KazZinc.”

Since the local press is not plentiful, it was not hard for us to meet with the editor-in-chief of the newspaper “Leninogorskaya Pravda” and find out her opinion about the accessibility of environmental information for the public at large.

Natalia Pavlovna Layurova, editor of the newspaper “Leninogorskaya Pravda”: “In general, earlier, as far as I remember, in 1995-1996 things were somehow a little freer than now. Specialists from the city environmental department spoke out fairly often in the pages of our newspaper. Now they've begun to turn up less often for some reason—maybe they're afraid somehow. I don't know whether that's true or not. Everything comes only through this newspaper, directly through the editor. Even if our material gets out somehow, it passes through the regional government, if they approve it there. KazZinc is a corporate entity, and therefore with them it's like a state within the state; we don't touch that already. Because we remember an example that took place last year, when there was a discharge of beryllium in Ust-Kamenogorsk and our residents also began to worry, since we're only 120 kilometers away. We requested information, called the regional administration, our administration, but everything was absolutely closed. Nobody gave us a thing. They said that it was all nonsense, and nothing of the kind had happened, or could ever happen. That is, I think that information isn't available for people.”

Information is inaccessible; people are afraid to say how all of this fails to match the bright advertisements of the companies, the welcoming faces of the officials, the glossy paper of official publications.

So, all the same, what hovers in the air over Ridder: clouds beckoning in the distance, poisonous emissions from factories, or an atmosphere of secrecy, hiding the bitter truth from the people?

The state, which parades its successful privatization and its battle against all forms of monopoly, nevertheless retains the main form of monopoly—the monopoly of the state over information!

Conclusions

Eleven years ago, Kazakhstan became an independent state; **three** years have passed since the Aarhus Convention was ratified. However, the citizens of Kazakhstan, as before, are unable to defend their rights, because they lack

access to justice and to information, and do not participate in the process of making decisions that are vital for them.

The massive human rights violations that have taken place have been determined in large measure by economic causes, above all the battle by officials and businessmen for possession of natural resources and their distribution, striving to place the burden of environmental losses on the shoulders of ordinary taxpayers. This calculation has been made correctly. The blow has fallen on the least protected social groups: the poor, the elderly, and the children. People have had their health taken away; their homes have been destroyed; they have been devastated and deprived of hope.

This is how they live: under high-voltage lines, under fatal smog, under the cover of secrecy. Under anything and anyone, but only not under God.

How much more time is needed, before people and their well-being become a reality, and not an abstract value, in our country?

Credits

The Ecological Society Green Salvation and the Eremurus Environmental Club are sincerely grateful to all who assisted in the making of this film.

We express special thanks to the residents of the Gornyi Giant district (Almaty), the settlement of Zashchita and the village of Opytnoye Polye (Ust-Kamenogorsk), and the city of Ridder. We also thank our colleagues from the Belovodye (Whitewater) Cultural and Environmental Association (Ust-Kamenogorsk) and the Biosphere Environmental Club (Ridder) for their invaluable support.

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2003



COMMUNICATION TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE

The Aarhus Convention's Compliance Committee met yesterday

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“Several nongovernmental organizations have charged that European governments subject to a treaty on access to environmental information have not followed through on several key stipulations, the U.N. Economic Commission for Europe announced today.

The Aarhus Convention requires parties to allow the public to have guaranteed access to information, participation in decision-making and access to justice in environmental matters.

The convention's Compliance Committee met yesterday and is meeting again today in Geneva to discuss reports of alleged noncompliance in Kazakhstan, Ukraine, Hungary and Turkmenistan.

The alleged cases of noncompliance include failure by Kazakhstan's National Atomic Company to provide information on the economic justification for a proposal to import nuclear waste; construction of high-voltage power lines in Kazakhstan without fulfilling the convention's requirements on public participation; the granting of a permit in Ukraine to construct a navigation canal through the Danube Delta without adequate public participation; incompatibility of a new Hungarian law on motorways with provisions of the convention; and possible conflict between the convention and Turkmenistan's new law on public associations” <www.unece.org/press/pr2004/04env_p08e.htm>.

Communication to the Aarhus Convention Compliance Committee

I. Information on correspondent submitting the communication

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Title/Position: Chairman, Ecological Society Green Salvation.

Bendzya Iraida Nikolaevna, address...

Egorova Lyudmila Ivanovna, address...

II. State concerned

Republic of Kazakhstan

III. Facts of the communication

Electricity was supplied to an exclusive residential district in the south-east of Almaty under project PS-110/10 kV Samal via a 110 kV power transmission line. In 1989, during the construction of the underground line an experimental cable which had never previously been subjected to extensive operational testing was laid over a distance of one thousand metres. For technical reasons, this led to a situation characterized by constant interruptions in the power supply. On 19.01.2001, the Akim (mayor) of the city of Almaty adopted decision No. 42 on the construction of a 110 kV overhead transmission line to replace the faulty cable line (Attachment No. 1).

On 15 November 2000, a construction site selection report (Attachment No. 2) was approved. According to this report, the route of the 110 kV overhead line will pass through the narrow streets of the Gornyi Gigant neighbourhood and the MVD (Ministry of Internal Affairs) settlement. The report was agreed by the Architecture and Town Planning Department, the Almaty Municipal Environmental Protection Board (AMEPB) and the Municipal Sanitary-Epidemiological Board (MSEB), which failed to issue an “opinion on the the report. Moreover, the report was not agreed with the municipal committee on land resource management.

The route was chosen and the report agreed and approved without taking into account the requirements of the existing “Regulations for the protection of electrical networks with a voltage of more than 1000 V” (the Regulations) approved by Resolution No. 1436 of the Government of the Republic of Kazakhstan of 10

October 1997. The Regulations require “compliance with the provisions of paragraphs 7.8-7.13 of Building Standards and Regulations 2.07.01-89 (BSR 2.07.01-89) ‘Town planning. Planning and construction of urban and rural settlements’ when the routes of overhead and cable lines pass through built-up urban or rural areas”. BSR 2.07.01-89, Section “Power, heat, refrigeration and gas supply, communications, broadcasting and television” (paras 7.8 and 7.9) requires overhead power transmission lines with a voltage of 110 kV or more to be sited outside built-up areas. Similar requirements can be found in BSR RK B.2.2-1-96 (paras 7.14 and 7.18) “Planning and construction of individual housing zones”. Moreover, for a 110 kV overhead power transmission line the Regulations require the creation of a 40-metre wide protection zone in which any activity not associated with the operation of the transmission line is prohibited, including its use for residential purposes, the cultivation of personal plots, the passage of gas and other mains, and fire-fighting.

According to the Regulations, only a cable and not an overhead line can be laid along the selected route, and to prevent failures only a XLPE/PVC, XLPE/PE, standard IEC 840 cable, not an experimental cable.

On 3 April 2001, project LEP 110 kV PS 220 kV Gornyi Gigant - PS Samal (conversion from cable to overhead line) received a favourable State environmental impact assessment No. 3-4-6-568 AMEPB (Attachment No. 3).

On 27 April 2001, the State Expert Commission of the Kazstroikomitet recommended project LEP 110 kV PS 220 kV Gornyi Gigant - PS Samal (conversion from cable to overhead line) for approval. (Attachment No. 4.) In both reports it is stated that the project had been carried out in accordance with the existing standards and regulations.

On 27 April 2001, about six hundred residents of the Gornyi Gigant neighbourhood and the MVD settlement, after repeated inquiries, learned from the Akim of the city of Almaty that their homes lay within the restricted zone of the power transmission line.

On 30 November 2001, the Kazakh Republican Sanitary-Epidemiological Station (KRSES), having made a sanitary-epidemiological assessment of project LEP 110 kV PS 220 kV Gornyi Gigant - PS Samal (conversion from cable to overhead line), refused to approve the project (Attachment No. 5).

On 13 December 2001, i.e. with a whole year’s delay, the Almaty MSEB issued a favourable opinion on the allocation of land for construction (form No. 310\y). (Attachment No. 6.)

On 14 December 2001, with an entire year’s delay, the Akim issued a resolution on making land available for temporary free use by the closed joint stock company APK in the Medeu district of the city of Almaty, which points to a violation of the planning legislation. (Attachment No. 7.)

On 21 June 2002, the KRSES approved the project (Attachment No. 8). The approval of the project violated article 35 of the Environmental Protection Act* of the Republic of Kazakhstan, since it was based not on the existing environmental quality standards applicable to the restricted zone of an overhead line, but on measurements of the electric field strength only, without magnetic field strength measurements having been made.

The position of the Committee for State Energy Oversight

On 28 May 2001, by letter No. 17-17-167, the State Power and Energy Supervisory Committee proposed that APK should “redesign the 110 kV overhead line to bypass the settlement of Gornyi Gigant”, “in conformity with the Regulations on the protection of electrical networks with a voltage of more than 1000 V” (Attachment No. 9).

On 10 August 2001, the State Power and Energy Supervisory Committee, without making a State energy appraisal, changed its decision. By letter No. 17-02-231 it approved the project: “Taking into consideration the arguments made by APK in its letters Nos. 001-1893 of 15 June and 002-2569 of 9 August, the State Power and Energy Supervisory Committee is permitting the construction of a power transmission line under the established procedure, in compliance with the existing legislation and enactments” (Attachment No. 10).

On 26 September 2001, the Committee notified the decision taken to the department of the Office of the Prosecutor General of the Republic of Kazakhstan responsible for reviewing the legality of the activities of State bodies (Attachment No. 11).

As will be seen in what follows, what is important for the courts and the prosecution service is approval and not compliance with the existing legislation and enactments.

The position of the Ministry of Environmental Protection

Special attention should be paid to the position of the Ministry of Natural Resources and Environmental Protection (MNREP), reorganized on 28 August 2002 as the Ministry of Environmental Protection (MEP) of the Republic of Kazakhstan with responsibility for the implementation of the Aarhus Convention.

On 24 December 2001, in a letter to the Office of the President, the Ministry reported that it was “studying the question of the invalidation of the State environmental impact assessment for the project since it infringed the provisions of article 15 of the Environmental Impact Assessment Act since “the project was accepted for assessment without the results of a survey of public opinion” (Attachment No. 12).

On 22 January 2002, under pressure from the public and members of parliament, the Almaty Municipal Territorial Environmental Protection Board, on the instructions of the Environmental Protection Committee of the MNREP,

carried out a second State environmental impact assessment and again approved the project (Attachment No. 13). In the assessment it is stipulated that the project should be carried out in compliance with the standards and regulations.

The residents of the Gornyi Gigant neighbourhood and the MVD settlement again collectively petitioned the Ministry, which also received an inquiry from a member of the Mazhilis, the parliament of the Republic of Kazakhstan.

On 15 May 2002, the Environmental Protection Committee of the MNREP sent a letter to the AMTEPB in which it stated that “the Environmental Impact Assessment Board, having considered the second environmental impact assessment of the Almaty Municipal Territorial Environmental Protection Board No. 3-8-144 of 22.01.02 concerning the Environmental Protection section of project LEP 110 kV PS 220 kV Gornyi Gigant-PS Samal (conversion from cable to overhead line), notes that in violation of article 15 of the Environmental Impact Assessment Act* the assessment was made without taking public opinion into account. On the basis of article 17 of the Environmental Impact Assessment Act the Environmental Protection Committee of the MNREP has revoked AMTEPB environmental impact assessment No. 3-8-144 of 22.01.02 “pending clarification of all the circumstances relating to the complaints of the local population” (Attachment No. 14).

On 24 June 2002, the Ministry informed the member of parliament of the decision taken, pointing out that “there remained certain differences with respect to the assessment of the effect of the works on the sanitary-epidemiological situation and public health” and, in view of the significant adverse public response from those living in the area, the AMTEPB was instructed, together with the organs of the Sanitary-Epidemiological Service, “to hold additional public hearings on the project with clarification of all the problem areas”. In the letter it is stated that the revocation of the assessment would halt work on the implementation of the project. However, construction was begun on 24 May 2002 without being halted by the Ministry. (Attachment No. 15.)

On 4 July 2002, ostensibly at the “initiative” of the local government committees and the residents of Gornyi Gigant and under the chairmanship of the deputy Akim of the Medeu district (!), “final” public hearings were quickly organized. The residents of the streets on which, at that time, construction of the overhead line was already in full swing were not invited to the hearings, having been conveniently replaced by others. This made it possible to adopt a decision “taking into account the interests of the different groups”: “The construction of the 110 kV overhead line in Gornyi Gigant ... is the only correct decision as regards the supply of electricity to the south-eastern part of the city of Almaty”. (Attachment No. 16.)

On 6 August 2002, the MNREP, having received the materials of these

hearings, cancelled the instructions to suspend implementation of the State environmental impact assessment of 22 January 2002.

On 16 October 2002, by letter No. 04-05-09/3086 responding to the residents' petition, the MEP confirmed that the cancellation of the instructions to suspend implementation of the State environmental impact assessment had been lawful (Attachment No. 17).

Over the course of the year, the Ministry's experts, responding to the complaints and questions of residents, were unable or unwilling to understand that the State environmental impact assessment, which had been made twice, failed to note the violations of BSR 2.07.01-89 "Town planning. Planning and construction of urban and rural settlements" and BSR RK B.2.2-1-96 (paras 7.14 and 7.18) "Planning and construction of individual housing zones". By the end of October 2002 the overhead line had been built and was carrying current.

The opinions of experts

Having failed to obtain the support of the official regulatory bodies, the residents, in order to assert their rights, turned to the scientific and voluntary organizations with a request for an independent opinion.

On 25 February 2002, experts of the Scientific Centre for Hygiene and Epidemiology of the Ministry of Health of the Republic of Kazakhstan prepared an opinion in which it was noted that "the project to build a 110 kV high-tension overhead line has been carried out with gross violations of the legislation of the Republic of Kazakhstan" and the objections of the residents were well-founded (Attachment No. 18).

On 4 March 2002, the Ecological Society Green Salvation prepared a "Response" to the State environmental impact assessment for the project in which it was noted that the residents were fully justified in raising the question of the invalidity of the environmental impact assessment of project LEP 110 kV PS 220 kV Gornyi Gigant - PS Samal (conversion from a cable to an overhead line) under articles 38.1.1, 1.2 and 1.3 of the Environmental Impact Assessment Act (Attachment No. 20).

On 10 April 2002, experts of the National Centre for Labour Hygiene and Occupational Diseases of the Ministry of Health of the Republic of Kazakhstan drew up a report on the project in which it was noted that the provisions of a series of BSR had been infringed; they therefore considered "the concerns of the population to be fully justified" (Attachment No. 19).

On 21 October 2002, the Republican Citizens' Movement "For a rule-of-law Kazakhstan" prepared a legal opinion on the resolution of the Akimat of the city of Almaty of 14 December 2001. According to this opinion, the Akim and Akimat of the city of Almaty committed the following violations of the legislation on land:

“1. The siting of the transmission line violated the building standards and regulations.

2. The mandatory transmission line safety zones were not established.

3. The Akimat of the city of Almaty issued a resolution instructing the Almaty Municipal Committee on Land Resource Management to expropriate the parcels needed to build the power transmission line. However, the reasons for expropriating the parcels were not precisely defined and the expropriation was entrusted to an inappropriate body.

4. Even if it were shown that there was in fact justification for expropriating (buying out) the parcels for State needs, the Akimat of the city of Almaty completely disregarded the expropriation (buy-out) procedure.

5. Resolution No. 3\328-34 of the Akimat of the city of Almaty of 14 December 2001 on making land available for temporary free use did not contain certain mandatory particulars.

6. The proposal temporarily to occupy the site of the KNB institute is not properly justified and violates the legal procedure.

7. It is proposed to locate on highway land an installation incompatible with its intended purpose” (Attachment No. 21).

Results of appealing to the courts and the prosecution service

On 8 June 2001, I.N. Benzya, on behalf of the residents, instituted proceedings in the City Court to obtain the annulment of the decision of the Akim and a ban on the construction of the overhead line.

On 25 June 2001, the City Court dismissed the action (Attachment No. 22).

On 28 September 2001, the Supreme Court, having considered the claimant’s appeal, reversed the judgement of the City Court and referred the case to the Bostandyk District Court of the city of Almaty for reconsideration. In its decision, the Supreme Court pointed out that “the conclusions of the court cannot be regarded as well-founded since they do not follow from the materials of the case”. The Supreme Court decided that in reconsidering the case the court should “verify the conformity of the overhead line construction project with the existing regulations, ... ascertain whether the rights and legally protected interests of the residents of the Gornyi Gigant neighbourhood are being infringed” (Attachment No. 23).

This ruling was followed by a series of proceedings in courts of various instances, but on every occasion the decision went against the residents.

On 1 December 2003, the president of the Civil Division of the Supreme Court of the Republic of Kazakhstan refused to consider the residents’ appeal, ruling that “... since, as required by article 65 of the CCP, you failed to provide indisputable and convincing evidence that the 110 kV overhead line poses a real

threat to human life and health, the court correctly decided to dismiss the claims” (Attachment No. 24).

On 22 May 2002, the company APK moved construction equipment into the Gornyi Gigant neighbourhood to start erecting the 110 kV overhead line, but the Almaty Public Prosecutor’s Office refused to allow construction to proceed on the basis of a resolution of the Office of the Prosecutor General of the Republic of Kazakhstan of 8 May 2002 ordering a review.

On 24 May 2002, APK decided to start work, and the construction equipment was escorted by RUVD (District Internal Affairs Administration) and OMON (Special Squad) officers. The deputy Akim of the Medeu district read out a new resolution of the Prosecutor General of the Republic of Kazakhstan, R.T. Tusupbekov, of 23 May 2002 which, without justification or explanation, cancelled the resolution of 8 May 2002 concerning the suspension of the decisions of the court (Attachment No. 25). People were stunned and incredulous and tried to resist the unlawful construction work. However, on the instructions of the Akim of the Medeu district, the RUVD and OMON men beat and scattered the residents, who included old men, women and children. Subsequently, five residents of the Gornyi Gigant neighbourhood, three of them elderly, including the claimant I.N. Benzya and her daughter, were held administratively liable by the district court. When the people were being dispersed, the district Akim personally pointed her out to the OMON men. They dragged her across an entire football field, on which people had gathered, and the daughter rushed to her defence.

Later, the Medeu district court also held the husband of I.N. Benzya, I.I. Bendzya, administratively liable, ostensibly for expropriation purposes as there was nowhere to put up a pole for the overhead line. As a result of their struggle for their constitutional rights all three adult members of the Bendzya family were punished by the courts.

Subsequently, petitions from residents and members of parliament addressed to all levels of the prosecution service received an unambiguous response to the effect that there were no grounds for filing objections to the decisions of the courts in view of the recognition of the lawfulness of the conclusions of the expert appraisals (Attachment No. 26).

These facts show that the residents of the Gornyi Gigant neighbourhood and the MVD settlement, as well as the interested public, were unable to obtain information in the early stages of decision-making. Environmentally significant decisions were made without public opinion being taken into account. The local residents have been unable to obtain a just solution of the problem through the courts. The State environmental, sanitary-epidemiological and construction and energy impact assessments on which the court decisions were based were

prepared in violation of the existing legislation. While recognizing the provisions of the Aarhus Convention, the administrative and judicial authorities of the Republic of Kazakhstan are not implementing them.

The residents of the Gornyi Gigant neighbourhood and the MVD settlement have come up against a clear case of government paralysis. The State authorities publicly recognize human rights but in practice neither comply with nor protect them! Accordingly, the citizens of Kazakhstan are being forced to appeal to the international organizations for the protection of their rights.

IV. Nature of alleged non-compliance

The facts presented above reveal non-compliance with the right of the public to obtain access to information, the right to public participation in the taking of environmentally significant decisions and the right of access to justice.

V. Provisions of the Convention relevant for the communication

Paragraphs 2, 3, 4, 6, 7 and 8 of Article 6.

Paragraphs 3 and 4 of Article 9.

VI. Use of domestic remedies or other international procedures

Over the course of three years, use was made of the procedures for appealing to the courts, the prosecution service, members of parliament and administrative bodies (see section III).

Results of appeals to international organizations

On 28 October 2002, a representative of the OSCE Centre in Almaty visited the overhead line construction site.

On 15 November 2002, information on the situation in the Gornyi Gigant neighbourhood and the MVD settlement was brought to the attention of the participants in the Conference on International Transparency “Anti-Corruption Initiatives in Central Asia”.

On 4 September 2003, the OSCE Centre in Almaty sent letters to the Ministers of Health and Environmental Protection of the Republic of Kazakhstan expressing concern about the “tense situation” that had arisen in the Gornyi Gigant neighbourhood and the MVD settlement (Almaty) (Attachment No. 27).

The Ministry of Environmental Protection of the Republic of Kazakhstan replied by letter No. 02-05-07/5359 of 11.11.03: “With respect to the State environmental impact assessment by the Almaty MTEPB concerning the transmission line construction project, we consider that it meets all the environmental requirements and was issued on the basis of the public hearings Protocol and the opinion of the Republican SES on project approval No. 41-2/10 of 21 June 2001” (Attachment No. 28).

The Ministry of Health of the Republic of Kazakhstan replied by letter No. 07-21-9135 of 08.11.2003: “By decision of the Bostandyk district court of the city

of Almaty of 13 September 2002 the claims of the claimants L.I. Egorova and I.N. Bendzya were dismissed on the grounds that all the documents submitted by the defendants met the requirements of the legislation of the Republic of Kazakhstan and all the contracts were made in compliance with the existing legislation” (Attachment No. 29).

On 8 September 2003, a representative of the residents of the Gornyi Gigant neighbourhood addressed the international conference on Electromagnetic Fields and Human Health, organized by the Ministry of Health of the Republic of Kazakhstan. However, there was no subsequent reaction from the organizers of the conference.

VII. Confidentiality

Information is not confidential

VIII. Supporting documentation (copies, not originals)

Constitution of the Republic of Kazakhstan of 30 August 1995 (as amended on 7 October 1998)

Article 1

1. The Republic of Kazakhstan proclaims itself to be a democratic, secular and social State, governed by the rule of law, whose highest values are the human being and his life, rights and freedoms.

Article 6

1. In the Republic of Kazakhstan, State and private ownership are recognized and, by the same token, protected.

Article 12

1. In the Republic of Kazakhstan, human rights and freedoms are recognized and guaranteed in accordance with the Constitution.

2. Human rights and freedoms belong to everyone from birth, are recognized as absolute and inalienable, and determine the content and application of the laws and other enactments.

Article 14

1. All are equal before the law and the courts.
2. No one may be subjected to any form of discrimination for reasons of origin, social or property status, occupation, gender, race, nationality, language, attitude to religion, beliefs or place of residence or in any other circumstances.

Article 15

1. Everyone has the right to life.

Article 17

1. Human dignity is inviolable.
2. No one should be subjected to torture, violence, or other cruel or degrading treatment or punishment.

Article 29

1. Citizens of the Republic of Kazakhstan have the right to protection of their health.

Article 31

1. The State shall endeavour to ensure an environment favourable for human life and health.

2. Officials shall be held accountable under the law for the concealment of facts and circumstances that endanger human life or health.

Environmental Protection Act of the Republic of Kazakhstan No. 160-1 of 15 July 1997

Article 5. Rights and obligations of citizens in the field of environmental protection

1. Every citizen, stateless person and foreign national present on the territory of the Republic of Kazakhstan has the right to an environment favourable for their life and health.

Article 35. Main objectives and requirements of environmental regulation

The purpose of environmental regulation is to establish scientifically based maximum permissible standards of environmental exposure that guarantee environmental safety and the protection of the health of the population and ensure the prevention of pollution and the renewal and rational use of natural resources.

The main objectives of environmental regulation include:

- the establishment of environmental standards and the determination of their effect on human health and the protection, renewal and rational use of natural resources;
- the establishment of maximum permissible amounts and levels of harmful effects on the environment.

Established environmental quality standards may not be exaggerated or replaced by provisional and lowered standards.

Quantitative standards may be made stricter depending on the specific environmental conditions.

Approved environmental standards shall be binding on all legal and natural persons and shall be subject to publication and free dissemination.

Environmental Impact Assessment Act of the Republic of Kazakhstan No. 85-1 of 18 March 1997

Article 3. The goals of environmental impact assessment

The goals of environmental impact assessment are:

- 1) to prevent any possible adverse effects of planned government, economic,

investment and other activities on the health of the population and the environment;

2) to assess the conformity with environmental requirements of planned government, economic, investment and other activities in the stages that precede the taking of a decision to carry them out, as well as in the process of construction and implementation.

Article 15. Requirements relating to documentation submitted for State environmental impact assessment

1. In the documentation submitted for State environmental impact assessment the client must include:

1) a comprehensive environmental-social and economic assessment of the impact of the planned activity on the state of the environment and the health of the population throughout the period during which the activity is to be carried on and a statement concerning the environmental consequences of that activity;

2) documents showing that the project has been approved for implementation by the central and local government authorities and the results of a survey of public opinion, in accordance with the procedure laid down by the central executive authority of the Republic of Kazakhstan in the area of environmental protection.

Article 38. Invalidity of environmental impact assessments

1. Environmental impact assessments may be deemed to be invalid if in their preparation there was:

1) any infringement of the procedure for carrying out the impact assessment;

2) any non-compliance with or distortion of environmental standards and regulations or the requirements of environmental safety, environmental protection or efficient use or renewal of natural resources;

3) any violation of the right of citizens to an environment favourable for life and health, other environmental rights and interests of the population, or the rights of participants in the assessment process;

4) any other violation of the rights of the parties involved in the environmental impact assessment.

2. The environmental impact assessment authority shall be responsible for the decisions it takes under the procedure established by the legislation of the Republic of Kazakhstan in force.

Sanitary-Epidemiological Welfare Act No. 110-XIII of 8 July 1994

Article 3. Right of citizens to a favourable living environment

Every citizen of the Republic of Kazakhstan has the right to a favourable living environment, whose factors should not have an adverse effect on the state of health of present and future generations.

**Architectural, Town Planning and Building Activities in the Republic of
Kazakhstan Act No. 242-II of 16 July 2001**

Article 7. Rights of citizens to a favourable environment in population centres

As consumers of the products of architectural, town planning and building activities, citizens have the right:

1) to a favourable, in relation to a particular area, environment for their living and livelihood within their locality (settlement) in accordance with government town planning policy with respect to the location and distribution of productive forces, town planning zoning requirements, environmental and sanitary-epidemiological safety standards and the level of development of the local infrastructure.

Article 28. State system of normative documents in the field of architecture, town planning and building

State normative documents in the field of architecture, town planning and building shall be an integral part of the legislation of the Republic of Kazakhstan.

2. The State system of normative documents in the field of architecture, town planning and building shall include:

- 1) State town planning standards and regulations;
- 2) State building standards and regulations, building standards, design and building codes and technological design standards.

Article 49. Residential area

3. The following may be located in a residential area: hotels, surface and underground garages, open car parks, and also industrial facilities whose siting and activity do not have an impact on the environment that requires the organization of sanitary safety zones.

Article 63. Construction project

1. The construction project as the basic component of the design (design-cost estimate) documentation must contain the town planning justification for the siting of the facility and the economic, architectural, spatial planning, functional, technological, design, engineering, nature conservation and other decisions, to the extent necessary to build and commission the facility.

3. The construction project shall be developed:

1) on the basis of the design specifications approved by the client, the materials on the selection and allocation (use permit) of the land (parcel, right of way), the technical conditions relating to the provision of engineering and municipal services, the results of engineering surveys and other initial data, including the results of the client's pre-investment activities;

Land Act of the Republic of Kazakhstan No. 152-II of 24 January 2001

Article 87. Land use in population centres

1. All the lands of towns, settlements and rural population centres shall be used in accordance with their master plans and planning, building and land-use projects.

2. Plots of common land may be made temporarily available to citizens and legal persons for the siting of light-duty structures (market stalls, kiosks, billboards, car parks and other service facilities) without prejudice to the common use.

Article 91. Zones with special land use conditions

1. For the purpose of ensuring the safety of the population and creating the conditions necessary for the operation of industrial, transport and other facilities, there shall be established zones within which forms of activity incompatible with the purposes for which the zone was established are restricted or prohibited.

2. The zones subject to special land use conditions shall include:

1) the health protection zones around industrial enterprises;

5) the safety zones around main pipelines and communication, radio installation and power transmission lines;

3. Land included in zones subject to special land use conditions shall be designated in situ by means of special signs. This land shall not be liable to expropriation from the owners or land users, except for the first belt of the safety zone around water intake structures.

4. The boundaries of these zones and the land use regime in them shall be determined by the authority which took the decision to give the land into ownership or use, in accordance with the regulations and technical project documentation.

Regulations for the protection of electrical networks with a voltage of more than 1000 volt

1. These Regulations are being introduced in order to ensure the safety of electrical networks with a voltage of more than 1000 volt, create standard operation conditions, prevent damage to high-voltage electrical networks liable to cause interruptions in the supply of power to consumers, and prevent accidents.

These Regulations apply to all the high-voltage networks of the Republic of Kazakhstan, whether operating, planned or under construction, and are binding within its territory upon all legal persons (their subsidiaries and agencies) and natural persons, land users and landowners.

Where the routes of overhead and cable lines pass through built-up urban or rural areas the requirements of paragraphs 7.8-7.13 of BSR 2.07.01-89 on Town Planning. Planning and construction of urban and rural settlements should be followed.

4. Electrical network safety and health protection zones shall be established: along overhead power transmission lines in the form of a strip of land and an

air space bounded by vertical planes on either side of the line at a distance from the outer conductors in their undeflected position of: for lines with a voltage of up to 20 kV - 10 m, 35 kV - 15 m and 110 kV - 20 m.

Building Standards and Regulations BSR 2.07.01-89*.

Town Planning, Planning and Construction of Urban and Rural Settlements. (Power, heat, refrigeration and gas supply, communications, broadcasting and television)

7.8. Overhead power transmission lines with a voltage of 110 kV or more should be sited outside built-up areas.

Cable lines should be used for connecting electrical networks with a voltage of 110 kV or more to deep-lead-in step-down substations within the built-up areas of very large and large towns.

Building Standards and Regulations of the Republic of Kazakhstan, BSR RK B.2.2-1-96. Planning and Construction of Individual Housing Zones

7.14. Overhead power transmission lines with a voltage of more than 110 kV should be located outside individual residential building areas.

Summary (see Attachment No. 30.)***

Signatures:

S.G. Kuratov,

I.N. Bendzya

L.I. Egorova

17 March 2004

* In the text, different names may be encountered for the same law: for example, The law of the Republic of Kazakhstan “On Environmental Protection” (1997) and the Environmental Protection Act of the Republic of Kazakhstan (1997); The law of the Republic of Kazakhstan “On Environmental Expertise” (1997) and the Environmental Impact Assessment Act of the Republic of Kazakhstan (1997).

*** The appendices to the given materials have not been included, as they are large documents, running to many pages. The citations to them given in the text have been retained in order to present the current document in complete form.

Summary of Communication to the Compliance Committee of the Aarhus Convention

Chronology of events connected with the construction of a 110 kV overhead power transmission line in the Gornyi Gigant neighbourhood and the MVD settlement

On 15 November 2000, construction site selection report approved.

On 19 January 2001, the Akim (mayor) of the city of Almaty decided that the company APK should design and build a 110 kV overhead line to replace a faulty cable line in the densely populated Gornyi Gigant neighbourhood and the MVD (Ministry of Internal Affairs) settlement.

On 3 April 2001, project LEP 110 kV PS 220 kV Gornyi Gigant - PS Samal 110 kV received a favourable environmental impact assessment No. 3-4-6-568, approved by the AMEPB.

On 27 April 2001, the Kazstroikomitet's expert commission issued a State extra-departmental report recommending project LEP 110 kV PS 220 kV Gornyi Gigant - PS Samal 110 kV for approval.

In the State environmental impact assessment and the State extra-departmental report it is asserted that project LEP 110 kV PS 220 kV Gornyi Gigant - PS Samal 110 kV was carried out in accordance with the regulations in force, which is not the case.

On 28 May 2001, the State Power and Energy Supervisory Committee proposed that APK should "redesign the 110 kV overhead line to bypass the settlement of Gornyi Gigant", "in conformity with the Regulations on the protection of electrical networks with a voltage or more than 1000 V".

On 10 August 2001, the Committee changed its mind and permitted the construction of the power transmission line under the established procedure, in compliance with the legislation and enactments in force.

On 30 November 2001, the Kazakh Republican Sanitary-Epidemiological Station (KRSES), in a sanitary-epidemiological report, refused to approve the 110 kV overhead line project.

On 13 December 2001, that is after a whole year's delay, the Almaty MSEB issued a favourable opinion on the allocation of land for construction (form No. 310\u).

On 14 December 2001, with a year's delay, the Akim issued a resolution making land available for temporary free use by the company APK in the Medeu district of the city of Almaty.

On 24 December 2001, in a letter addressed to the Office of the President of the Republic of Kazakhstan, the Ministry of Natural Resources and Environmental Protection (MNREP) reported that it was studying the question of the invalidation of the State environmental impact assessment for the project in question.

On 22 January 2002, the Almaty Municipal Territorial Environmental Protection Board made a second impact assessment and again approved the project.

On 15 May 2002, the Environmental Protection Committee of the MNREP again revoked the AMTEPB environmental impact assessment No. 3-8-144 of 22 January 2002 “pending clarification of all the circumstances relating to the complaints of the local population”.

On 21 June 2002, the KRSES approved the project.

On 4 July 2002, “final” public hearings were organized. The residents of the streets on which, at that time, construction of the overhead line was already in full swing were not invited to the hearings, but were conveniently replaced by others.

On 6 August 2002, the MNREP, having received the materials of these hearings, “cancelled the instructions to suspend implementation of the State environmental impact assessment of 22 January 2002”.

By the end of October the 110 kV overhead line had been built.

On 16 October 2002, the Ministry of Environmental Protection (MEP), in letter No. 04-05-19/3086 responding to the residents’ petition, confirmed that the cancellation of the instructions to suspend implementation of the State environmental impact assessment had been lawful.

Independent experts did not agree with these conclusions of the State impact assessments.

On 25 February 2002, experts of the Scientific Centre for Hygiene and Epidemiology of the Ministry of Health of the Republic of Kazakhstan prepared an opinion.

On 4 March 2002, the Ecological Society Green Salvation prepared a “Response” to the State environmental impact assessment for the project LEP 110 kV PS 220 kV Gorny Gigant - PS Samal.

On 10 April 2002, experts of the National Centre for Labour Hygiene and Occupational Diseases of the Ministry of Health of the Republic of Kazakhstan drew up a report.

On 21 October 2002, the Republican Citizens’ Movement “For a rule-of-law Kazakhstan” prepared a legal opinion on the Resolution of the Akimat of the city of Almaty of 14 December 2001.

Outcome of appeals to the judicial authorities

On 8 June 2001, I.N. Bendzya, on behalf of the local residents, instituted proceedings in the City Court to obtain the annulment of the decision of the city’s Akim and a ban on the construction of the overhead line.

On 25 June 2001, the City Court dismissed I.N. Bendzya’s action.

On 18 September 2001, the Supreme Court, having considered the claimant’s appeal, reversed the judgement of the City Court and referred the case for reconsideration.

On 9 November 2001, the Bostandyk district court of the City of Almaty determined that the Republican SES should make a sanitary-epidemiological impact assessment.

On 5 February 2002, the judge of the Bostandyk district court dismissed the claims of the local population. The judge disregarded the issues raised in the decision by the Supreme Court of the Republic of Kazakhstan.

On 12 April 2002, the Civil Division of the Almaty City Court allowed the decision of the Bostandyk court to stand.

On 23 April 2002, an application for review of the decision of the Bostandyk district court of 5 February 2002 and that of the Almaty City Court of 12 April 2002 was submitted to the Prosecutor General of the Republic of Kazakhstan.

On 8 May 2002, the Prosecutor General of the Republic of Kazakhstan decided to suspend execution of the above-mentioned court decisions in the civil proceedings.

On 23 May 2002, the Prosecutor General of the Republic of Kazakhstan, without explanation or justification, cancelled his resolution of 8 May 2002 suspending the court decisions.

On 5 July 2002, the president of the Almaty City Court, M.T. Alimbekov, refused to consider an application for review in the Review Division, considering that “the lower courts rightly concluded that the project is in conformity with the existing rules and regulations and was agreed with all the interested parties and that its implementation is lawful”.

On 14 October 2002, the president of the Civil Division of the Supreme Court of the Republic of Kazakhstan refused to consider an application for review, taking the position that “... the specially authorized bodies had finally determined that the construction of the overhead line had no harmful effects on the life or health of the residents of the Gornyi Gigant neighbourhood and had clarified the point at issue”.

Second judicial process

In February 2002, the residents instituted new proceedings to have the decisions of the Akimat of the city of Almaty concerning the allocation of land and the environmental and building reports declared invalid.

On 1 July 2002, a session of the Bostandyk court was held at which the judge ruled that the construction and commissioning of the 110 kV overhead line should be immediately halted.

On 19 July 2002, the Civil Division of the City Court quashed the decision of the district court.

On 31 August 2002, the process of reconsidering the second action on the merits began and after three sessions on 13 September 2002 the judge dismissed the claims of the claimants *in toto*.

On 26 September 2002, an appeal was filed with the City Court against the

decision of the Bostandyk court of 13 September 2002.

On 22 November 2002, the Civil Division of the Almaty City Court allowed the decision of the district court to stand.

On 30 January 2003, an application for review of the decisions of the Bostandyk court of 13 September 2002 and the Civil Division of the City Court of 22 November 2002 was filed with the Civil Division of the Almaty City Court.

On 17 February 2003, President M.T. Alimbekov of the Almaty City Court refused to review the case under the supervisory procedure.

On 1 June 2003, the residents of the Gornyi Gigant neighbourhood and the MVD settlement sent a letter to the Ministry of Environmental Protection of the Republic of Kazakhstan requesting recognition of violations of the nature conservation legislation in the construction of the overhead line.

In August 2003, they received a reply from the Ministry, signed by the Deputy Minister, to the effect that public opinion was in the nature of a recommendation. This was a purely formal reply.

In September 2003, an application for review was filed with the Supreme Court of the Republic of Kazakhstan. It was lodged by the foundation "Public Protection".

On 1 December 2003, the president of the Civil Division of the Supreme Court of the Republic of Kazakhstan refused to consider the case under the supervisory procedure.

In September 2003, on behalf of the residents of the Gornyi Gigant neighbourhood and the MVD settlement, ES Green Salvation brought a third action against the Ministry of Environmental Protection of the Republic of Kazakhstan in the Sary-Arkin district court of the city of Astana for failure to act.

The court held its first session **on 13-14 November 2003** and its second session on 28 November 2003. Having fully considered the case on the merits, **on 25 December 2003** the court ruled that the action should be dismissed because ES Green Salvation lacked the authority to protect the interests of citizens.

On 10 February 2004, the Astana City Court quashed the decision of the district court and sent the case back to the same court and the same judge for consideration on the merits. The City Court noted that Judge Z.M. Fattakhova "set a date for a hearing and having actually considered the case on the merits did not take a decision, thereby creating bureaucratic delay in connection with the consideration of the case".

S. Kuratov,
Chairman, the Ecological Society Green Salvation

17 March 2004



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ECONOMIC COMMISSION
FOR EUROPE

Environment and Human Settlements Division
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07 May 2004

Mr. Sergey Kuratov

Chairman

Green Salvation

Shagabudinova str. 58 apt. 28

Almaty 480091, Republic of Kazakhstan

Dear Mr. Kuratov,

**Re: Communication concerning compliance with the Aarhus Convention
by the Government of Kazakhstan (Ref. ACCC/C/2004/02)**

We hereby acknowledge receipt of your second communication to the Aarhus Convention Compliance Committee, submitted pursuant to paragraph 18 of the annex to Decision I/7 of the Meeting of the Parties to the Convention. The communication has been assigned the reference number ACCC/C/2004/02 which you are invited to cite in future correspondence. We look forward to receiving a signed copy of the communication by post.

The communication and the supporting documentation will now be forwarded to the Committee. As English is the internal working language of the Committee, the summary sheet and the narrative chronological summary have been submitted for translation and we will provide the Committee with English translations as soon as these are ready. The Committee will also be sent a list of the documentation, a copy of which is attached herewith for your information. We will be arranging professional translation of the full set of documentation into English as soon as this can be achieved.

We will keep you informed of the progress in processing your communication.

Yours sincerely,

Jeremy Wates

Secretary

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Legal Problems Of Nature Protection



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17 May 2004

Attn. Mr. Ahmedzhan Kushenov
National Focal Point for the Aarhus Convention
Ministry of Environment
Pr. Pobeda 31, distr. Sary-Arka
Astana, Kazakhstan
Fax: +7 3172 59 19 69

Dear Mr. Kushenov,

Re: Communication to the Aarhus Convention Compliance Committee concerning construction of high-voltage power line (Ref. ACCC/C/2004/02)

On 17 March 2004, the secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) received a second communication from the Kazakh non-governmental organization Green Salvation addressed to the Compliance Committee of the Convention regarding compliance by Kazakhstan with certain provisions of the Convention. The communication was submitted in accordance with the provisions of chapter VI of the annex to decision I/7 of the Meeting of the Parties.

Please find enclosed a copy of the communication, including the full set of supporting documentation, which is being forwarded to you at the request of the Committee in accordance with the provisions of paragraph 22 of the annex to decision I/7. In addition to the original Russian version, we are enclosing an English translation of the communication itself and a chronological summary, prepared in order to facilitate the work of the Committee. The communication has been registered under the symbol ACCC/C/2004/02, which you are invited to cite in future correspondence on the matter.

The Committee, having considered the communication, has on a preliminary

basis determined it to be admissible in accordance with paragraph 20 of the annex to decision I/7. A copy of the preliminary determination on admissibility is attached. Please note, however, that the Committee has not reached any conclusions with respect to the compliance issues referred to in the communication.

In order to facilitate further consideration of the communication, the Committee has requested the secretariat to invite you to comment on the subject matter of the communication, and in particular to address the following points:

(a) Within the Kazakh regulatory system, would the construction of a high-voltage power line as described in the communication be deemed to be an activity that may have a significant effect on the environment, and if so, has the Government of Kazakhstan made any determination in accordance with article 6, paragraph 1 (b), of the Convention as to whether a proposed activity of this kind and on the scale envisaged should be subject to the provisions of article 6?

(b) Is the construction of a high-voltage power line as described in the communication a type of activity that is subject to an environmental impact assessment procedure in Kazakhstan, and if so, does that procedure provide for public participation?

Having regard to paragraph 23 of the annex to decision I/7, you are kindly invited to submit to the Committee, as soon as possible but at the latest within five months, any written explanations or statements clarifying the matter referred to in the communication and describing any response that may have been made in the mean time.

For further details and information on the compliance mechanism under the Convention, including decision I/7, the Committee's modus operandi and the Committee's Information Sheet on Communications from the Public, you may wish to consult the website of the Compliance Committee at <www.unece.org/env/pp/compliance.htm>.

We look forward to hearing from you.

Yours sincerely,

Jeremy Wates

Secretary

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

cc. Green Salvation, Kazakhstan



The Riches of Nature—in Whose Hands?

**GREEN
SALVATION
HERALD**

THE RICHES OF NATURE—IN WHOSE HANDS?

**The Ecological Society Green Salvation and the Eremurus
Environmental Club present**

Film text and titles

The riches of nature have always played an important role in the life of society. Their abundance makes possible the rapid development of a nation's economy, science, and culture; a lack of natural resources forces people into a harsh struggle for survival.

However, the presence of natural wealth in and of itself does not guarantee that all members of society will prosper, just as it does not guarantee a highly developed economy. Therefore, in the advanced democratic countries of the world, mechanisms have been implemented that enable citizens to enjoy the right of access to natural resources and receive real benefits from their use.

In 1976, in the state of Alaska, the Alaska Permanent Fund was created.

The Fund's goal is to accumulate revenues from oil drilling and extraction, and to use these resources in the interests of present and future generations. The Fund is made up of allocations from oil companies working in Alaska. The accumulated funds are used for stabilizing the state economy, funding social programs, and for the payment of dividends to state residents, each of whom receives an income of about \$2,000 annually from the fund.

In Alaska, the search continues for a reasonable compromise between the interests of society and private business, between economic development and the preservation of nature—a compromise that is possible in a society governed by law.

However, as practice has shown, not all of the world's nations use natural resources for the good of society.

In 1995, close ties between major oil companies and Nigeria's dictatorial regime led to massive unrest, which was harshly suppressed by authorities. Every year, about one billion dollars earned from the extraction of oil in Angola

“disappear” without a trace. Venezuela, one of the largest suppliers of oil on the world market, became an arena of acute social conflict in 2002.

Increasing social stratification, flourishing corruption, intensive pollution and destruction of the environment, massive human rights violations, repression, and armed conflict—these are the sad fruits of the natural resource boom in these countries.

In acquiring its independence, the Republic of Kazakhstan, known for its rich natural resource deposits, confidently took its place in the international market for raw materials. Over the last decade, the flow of foreign investment into the country has grown. New deposits of oil and gas were discovered, and Kazakhstan became one of the world’s major oil powers. The extraction and export of natural gas has grown, as well as that of uranium ore and non-ferrous metals.

According to the Constitution of the Republic of Kazakhstan, the country’s natural wealth is “state property.” Over the course of several years, this vague formulation has given rise to endless arguments about who the actual owner is: the people, businessmen, or government officials? This is a far from a simple question, since property should provide income to its owner. Do ordinary Kazakhstani receive any benefits from the increased extraction of mineral resources?

[This question was asked of random passerby. Several individuals agreed to answer it.]

Young woman: No, not a bit.

Elderly man: Me personally, no—hardly at all. But, in general, it does have an effect on life in Kazakhstan as a whole. A positive one.

Middle-aged man: Copper, ore, gold, oil, coal—colossal deposits...it does not have an impact on the population.

Older bearded man: There has been no impact on my life. Because I don’t know anything about oil, and I don’t know where it goes or how it’s produced either.

Two young women: No; it all goes to the government, and we don’t receive anything at all.

Older woman: If we’re talking specifically about our own lives, there’s no impact. We don’t feel it.

Young man in suit and tie: It might affect us indirectly, in that business is growing; we deal with financing business from here, of course.

Young man in street clothes: Only in the pretty houses, the pretty buildings...for me personally, no.

The paradox of Kazakhstan’s socioeconomic situation lies in the fact that despite growing revenues for the state and for companies extracting raw materials, poverty, unemployment, and illiteracy have become constant companions in

our lives. If in 1990 Kazakhstan occupied 37th place in the world in terms of its standard of living, by 1999 it had slipped to 113th.

Following the example of Norway and Alaska, the National Fund of Kazakhstan was created in 2000, at the height of the oil boom.

It was formed on the basis of payments from twelve major resource-extracting companies. At the beginning of 2003, the Fund's assets totaled more than two billion dollars.

The Fund was created with the goal of ensuring the nation's stable development, reducing the economy's dependence on the impact of harmful factors, and accumulating funds for future generations. Perhaps it will become an instrument allowing citizens to enjoy their right of access to natural resources and increase their standard of living, since, in contrast to Norway and Alaska, in Kazakhstan many social and economic problems have not yet been solved. What do Kazakhstanis know about the National Fund?

[This question was asked of random passerby. Several individuals agreed to answer it.]

Young man in street clothes: There are so many different organizations now...No, I don't know anything about it.

Young woman: No, I don't know anything about it.

Man in brown sweater: The National Fund of Kazakhstan—that's all of our Kazakhstani savings in full, all of our finances.

Older bearded man: The National Fund of Kazakhstan—I don't know what that is.

Two young men: Well, the National Fund of Kazakhstan...likely as not, it's our gold reserves.

Young man in suit and tie: The place where all of the royalties from export orders for the sale of oil are gathered.

Young man with young women: Well, to tell the truth, I'm not in the loop on that one; I don't know.

Elderly man: It's a fund that was created supposedly for the next generation. Under the president.

Young woman in sunglasses: No; unfortunately, I don't know what that is.

Three young men: Unfortunately, no, I don't know.

Unsurprisingly, the majority of those questioned know nothing about the National Fund. Neither ordinary citizens nor the members of Parliament took any part in its creation. In contrast to the citizens of Alaska, they are not involved in the Fund's administration. The Fund's money is spent neither on social needs, nor on environmental problems, nor for the elimination of poverty. It is for precisely these reasons that the establishment of the Fund, despite its much-heralded and beneficial goals, has aroused mixed feelings among the

population.

All the same, how should the revenues from the exploitation of the nation's natural resources be distributed?

Part of the income from the development of mineral resources is received by the state. Extracting companies provide hundreds of millions of dollars to the state budget annually. Among other sources, large sums are paid by transnational oil companies working in Kazakhstan. For instance, in 2001, the company Tengiszchevroil paid more than \$500 million to the state budget.

A significant portion of revenues from extraction of natural resources are enjoyed by private companies themselves. Their true profits can only be guessed at, since information about them is not available to the public at large. Approximate calculations can be made using the overall volume of resources extracted and the average price of the raw materials on the world market. However, in the opinion of specialists, some companies—many oil firms, for example—hide from 15 to 20 percent of their oil production.

Flaws in national legislation, price manipulation, and reductions from true production volumes enable companies to receive high profits, which amount to losses for the country. For instance, some specialists believe that the state has lost some \$15 billion from its contracts for the development of the Tengiz deposit alone.

Finally, a certain portion of the revenues from the exploitation of natural resources enter the National Fund, which is headed by a council chaired by the President of Kazakhstan; the Fund's money is managed by the National Bank.

The extraction of mineral resources not only brings income, but also leads to the destruction, exhaustion, and pollution of the environment. This cannot help but be reflected in the fate of the present and future generations. The situation is exacerbated still further by the fact that to this day Kazakhstan lacks a coherent environmental policy. For our state, the rational use of natural resources and protection of the environment are not priorities. Nature has literally been sacrificed to the policy of "economic growth at any cost."

It is virtually impossible to calculate the harm inflicted upon nature, but it may well be enormous. It is enough simply to take a look at the environmental consequences of the activities of oil companies in various countries around the world. Inevitable oil spills during extraction and transport, industrial accidents, and the catastrophes of the tankers *Exxon Valdez* and *Prestige* have resulted in multi-billion-dollar losses for society and irreparable costs to nature. If environmental costs of oil extraction in Kazakhstan, for example, exceed the benefits obtained, doesn't the environmental price of economic growth turn out to be too high, for both current and future generations? For precisely this reason, the debate over the expediency of developing the Caspian shelf has not subsided to this day.

Kazakhstan's first decade of independence has shown that rich natural

resources have not brought benefits to the majority of the country's citizens. The question of the ownership of natural resources remains unresolved, which allows officials to use them for their own benefit. In contrast to the United States or Norway, where oil funds have become mechanisms for realizing the citizens' right of access to their nation's natural resources, in Kazakhstan the National Fund is an expensive plaything, needed to create the image of a democratic state.

Kazakhstan's citizens cannot fully enjoy or defend their own rights, including the right of access to natural resources. This is one of the reasons for the country's poverty. In March of 2003, at a routine session of Parliament, the chairman of the National Bank of Kazakhstan gave a report on the activities of the National Fund. In response to his speech, deputy of parliament Valery Kotovich stated, "Your information has convinced me that our state sits today atop an enormous sack of money, while at the same time it contains millions of poor and hungry people."

Dear viewers: in the time it has taken you to watch this film, about 1,160 tons of oil have been extracted from Kazakhstan's deposits, worth a total of \$225,000. **Where does this money go?**

Credits

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2003



The Riches of Nature—in Whose Hands?

**GREEN
SALVATION
HERALD**

**REFLECTIONS ON THE INTERNATIONAL
CONFERENCE ON EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVES OCTOBER
27, 2003 ALMATY, KAZAKHSTAN**

Rick Steiner, Professor, University of Alaska, the State of Alaska, USA.

Received October 30, 2003

Reflecting on the recent Transparency Initiatives conference held in Almaty, I am left with two somewhat conflicting conclusions. The *good* news is that there seems to be some progress on the difficult road to democracy in Kazakhstan—the *bad* news is that there is much, much farther to go. With all respect, Kazakhstan seems to still be a very long way from a truly participatory democracy.

On the positive side, I think the conference represents an historic event—it was perhaps the first real gathering in Kazakhstan focused exclusively on the issue of transparency for extractive industries. As such, the conference represents a new level in civil society’s conversation about democracy and transparency. It is clear that the NGO community, some foreign governments (notably the UK and EU), and some members of Kazakhstan’s parliament recognize the historic significance of this conversation. Most participants seemed to agree to the general necessity of transparency in government and industry. There is movement toward transparency and public involvement in Kazakhstan.

However, what troubled me, and should trouble any objective observer of the process, is as much who *was not* at the conference as *who was*. Notably absent were high level representatives of the Kazakhstan government and the extractive industries operating in the country. And although leaders of government and industry often *say* they support transparency and democracy, actions indeed speak louder than words. Their absence from such an important conference is a clear indication of the lack of appreciation and respect that

government and industry hold for the issue of transparency and democracy. It is evident to me that, by their notable absence from this conference, the government of Kazakhstan and the extractive industries operating there are sending the message to civil society that they are not yet ready to behave in a democratic, transparent, and just manner. They are, apparently, afraid of this movement, and have clearly demonstrated this fear through their choice to not participate in this conference.

In addition, I detected a reticence among many of the speakers at the conference to speak candidly and entirely openly about the many aspects of this issue. This was very clear in candid, private conversations during breaks and afterwards. Some of this sort of reluctance to speak forcefully, openly, and directly may be understandable, but much of it is counterproductive and delays progress on the issue. This sort of reticence may also represent a deeper problem: that there is yet to develop in Kazakhstan the very cornerstone of democratic society—free speech. If there is any reticence whatsoever among the Kazakhstan citizens to speak freely, even critically of government, out of fear of retribution in any way, then one cannot possibly have democracy, nor transparency, nor a just and sustainable society.

On the issue of Transparency Kazakhstan's survey on transparency sent to some 76 extractive companies receiving only a very limited response, it is inexcusable for these industries to ignore this honest attempt to engage them by civil society. And when asked about why his members ignored this overture from civil society, the representative of the Kazakhstan Petroleum Association offered no real answer.

With all respect, it is evident that Kazakhstan has a long way to go with regard to issues of corruption, transparency, justice, and democracy. The last decade of unregulated, uncontrolled free-market capitalism has wreaked havoc on the people, environment, and social institutions of Kazakhstan. This is an inherently unstable situation, and must be corrected soon.

It is clear that transparency and participatory democracy are the central challenges for Kazakhstan over this decade. The government of Kazakhstan simply must begin acting on behalf of the public interest—not simply on behalf of the wealthy and the extractive industries. The parliament must become engaged in this issue, and pass strong legislation guaranteeing the citizens of Kazakhstan a basic level of access to information from their government and industry, participation in oversight of government and industry, and provide protections from government or industrial abuse. The courts must become more aggressive in implementing the rule-of-law, handing down strong sentences (and seeing that they are carried out) for violations of Kazakhstan law, in particular for corruption or any violation of civil rights by government or industry. And,

the state administration must invite and become more open to citizen opinion and criticism, and must find ways to better involve citizens in the affairs of *their* government. As well, the state government of Kazakhstan must assert the public interest in controlling industries that extract Kazakhstan's natural resources. Put simply, Kazakhstan's future prosperity lies in it becoming a government for and by the people of Kazakhstan—not for and by the transnational corporations. This is a fundamental challenge in any democracy. Someone once said that:

The greatest threat to democracy is the illusion that it has been achieved.

This is indeed the case in every nation in the world which aspires to the ideal of a functional, participatory democracy—the U.S., the U.K., Kazakhstan, etc. We can't simply *call* ourselves democracies—we have to wake every morning and *be* a democracy. We know well how to do this, and how not to do this. Democracy requires constant vigilance and reexamination of everything our governments do and don't do. It requires open criticism of government, and openness on the part of government to accept criticism from its citizens. And it requires transparent conduct in government and industry. This will require nothing short of revolution in the truest sense—a revolution not of bullets and bombs, but of ideals, passions, and commitment to real social progress through the reform of the existing dysfunctional status quo in government and industry.

The October 27, 2003 Transparency Conference in Almaty represents a truly historic step along this road.



**PIPELINES AND THE PETROLEUM REVENUE
“TAKE:” ALASKA’S EXPERIENCE AND
IMPLICATIONS FOR KAZAKHSTAN**

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Introduction

It is widely recognized that Caspian Basin oil is land-locked and must bear the costs of transportation to tidewater in order to compete on the world market. But the economic implications of this fact are not so widely recognized or well understood.¹ Before most payments to the host government are calculated, transportation costs, such as pipeline shipping costs (tariffs), must be netted out. Therefore, increases in transportation charges result in decreases to host government revenues. While this general proposition is simple enough, the mechanics of its execution are typically hidden from public view and can be quite complicated. Pipeline terms can also serve to inhibit development by stifling competition through excessive tariffs, or by limiting access to the line and its associated facilities.

To understand how transportation terms can reduce host government revenues and inhibit competition, this discussion will look at the experience of another remote province with a super-giant oil reservoir, the State of Alaska.² The limited public information about the terms for transporting oil from Kazakhstan suggests that the public interest would be well served by understanding the effects of transportation economics on petroleum revenue, and by careful consideration and public review of the implementation of these important arrangements.

Alaska's Experience

Almost all of Alaska's oil is produced on the continent's northern edge, where the largest oil field in the United States was discovered in 1968. Alaska's North Slope entered production in 1977, peaked at 2.0 million barrels per day (bpd) in 1988 and produces approximately 1.0 million bpd of crude oil today.³ Oil produced at that remote outpost is shipped south across Alaska on the 800-mile Trans-Alaska Pipeline System (TAPS) to the ice-free port of Valdez, where most of the oil is loaded on tankers for shipment to the West Coast of the United States. Approximately eight percent of the oil shipped on TAPS remains in Alaska for in-state refinery use. Since inception, three major oil companies—British Petroleum, ConocoPhillips and ExxonMobil— have controlled more than 90 percent of North Slope production and a similar percentage of TAPS.⁴ Over the first 22 years of operation, it is estimated that North Slope production and TAPS earned profits an estimated \$73.4 billion for investors.⁵ By comparison, the State of Alaska and the federal government received \$97.6 billion dollars during the same period.⁶

The Regulatory Commission of Alaska's 2002 TAPS Decision

Between 1977 and 1998, TAPS generated approximately \$19.3 billion of the industry's profits from North Slope production and pipeline operations—approximately 26.3% of the industry's total profits from Alaska's North Slope.⁷ But this figure only hints at the economic importance of the pipeline. In November 2002, the Regulatory Commission of Alaska (RCA), a quasi-independent state agency that regulates pipeline shipping charges for the small portion of TAPS oil destined for in-state markets,⁸ issued an order summarizing the results of an extensive investigation of the tariffs on TAPS. The 465-page decision found that the pipeline operators had been overcharging pipeline shippers by gross amounts since TAPS entered service.⁹ Data in the order indicate that, overall, TAPS tariff overcharges reduced state revenues by over \$2.0 billion between 1977 and 1996. For all practical purposes, that money is lost to public coffers. But the RCA decision was far from academic. The operational part of the RCA decision deals with more recent tariffs. The commission concluded that in relation to costs, shipping charges on the pipeline in recent years have been, on average, 57 percent too high. Therefore, the state commission ordered those tariffs reduced for the oil over which it exercises jurisdiction.¹⁰

The primary reason pipelines are regulated is that they are a potential bottleneck that can be used to strangle competition, either by charging excessive rates or by limiting access. For the TAPS owners, tariffs charges are internal transfer payments, typically made by the firm's producing arm to its transportation unit. On the other hand, non-owners must pay shipping charges—including a profit allowance—out of their own pockets. Perhaps it is not surprising, therefore,

that the RCA decision sent ripples through the Alaska oil and gas community. The Division of Oil & Gas of the Alaska Department of Natural Resources (the state's land manager) has estimated that reduced tariffs on TAPS—if applied line-wide— would increase state revenues by \$110 million per year. At present, the TAPS owners are pocketing the excess revenue they collect on TAPS.¹¹ But assuring a fair share of the petroleum revenue “take” is just one of the important public policy reasons for seeking tariff reductions. The second reason is this: Excessive pipeline tariffs penalize prospective producers and inhibit the competition on which future oil development depends. According to the director of the Oil and Gas Division, “[e]xcessive tariffs create a barrier to entry for all oil and gas companies not owning an interest in TAPS.” In January 2003, a trade journal survey of 17 key industry participants and observers found that lower TAPS tariffs tied for first place as the top priority for 2003 (with streamlined permitting) and “one of the most important incentives the state could offer.”¹² In February 2003, the Alaska Permanent Fund Board of Trustees voted to investigate “all maintenance and operational practices, including tariff and facility pricing,” that could limit development of state oil leases.¹³ The TAPS owners have challenged the RCA ruling—and its jurisdiction—in the state legislature and in court.¹⁴

Conoco's Experience

The importance of pipeline ownership is demonstrated by the experience of Conoco,¹⁵ the former operator of the North Slope's Milne Point field. Conoco was the only company that has operated a field on the North Slope without a share of the super-giant Prudhoe Bay or TAPS. During a period of relatively low oil prices in 1993, Conoco sold its North Slope interests to BP. Analysis of North Slope production and pipeline revenue streams reveals that the guaranteed profits from TAPS ownership might have kept the operation afloat until oil prices rose again.¹⁶ Later, reflecting on his company's departure from Alaska, Conoco Chairman and CEO Archie Dunham said, “It broke my heart to trade Milne Point, but we had to do it. All the value of that property was taken away from us in the pipeline tariffs. It was a valuable strategic lesson—just look at why the producers in the Caspian Sea are so worried.”¹⁷ By virtue of the mergers among major oil companies (see footnote 3, above), ConocoPhillips is now a major TAPS owner. In addition to joining a vigorous defense of the TAPS tariff in a court challenge to the recent RCA decision,¹⁸ ConocoPhillips has proposed legislation to limit the authority of the RCA.¹⁹

The Devil Is in the Details

The RCA decision also served notice that the commission intends to deal with another tariff issue of enormous fiscal and public policy importance: the provisions governing TAPS dismantling, removal and restoration (DR&R).²⁰ In

recent orders, the RCA has reconfirmed its commitment to exercise its jurisdiction over DR&R issues under state law.²¹ At issue is the industry's accelerated or front-loaded collection and retention of approximately \$1.6 billion in funds for the future dismantling of the pipeline. This tariff element is an undeserved windfall to the TAPS owners of enormous proportions, delivered to the TAPS owners at shipper and public expense. The Staff Expert Witness for the Alaska Public Utilities Commission, predecessor to the RCA, first identified the financial benefits of the DR&R provision to the TAPS owners, as well as the policy consequences for the State of Alaska, in 1986.²² Since then, DR&R problems have come to public attention at least four times; in every instance, the state administration has failed to remedy the problem, thereby continuing to penalize the state treasury and place the environment at potential risk.²³

While the DR&R provision has major implications for public policy in Alaska, it is a relatively minor aspect of the TAPS DR&R terms that best illustrates the complicated nature of pipeline tariff issues—and the potential for industry to profit from the complexity surrounding transportation costs at public expense. The TAPS tariff formula allows the TAPS owners to collect from shippers an income tax surcharge on all DR&R payments as part of the tariff. But instead of actually making those payments to the federal Internal Revenue Service (IRS), the pipeline owners obtained a special ruling allowing annual deductions on DR&R income—long before that money is actually spent on dismantling. For the TAPS owner shipping its own oil, the unnecessary income tax collection is simply a transfer to from the company's production arm to its transportation subsidiary. But this phantom transportation cost penalizes non-owner shippers, who must pay the cost out of pocket under the tariff formula. Moreover, the excess cost also reduces the production arm's royalty and severance tax basis, saving the company—and costing the state—an estimated \$0.21 per dollar.²⁴ Three years ago, a committee of the Alaska State Legislature tried to find out how money much the state has lost over the years as a result of this scam. The legislative committee was unsuccessful.²⁵

What about using pipeline facilities to limit access to the North Slope oil trade? In 1993, U.S. Oil, a small oil company with a refinery on the West Coast decided that it could obtain oil from the North Slope more cheaply by chartering its own tanker than by paying BP to deliver that oil. By offering cheaper tanker rates than the major North Slope producers, U.S. Oil planned to fill its tanker with oil for other refineries. The tanker would have been the only tanker calling at the Valdez terminal to pick up North Slope oil that was not under the control of the major North Slope producers. The TAPS operators denied the U.S. Oil tanker from Valdez, claiming that the company lacked the financial resources required by law to provide adequate spill response. Barred from competing in the TAPS

trade, the tanker owners filed two lawsuits—a suit against TAPS in state court for breach of contract and an antitrust case against the pipeline company and its owners in federal court. After a three-week trial in 1998, the state court concluded that the TAPS operators had imposed unreasonable financial requirements beyond those required by law, causing the tanker's owners to lose more than \$10 million dollars. Armed with that court judgment, the tanker owners negotiated a settlement with the pipeline company and dropped their antitrust case.²⁶ Attorneys for the barred tanker could not discuss details but said they were happy with their settlement.²⁷ However, the facts laid out in the court documents strongly suggest that the TAPS owners used their control of their facilities to bar a competing tanker from the TAPS trade.

The State's Response to the RCA Decision

You might think that the State of Alaska would be vigilant to ensure robust competition and promote development and increase revenues by preventing excessive pipeline tariffs and ensuring open access to key transportation facilities. But you would be surprised. Strange as it may seem, when Oilwatch Alaska, a nongovernmental organization, raised these issues with Alaska's Attorney General, he responded that none of the parties allegedly injured by the conduct of the major North Slope producers has ever raised his concerns with the Department of Law.²⁸

Although the state Division of Oil and Gas has recently pointed out the problems resulting from the TAPS settlement methodology, it is the Department of Law that exercises primary responsibility for state pipeline tariff policy. It should be noted that it was the Department of Law's attorneys who negotiated the 1985 settlement agreement between the state and the TAPS owners.²⁹ Participants in settlement negotiations are likely to believe it is a good one, whatever the outcome; if the negotiators didn't think the settlement was the best possible under the circumstances, they would continue to negotiate or litigate. This may be one reason why Alaska's policy makers do not seek immediate reduction of TAPS tariffs³⁰ and do not try to get to the bottom of the DR&R question. To do so would be to criticize their own 1985 settlement agreement. When the Department of Law's settlement defense fails on the merits, the state's attorneys resist challenges by relying on a provision of the settlement that obligates all signatories to defend the settlement.³¹

In 2001, the Alaska Department of Law claimed that the 1985 settlement resulted in tariff reductions resulting from that settlement augmented state revenues by \$3.8 billion during the next 10 years.³² This figure should not be mistaken for demonstration that the settlement served the public interest; that argument turns the excessive tariffs filed by the TAPS owners into a reference point, then substitutes that faulty benchmark for the standard of just and

reasonable tariffs. But the rationale for high tariffs offered by attorneys obligated to advocate the interests of their company's stockholders is not the appropriate standard for evaluating the settlement tariffs. Rather, tariffs should be evaluated in terms of factors such as actual costs and appropriate rates of return for risks incurred. It is the latter approach that the RCA correctly applied when it determined that TAPS tariffs were—and are—grossly excessive.

The lessons from TAPS and Alaska's North Slope may be summarized as follows:

- Excess transportation costs from a remote province can reduce host government revenues significantly;
- high costs and selective enforcement of transportation terms can also inhibit competition by companies who do not share in pipeline ownership;
- calculation of transportation costs and their implications for host government revenues are liable to be quite complicated;
- state actions in this arena have not maximized the public interest.

In this situation, an informed public can play an important role by encouraging government to avoid problems or demanding that mistakes be corrected.

Caspian Basin

Oil exports from the Caspian Sea region totaled approximately 0.92 million bpd in 2001. This figure is expected to triple by 2010. Much of that oil will likely be carried by two major new oil pipelines that will carry Caspian oil to western markets. In October 2001, the Caspian Pipeline Consortium (CPC) Pipeline loaded its first barrel of Kazakhstan oil into a tanker at the Black Sea port of Novorossiisk, Russia. The CPC line, which circles the north rim of the Caspian Sea on its 1,580-kilometer trip to the Black Sea, will serve as the principal conduit for the super-giant Tengiz field in western Kazakhstan. A second major line, the Baku-Tbilisi-Ceyhan (BTC) Pipeline, is presently under construction. When completed, the 1738-kilometer BTC Pipeline will carry oil from another super-giant field, Azerbaijan's Azeri-Chirag-Gunashli complex in the southern Caspian Sea through Georgia to Ceyhan, Turkey, on the Mediterranean. A third super-giant field, Kashagan, was discovered in the northern Caspian, just west of Tengiz, in 2000. Oil from that field might be shipped on either new pipeline, or both. Meanwhile, smaller but significant quantities of oil produced in other Kazakhstan oil provinces is now transported via other truck, rail, barge and pipeline connections. The most important of these is a network of older pipelines that transports oil north to Russia. Some of this oil may use excess capacity in the BTC and CPC pipelines. Additionally, construction is underway on a new pipeline that will carry Kazakhstan oil east to China. Export through Iran would provide an attractive economic alternative, but a major impetus for Caspian oil development is to reduce western dependence on the Persian Gulf states.³³

The Chicken-Egg Dilemma: Part I

It has been suggested that large pipelines face a classic “chicken and egg” problem: An oil field needs a transportation link, but a pipeline needs oil. Investors in the component that is completed first faces a risk of economic loss if the latter fails to be completed on schedule or fails to live up to expectations.³⁴ It is difficult to establish the correct rate of payment for shipments on a pipeline with an uncertain future. Thus, the “chicken and egg” dilemma was a significant factor delaying the construction of the CPC Pipeline. In 1993, it was estimated that the CPC line would cost \$1.4 billion. Chevron (now ChevronTexaco) held a major interest in Tengiz and thus had a primary interest in the pipeline to the west. But the financing proved difficult to arrange and construction did not begin immediately. By the time the financing to build the pipeline was arranged and construction began five years later, the consortium had no less than eleven identified participants. With a capacity of 400,000 bpd in 2002, an additional \$1.7 billion investment is planned to increase CPC’s capacity to 1.34 million bpd by 2015.³⁵

Three governments own 50 percent of CPC, while eight private investing groups comprised the other half. The present owners of Tengiz and the CPC pipeline are:

Table 1. Tengiz and CPC Pipeline Project

<u>Tengiz</u>	<u>CPC Pipeline</u>
<i>Estimated 9 billion barrel recoverable</i>	<i>From Tengiz to Novorossiisk; first phase completed 2001;</i>
<i>Discovered in 1979;</i>	<i>present capacity 600,000 bpd;</i>
<i>production in 2001</i>	<i>when</i>
<i>290,000 bpd; anticipated peak of approximately</i>	<i>completed, will carry 1.34 million bpd for a total cost</i>
<i>0.9 million bpd around 2010.</i>	<i>of \$4.2 billion</i>
<u>Owners:</u>	<u>Owners:</u>
	Russian Federation (24%)
	Republic of Kazakhstan (19%)
	Sultanate of Oman (7%)
ChevronTexaco (50%)	Chevron CPC Consortium (15%)
ExxonMobil (25%)	ExxonMobil (7.5%)
Kazakhoil (20%)	
LUKArco (5%)	LUKArco (12.5%)
	Kazakhstan Pipeline Ventures LLC (1.75%)

Rosneft-Shell Caspian Ventures (7.5%)

Agip International (2%)

BG Overseas Holdings (2%)

Oryx Caspian Pipeline Co. (1.75%)

From: U.S. Energy Information Agency, “Kazakhstan” (country briefing report), January 2002 and “Caspian Sea Region: Reserves and Pipeline Tables,” July 2002, Tables 1, 2 and 4.

Although its name does not appear in the preceding list, BP—the major British transnational whose interests on Alaska’s North Slope were discussed in the preceding section—owns approximately 6.62% of the CPC pipeline. When BP acquired ARCO in 2000, BP inherited ARCO’s interests in LUKArco, a joint venture with the Russian oil company Lukoil formed in 1997. As a result of that merger, BP has a 5.75% share of CPC (46% of LUKArco’s 12.5% stake), with an obligation to finance 25% of the pipeline.³⁶ Press accounts indicate that BP also controls an additional 0.875% of CPC through LUKArco’s half interest in Kazakhstan Pipeline Ventures LLC.³⁷ In December 2000, CPC shareholders named Sergei Gnatchenko as the new General Director of CPC. According to the company press release, “prior to his appointment Mr. Gnatchenko was the President of LUKArco Services B.V., a joint venture of Lukoil and ARCO, a subsidiary of BP-Amoco.”³⁸

When Tengiz oil began to fill the CPC pipeline in March 2001, the cost to construct the pipeline had escalated to \$2.6 billion. At that point, start-up was delayed again—this time by disagreements with Russian authorities over shipping rates. According to one observer, the dispute revolved around the method of valuing the different types of crude oils that each producer contributed to the pipeline, each of which had a different chemical composition and, consequently, a different market value. Another warned that the quality bank—the method of assigning different values used in western nations—was new to the Russian energy sector and would be difficult to explain. Others said that the root of the problem was that Transneft, the Russian state pipeline monopoly, simply viewed CPC line as an unwelcome competitor; still other suggested that Russia delayed the opening of CPC in an effort to compel Kazakhstan to agree not to transport oil through the BTC pipeline later in the decade.³⁹

The first shipment of oil on the CPC was delivered to the Black Sea in November 2001, but the difficulties making arrangements to get Kazakhstan’s oil to market continued. In March 2002, it was reported that Russia was preparing to classify a portion of the pipeline as a “natural monopoly,” which would make its tariffs subject to review. At the same time, oil companies were challenging

new petroleum legislation in the Russian Federation and in Kazakhstan before international tribunals.⁴⁰

PetroKazakhstan (Hurricane) and CPC.

PetroKazakhstan is a small, vertically integrated Canadian firm that has become one of the largest oil companies in Kazakhstan while remaining focused on production from relatively small on-shore fields in the south-central part of the country.⁴¹ Unlike the major transnational oil companies, PetroKazakhstan does not invest in the large, high-stakes prospects that lie beneath the western part of the country and the Caspian Sea; according to PetroKazakhstan chief executive Bernard Isautier, the Caspian is “a different game—long lead times, massive capital investments and different technology.”⁴² In its turbulent, six-year history, the company has gone from near-bankruptcy in 1999⁴³ to one of the largest oil companies in Kazakhstan. During the first quarter of 2003, PetroKazakhstan’s 0.14 million bpd—represented a 14 percent increase over the preceding year.⁴⁴

PetroKazakhstan publishes a great deal of information on its complicated business at its on-line web site.⁴⁵ The importance of the costs that PetroKazakhstan incurs to move its oil, using a variety of barge, rail, truck and pipeline connections, is indicated by these data. During the first three months of 2003, the company reported costs of \$8.32 per barrel for the variety of barge, rail, truck and pipeline connections necessary to transport its export oil to market.⁴⁶ That amount reduces the revenue PetroKazakhstan received on its exported oil by 35%.

The unsuccessful efforts of PetroKazakhstan (formerly Hurricane Hydrocarbons Ltd.) to buy into the CPC pipeline provides insight into the importance of pipeline economics in the Caspian Basin. In 2001, PetroKazakhstan announced plans to streamline its transportation operations by purchasing one-half of the Kazakh Pipeline Ventures interest in CPC from BP for \$100 million. According to press reports, the deal would give PetroKazakhstan a 0.875% stake in the CPC pipeline and the right to export 64,000 bpd over that line, saving the company “millions of dollars every year in transport costs.” By June 2002, the deal was less than a week away from completion and PetroKazakhstan had already paid BP \$40 million. But at that late date, for reasons that were not clear, the deal was scuttled by Kazakhstan’s newly-created oil and gas conglomerate and PetroKazakhstan’s CPC partner-to-be, KazMunaiGaz.⁴⁷ According to one observer, “BP went through tremendous amounts of work to get letters of credit and every major CPC shareholder went through incredible amounts of work for 11 months to put this through. . . . Then you’ve got this ridiculous reversal. . . . There’s something that doesn’t add up here.”⁴⁸

PetroKazakhstan spent the next year arranging more costly access to CPC as an independent shipper.⁴⁹

Press reports on PetroKazakhstan's unsuccessful effort to buy into CPC suggests that investors in the CPC pipeline may be richly rewarded for their investment in that project. Look at it this way: BP sold 0.875% of the CPC pipeline for \$100 million. This suggests that the CPC pipeline is worth \$11.4 billion. The pipeline was built between 1998 and 2001 for approximately \$2.6. Thus the sale price was more than four times the original investment. If you could quadruple your original investment in four years, you'd smile all the way to the bank.⁵⁰ PetroKazakhstan must have thought it could realize significant savings on transportation charges by investing in CPC or it would not have been willing to invest \$100 million in CPC.

The Chicken-Egg Dilemma: Part II

The discovery of Kashagan in 2000 added a new dimension to the "chicken-egg" dilemma. A super-giant field probably larger than Tengiz, Kashagan is estimated to contain approximately 10 billion barrels of recoverable oil with first production anticipated by 2005.⁵¹ The ownership structure shown in Table 2 reflects the sale of a 14.29% share in Kashagan formerly held by BP and Statoil to the other members of the consortium.⁵²

Table 2. Kashagan Project

Approximately 10 billion barrels; discovered in 2000; production anticipated to begin in 2005, peaking at approximately 1.2 million bpd around 2015.

Owners:

<i>Agip-ENI</i>	<i>16.67%</i>
<i>BG</i>	<i>16.67%</i>
<i>ExxonMobil</i>	<i>16.67%</i>
<i>Shell</i>	<i>16.67%</i>
<i>TotalElfFina</i>	<i>16.67%</i>
<i>ConocoPhillips</i>	<i>8.33%</i>
<i>Inpex</i>	<i>8.33%</i>

From: Phillips Petroleum Co., "Kashagan Declared Commercial" (press release), June 28, 2002.

If production from both Tengiz and Kashagan increases during the coming decade as anticipated (see Tables 1 and 2), the CPC pipeline will not be able to transport all of Kazakhstan's new production to western markets. One analyst estimates that by 2011 Kazakhstan will be producing 0.7 million bpd of oil in excess of export pipeline capacity by 2011. The first candidate for transporting excess Kashagan production is the BTC pipeline, which is supposed to be ready to carry 1.0 million bpd by early 2005 and is contracted to carry the production from the third super-giant in the Caspian region, Azerbaijan's Azeri-Chirag-Gunashli complex (see Table 3).⁵³

Table 3. Azeri-Chirag-Gunashli (ACG) Field and BTC Pipeline Project

<u>ACG Field</u>	<u>BTC Pipeline</u>
<i>Estimated recoverable reserves of 5.4 billion barrels; production of 130,000 bpd in 2001; anticipated to increase to 400,000 bpd by 2004, 800,000 bpd in 2007 and more than 1.0 million bpd in 2010.</i>	<i>From Baku (Azerbaijan) to Ceyhan (Turkey); first oil to be exported in 2005; when completed, will carry 1.0 million bpd; total cost of \$2.95 billion (\$3.6 billion with financing).</i>
<u>Owners:</u>	<u>Owners:</u>
BP (34.14%)	BP (30.1%)
Unocal (10.28%)	Unocal (8.9%)
State Oil Co. of Azerbaijan (10.0%)	State Oil Co. of Azerbaijan (25%)
LUKoil (10.0%)	
Statoil (8.56%)	Statoil (8.71%)
ExxonMobil (8.0%)	
TPAO (6.75%)	TPAO (6.53%)
Devon Energy (5.63%)	
Itochu (3.92%)	Itochu (3.4%)
Delta Hess (2.72%)	Delta Hess (2.36%)
	Agip (2.5%)
	TotalElfFina (5%)
	ConocoPhillips (2.5%)
	INPEX (2.5%)

From: <<http://www.caspiandevlopmentandexport.com>> and “Building Tomorrow’s Crisis?”

It is not clear whether the two major export routes to the west will be handle the production from the three super-giant fields and other production from the Caspian region. Additionally, the schedules for expanding the capacity of two major pipelines may not match the increase in production from the three super-giant fields discussed above. BTC needs oil in the first years of its life, but the Kazakhstan surplus may not materialize until several years later. With a partially empty pipeline, BTC investors will face potentially serious problems recouping their investment in the early years. Under these circumstances, BTC’s projected rate of return—already below industry norms—could be seriously reduced.⁵⁴ In recognition of these problems, the BTC Pipeline grants its owners the right to ship on the pipeline at reduced rates.⁵⁵

For oil produced in Kazakhstan, the BTC route poses another significant problem: How to get that oil across the Caspian Sea to Baku? The governments of Kazakhstan and Azerbaijan have a mutual interest in solving this problem—Kazakhstan wants to export oil and Azerbaijan wants to fill the BTC pipeline. Possible solutions include surface transport by tanker and an undersea pipeline; both solutions add to the shipping costs, potentially reducing Kazakhstan's share of the petroleum revenue "take" from its production.⁵⁶

Another potential problem for BTC is that cost over-runs could increase per-barrel shipping costs, again depriving Kazakhstan of income. With construction on the Georgia portion just beginning in 2003, a challenge by an environmental lawsuit there is accompanied by cost overruns and delays on the long portion through Turkey.⁵⁷

Conclusion

The major oil fields and the new pipeline routes out of the Caspian Basin face a wide range of technical, environmental, political and economic complications. These problems might increase pipeline tariffs, decreasing government revenues and adversely affecting development.

In the United States, pipeline tariffs are regulated to ensure all parties access to a pipeline on equal terms, and at rates that are just and reasonable. Despite these safeguards, the RCA's November 2002 TAPS decision found that TAPS tariffs have been inflated, with two major consequences: reduced host government revenue and a decrease in the robust competition among potential producers that many observers believe is vital to development. It has yet to be determined whether the state of Alaska intends address the arguments set out in the RCA's TAPS decision in a meaningful manner.

The legal framework for pipeline regulation emerging in the Caspian Basin appears to be quite different from that of the United States. As PetroKazakhstan's attempt to buy into the CPC pipeline and the differential rates on the BTC pipeline make clear, owners pipeline are allowed to derive significant differential benefits from their ownership.

In light of Alaska's experience and the contrast between the regulatory approach to pipeline economics, the people of the Caspian Basin should insist on vigilance and attention to detail in analyzing pipeline tariff policy and execution.

Notes

¹ This article rests on the premise that revenues from resource extraction should enrich the lives of the people of the territory from which those resources are taken from the earth. Achievement of this fundamental human right depends on the degree to which the financial mechanisms by which oil is transformed

into wealth are implemented in a just and meaningful manner. Therefore, this article is focused on the revenue stream produced by petroleum development, rather than the ecological effects of pipeline construction and operations on land, air and water.

²The term “super-giant” is usually reserved for oil fields estimated to contain at least 5.0 billion barrels of recoverable oil. In 1993 there were only 42 such fields in the world (L.F. Ivanhoe and G.G. Leckie, “Global Oil, Gas Fields, Sizes, Tallied, Analyzed,” *Oil & Gas Journal*, February 15, 1993, pp. 87-91). Alaska and the Caspian Basin are among the relatively few regions outside the Persian Gulf that possess super-giant oil reservoirs.

³ See: Alaska Department of Revenue, *Revenue Sources Book: Forecast and Historical Data*, Spring 2003, Appendix D. (on-line at www.revenue.state.ak.us).

⁴ Mergers and acquisitions have changed the corporate names of the three dominant companies on Alaska’s North Slope. BP’s U.S. subsidiary merged with the Standard Oil Company of Ohio (Sohio) in 1970 and formally took over management of its Alaska partner in 1987; ExxonMobil represents the combined interests of the former Exxon and Mobil Corporations; Phillips Petroleum became the third major North Slope player by virtue of Phillips Petroleum’s acquisition of ARCO’s Alaska properties in 2000. United States antitrust regulators required BP to divest ARCO’s Alaska holdings as a condition of its global merger with ARCO; the enlarged Phillips subsequently merged with Conoco, which held smaller interests on the North Slope before trading them to BP and leaving Alaska in 1993.

⁵ Data for 1977-87 from: Edward B. Deakin, *Oil Industry Profitability in Alaska, 1969 through 1987* [Alaska Dept. of Revenue, 1989], Appendix E; data for 1988-1998 from: Alaska Department of Revenue, “State of Alaska’s Oil Revenue Pie (Production and Value Added by TAPS),” March 22, 2000 (in letter from Dan E. Dickinson, Director, Tax Division, to Representative Jim Whitaker, Chair, Special Committee on Oil and Gas, Alaska State House of Representatives). Adjusted to 2003 dollars using Consumer Price Index (CPI-U), industry North Slope production and pipeline profits totaled approximately \$118.0 billion).

⁶ Estimated from Deakin and “State of Alaska’s Oil Revenue Pie (Production and Value Added by TAPS).”

⁷ TAPS profit data from Richard A. Fineberg, *How Much Is Enough? Estimated Industry Profits From Alaska North Slope Production and Associated Pipeline Operations, 1993-1998* (Oilwatch Alaska, 1998), Table 4.1.

⁸ Approximately eight percent of the oil shipped through TAPS goes to in-state refineries. But the state commission’s 465-page decision calls into question

the shipping rates for the remaining 92 percent of TAPS oil because that oil is shipped under a similar formula arrangement approved by the Federal Energy Regulatory Commission (FERC).

⁹ Regulatory Commission of Alaska, Order Rejecting 1997, 1998, 1999 and 2000 Filed TAPS Rates; Setting Just and Reasonable Rates; Requiring Refunds and Filings; and Outlining Phase II Issues, Docket P-97-4, Order #151, November 27, 2002 (on-line at www.state.ak.us/rca).

¹⁰ Although the RCA has jurisdiction only over the shipping charges for approximately eight percent of the oil shipped through TAPS, the state commission's decision calls into question the shipping rates for the remaining 92 percent of TAPS oil shipped under a similar formula arrangement approved by the Federal Energy Regulatory Commission (FERC).

¹¹ Allen Baker, "State weighs pipeline fees—\$110 Million: If rates are cut, Alaskans, small producers benefit," *Anchorage Daily News*, December 31, 2002, p.A-1.

¹² " 'Good news' wanted in 2003," *Petroleum News Alaska*, January 19, 2003, p. 1.

¹³ Sean Cockerham, "Oil lease probe sought—Permanent Fund: Corporation worries smaller companies are shut out, state is being shortchanged," *Anchorage Daily News*, February 20, 2003 (on-line).

¹⁴ See: Indicated TAPS Carriers' Statement of Points on Appeal, Amerada Hess Pipeline Corporation, BP Pipelines (Alaska) Inc., ExxonMobil Pipeline Company, Mobil Alaska Pipeline Company, Phillips Transportation Alaska, Inc. and Unocal Pipeline Co. v. Regulatory Commission of Alaska, December 6, 2002 (Superior Court for the State of Alaska, Third Judicial District, Case No. 3AN-02-CIV); and Wesley Loy, "Oil bill would 'decapitate' regulators, critics say," *Anchorage Daily News*, April 26, 2003 (on-line).

¹⁵ Conoco was an independent oil company until 2001, when it merged with the Phillips Petroleum Co. to become part of ConocoPhillips (see footnote 3, above).

¹⁶ For the effect of pipeline costs on Conoco's profitability during its final year of operation in Alaska, see *How Much Is Enough?*, op. cit., pp. 27-35.

¹⁷ For Dunham's statements see "Getting to the Future First," *Hart's Oil and Gas Investor*, August 1996, p. 41.

¹⁸ Indicated TAPS Carriers' Statement of Points on Appeal.

¹⁹ "Oil bill would 'decapitate' regulators, critics say."

²⁰ This discussion of the treatment of DR&R on TAPS is presented as an example of the way in which complex formula can be used to generate profits. Provisions for dealing with dismantling issues in the Caspian Basin differ significantly from those governing TAPS.

²¹ Regulatory Commission of Alaska, Order Denying Indicated TAPS Carriers'

Motion to Cancel Prehearing Conference and Ruling on DR&R Question, Docket P-97-4, Order #157, March 6, 2003 (on-line at www.state.ak.us/rca).

²² Prefiled Testimony of Rudolph L. Bertschi (Alaska Public Utilities Commission Docket No. P-86-2), December 17, 1986, pp. 63-70.

²³ For a summary and economic analysis of DR&R issues in the context of the TAPS tariffs, see Richard A. Fineberg, *The Emperor's New Hose: How Big Oil Gets Rich Gambling with Alaska's Environment* (Alaska Forum for Environmental Responsibility, June 2002), Chapter 5 (on-line at www.alaskaforum.org).

²⁴ This issue is briefly summarized in Richard A. Fineberg, "New filings reveal oil pipeline owners' tax scam," *Anchorage Daily News*, February 8, 2000, p. B-8.

²⁵ Alaska State House Oil and Gas Committee hearing, April 13, 2000 and follow-up letter from Michael A. Barnhill, Assistant Attorney General, to Rep. Jim Whitaker, May 23, 2000.

²⁶ This account is taken primarily from the following court documents: "Complaint," *Maritime Endeavor Associates, L.P. v. Alyeska Pipeline Service Company*, Alaska Superior Court Case No. 1JU-95-1141 Civil, May 31, 1995; "Complaint," *Maritime Endeavor Associates, L.P. v. Alyeska Pipeline Service Company, Inc., BP America, Inc., BP Oil Company, BP Oil Supply Co., BP Exploration & Oil Inc., BP Oil Shipping Co. USA, BP Pipelines (Alaska) Inc., Amerada Hess Pipeline Corp., ARCO Transportation Alaska Inc., Exxon Pipeline Co., Mobil Alaska Pipeline Co., Phillips Petroleum Co. and Unocal Pipeline Co.*, United States District Court (Juneau) Case No. J97-010 CV (HRH), May 27, 1997; "Memorandum of Decision and Order," Case No. 1JU-95-1141 CI, September 30, 1998; and "Stipulation and Order for: Vacation of September 30, 1998 Memorandum of Decision and Order and Dismissal of Action with Prejudice," Case No. 1JU-95-1141 CI, February 17, 1999.

²⁷ Author's interview with attorneys representing U.S. Oil's successors (*Maritime Endeavor Associates, L.P.*).

²⁸ Letter from Alaska Attorney General Bruce Botelho to Jim Sykes, Executive Director, Oilwatch Alaska, November 28, 1997 (see also: Brian O'Donoghue, "Suits allege antitrust violations by Alyeska," *Fairbanks Daily News-Miner*, November 30, 1997, p. A-1).

²⁹ Settlement Agreement between The State of Alaska and ARCO Pipeline Co., BP Pipelines Inc., Exxon Pipeline Co., Mobil Alaska Pipeline Co., Union Alaska Pipeline Co. with Respect to the Trans - Alaska Pipeline System, June 28, 1985 (Federal Energy Regulatory Commission Docket OR 78-1), p. 1.

³⁰ In the RCA tariff proceedings, the State of Alaska, represented by the Department of Law, supported the 1985 settlement in opposition to the shippers who sought lower tariffs.

³¹ Settlement, Section I-3.

³² “Oil and Gas Settlements,” attachment to letter from Bruce M. Botelho (Alaska Attorney General) to Representative Eric Croft (Alaska State House of Representatives), February 7, 2001.

³³ For a summary of Caspian Sea region reserves, production and pipeline routes, see: U.S. Energy Information Agency, “Kazakhstan” (country briefing report), January 2002 and “Caspian Sea Region: Reserves and Pipeline Tables,” July 2002, Tables 1, 2 and 4 (on-line at <http://www.eia.doe.gov>).

³⁴ Mark Mansley, “The Baku-Tbilisi-Ceyhan Pipeline and BP: A Financial Analysis,” p. 9.

³⁵ Robert M. Cutler, “The Caspian Pipeline Consortium Beats the Skeptics,” *The Analyst*, September 12, 2001 (on-line); and “Caspian Sea Region: Reserves and Pipeline Tables,” July 2002.

³⁶ See: Lukoil, “International exploration and production,” undated (circa 2002; on-line at http://www.lukoil.com/razvedka_dobycha/inter.htm).

³⁷ See for example: Charles Coe, “Questions concerning Kazakhstan’s future go beyond oil,” *Alexander’s Gas & Oil Connections*, July 31, 2002 (on-line at <http://www.gasandoil.com/goc/news/ntc23492.htm>); and Pravda On-line, “Hurricane Abandons \$100 Million Pipeline Deal,” June 17, 2002 (on-line at <http://english.pravda.ru/comp/2002/06/17/30498.html>; originally published by Reuters, June 14, 2002).

³⁸ Caspian Pipeline Consortium, “Caspian Pipeline Consortium Shareholders Approve Budget for the Year 2001—CPC General Director Viktor Fedotov to be succeeded by Sergei Gnatchenko,” December 1, 2000 (press release; on-line at <http://www.cpc-ltd.com/>).

³⁹ “The Caspian Pipeline Consortium Beats the Skeptics.”

⁴⁰ Michael Lelyveld, “Kazakhstan: Foreign Investors May Face Troubles Over Pipeline Tariffs,” *Radio Free Europe / Radio Liberty*, March 7, 2002 (on-line).

⁴¹ See: “Oil Industry of the Republic of Kazakhstan,” *Oil & Gas Vertical* (Analytical Journal, #15 [82]), September 2003, p. 152.

⁴² Jeffrey Jones, “Kazakhstan aims for Caspian oil rush in 2004” (update 1), Reuters, June 27, 2003 (on-line).

⁴³ Gary Park, “Soaring share prices trouble Canadian securities regulators: Trading activity of takeover companies under scrutiny as rumor mill churns out fresh speculation, dominated by talk of a BP bid for oil sands leader Suncor Energy,” *Petroleum News Alaska*, March 31, 2003.

⁴⁴ PetroKazakhstan Inc. “Management’s Discussion and Analysis,” 2003, FirstQuarter, p. 2 (on-line).

⁴⁵ PetroKazakhstan’s web site can be accessed at <http://www.petrokazakhstan.com>.

⁴⁶ See: “Management’s Discussion and Analysis,” 2003 (first quarter), p. 14 (on-line).

⁴⁷ “Questions concerning Kazakhstan’s future go beyond oil.”

⁴⁸ “Hurricane Abandons \$100 Million Pipeline Deal.”

⁴⁹ See: “PetroKazakhstan gets new pipe for fast oil exports,” Reuters, June 24, 2003 (on-line).

⁵⁰ $\$100,000,000 \times 100 \times 8/7 = \$11,428,571,429$.

⁵¹ “Kazakhstan” (country briefing report).

⁵² Phillips Petroleum Co., “Kashagan Declared Commercial” (press release), June 28, 2002 (on-line at <http://www.phillips66.com/newrroom/NewsReleases/Print/rel396.doc>).

⁵³ “The Baku-Tbilisi-Ceyhan Pipeline and BP: A Financial Analsys,” p. 9.

⁵⁴ “The Baku-Tbilisi-Ceyhan Pipeline and BP: A Financial Analsys,” pp. 25-29.

⁵⁵ “The Baku-Tbilisi-Ceyhan Pipeline and BP: A Financial Analsys,” p. 11.

⁵⁶ Platt’s Global Energy, “U.S. hopeful of cross-Caspian oil export agreements by end-2003,” June 3, 2003 (<http://www.platts.com/features/caspian/related.shtml>).

⁵⁷ For background see: “The Baku-Tbilisi-Ceyhan Pipeline and BP: A Financial Analsys,” pp. 10-11, 28-31.

* Richard A. Fineberg brings experience from academia, newspaper reporting and government service to his independent analysis of economic and environmental issues related to Alaska and global petroleum development. His research reports on Alaska cover topics such as: the profitability and long-term production prospects of Alaska’s North Slope oil complex; state and federal petroleum receipts; operational and safety issues on the Trans-Alaska Pipeline System (TAPS); the economics of that system; and the causes and effects of the 1989 *Exxon Valdez* oil spill. His newspaper coverage of the construction of TAPS and a proposed natural gas line earned both state and national awards. Between 1986 and 1989, Dr. Fineberg served as a senior advisor to the Governor of Alaska on oil and gas policy issues. Since that time he has consulted and prepared reports for non-profit organizations, government agencies, independent developers and private investors.



Information

**GREEN
SALVATION
HERALD**

ILE-ALATAU NATIONAL PARK

Brochure about Ile-Alatau National Park

Received March 25, 2004

Ile-Alatau State National Nature Park is located on the northern slopes of the Trans-Ili Alatau, one of the spurs of the Tien-Shan mountain range. The park stretches from the magnificent Turgen Gorge in the east, to the Chemolgan River in the west. Its northern boundary is formed by deciduous forests, while its southern border follows the peaks of the Trans-Ili Alatau.

A Bit of History

National parks exist in many countries of the world. According to the definition of the World Conservation Union, a national park is a comparatively large territory under the protection of the state, in which natural ecosystems are not substantially changed as a result of human use. These sites, possessing wonderful landscapes and natural monuments, inhabited by various plants and animals, present scientific, educational, and recreational interest.

The first national parks were created in the United States of America more than 130 years ago; today there are about two thousand such parks throughout the world. Some of these have not only attained national significance, but have been included on the World Heritage List.

In Kazakhstan, as in the other republics of the former Soviet Union, national parks have appeared relatively recently, since the Soviet system of nature conservation was based primarily on the creation of wildlife preserves (*zapovedniki*). National parks, like nature preserves, are formed to preserve the most precious creations of nature that humanity possesses. In contrast to nature preserves, they are open to tourism, recreation, and cultural and educational activities.

The first national park in our country—Bayanaul—was created in 1986. Today, eight national parks exist in Kazakhstan, and since they are all quite young, much work still lies ahead, in order to bring them into line with world

standards. The law “On Specially Protected Natural Territories,” passed in 1997, regulates the protection and use of Kazakhstan’s national parks.

Ile-Alatau National Park was opened in 1996. Its area—more than 200,000 hectares—is approximately equal to the territory of the island of Mauritius, and greater than that of the nation of Malta. However, compared to the major national parks of the world, Ile-Alatau is not large. For example, Katon-Karagai National Park (Kazakhstan) has an area greater than 500,000 hectares; Yellowstone (USA), more than 890,000 hectares; Kruger National Park (South Africa), more than 1.9 million hectares; and Kakadu Park (Australia), more than 2 million.

The Nature of the Park

The park’s chief asset is its untouched natural environment. Thousands of years of activity by pastoral nomads in the Trans-Ili Alatau have not led to the destruction of its ecological balance. However, within the last 80 years, the natural environment in a number of gorges adjoining the city of Almaty has been significantly altered as a result of the onset of industrial civilization and environmental pollution. These represent the main threat to the integrity of the park’s ecosystems.

In spite of this fact, however, the Trans-Ili Alatau still retain their bygone magnificence, justifying their name as “lofty” mountains, with a striking variety of forms of life and whimsical creations of nature. On the territory of the park, forests, Alpine meadows, moraine lakes, glaciers, and traces of ancient cultures are knit together in harmony.

A significant portion of the park is occupied by unique relict spruce forests, which have survived the Quaternary ice ages. Here grows Schrenk’s spruce, which can reach a height of 45 meters and a diameter of up to two meters. It is noted for its remarkable ability to grow on nearly vertical slopes. This stately tree lives for up to 250–300 years, and at the upper treeline, for up to 600. Below the coniferous forest zone lie mixed forests, distinguished by their rich diversity of species. Here one encounters the common apricot, Mushketov’s atraphaxis, Turkestan shrub maple, Yanchevsky’s currant, Caucasian carcas, and, of course, Sivers’ apple. According to the latest research, this is the forefather of all of the world’s known apple varieties. In all, more than 1000 species of plants are known to exist in the park.

The animal world of the Trans-Ili Alatau is diverse as well, including some 300 species of mammals and birds. Here dwell the snow leopard (or *irbis*), Central Asian lynx, Tien-Shan brown bear, Central Asian rock marten, ibex (or *tau-teke*), ibisbill, bearded vulture, griffin vulture, golden eagle, and blue rock thrush.

Ile-Alatau National Park is notable not only for its diverse flora and fauna, but for its remarkable natural monuments, which give this corner of the planet its unique character. One of the park’s special features lies in its sharply expressed

vertical zones; over the course of several hours of travel, one can ascend from the level of the steppes to Alpine meadows and glaciers.

Along the southern boundary of the park, the tracks of the Earth's Ice Ages remain. At an altitude of more than 3500 meters, mighty glaciers are found. In the valley of the Left Talgar lies the largest glacier of the northern slopes of the Trans-Ili Alatau—the Dmitriev Glacier. A unique landscape, resembling the Arctic tundra, comes into view at Prokhodnoi Pass. Here, eternal permafrost lies at a depth of one to two meters. On the right bank of the Shenturgen River stands the relict forest of moss firs known by the same name, dotted with permafrost “islands” located a few meters beneath the surface of the earth.

Numerous signs of seismic activity and landslides are visible everywhere. Big Almaty Lake, created more than 2000 years ago, and the Akzhar Landslide in Aksai Gorge, which took place in 1887, are both threatening reminders of the powerful earthquakes.

On the territory of the park, one can also see ancient religious structures and rock paintings, but on the whole, its cultural artifacts have been poorly studied to date. In the opinion of scholars, the names of the peaks, lakes, rivers, and natural boundaries were given to them by still more ancient peoples, who regarded this land with reverence and honor. The peak of Khan-Tengri is “the Sanctuary of God”; Lake Issyk, “the Holy Lake”; the Maibulak River, “the Holy Spring.”

The park's unique natural environment and its cultural artifacts are of value to all of humanity. In order to preserve the park for present and future generations, in 2001 the government of Kazakhstan placed it on a preliminary list of sites to be nominated for inclusion on the World Heritage List.

What Do Our Mountains Give?

The national park was created not only to preserve the beauty of the Trans-Ili Alatau. These mountains are the “green heart” of an enormous territory, inhabited by more than two million people.

The mountain forests regulate water flow and enrich the air with oxygen and phytocides. They provide protection against heavy rains and spring flooding, slow the melting of the snows, transform surface flows into groundwater, and hinder the formation of mudslides and erosion. These useful qualities are of crucial importance, and they bring far more benefit than the cutting of timber!

The Trans-Ili Alatau provide the southern part of the Almaty region with water resources, above all high-quality drinking water. This priceless gift of nature is not available to many inhabitants of Kazakhstan's steppe and desert zones, or to hundreds of millions of other people on this planet, many of whom are forced to purchase drinking water from elsewhere.

The mountain breezes (or *foehns*), blowing down into the valleys, generate air circulation in the city of Almaty and form the climate of the foothills zone.

The biological diversity of the Trans-Ili Alatau is a precious treasure, which

guarantees the development of future generations and permits us to preserve the genetic fund of a variety of species.

It is not third-rate restaurants and casinos that draw people to the Trans-Ili Alatau, but the inimitable enchantment of these places, and the opportunity to be one with nature!

What Threatens the Park?

So far, we can still enjoy the beauty of Ile-Alatau National Park and make use of its rich resources! With every passing year, however, the danger grows that the unique natural environment of this blessed region will be destroyed by the hand of humanity.

Pollution of the atmospheric basin, forests, lakes, rivers, springs, and animal habitats has reached threatening levels. As a result, the melting of the glaciers has been hastened, the forests are dying, the number of floods has increased, the quality of drinking water has fallen, and in the park there remain fewer and fewer birds and other animals.

The destruction of the park's natural environment has been exacerbated by violations of the law "On Environmental Protection," uncontrolled economic activity, unorganized tourism, a lack of sufficient financial resources for its protection, and elementary ignorance on the part of its visitors.

Will the park retain its beauty and riches for living and future generations, or will it become yet another monument to human ignorance, indifference, and greed? The answer depends not only on the actions of the government, but on each one of us as well.

Ile-Alatau State National Nature Park

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The Environmental Society "Green Salvation."

Almaty, 2004.



Information

**GREEN
SALVATION
HERALD**

Hivos

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Mission statement

Hivos is convinced that poverty is a consequence of unequal opportunities and an unfair distribution of knowledge, power, production and income – on a global scale and within national states. Our world can only be a sustainable and fair place to live if more people have access to the resources and the decision-making processes that determine their future. Nowadays, the information revolution offers us new ways of achieving this. Access for all is a motto that succinctly expresses the ideology and policy of Hivos.

Hivos, the Humanistic Institute for Development Cooperation, wants to increase opportunities for people in the South and give them greater scope to develop themselves. Local organisations and community groups can play a key role in this. They support groups of citizens who defend their own interests and who fight for human rights and democratisation. Such groups build the foundations on which the structure of society is erected.

Hivos supports autonomous non-governmental organisations that contribute

to sustainable development. Hivos is their ally in the political debate on international cooperation. As an active member of Dutch and European networks, Hivos lobbies for a foreign policy that gives consideration to the interests of developing countries.

Policies

Hivos does not carry out projects or programmes itself, nor does it post development workers overseas. Hivos provides financial support and advice to local NGOs. These organisations carry out a wide range of activities at many different levels of society. They play a role in the way in which their society develops. Hivos always seeks out partners that are not afraid to point the way, that are not dogmatic and that welcome innovation.

Hivos takes an institutional approach in supporting organisations that enable people to stand up for their rights and that increase their access to decision-making. This entails support not only to the activities of the organisation, but also to the organisation itself: organisational and policy development, financial control, internal democracy and public accountability. Based on this same approach, Hivos encourages and fosters cooperation between organisations, social movements and national umbrella organisations.

Hivos supports organisations that are secular, autonomous and without government ties. Hivos places great value on association with large organisations and interest groups from the local community, selecting them on the basis of its policy priorities. At a national level, such organisations can be powerful champions of the interests of underprivileged groups. Community-based organisations constitute a second important group. Such grassroots initiatives can demonstrate that things can be done differently and better. Organisations that combine these two elements (influence at a national and a grassroots level) are particularly valuable. Hivos also supports NGOs that act as intermediaries and service providers if the services they offer are related to Hivos policy, if they are effective facilitators and promote access to decision-making. Network and umbrella organisations also receive support on a limited scale.

Hivos concentrates its activities geographically in a limited number of countries and regions. In Central Asia it limits its work to Kazakhstan and Kyrgyzstan.

In allocating its funding, Hivos gives priority to five special themes and sectors, which it likes to refer to as policy spearheads. They are:

1. economy and credit facilities
2. culture and the arts
3. gender, women and development
4. sustainable development

5. human rights and AIDS

In the course of time Hivos' programme in Central Asia has stabilized. In 2004 it was at a funding level of almost 1.4 million euro on an annual basis: 763 thousand in Kazakhstan and 644 thousand in Kyrgyzstan. In Kazakhstan, Hivos puts a strong emphasis on environmental issues and sustainable development. In 2004, 30% of the funds in Kazakhstan was transferred to environmental NGOs: Green Salvation in Almaty, EcoCenter and EcoMuseum in Karaganda, and Milieukontakt Oost-Europa in Amsterdam (which includes the Ecoforum resource centre). Other significant funding in Kazakhstan was provided to NGOs in the sphere of gender/women's emancipation (31%) and the human rights (17%).

Environment: sustainable development

In 1999, a new policy paper defined Hivos' strategy on the environment. This strategy revolves around sustainable development: economic, political and socio-cultural developments cannot be taken out of their ecological context, which is formed by the limited natural resources available to us.

The new strategy—development from the perspective of the environment—emerges from Hivos' experience with environmental policy in the past ten years. Hivos has successfully established a sound collaborative structure with organisations prominent in the field of sustainable development. However, it has been extremely difficult to convince other partners to integrate sustainable development into their activities.

The policy paper presents a long-term vision of how this integration can be accomplished: it concretely defines the common ground between human rights, gender and the environment, such as the right to live and work in a healthy environment. Hivos supports organisations that work on that common ground—for example, organisations that advocate local ownership of natural resources. The paper also explains how economic and ecological development can be integrated. The new policy gives high priority to groups that promote technologies and production processes, which are friendly to humankind and the environment alike. In formulating and elaborating this environmental policy, Hivos works together with organisations such as Vereniging Milieudefensie, Friends of the Earth International and IFOAM (International Federation of Organic Agricultural Movements).

Green Salvation in Almaty was one of the first partners of Hivos in Central Asia. The start of our cooperation dates back to mid-1994.

If you would like further information, please contact us at the address mentioned above. Documentation (in English and Russian) is available on the basic principles, criteria and implementation of overall Hivos policy and policy in respect of the special priorities.

