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Ensuring Environmental Compliance
Trends and Good Practices
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PART II

Chapter 14

Russian Federation

14.1. Key Features of the Legislative Framework Related to Compliance Assurance

In Russia's legal framework, there are legislative acts which govern environmental protection and use of natural resources in general. They set cross-cutting requirements and provide for the overall framework of environmental management. Among them, the key act is the Federal Law "On Environmental Protection" of 2002 that superseded a similar law which had been in effect since 1991. It stipulated a wide range of environmental policy instruments and introduced new concepts. The law required the adoption of many implementing regulations, a number of which are still not in place.

The 2001 Code of Administrative Offences expanded considerably the list of the constituent elements of environmental offences. Under the Code, several agencies are authorised to impose administrative penalties in their areas of competence. It also expanded the range of subjects of administrative liability: in addition to individuals and officials, legal entities are now also held liable. Penalties for legal entities are considerably higher than those for other categories of offenders. The Administrative Code has a chapter entirely dedicated to offences against the environment and natural resources. Similarly, a special separate chapter on environmental crimes was included in the Criminal Code for the first time in 1997.

Since the early 2000s many sub-national authorities have adopted local legislation which has no federal-level analogues or which details considerably the federal provisions, taking into account environmental, industrial, agricultural, and other specificities of the region. For example, the City of Moscow passed a special law on environmental compliance assurance.

14.2. Institutional Framework for Compliance Assurance

Federal level

The key authority responsible for formulating and implementing the environmental policy and law at the federal level in Russia is the Ministry of Natural Resources and Ecology (MNRE). The Federal Service for Environmental, Technological, and Nuclear Supervision (*Rostekhnadzor*, or RTN) and the Federal Service for Supervision over Use of Natural Resources (*Rosprirodnadzor*), both subordinated to the MNRE,[1] supervise industrial impacts and natural resource use, respectively. At the same time, compliance assurance responsibilities are delegated to the constituent entities of the Russian Federation.

At the sub-national level, there are eight Inter-regional Territorial Departments for Technological and Environmental Supervision (in seven Federal Districts and Moscow), eight Inter-regional Departments for Technological and Environmental Supervision (each for several subjects of the federation), and 60 Departments for Technological and Environmental Supervision in individual constituent entities of the Federation. At the sub-national offices of *Rostekhnadzor*, inspection staff and permitting specialists operate at

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different units, but the inspection unit always has access to the permit and licence information.

There is a wide range of other official actors that are involved in compliance assurance, including a variety of ministries, such as those covering public health, industry, economic development, agriculture, and transport. Sometimes this results in an overlap of functions, but co-ordination among different authorities is gradually improving. In 2007, a practice of signing co-operation agreements between RTN and prosecutor's offices and the police was launched at the federal and sub-national levels.

Sub-national level

Lately, environmental enforcement in Russia has been evolving toward greater decentralisation: as of 2006, local administrations (including at the municipal level) received the right to regulate and inspect certain segments of industry. The following regulated entities remained under federal jurisdiction and are regulated by RTN's territorial units:

- Nuclear power plants, military units, and facilities situated on land in federal ownership.
- Facilities that have adverse impact on the World Cultural Heritage and World Natural Heritage sites and facilities contributing to cross-border environmental pollution.
- Facilities that annually store or dispose of more than 10 000 tonnes of hazardous waste of 1st or 2nd class; discharge over 15 million m^3 of wastewater, and produce more than 500 tonnes of air emissions.

It is expected that Federal Law No. 199-FZ (2005) on the division of responsibilities between federal agencies and executive authorities of the subjects of the federation will be fully implemented with respect to environmental compliance assurance in 2007-2009.

The institutional capacity at the regional and municipal levels varies considerably. Several administrations have set up strong environmental committees that assumed compliance assurance functions. In other regions, the administrations tend to delegate energy, municipal services, and environmental management to one department where environmental issues are the smallest priority. At the municipal level, in most cases there are no environmentalists or there is just one person who must combine the environmental function with several other control functions.

14.3. Regulatory Regimes

Regulated community

The regulated community is relatively well identified, mostly through permit applications. In 2007, a federally funded project was launched to develop a system of state registration of regulated entities with web-based access for all RTN offices.

Although the structure of the regulated community has evolved over the last decade, large industrial enterprises continue to be the greatest contributors to the pollution from point sources. The number of small businesses in Russia has not really grown since the mid-1990s, and the 900 000 SMEs that exist generate only about 12% of GDP. The specificity of Russia is the quasi-absence of SMEs specialised in technology-intensive activities. The vast majority of Russia's SMEs are very small firms, often individual entrepreneurs engaged mostly in trade, construction, or services.

Permitting

For installations under federal jurisdiction, permits for air emissions, effluents, waste disposal, as well as licences for waste handling are issued by RTN's territorial departments. Other agencies, such as the Federal Water Resources Agency (which has mostly planning and service functions) and Rosprirodnadzor, both under the MNRE, and regional and municipal governments, are consulted during the permitting process.

Permitting of environmental pollution continues to be medium-specific and focuses mostly on end-of-pipe solutions. Emission limit values (ELVs) set by permits are derived from environmental quality standards using modelling software. Since the environmental quality standards are quite stringent, in certain cases the ELVs are technically unfeasible. In order to overcome the problem of ELVs' frequent lack of technical and economic feasibility, the instrument of "temporarily agreed emission limit values" has been used. Temporary limits can be set, assuming that the permit requirements would be achieved gradually. However, adherence to compliance schedules has been hardly enforced.

Despite an active discussion among Russian experts of the feasibility of moving toward integrated environmental permitting based on best available techniques (or technologies, in the Russian terminology), a short-term transition to integrated permitting is unlikely. On the contrary, it is planned to transfer the responsibility for issuing permits for wastewater discharges to the Federal Agency for Water Resources.

Permits are commonly valid for one to three years, sometimes for up to five years. The operator can appeal a permitting decision administratively (*e.g.* to RTN's central office) and in court. Permits are not available to the public.

14.4. Compliance Promotion

Information dissemination to the regulated community

Compliance assistance is not part of the responsibilities of environmental enforcement authorities in Russia, and there are doubts whether an enforcement authority should become involved in such activities. It is believed that industry should request compliance assistance from consulting companies on a commercial basis. Therefore, guidance documents for the regulated community are rare and often produced within donor assistance projects. At the same time, providing online access to legal acts and regular publishing of news has become a rather regular activity for both *Rostekhnadzor* and *Rosprirodnadzor*.

Promotion of good environmental management

Environmental management systems are becoming increasingly common in Russia. Promotion of EMS certification according to ISO 14000 standards, training of company management and staff, and development of guidelines is done by a range of stakeholders: consulting companies, research institutes and universities, and NGOs. It is noteworthy that the State Standardisation Agency (*Gosstandart*) has accredited several voluntary environmental management systems per GOST R ISO 14001-98 that transposes the ISO 14000 series standards in Russia. One of the challenges faced by the authorities certifying those systems is the international recognition of the certificates they issue. Enterprise managers seeing ISO 14000 standards as mandatory is typical in the Russian context, which is largely due to the lack of a clear position of the environmental authorities *vis-à-vis* EMS.

In recent years, environmental ratings of individual enterprises have been used more and more frequently in Russia. Currently, there are several rating agencies which use

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different rating techniques. For example, the Chamber of Trade and Industry makes annual awards to "best enterprises in environmental policy implementation". However, criteria used are not always clear and transparent, making it difficult to assess the effect of these ratings on the performance of the regulated community.

Financial incentives

The draft law "On Charges for Adverse Environmental Impact" (under development for many years) advocates, among other things, the reinstatement of the offsets scheme which was in place until 1998, which provided an opportunity to deduct expenditures on eligible environmental projects from pollution charge payments (see also Section 14.6). In the past, the offsets were often granted to those enterprises that did not pay charges anyway, defeating the incentive purpose of the scheme and the pollution charge system as a whole.

14.5. Compliance Monitoring

Compliance monitoring instruments

Various types of inspection are used. Multimedia inspections constitute a large share of inspections conducted by the sub-national bodies of RTN. When non-compliance is detected and corrective measures are prescribed, a follow-up inspection is usually scheduled. Unscheduled site visits are carried out in the event of accidents, threat to human health and the environment, damage to property, or complaints. Every site visit must result in an inspection record stipulating the violation(s) revealed, the legal requirements that have been violated, the cause(s) of non-compliance, and the corrective actions prescribed. Inspection reports are not disclosed to the public.

Annual inspection plans are usually posted on websites of competent authorities. Inspection priorities are defined based on industry size and its potential adverse environmental impact. This kind of information is available internally from officials responsible for issuing permits, as well as from the federal statistics authorities. However, priority setting is not systematically supported by the analysis of factors leading to offences.

The Federal Law (2001) "On the Protection of Rights of Legal Entities and Individual Entrepreneurs during State Control/Supervision" forbids scheduled inspections to be held more frequently than once every two years. Furthermore, it requires that all inspections be announced. This restrictive practice was mainly triggered by the need to reduce administrative burden on industries and corruption among government officials. Currently, a possibility is being considered of completely shielding small businesses from any inspections not sanctioned by a prosecutor or a court. Data available from environmental authorities do not allow to accurately define the actual frequency of scheduled inspections or the share of the regulated community covered by inspections each year. In general, since 1999 a sharp reduction in the number of inspections has been recorded.

Self-monitoring

Under Russia's environmental legislation, all industrial installations have the responsibility to ensure environmental self-monitoring and reporting. Self-monitoring programmes are a part of the permitting documentation. In principle, they are valid for five years while sampling schedules are updated annually. Regulated pollutants can be monitored directly at the source or by determining their concentration in the environment

(within the so-called "sanitary protective zone"). Indirect monitoring using emission factors and other means is also possible.

Operators bear full financial responsibility for implementing self-monitoring pro-grammes and provide the necessary expertise, equipment, and analytical facilities. Sometimes self-monitoring services are outsourced to accredited industrial laboratories. The sub-national bodies of RTN can require comparative measurements. (Accreditation of some industrial laboratories has been revoked when the results of such inter-calibration were unsatisfactory.) Operators must submit annual reports on their environmental performance, including forms for air, water, waste, contaminated soils, and pollution charges.

14.6. Non-compliance Response

The level of compliance in Russia does not lend itself to precise statistical expression but is judged to be low. The available data show that the number of violations discovered is roughly equal to the number of inspections.[2] At the same time, this may be due to the fact that only a small fraction of the regulated community (often, large facilities causing most compliance problems) is inspected annually.

Administrative enforcement

The traditional enforcement strategy in Russia is to respond to all identified violations with sanctions. Warning letters can be issued by RTN, but they are rarely used in practice. The possible administrative sanctions include corrective action orders, fines, suspension of activity, and permit suspension or revocation (leading to facility closure).

Although the list of tools is extensive, in practice fines are the most common punitive action. Within the limits defined in the Administrative Code, the exact amount of monetary penalty is determined by the competent authority (with revenues going to the general budget). Before 2007, the Administrative Code set minimum and maximum fines in multiples of the minimum monthly wage. Currently, the limits for fines are expressed in monetary terms. Interestingly, one of the most severe administrative sanctions are stipulated for non-payment of pollution charges (see below).

The number of activity suspensions or facility closures is also high, as many inspectors believe that this is the only kind of sanction that has a strong impact on the regulated community. An administrative penalty can be appealed to the higher competent authority or in court. Decisions on sanctions are generally not disclosed to the public.

While federal inspectors may use a wide array of administrative enforcement tools, inspectors of constituent entities of the Russian Federation have no such rights. They can only submit reports on non-compliance to the sub-national bodies of RTN or respective law enforcement authorities that are supposed to take further action. Sometimes enforcement authorities come under external pressure not to impose sanctions for economic or social reasons.

Pollution charges

Pollution charges in Russia are levied universally on all operators that are subject to environmental permits. They are imposed on up to 214 air pollutants and 197 water pollutants, as well as on storage and disposal of four categories of hazardous waste (based on toxicity) and two categories of non-toxic solid waste.

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A central feature of the pollution charge system is that a set of pollutant-specific basic rates apply to discharges within established limits, whereas a much higher rate applies to discharges exceeding the limits. The applicable rate of pollution charges is five times the base rate for quantities discharged in excess of the ELV but within the temporary limit. For discharges in excess of the temporary ELV (or those without a permit), the applicable rate is 25 times the base rate. These multipliers represent the "non-compliance component" of pollution charges, effectively making them an enforcement instrument. However, the charge rates are so low compared to marginal abatement costs that the system provides very little incentive for reducing the level of pollution. In addition, with the charge base of hundreds of pollutants, the system does not reflect any policy objectives or priority pollution problems.

The collection of pollution charge revenues is the responsibility of the federal tax authorities. The revenues are divided between the general federal budget (19%) and regional budgets (usually via an earmarked budget line). The system is significantly undermined by the lax enforcement against non-payment: the collection rate does not exceed 80%.

Criminal enforcement

The number of recorded environmental crimes in Russia more than doubled between 2001 and 2006: the share of environmental crimes in the total number of crimes went up from 0.5% to 0.9% over this period. It has increasingly taken the form of organised crime, particularly in the field of natural resources use. The rate of resolved cases in very low: 4.9% in 2003, 27.3% in 2004, and 10.2% in 2005.[3] "Green" crimes still dominate the landscape, partly due to their easier detection and high priority for authorities. Crimes linked to pollution and waste are more difficult to discover or prove, making their level seem lower. Environmental pollution crimes are often recorded only in connection with major industrial accidents.

The complexity of environmental enforcement and the need for specific knowledge in the investigation of environmental crimes have led to the establishment of a network of environmental prosecutors' offices. Currently, there are 35 inter-rayon environmental prosecutors' offices in the constituent entities of the Federation and one inter-regional Volga environmental prosecutor's office (which has oblast-level rights) comprising 15 inter-rayon prosecutors' offices based in the cities on the Volga River. Still, criminal investigations and enforcement in Russia have not been particularly effective. The number of unsolved crimes reached almost 50% in 2005.

Criminal cases are referred to a prosecutor's office which decides whether to initiate a criminal case. If the violation does not constitute a crime, the prosecutor makes a decision not to open a criminal case and initiates an administrative enforcement procedure. When criminal prosecution goes ahead, the probability of a conviction largely depends on the way specific articles of Russia's Criminal Code are formulated. There is a large gap between the large number of recorded crimes for "violation of the rules of shipment of environmentally hazardous substances and waste" and the low number of those under other articles setting criminal liability for pollution, which signifies the difficulty of proving criminal liability for environmental damage. This is partly due to the low capacity of the courts to adjudicate environmental cases. Punishment for the persons convicted of environmental crimes is mostly reduced to fines or suspended imprisonment. As a result, the deterrent effect of criminal sanctions is low.

Civil liability

The instrument of civil liability as a whole and that for environmental violations in particular is one of the most developed ones in the legislation and legal doctrine of Russia. The Russian legislation declares liability for environmental damage caused by industries, institutions, agencies, or individuals by environmental pollution, deterioration, destruction, impairment, and mismanagement of natural resources, destruction of natural environmental systems, or other environmental offences.

Civil liability has been least affected by the regulatory reform in recent years. Although the new Civil Code and Labour Code took effect in 1995 and 2002, respectively, the grounds for, principles, procedures, and other features of civil environmental liability remained practically unchanged. They rely on the approaches developed in the environmental legislation in the early 1990s. Damage compensation can be paid voluntarily or ordered by a court according to the officially approved rates and damage assessment methodologies or, in the absence thereof, based on the actual costs of remediation of the environment and losses (including opportunity costs) incurred by private parties. Instead of imposing a monetary damage compensation, the court may order the defendant to rehabilitate the environment at its own expense.

The existing system for environmental damage assessment has important methodological and legal gaps. The damage assessment methodologies are imperfect and inconsistent across the country (some local authorities have promulgated their own regulatory guidance on the matter), standard rates for many types of damage are too low, and procedures for imposing and collecting damage compensation have not been defined in the legislation.

As a result, there are few damage compensation suits in Russia. Still, the limited practice shows that courts view damage assessments based on estimated remediation costs more favourably than those based on non-market standard rates and formulas. The so-called "scientific" methodologies do not usually allow plaintiffs to sustain their burden of proof in court and withstand the legal attacks of enterprises, which have resources that allow them to hire technical experts and seasoned defence lawyers.

Individuals or non-governmental organisations rarely initiate legal actions against violators. Citizens' enforcement is limited due to the lack of plaintiffs' legal knowledge, high court fees plaintiffs have to bear in case of a negative court decision, high costs of legal services, etc. In general, many citizens still, as in the Soviet period, seek to redress violations through complaining to executive bodies rather than bringing law suits.

The Federal Law "On the Safety of Hazardous Industrial Facilities" (1997) mandated environmental insurance against accidents for industrial facilities generating or handling hazardous substances or wastes. Only insurance companies approved by the Ministry of Finance are eligible to insure environmental risks. The law requires coverage for liability to physical and juridical persons and the state in case of accidental pollution releases.

While there have been experiments in different constituent entities of the Federation, there is no coherent nationwide environmental insurance scheme. The core reason for this is the lack of damage compensation claims that would trigger a real need for insurance coverage. Currently, Russian insurance companies do not anticipate that they will be liable for any environmental damages and view the premiums as income.

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14.7. Management Aspects of Compliance Assurance

Funding of compliance assurance activities

RTN is fully funded from the federal budget (there are no administrative fees for permitting and inspection). Its budget is relatively stable: about 80% of it is allocated to compliance monitoring and enforcement activities, while 10% is spent on environmental impact assessment, and permitting accounts for less than 5%. No resources are allocated for compliance promotion.

Strategic planning

Several documents guide the activities of environmental enforcement authorities in Russia but there is none that would specify objectives and compliance targets, and would then identify the optimal mix of compliance assurance tools to best achieve strategic objectives.

Since the introduction of performance-oriented budget planning in 2004, government programmes in Russia have to include measurable targets and supporting indicators to monitor the achievement of goals. The "Report on the Results and Main Directions of the RTN Activities for 2007-2009" contains a long list of quantitative targets, including composite indices for:

- Non-compliance (accidents and violations) at hazardous industrial installations, in relation to the number of regulated entities;
- Intensity of compliance monitoring by category of regulated installations;
- Effectiveness of compliance assurance (a ratio of the intensity of compliance monitoring and the rate of non-compliance); and
- Level of negative impact from the regulated installations (a ratio between the volume of pollution release and the production volume).

However, RTN does not measure the effectiveness of using its own resources.

Performance assessment

The environmental enforcement authorities in Russia monitor over 30 parameters that characterise their institutional performance. These environmental compliance and enforcement indicators constitute mostly activity counts and are officially published in annual reports on the state of the environment or annual activity reports of the environmental enforcement authorities. Internal reports also contain various "input" and "output", as well as composite index indicators. The compliance and enforcement indicator data are routinely collected within a structured framework, with clear procedures, in prescribed formats, and using standard information technology. Regular reporting to internal and external audiences ensures a certain level of operational monitoring and accountability.

The scope of collected data is comprehensive: the indica-tors cover the entire body of environmental legislation and are broken down by medium-specific programme areas, both at the federal level and in constituent entities of the Federation. The data can be tracked by industry sector and geographic area, non-compliance patterns are analysed by specific articles of the Administrative and Criminal Codes, outputs are relatively well recorded, and sector-specific offences can be easily identified.

Special emphasis has been placed on establishing the mechanisms for ensuring internal accountability. These include semi-annual and annual reporting from constituent

entities of the Federation, operation monitoring by managers, cross-regional analysis of results, agency-wide annual meetings that gathered representatives of all constituent entities of the Federation, and missions of federal-level officials to the regions. In addition, internal audits are used to identify cases of mismanagement or misbehaviour that are often made known to the general public through the Ministry's web site.

Overall, however, the benefits of compliance and enforcement indicators have been lower than could be expected given their comprehensiveness. The existing indicators still reflect the traditional approach to compliance assurance which is based on detection of violations and violators and their punishment. The enforcement authorities measure the intensity of inspection and the extent of applica-tion of enforcement tools but do not try to show the connection between these activities and expected environmental changes.

Staff training

RTN has well developed training programmes (including those for online training) and uses both internal and external trainers. For example, in 2006, 432 RTN staff underwent federally-funded training in such areas as compliance monitoring, environmental impact assessment, energy audits, etc.

Notes

1. RTN reported directly to the Prime Minister before it was subordinated to the reorganised MNRE in May 2008.
2. State of the Environment Report (2005).
3. State of the Environment Reports of the Russian Federation, *www.mnr.gov.ru* (1997-2005).

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Acronyms and Abbreviations

General

ADR	Alternative dispute resolution
BAT	Best available techniques
BREF	EU Best available techniques reference document
EIA	Environmental impact assessment
ELV	Emission limit value
EMS	Environmental management system
EMAS	Eco-Management and Audit Scheme
EQS	Environmental quality standard
FY	Fiscal year
GBR	General binding rules
GIS	Geographical information system
IPPC	Integrated pollution prevention and control
IT	Information technology
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
SMEs	Small and medium-sized enterprises

Finland

FEI	Finnish Environment Institute
MoE	Ministry of the Environment
REC	Regional Environment Centre
VAHTI	Compliance monitoring data system

France

ADEME	Environment and Energy Management Agency
ARIA	Analysis, research and information on accidents online database
CEDRIC	Electronic database of documents related to “classified” installations
CSIC	High Council of Classified Installations
CODERST	Departmental Council of Environment and Sanitary and Technological Risks
DDSV	Departmental Veterinary Service Directorate
DIREN	Regional Environment Directorate
DGPR	Directorate General of Risk Prevention
DRIRE	Regional Directorate for Industry, Research and the Environment
GIDIC	Information management database on classified installations
INERIS	National Institute of Industrial Environment and Risks
SIGAL	Geographical information and environmental analysis system
STIIIC	Technical Service for Inspection of Classified Industrial Installations

Japan

LPCA	Local pollution control agreement
METI	Ministry of Economy, Trade and Industry
MoE	Ministry of the Environment
NERTI	National Environmental Research and Training Institute

Netherlands

ACTAL	Dutch advisory body for administrative burdens
DCMR	Rijnmond Environmental Protection Agency
EMA	Environmental Management Act
LOM	National Environmental Enforcement Cooperation Secretariat
VROM	Ministry of Housing, Spatial Planning and the Environment
WABO	General Provisions for the Environment Act

United Kingdom

CAP	Compliance Assessment Plan
CCS	Compliance Classification Scheme
COMAH	Control of Major Accident Hazards
Defra	Department for Environment, Food and Rural Affairs
DoE	Department of the Environment, Northern Ireland
EPR	Environmental Permitting Regulations
MAC	Methodology for Assessing Compliance
MCERTS	Monitoring Certification Scheme
NEIA	Northern Ireland Environment Agency
OMA	Operator Monitoring Assessment
Opra	Operational risk appraisal
REPAC	Regional Environment Protection Advisory Committee
SEPA	Scottish Environment Protection Agency

United States

ALJ	Administrative law judge
CAA	Clean Air Act
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CWA	Clean Water Act
DOJ	Department of Justice
EAB	Environmental Appeals Board
ECHO	Enforcement and Compliance History Online database
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
ERP	Environmental Results Program
FBI	Federal Bureau of Investigations
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
NEPA	National Environmental Policy Act
NETI	National Enforcement Training Institute
NPDES	National Pollutant Discharge Elimination System
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General

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OPA	Oil Pollution Act
OTIS	Online Tracking Information System
RCRA	Resource Conservation and Recovery Act
SDWA	Safe Drinking Water Act
SEP	Supplemental Environmental Project
SIP	State Implementation Plan
TSCA	Toxic Substances Control Act
TSD	Hazardous waste treatment, storage, and disposal (facility)

China

BES	Bureau of Environmental Supervision
CIRC	China Insurance Regulatory Commission
DPS	Discharge Permit System
EPB	Environmental Protection Bureau
EPD	Environmental Protection Division
EPL	Environmental Protection Law
MEP	Ministry of Environmental Protection

Russia

Gosstandart	State Standardisation Agency
MNRE	Ministry of Natural Resources and Ecology
RTN	Federal Service for Environmental, Technological, and Nuclear Supervision (*Rostekhnadzor*)

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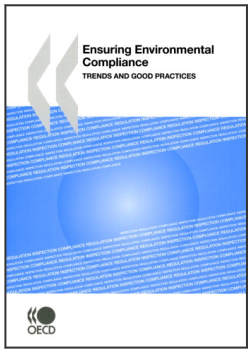

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