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A Brief Review of the General Principles of Environmental Damage Remediation Set Out in the Russian Legislation

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Abstract. The global community is currently focusing on the challenges of Arctic development. One reason is the huge deposits of subsoil resources hidden underneath the ice and in the offshore areas of the Arctic. In pursuit of economic good, however, it should be borne in mind that the Arctic environment is fragile and that any anthropogenic damage to it should be repaired. Being a large Arctic state, Russia puts a stake on its offshore oil and gas deposits, posing a risk of environmental damage. In this regard, it is of utmost importance that we know and interpret adequately the general principles of environmental damage remediation. These principles are legally enshrined. The author of this paper has made a survey of the basic statutory documents regulating the procedures for remediation of environmental damage. References are made to concrete documents. The survey involved the analysis of the judicial practice concerning the responsibility of compensating for damage from oil spills. The basic trends in law-enforcement practice are outlined, offering more insight into operation of the law in Russia. The article also presents a number of proposals on how legal regulation could be enhanced.

1. Introduction

The Arctic Region is drawing the global community's attention as a source of immense energy resources. [6]. The Arctic is seen also as an important transport artery (the Northern Sea Route) [3]. The ongoing climate change and the melting of the Arctic ice open up the perspective of international offshore shipping [5]. Yet, the harsh Arctic environment with drifting ice, low temperatures, poor visibility or polar night, strong winds, and extreme storms increases the risk of emergencies or errors that are likely to lead to oil spills.

This article is not intended to give detailed descriptions of the environmental consequences of oil spills, nor of any of the oil spill response techniques. Let us note only that the disastrous scale of oil spills is what the global community first pointed at as early as the 1950s, and that there is a series of international agreements in place that regulate specific aspects of oil spill prevention and response.



The Arctic states, too, have reached a number of agreements on Arctic marine oil pollution preparedness and response [1].

Being the largest Arctic economy, Russia is totally dependent on hydrocarbons. Hence its active, even aggressive stance on the development in the Arctic areas, and particularly the offshore Arctic. It is no secret that the environmental damage being caused by field operators during oil and gas exploration, drilling and transportation, is not be limited to one country only. Oil slicks get carried by sea currents, affecting the biota in places far from where the spills occur. In this regard, it is of utmost importance that we know and interpret adequately the general principles of environmental damage remediation as set out in the legislation of one of the largest producers of the Arctic hydrocarbons.

2. Main Text

Oil is a natural resource to be extracted in strict compliance with environmental legislation. Oil is legally protected for the benefit of future generations as a nonrenewable resource. To ensure its protection, the Russian legislation operates the term “allowed extraction of natural environment components” [10]. At the same time, oil and its derivatives represent a most hazardous environmental pollutant. Oil spills can occur at any stage of oil production, storage or transportation. Oil spills can occur both on shore and offshore. Among their potential sources are well flowing during exploration and production; blowouts and pipeline leaks; leaking storage tanks; oil transporting vehicle or ship accidents; and fuel spills from ships and vehicles. Despite the effort being put globally into oil spill prevention, spills continue to take place. As known, oil spills cause damage not only to the natural environment but also to the health and property of humans, resulting from degrading environment.

2.1 Basic principles

Any area (including water area) within the Russian Federation which is affected by an oil spill, is subject to the environmental remediation principles and regulations provided for in the Russian legislation.

Overarching are the provisions of Section 77 of the Federal Law “Concerning Environmental Protection” that stipulate *complete reparation* of damage [10]. That said, the extent of the environmental damage is determined based on the actual costs sustained restoring the damaged environment, as well as the losses incurred, inclusive of lost profit. The prescribes that reclamation and rehabilitation measures be in place. Where these are absent, the extent of environmental damage is calculated based on rates and methods valid. These rates and calculation methods are approved by the executive authorities in charge of public enforcement of environmental regulations. In Russia, there currently exist several guidances and so-called ‘procedures’ for calculating the value of environmental damages caused by different industries. The earliest of them – The Methodological Guidance for Calculating Environmental Damage from Oil Mains [7] – dates back to 1995 and is still in force.

The arbitration court may impose on the culprit the *obligation to repair* the environmental damage at their own expense, in which case reclamation design will be required. Even though this legal provision means the environmental culprits become forced to repair the damage through a judicial procedure, it does not deny their right to repair on a *voluntary basis*, as is stated in Section 78 of the Federal Law “Concerning Environmental Protection” [10] and held by courts. Moreover, voluntary reparation of environmental damage relieves the culprit from legal responsibility. What adds to the expediency of voluntary reparation in Russia as a preferred way of dealing with environmental damage, is the fact that litigations are a time-consuming process, during which the aftermath of oil spills remain in place.

Thus, according to the Russian legislation, the environmental damage from oil spills can be repaired voluntarily or upon court order. Reparation can be in-kind, i.e. through actions to restore favourable natural conditions, or by compensating for the costs actually sustained by the state repairing the damage or for the amount pre-calculated based on valid rates and calculating techniques (see Figure 1).

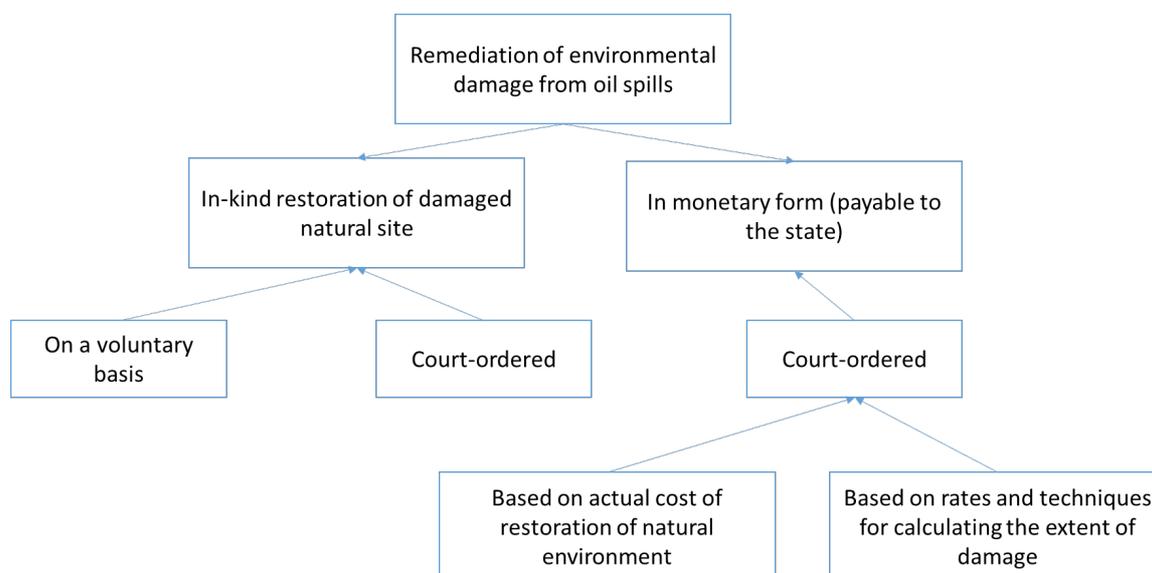


Figure 1: Remediation of environmental damage from oil spills as set out in the Russian legislation.

By virtue of the Federal Law “Concerning Environmental Protection” (Sections 5, 6, 11 and 12), environmental damage claims can be brought forwards by public authorities at federal and regional levels, individuals, or associations of individuals [10]. However, the judicial practice shows that the majority of suits were lodged, over the period from 2003 to 2018, by federal and regional authorities to ensure the interests of the state.

Claims for environmental damage can be filed during twenty years following its occurrence. Even though twenty years, as the length of time allowed for filling claims, is a long time, it is evident that it needs to be extended. One reason is the general latency of environmental offences in Russia. The other is dictated by the duration of the oil spill effect: the analyses have shown that it remains for decades, evidenced by the oil spills occurred in the U.S. in 1989 (the 2003 analysis showed that the spilled oil had only weathered slightly along the coastal area affected by the spill) [4] and in 1969 (38 years after the spill, the residual oil continues to affect the area and its inhabitants) [2].

2.2 Practical application of the basic principles

Currently, the major portion of expenditure on environmental damage reparation is covered by the state. According to the RF presidential control directorate, the amount spent over the period from 2004 to 2005 eliminating the consequences of man-made accidents and disasters equaled RUR 7.4 bln, of which 92.8% were reimbursed from federal budget, 7% from budgets of the Russian regions, and 2% by insurance companies. This being the case, in the total federal budget revenues the environmental impact fees paid in 2004 accounted for RUR 2.6 mln, and the penalties for RUR 1.7 mln [9]. Over the past fourteen years, the situation has changed only slightly. The above figures indicate that together

with fines and penalties, the costs borne by subsoil users eliminating the aftermath do not cover the actual losses borne by the state.

Aside from that, there is a nuance against environmental protection. There is no obligation for the state to channel the revenues the federal budget receives in the form of environmental impact fees, fines and penalties towards rehabilitation of nature. This means these revenues can be spend on issues other than environment, which is actually the case. In the breakdown of expenditure according to the Federal Law “Concerning the Federal Budget for 2018 and the Planning Period of 2019 and 2020” [11], “environmental protection and rehabilitation” is not listed as a separate item. Given that the environmental allocations simply disappear in the overall budget, environmental rehabilitation is an extremely slow process, its pace badly lagging behind the ongoing degradation and anthropogenic impact.

In the light of pickup in the Arctic development, in 2014 the RG government endorsed The Procedural Rules for Oil Spill Prevention and Response on the Continental Shelf of the Russian Federation, its Inland Waters, Territorial Sea and the Contiguous Zone to the Russian Federation [8]. This document abides companies to have oil spill prevention and response plans. Such plans should specify, among others, the data on potential oil spill sources; estimated maximum volumes of spills; projected spread; control, communication and alerting schemes; and action plans under polluted terrestrial and/or water areas reclamation programs, and are designed to stimulate businesses to compensate for the environmental damage on a voluntary basis and using their own funds.

As a rule, where the environmental damage case is brought before the court, voluntary damage compensation is evaded. The analysis of the judicial practice for 2018 has shown that in hearing the environmental damage cases, courts are governed by the principle of damage localization, i.e. they consider the specific natural site – land area, forested area or water body – not the entire environment, as is prescribed by the current procedures for calculating the environmental damage.

3. Conclusion

Russia is taking a very active stance on developing its Arctic areas. This is due to various reasons and among them subsoil resources, offshore development, and defense capacity. At the same time, it is, regrettably, a fact that any human activity is likely to cause a negative effect on the environment and, consequently, human health. Our study into the legal mechanisms for enforcing the environmental damage compensation has shown that they exist in Russia. With regard to environmental damage, the Russian legislation operates the principle of full reparation. The extent of damage is calculated based either on the actual cost of rehabilitation or on current rates and calculation techniques. As a rule, judicial cases are initiated by public authorities on behalf of the state, the time allowed for claims being 20 years. The tendency is emerging for re-distributing the burden of environmental damage compensation and laying it on users of natural resources (i.e. economic entities), through out-of-court agreements.

Russia’s environmental legislation is swiftly evolving, receiving updates. As new social requirements emerge, the old rules of law receive updates. However, the overwhelming majority of the statutes regulating the environmental protection from oil spills are obsolete. In this context and given the need to ensure the environmental interests and safety of all the Arctic countries, to the foreground comes the task of harmonizing the basic principles of environmental damage remediation prescribed by the statutes of the Arctic countries.

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