Legal Regulation and Law Enforcement Practices in State Subsoil Condition Monitoring

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Abstract

The issues of legal regulation of state subsoil monitoring in the Russian Federation are considered. On the basis of the analysis of normative legal documents and law enforcement practice, it is suggested to update the provisions of the Order of the Ministry of Natural Resources of 2001; when drafting normative acts in the reviewed field of regulation, it is advisable to consider also generalizations and conclusions included in the state reports on law enforcement practice in federal state control (supervision) and to formalize the tasks of environmentally safe subsoil use at the level of the Law “On Subsoil”.

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In accordance with the Energy Security Doctrine of the Russian Federation, the tasks of maintaining the mineral resource base of the fuel and energy sector and the main production facilities of fuel and energy sector organizations at the level necessary to ensure energy security include, in particular, increasing the efficiency of subsoil use. The priorities of the state policy in mineral resource base development, in accordance with the objectives of the Strategy for the Development of the Mineral Resource Base of the Russian Federation up to 2035, also include ensuring the efficient use of the created mineral resource base and reducing the negative impact of subsoil development on the environment.

The task of reducing the negative impact of subsoil use on the environment is solved through the implementation of state subsoil monitoring, including groundwater monitoring.

According to the provisions of Article 6 of the Law of the Russian Federation “On Subsoil”, regional geological research includes, in particular, works on general geological research of subsoil, geological works on earthquake prediction and volcanic activity research, establishment and maintenance of subsoil monitoring and control of groundwater regime. From March 1, 2024, works on the establishment and maintenance of subsoil monitoring will be excluded from Article 6 of the Law of the Russian Federation “On Subsoil”.

According to the current legislation, in case of regional geological research and state subsoil monitoring by state (budgetary or autonomous) institutions under the jurisdiction of a federal authority managing the state subsoil fund or its territorial agency, subsoil use is performed without a license on the basis of a state task in accordance with clause 11 of Part One of Article 10.1 of the Law of the Russian Federation “On Subsoil”.

Work “On Subsoil” monitoring is organized in accordance with the established rules. Design documentation on the establishment and maintenance of subsoil monitoring and control of groundwater regime is subject to examination. The design documentation is examined for compliance with the requirements of the Russian laws “On Subsoil”, documents stipulated by the Russian laws on technical regulation and standardization, as well as the subsoil license (for design documentation prepared in accordance with the subsoil license), a contract for designing or performing works on geological exploration of subsoil concluded in accordance with the Federal Law “On the System of Contracts for Procurement of Goods, Works and Services for State and Municipal Needs” by the Federal Agency for Subsoil Use or its territorial agency, and in case of a subsoil plot of local significance — by a government body of a constituent entity of the Russian Federation. The purpose of state subsoil monitoring is to provide public authorities of the Russian Federation and constituent entities of the Russian Federation, local governments, legal entities, and citizens of the Russian Federation with reliable and up-to-date information “On Subsoil” conditions and their changes under the influence of natural and man-made factors.

The grounds and procedure of subsoil monitoring are regulated by various normative legal acts, where the legislation describes subsoil monitoring as a part of state environmental monitoring and considers it a subsystem of the unified state system of
emergency prevention and elimination. Besides, the information on the state of subsoil obtained during state subsoil monitoring refers to state information resources, which are part of the state fund of geological information. Thus, according to Article 36.2 of the Law “On Subsoil”, state subsoil monitoring is part of state environmental monitoring. In this respect, relations in subsoil monitoring are regulated not only by the provisions of the Russian Law “On Subsoil”, but also by the provisions of the Russian Law “On Environmental Protection”. According to Article 1 of this Law, state environmental monitoring means complex observations of the state of the environment, including components of the environment, natural ecological systems, processes and phenomena occurring in them, assessment and forecasting of changes in the state of the environment. According to the Resolution of the Government of the Russian Federation No. 794 On the Unified State System of Emergency Prevention and Elimination of December 30, 2003, subsoil monitoring is included in the unified state system of emergency prevention and elimination as its functional subsystem [1]. Order of the Federal Agency for Subsoil Use No. 1197 of November 24, 2005 approved the Regulations on the Functional Subsystem of Subsoil Monitoring of the Unified State System of Emergency Prevention and Elimination, according to which the functional subsystem of subsoil monitoring is intended to organize and conduct regular observations of the state of subsoil, forecast its changes under the influence of natural and man-made factors in order to warn the public authorities, organizations, and citizens of the Russian Federation of possible emergencies in the subsoil. Since the above-mentioned Regulations were developed in pursuance of the Resolution of the Government of the Russian Federation No. 794 of December 30, 2003, these relations are also subject to the provisions of the Federal Law “On the Protection of the Population and Territories from Natural and Man-Made Emergencies”. According to clause 9 of the Regulations on the Procedure of State Subsoil Monitoring of the Russian Federation, information on the state of subsoil belongs to the state information resources, which are part of the state fund of geological information. In this regard, subsoil users shall ensure the submission, completeness, reliability and quality of subsoil geological information for the subsoil area designated for use in accordance with the established requirements.

7 It should be noted that since March 1, 2024, clause 2 of Article 36.2 of the Law “On Subsoil” has been revised in accordance with the amendments introduced by Federal Law No. 598-ФЗ of December 29, 2022 [2]. In particular, it is stipulated that the procedure of state subsoil monitoring and subsoil monitoring on the subsoil area designated for use shall be established by the Government of the Russian Federation.

8 Since subsoil monitoring is a part of state environmental monitoring, it is also subject to the general regulations on the organization and implementation of environmental monitoring. Thus, in accordance with the Russian Law “On Environmental Protection”, such general regulations, which are determined by the public authorities of the Russian Federation, include: establishing the procedure of state environmental monitoring, the procedure of organization and operation of the unified system of state environmental monitoring (state monitoring of the environment), forming the state system of environmental observations and ensuring the operation of the state system of environmental monitoring; the procedure of creation and operation of the state fund of state environmental monitoring data, the list of types of information to
be included in it, the procedure and conditions for submitting information, as well as the procedure for exchanging such information.

9 In accordance with the Federal Law “On Environmental Protection”, the Government of the Russian Federation has adopted the Regulations on State Environmental Monitoring and the State Fund of State Environmental Monitoring Data [3], which stipulate that work on the organization and operation of the unified monitoring system shall be coordinated by the Ministry of Natural Resources and the Environment of the Russian Federation, and relevant federal ministries and agencies shall be responsible for the creation and operation of observation networks and information resources (state fund of state environmental monitoring data) within the subsystems. The unified system of state environmental monitoring includes the subsystems listed in Article 63.1. These include the state subsystem of state subsoil monitoring.

10 At present, the procedure of state subsoil monitoring is governed by special regulations approved by the Order of the Ministry of Natural Resources in 2001. The Federal Agency for Subsoil Use is authorized to create and operate observation networks and information resources for subsoil monitoring. Subsoil monitoring includes the following subsystems: groundwater monitoring; monitoring of hazardous exogenous geological processes; monitoring of hazardous endogenous geological processes. One of the tasks of state subsoil monitoring is to develop, ensure implementation, and analyze the effectiveness of measures for environmentally safe subsoil use and protection, as well as to prevent or reduce the negative impact of hazardous geological processes. It is advisable to formalize the tasks of ensuring environmentally safe subsoil use at the legislative level. In particular, it is possible to update Article 36.1 of the Russian Law “On Subsoil”.

11 The analysis of the content of licenses has shown that there is no unified approach to the formulation of conditions for subsoil monitoring included in licenses issued to subsoil users. Some licenses contain mandatory requirements for monitoring, in particular, it is established that the license holder shall conduct monitoring, develop an annual monitoring program, and submit program completion reports.

12 Other licenses contain monitoring conditions in the section on efficient subsoil use and protection, safety of subsoil use operations, or contain a reference to the field development project. In some licenses, the section on efficient subsoil use and protection contains references to Articles 23 and 24 of the Law “On Subsoil”, as well as references to technical projects for the development, construction, operation, decommissioning of mines, wells, and other facilities related to subsoil use.

13 The Center for State Subsoil and Regional Works Monitoring of Gidrospetsgeologiya Federal State Budgetary Institution annually prepares materials for the State Reports on the State and Protection of the Environment; on the State of Protection of the Population and Territories Against Natural and Man-Made Emergencies; on the State of Water Resources Use [4]. Order of Federal Agency for Subsoil Use No. 58 of February 10, 2022, has determined that the information website on the state of subsoil of the Russian Federation of Gidrospetsgeologiya Federal State Budgetary Institution is the official website on the Internet for publishing information on
the state of the environment (environmental information) obtained through state subsoil monitoring. In particular, the Information Bulletin on the State of Subsoil in the Territory of the Russian Federation is prepared basis of the results of the assessment.

14 Typical violations of the requirements of the Law “On Subsoil” related to subsoil monitoring are as follows: - Failure to conduct research as required the field development project.

15 - Failure to monitor environmental components in the area where the work is being performed, etc.

16 The analysis of normative legal acts and law enforcement practice has shown that public relations in state subsoil monitoring are complex. Different entities participate in these relations depending on whether state subsoil monitoring is considered as a part of state environmental monitoring or as a subsystem of the unified state system of emergency prevention and elimination. The relations connected with the submission of information on the state of subsoil to the state fund of geological information are very specific. The legal literature has noted the specifics of the legal regime of geological information [5] and the state fund of geological information [6]. In the letter of Rostekhnadzor, it is noted that according to clause 5 of Part 5 of Article 24 and clause 6 of Part 2 of Article 22 of the Russian Law “On Subsoil”, the subsoil user shall provide a set of geological, surveying, and other observations sufficient to ensure the normal technological cycle of works and forecasting of hazardous situations, timely identification and drawing of hazardous zones on mining plans [7]. The complex and multifaceted nature of relations in subsoil monitoring is also proven by the fact that subsoil users perform surveying works (observations) in accordance with the licenses.

17 Taking into account the complex nature of the relations under review, it is advisable to define the tasks of ensuring environmentally safe subsoil use in the Law “On Subsoil”. It is also necessary to formalize the updated rules based on the fact that state subsoil monitoring is a part (subsystem) of state environmental monitoring. In order to create a consistent and coordinated system of legal regulation in this field, it is necessary to define the objects of monitoring, the structure (types) of monitoring, the system of observations, the requirement to include the condition “On Subsoil” monitoring and the condition on submission of monitoring reports in the subsoil license at the level of the Law “On Subsoil”. Since information on the state of subsoil refers to the state information resources that are part of the state fund of geological information, it seems necessary to establish the legal regime of such information at the level of the Law “On Subsoil”. When preparing normative legal acts regulating relations in the organization and implementation of subsoil monitoring, it seems advisable to take into account generalizations on issues of law enforcement practice contained, in particular, in the State Reports on Law Enforcement Practice in Federal State Control (Supervision).

References:


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Аннотация

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