

ISCKMC 2020**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****USING THE RUSSIAN LICENSING SYSTEM IN PROTECTING
ENVIRONMENTAL INTERESTS OF SUBSOIL USERS**

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Abstract

The subject of the research is legal norms and doctrinal sources that determine the content of the principle of preventing environmental harm and peculiarities of its functioning in a licensing and permissive system of environmental management in Russia. The article discusses socio-economic factors of the importance of licensing activities related to the use of natural resources. The article justifies the need for the development of contractual and permissive relations in the field of environmental management and protection. It discusses the possibility of using other documents similar by their function to licenses. It is proposed to classify licensed types of environmentally significant activities according to the functional criterion into those that are directly related to the use of natural resources and environment protection from harmful effects, and those that are not initially environmental protection activities, but are indirectly related to environmental protection. Particular attention is paid to the problems of improving the basics of licensing for subsoil use. It is proposed to develop and approve standards of public services in the field of licensing of subsoil use and a methodology for calculating the initial one-time payment for the use of subsoil; to amend the current environmental legislation regarding division of the amounts of one-time payments for the use of subsoil between federal and republican budgets.

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1. Introduction

In modern Russian environmental legislation, there is a clear tendency for the development of licensing and contractual frameworks for the regulation of environmental management and protection. License and contract in this area acquire great legal significance. Obtaining a license or concluding an agreement creates the basis for acquiring the right to use natural resources and for the implementation of a number of activities related to environmental protection. Requirements of a legislative restriction or even a ban on the implementation of environmentally significant economic activities without permits are seen as justified and necessary administrative measures. At the same time, the importance of introducing such licensing is supported by a number of socio-economic factors, for example:

- accumulate information on the scale and limits of environmentally significant activities that can, in one way or another, affect the state of the environment;
- timely develop appropriate targeted protective measures for the rational use of natural resources;
- choose an effective preventive course, taking into account the collected data on the scale and types of environmentally significant activities;
- establish restrictions on the use of certain natural resources (to limit the chemical, physical and biological impact on nature, etc.) in order to avoid causing irreparable damage to environment;
- strengthen control of the authorized state bodies carrying out preventive monitoring of the licensee's compliance with environment along with the requirements of environmental legislation;
- ensure implementation of the rights of citizens and legal entities in the field of environmental management and protection.

Economic and other activities related to the use of natural resources that have or may have a harmful effect on the environment should be permitted only on the basis of special licenses. Undoubtedly, this should only concern special nature management, including use of subsoil, extraction of water for industrial purposes but only if emissions and discharges of pollutants into the atmosphere and water bodies exceed the norms established by law.

2. Problem Statement

Licensing and development of contractual relations in the field of environmental management and protection in Russia have some of their unique features. This is associated with the specifics of licensed activities for the use of natural resources (their diversity): land, air, subsoil, surface and underground waters, forests and other vegetation, fauna, genetic fund, natural landscapes, and specially protected areas. The term of the license, conditions for its issuance, maintenance, and the range of functionality of the bodies authorized to issue such licenses may vary.

In addition, in accordance with Russian environmental legislation, it is not prohibited to use various forms of documents that perform the functions of a license. Along with licenses (for example, the right to use subsoil), so-called “permits” can also be applied (for example, the release and disposal of

hazardous substances, waste disposal, etc.). Since these documents perform an identical function with a license, their admissibility in the system of licensing of natural resources is justified.

3. Research Questions

If we talk about the possible reformation of licensing of subsoil use, then the primary steps are the need to change the Russian constitutional provision on the delimitation of jurisdiction over subsoil plots at the federal, regional, and local levels. This distinction complicates the large-scale development of minerals, geological exploration, and the protection of subsoil.

In addition, in order to improve the licensing system for subsoil use, it is necessary to support the opinion of scientists that it is necessary to:

- Develop and approve standards of state services in the field of licensing of subsoil use.
- Develop and approve a methodology for calculating the initial one-time payment for subsoil use.
- Introduce amendments to the current legislation regarding the division of the amounts of one-time payments for the use of subsoil between the federal and republican budgets.

4. Purpose of the Study

As for the conclusion of permissive agreements for the use of natural resources, it should be noted that they are rarely used in Russia. In a practical sense, such an agreement is used only as a regulator of civil law relations of legally equal participants in legal relations. Thus, the question arises “Can such an agreement be concluded between authorized government bodies and users of natural resources?” In our opinion, this is possible when all the conditions for the use of a natural object are prescribed scrupulously enough; and responsibility of the parties for failure to fulfill their obligations are strengthened. Despite the permissive rule of the civil law method of regulation, their rights and obligations should not be determined arbitrarily at the discretion of the parties (as is customary in the regulation of other civil relations) but follow provisions of the legislation on environment and be within the competence of the relevant executive authority (Brinchuk, 2008).

In addition, all licensed types of environmentally significant activities should not be perceived identically. They should be functionally divided at least into those that are directly related to the use of natural resources and the protection of environment from harmful influences, and those that are not initially environmental activities, but have indirect attitude to environmental protection (table 1).

Table 1. Licensed types of environmentally significant activities

First group	Nature management and environmental protection from harmful influences
1.	Special nature management for all types of natural objects involved in the economic and industrial sector.
2.	Collection, use, disposal, transportation, disposal of hazardous waste.
3.	Implementation of works on active influence on hydrometeorological processes and phenomena.
4.	Performing work on active influence on geophysical processes and phenomena.

5.	Turnover of wild animals belonging to the species included in the Red Book of the Russian Federation.
6.	In the field of using sources of ionizing radiation.
Second group	Activities that are not inherently environmental, but related to environmental protection
1.	Performance of work and provision of services for the storage, transportation, and destruction of chemical weapons.
2.	Operation of chemically hazardous production facilities.
3.	Transportation of goods by rail.
4.	Space activities.
5.	Activities related to the use of infectious agents.

Note: the list is not exhaustive; it can be supplemented with other types.

5. Research Methods

For greater clarity, we will consider all the above outlined provisions and problems in more detail using the example of subsoil use.

6. Findings

6.1. Licensing of the right to use subsoil: general provisions

Licensing rules for the use of subsoil should be established taking into account the nature of minerals (this is a vein, stock, reservoir, nest, placer or something else); the specifics of mineral resources (for example, brine from estuaries and lakes, peat, sapropel, etc.); methods of their extraction (Fig. 1); type of work related to subsoil (geological study, exploration or production); the purposes of their use (for their own production or technological needs); whether the use of waste from mining and related processing industries is included. Fig. 2 shows illustrative examples of minerals.

In addition, it is necessary to look at the form of ownership of natural resources. Do not forget that, according to Russian legislation, owners and tenants of a land plot have the right to use the widespread minerals located on their site for their own needs without special permission. In other cases, the provision of subsoil for use is possible only with a special state permit – after obtaining a license. For example, you can request a license for geological exploration of subsoil, or the construction and operation of underground structures not related to their production, or the formation of specially protected areas, etc.

International practice shows something different. Thus, analysis of legislation systems of foreign states showed that the status of subsoil in it is most often fixed in the form of state ownership (Mullins, 2004; Richards, 2002). There are even unique cases. For example, Constitution of the Cherokee Nation, adopted in 1839, clarifies that the land and subsoil are collectively Indian property, not subject to any sale, and under no circumstances should they be used by non-members of the tribe (especially the ban on their use by the United States) (Ignatyev, 2016)

In Russia, in order to request a license for the use of underground natural resources, you first need to develop and approve a project for subsoil use, obtain consent from a land administration body or a landowner for allotment of a land plot for stated purposes of subsoil use. Although the procedure is multi-

stage, it is justified – everything that concerns the protection of nature should be put in the first place in the process of greening any activity.

The legal foundations of rational subsoil use are: Law of the Russian Federation “On Subsoil” dated 02.21.1992, No. 2395-1; Federal Law “On Ecological Expertise” dated 23.11.1995, No. 174 – Federal Act; Federal Law “On Production Sharing Agreements” dated 30.12.1995, No. 225 – Federal Act; Federal Law “On Environmental Protection” dated 10.01.2002 No. 7 – Federal Act; Federal Law of the Russian Federation “On Licensing of Certain Types of Activities” dated 04.05.2011 No. 99-Federal Act, etc.

Processing, registration and issuance of licenses for the use of subsoil, as well as the introduction of amendments and additions to them, including the ones on proposal of Federal Service for Supervision of Natural Resources and other authorized bodies, decisions on early termination, suspension and restriction of the right to use subsoil plots in charge of Federal Agency for Subsoil Use (Rosnedra). State registration and issuance of licenses for the use of subsoil plots of local significance – by state authorities of the constituent entities of the Russian Federation.

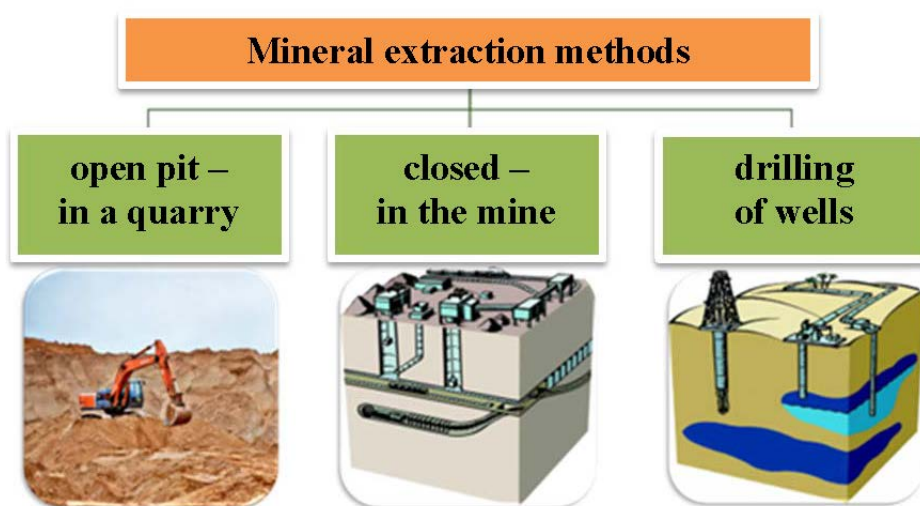


Figure 1. Mineral extraction methods

6.2. Problematic aspects of licensing the right to use subsoil

First problem is lack of legislative consolidation of the concept of “essential terms of the license”. Its essence lies in the fact that the right to use subsoil can be terminated ahead of schedule by the authorities (which granted the license), on the grounds listed in Part 2 of Art. 20 of the Law “On Subsoil”. The violation by a subsoil user of essential terms of the license is indicated in these documents.

However, seriousness of consequences of their practical application – “is not compensated by a legislator and by clarity of the term “essential terms of the license” (Melgunov & Kostareva, 2014). Its definition is still missing. In addition, “the termination of the right to use subsoil on this basis is widely used by Federal Agency for Subsoil Use and its territorial bodies, which leads to an increase in the number of court cases challenging the relevant decisions” (Mehlum et al., 2006, p. 1121). The only solution to this problem is the legal filling of gaps in legislation in this direction.

Second problem is insufficient state control over subsoil users, commercialization of licensing stages, shortage of local budgets. In this regard, one cannot but agree with the opinion of Halvor Mehlum, Karl Moen and Ragnar Torvik: “Natural resource-abundant countries constitute both growth losers and growth winners, and the main difference between the success cases and the cases of failure lies in the quality of institutions” (Popov, 2015, p. 6).

Third problem is prospecting lags behind subsoil production. The annually repayment of mineral reserves significantly exceeds their growth. One of the reasons for the lengthy terms of exploration work is large bureaucratic turnover of documents and considerable time allotted for consideration of the submitted documentation. In addition to mandatory current reporting on results of the study of subsoil plots, the existing legislation forces subsoil users to incur significant costs even before the start of work. These are the financial costs for obtaining a license, drawing up and approving design estimates and technical documentation. The amounts of these costs are significantly overestimated, and preparation, registration and approval of the necessary materials take a long time (Klyukin, 2004).

The fourth problem is that the existing licensing system hinders development of mining production and the possible inflow of investments in this industry. The point is that the issue of transition to new organizational and legal forms is generally not on the agenda of subsoil users, there is an obvious flow of capital to the most promising mining enterprises and associations. Undoubtedly, this situation does not allow the state to promptly influence the development of this sector of the economy (King, 2012). Modern regulation of subsoil use must meet the requirements of modern market relations between the state and the subsoil user, and legal norms must be viable and effective (Markeev, 2015).



Figure 2. Types of minerals

7. Conclusion

Modern environmental licensing system is a new name for the old licensing system, an alternative to which we were actively offered from abroad. In the new geopolitical and economically sanctioned relations between the West and Russia, it is necessary to carefully consider the norms of the current environmental legislation in order to: on the one hand – prevent the excessive waste of their national natural resources; and, on the other hand, to find new ways to attract such investors who could not only finance, but also introduce new technologies in the non-mining industry.

The main goal of the licensing system should be ensuring the practical implementation of state programs for the development of the mining industry and the mineral resource base; protecting the interests of the national security of the Russian Federation, as well as the social, economic, environmental and other interests of the population of the country; development of market relations; conducting antimonopoly policy in the field of subsoil use; necessary guarantees for license holders (including foreign ones), including protection of their right to use subsoil.

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