

CURRENT LIABILITY (ENVIRONMENTAL DAMAGE COMPENSATION) CAUSED BY COMMERCIAL OPERATIONS OF COMPANIES

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For basin management especially within the framework of international cooperation, it is difficult to overestimate the importance of harmonization of approaches for environmental damage assessment caused by economic activities. It is caused by the fact that only unification of requirements in environmental damage assessment permits solving of conflicts of basin management, work out compensation mechanisms of the conflict mitigation in water management.

It is not incidental that active efforts are made in this respect under the auspices of prominent international organizations both in the field of legislation and methodology. An impressive range of best practices has been accumulated in this respect and it is difficult to overestimate the contribution of the European Union to this process. As far as preparations made by the Russian Federation for joining the OECD and the WTO, convergence of standards and approaches of Russia and the EU for assessing environmental damage should be considered as one of the top-priority areas.

Current situation. In the Russian Federation, estimation of and compensation for damage inflicted to the environment, public health, water resources and other parties is regulated by many normative documents approved both at the federal level and at the regional one. There are currently over 70 regulatory documents at the federal level. Documents of the regional level either fill the gaps in the regulatory methods for estimating the damage to specific elements and environmental media or elaborate in more detail the respective documents having the federal status taking into account specific local features. In the field of water resources works the Constitution of the RF, Water Code of the RF 2007, Federal Law "On the Continental Shelf" 1995, Federal Law "On Internal Maritime Waters, the Territorial Sea and Adjacent Zone of the RF" 1998, Federal Law "On Environmental Protection" 2002, Laws of the subjects of the RF, etc.

The regulatory documents set forth in detail all aspects of damage assessment in terms of value, procedures for compensation and authorities of officials and governmental bodies in this particular area. In general, a review of the regulatory, legal and methodological framework for evaluation of environmental damage permits us to conclude that most of the methodological approaches applied currently in the RF *to estimation of environmental damage can be boiled down to two main types: estimation on the basis on rent rates and on the basis of expenses or a combination thereof. In respect to damage evaluation of environment under transboundary pollution of water resources of the RF it should be noted that about 70 full flowing and lengthy transboundary rivers run on the territory of the RF. Thus the boundary with Finland does upon the river Vuoksa, with Lithuania upon the Neman, with Belarus and Ukraine upon the Dnieper, with Belarus and Latvia upon the Western Dvina, with Azerbaijan upon the Samur, with Kazakhstan upon the Volga, the Ural, the Irtysh, with Mongolia upon the Selenga, with PRC and DPRK upon the Amur. That is why such countries as PRC and DPRK, former Soviet Republics of Kazakhstan, Ukraine, Belarus, Lithuania and Latvia may face the problem of transboundary pollution.*

Shortly about tendencies. First of all it should be pointed out that there is a trend toward expansion of the meaning of the term 'environmental damage', incorporation in its estimate of a larger number of negative factors, and expansion of the range of phenomena to be assessed. The domination of K. Marx's theory of labor value in Russia over the most part of the 20th century could not but cause methodological problems in environmental economics of the RF within market conditions. This resulted in the specific situation in Russia nowadays explaining the current regulatory and legal framework with the prevailing damage assessment methods based on compensations for damage and insufficient application of the advanced methodologies.

When transferring the worldwide experience to Russia it should be taken into account that there are some specific differences in legal systems, first of all between the status law in Russia and the Anglo-Saxon case law applied by the Council of Europe and the European Court. Accordingly, the role of formally and nationally approved methodologies for environmental assessments is important and the role of precedent cases in the court practice is less significant. Nevertheless, in general, there are no factors now in the Russian Federation that could basically preclude practical introduction of advanced methods for environmental damage assessment caused by activities carried out by commercial entities.

By way of example one can name materials of the Advisory Council under the Minister of Natural Resources of the RF Yuri Trutnev devoted to the problems of water bodies pollution by dumping of industrial enterprises and enterprises of housing and utilities infrastructure, which was held on 20 June, 2008. The decision was made on revision of the list of contaminators normalized by payment and charged, tax advantages, introduction of elimination mechanism from payment under securing of norms corresponding to indicators of the best existing available technologies. The decision was also made on preparation of necessary legislative acts.

It should be admitted that it is extremely important to intensify the efforts aimed at harmonization of the methods and regulating documents for environmental damage assessment within the framework of the working subgroup for convergence of the Russian and EU environmental policy. The following aspects appear to be especially important:

Firstly, it is necessary to speed up development and application to the natural resources management practice in Russia of the mechanisms harmonized with the European practices of compensations for environmental damage at all stages of service life of commercial facilities, i.e. starting from design development and construction up to the closure of a facility, and make as unified as possible the methodological approaches and financial norms.

Secondly, the development and approved at the legislative level the Methodological Guidelines for economic assessment of environmental damage, which is close in its content to the respective OECD documents, are necessary. We had started this work a few years ago and have already developed the first draft document adopting the international approaches to the conditions of Russia. It would be useful to give a new impetus to this work. Furthermore, in order to ensure versatile requirements to environmental assessment and minimize the level of subjectivism, it is important to develop sectoral regulations for assessment of environmental impacts, in a similar manner as it is recommended by the World Bank. The extensive use of the Equator Principles in the banking sphere during the recent years makes it even more important to adopt a similar document in Russia.

Development of such documents with due consideration of the European experience will make it possible to increase the application practice of mechanisms of environmental damages compensation under the organization of economic activity within river basins.