

Mannheimer Swartling Ryssland Advokataktiebolag

St. Petersburg, 22 May 2009

EHS legal update for March and April 2009

1. Order of the RF Ministry of Natural Resources No. 266 “On adoption of the Administrative Rules for performance of state function of control and supervision by the Federal Service for Ecological, Technological and Atomic Supervision over compliance with fire safety requirements in the course of production, transportation, storage, use and utilization of explosive materials by organisations carrying out explosive works with the use of explosive materials intended for industrial use” dated 23 October 2008 (has not entered into force yet)

The Administrative Rules establish administrative procedures, order and forms of control over performance of the state function, procedure for challenging actions (failure to act) and decisions of officers.

As a result of performance of the state function, Federal Service for Ecological, Technological and Atomic Supervision (“Rostekhnadzor”):

- draws up and issues orders based on the results of examination;
- initiates administrative proceedings; and
- draws up reports, prepares materials and sends them to law-enforcement bodies, state registration authorities, and other supervisory bodies for taking appropriate actions.

2. Order of the RF Ministry of Natural Resources No. 292 “On adoption of the Administrative Rules for performance by the Federal Service for Ecological, Technological and Atomic Supervision of state function of issuing permissions for cross-border transportation of waste” dated 31 October 2008 (has not entered into force yet)

Rostekhnadzor may issue permits for cross-border movement of waste, refuse to issue such permits, or decide that the waste does not qualify as waste under Resolution of the RF Government No. 442 dated 17 July 2003 “On cross-border movement of waste”.

The Administrative Rules also establish administrative procedures, forms of control over performance of the state function, procedure for challenging actions (failure to act) and decisions of officers.

3. Order of the RF Ministry of Natural Resources No. 289 “On adoption of the Administrative Rules for performance of state function of control and supervision by the Federal Service for Ecological, Technological and Atomic Supervision over observance of safety rules and regulations applicable to hydraulic facilities (save for navigation hydraulic facilities and also hydraulic facilities

**supervised by local authorities) by owners or operators of hydraulic facilities”
dated 31 October 2008 (has not entered into force yet)**

The Administrative Rules establish administrative procedures, forms of control over performance of the state function, procedure for challenging actions (failure to act) and decisions of officers.

4. Ruling of the Federal Commercial (‘Arbitrazhny’) Court of Eastern-Siberian District No. A19-7033/08-64-Φ02-283/2009 dated 19 February 2009

A non-commercial environmental organisation has challenged in court a state environmental expert examination report regarding a construction project. A district court has rejected arguments that the environmental expert examination is illegal if it is carried out in the absence of materials relating to public hearings. A public opinion is considered by an expert along with other materials and constitutes a non-binding recommendation.

5. Order of the RF Ministry of Civil Defence, Emergency Management and Natural Disasters Response No. 91 “On adoption of form and procedure for registration of fire safety declaration” dated 24 February 2009 (will enter into force on 1 May 2009)

A fire safety declaration shall be prepared and filed with respect to the following facilities:

- capital construction projects which are subject to state expert examination;
- construction housing preschool educational institutions;
- special facilities for senior citizens and disabled persons;
- hospitals; and
- child care facilities.

A fire safety declaration shall cover the entire facility or each building constituting part of such facility to which fire safety requirements apply.

A fire safety declaration shall be prepared by either owner of the facility or its operator. Declarations on projects in the process of being designed shall be prepared by the developer or by the person involved in the preparation of project design documentation. A fire safety declaration shall contain assessment of fire risks potentially threatening the facility, if necessary.

A fire safety declaration is subject to registration with the territorial department of the structural subdivision of the territorial body of the RF Ministry of Civil Defence, Emergency Management and Natural Disasters Response which is authorised to carry out state fire safety supervision.

6. Resolution of the RF Government No. 206 “On adoption of Regulations on reimbursement of expenses related to discovery and assessment of discovered mineral deposit and the amount of lump-sum payment for the use of a subsoil plot paid under a combined licence, to persons who were denied, in accordance with paragraph 5 of Article 2.1 of the Federal Act “On subsoil”, the right to use a subsoil plot of federal importance for investigation and extraction of subsoil resources, and on payment of remuneration to such persons” dated 10 March 2009 (entered into force on 24 March 2009)

A foreign investor may receive monetary compensation for the discovery of a mineral deposit of federal significance.

The RF Government may refuse to grant the right of use of a mineral deposit of federal significance to a foreign investor. However, if such mineral deposit was discovered during the geological exploration of a subsoil site by a foreign investor, the latter may claim expenses in connection with the discovery and assessment of the mineral deposit, and also the amount of a lump-sum payment for the use of a subsoil plot paid under the combined licence. The investor is also entitled to remuneration.

In order to receive the above mentioned payments and compensation, a foreign investor shall file application and supporting documents with the Federal Agency for Subsoil Use (“Rosnedra”). Rosnedra considers the documents within 90 days from the date when the application was filed.

7. Order of the RF Government No. 304-r “On adoption of the list of national standards containing rules and methods of analysis (examination) and measurement, including rules for selection of samples required for the application and performance of the Federal Act “Technical regulations on fire safety requirements” and assessment of compliance” dated 10 March 2009 (entered into force on 10 March 2009)

The Technical Regulations on fire safety requirements that establish uniform approach to the organisation and maintenance of fire safety and fire protection will enter into force in May 2009.

In this connection the RF Government has approved the list of national standards containing necessary data for the application and performance of the Technical Regulations on fire safety requirements and assessment of conformity.

The list contains National Standards regarding:

- inflammability of substances and materials and flame distribution;
- requirements to fire alarm systems, automatic systems of fire fighting, fire extinguishers, fire hydrants and cars;
- requirements to individual protection devices, etc.

8. Resolution of the RF Government No. 223 “On limits (maximum permissible amounts) and quotas for water extraction from water objects and sewage discharge” dated 10 March 2009 (entered into force on 24 March 2009)

The Federal Agency for Water Resources (“Rosvodresurs”) shall establish such limits and quotas until the time of adoption of schemes for complex use and protection of water objects (by 1 January 2015 at the latest). The earlier legislation provided that until the adoption of such schemes, the water use limits (limits of water consumption and water discharge) existing prior to the entry into force of the RF Water Code, should apply.

Rosvodresurs will establish limits for the period from 2010 to 2012 and for the period from 2013 to 2014 on the basis of data and suggestions of the territorial bodies of Rosvodresurs, water economic balances, data on water object and water use, data on extraction of water resources for sanitary, ecological and (or) navigable releases. Rosvodresurs should take into the account various features of water objects.

Applications of the authorised executive bodies of the RF subjects should be submitted to the respective territorial body of Rosvodresurs by 15 September 2009 and by 15 September 2012, respectively.

Rosvodresurs may adjust the established limits and quotas.

9. Resolution of the RF Government No. 204 “On amendments to Resolution of the RF Government No. 54 dated 1 February 2006” dated 10 March 2009 (entered into force on 24 March 2009)

- Rostekhnadzor exercises control over:
 - (i) construction, reconstruction, and capital repairs of objects planned on the territory of two or more subjects of the Russian Federation;
 - (ii) objects located in special economic zone;
 - (iii) objects located on the continental shelf, internal sea waters and territorial sea of the Russian Federation;
 - (iv) facilities of embassies, consulates and representations of the RF abroad;
 - (v) military and state safety objects and other objects information about which constitutes a state secret;
 - (vi) federal highways;
 - (vii) objects of cultural heritage of federal importance;
 - (viii) dangerous, technically complex, and unique objects.

- The state construction control in respect of unique objects on the territory of Moscow shall be exercised by an authorised regional authority until 1 January 2011.
- The state construction control is limited to construction and reconstruction of those objects of capital construction, the project documentation for which is subject to state expert examination.
- The following types of control are, *inter alia*, exercised during the state construction control: state fire control, state sanitary-epidemiological control, and, save for cases provided for by the RF Town-Planning Code, state environmental control.

The state construction control is extended to construction materials applied during construction, reconstruction and capital repairs, as well as the results of such works.

10. Federal Act No. 32-FZ “On amendments to the RF Forest Code and certain RF legal acts” dated 14 March 2009 (entered into force on 17 March 2009 save for certain provisions)

- Development of mineral resources on forest plots located in green zones is permitted only if a subsoil licence was issued prior to 1 January 2007 (during the licence validity period). Hay mowing, beekeeping and placing of objects of state or municipal importance are also permitted in green zones.
- Citizens and legal entities may harvest wood only pursuant to agreements for the lease of forest plots, save for:
 - ✓ harvesting fir trees for New Year holidays; and
 - ✓ harvesting wood for state and municipal needs under the agreements for the sale and purchase of forest plants without granting use of forest plots.
- Forest plots for agricultural use are granted on the basis of (i) lease agreements (for citizens and legal entities) or (ii) unpaid fixed-term use (for citizens only). The establishment of servitudes is also permitted.
- Authorised state bodies of the RF subjects may carry out fire and forest control (supervision) in forests. Authorised federal state bodies carry out fire and forest control in forests on the defence and security land plots and land plots of specially protected natural territories. Specially created state institutions may also carry out such control and supervision.
- Federal state institutions may obtain the right of permanent (indefinite) use with respect to forest lands.
- Forest parks should be modified into forest park zones. Regional authorities shall determine functional zones in the forest park zones, the areas of forest-

parks and green zones and their borders. The reduction of the area of such zones is prohibited.

The Federal Act entered into force on the date of its official publication (16 March 2009), except for the provisions on forest and fire control (supervision), and acquisition and use of duty weapon and special devices. These provisions will enter into force on 1 January 2010.

11. Resolution of the RF Government No. 272 “On the procedure for assessing fire risks” dated 31 March 2009 (will enter into force on 1 May 2009)

Fire risks shall be assessed by comparing estimated levels of fire risks with corresponding levels established by the Federal Act “On Technical Regulations on fire safety requirements”.

Estimated levels of fire risks shall be determined by conducting analysis of the level of fire danger that a certain object presents, frequency of fire danger occurrences, relevant technical parameters, availability of fire safety arrangements, etc. Fire risks assessment shall be presented as a report in writing.

12. Resolution of the RF Government No. 285 “On list of facilities that are subject to federal state environmental supervision” dated 31 March 2009 (has not entered into force yet)

All facilities that are under economic jurisdiction of the Russian Federation fall under environmental supervision irrespective of the type of ownership. In particular, the following facilities are subject to federal state environmental supervision: federal power systems, federal transportation system, means of communication, communication lines, including telecommunication networks and linear objects that are used to support the activity of natural monopolies.

The RF Ministry of Natural Resources shall be responsible for making the list of such facilities.

13. Resolution of the RF Government No. 304 “On adoption of the Rules for assessment of compliance of defence facilities (products) with fire safety requirements through independent assessment of fire risks” dated 7 April 2009 (entered into force on 1 May 2009)

The rules for independent fire risks assessment are as follows:

- Property of citizens or legal entities, state or municipal property, including buildings, constructions, vehicles and technological installations should meet fire safety requirements established by the Federal Act “On Technical Regulations on fire safety requirements”.
- An expert organisation will carry out independent assessment of fire risks on the basis of a contract executed with the owner of the facility or its operator.

- An expert organisation may not carry out independent assessment as regards its own facilities and facilities in relation to which it performed other works and/or services in the sphere of fire safety.
- An expert organisation shall examine documents specifying the level of fire danger of the facilities and carry out investigation and examination of the facilities.
- Independent fire risk assessment shall be presented as a report in writing. A copy of the report shall be submitted to a structural subdivision of the territorial body of the RF Ministry of Civil Defence, Emergency Management and Natural Disasters Response or its territorial department authorised to carry out state fire safety supervision.

14. Resolution of the RF Government No. 307 “On adoption of Technical Regulations applicable to products intended for kids and teenagers” dated 7 April 2009 (entered into force on 29 April 2009 save for certain provisions)

The Technical Regulations apply to the following products:

- child care products;
- toys;
- clothes and footwear;
- baby carriages and bicycles;
- publishing products and stationary, etc.

Acknowledgement of products conformity to the requirements of the Technical Regulations is mandatory. Appendices to the Technical Regulations contain a list of products subject to safety requirements, as well as requirements of chemical, microbiological, biological, mechanical and other safety.

The Technical Regulations will come into force in two years of the date of the official publication of the Resolution.