Government activities in eliminating residual pollution

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Executive summary

The SAO carried out an audit designed to analyse the implementation and impact of the residual pollution elimination policy. The audit covered 70 extremely dangerous or dangerous residual pollution sites to examine the legal arrangement, organisational structure and financing of residual pollution elimination from 2000 to 2003.

This issue was chosen because the SAO believed that residual pollution had received less attention than other problems, although residual pollution was one of the seven priority environmental problems defined in the Environmental Strategy.

Activities of the Ministry of Environment in organising the elimination of residual pollution

The Constitution and the internationally recognised precautionary principle require the government to regulate the issue of residual pollution. The Parliament made the elimination of residual pollution a priority already in 1997. But as in the recent years the general priority of the government has been accession to the EU, the topics not directly related thereto – including residual pollution – have been left aside.

The government has the obligation to develop a legal framework, which supports the elimination of residual pollution and, in particular, clarifies the responsibilities. However, the laws display inadequacies already on the level of basic concepts – pollution and environmental damage – not to mention the organisation and monitoring of elimination. There is a legal basis only for the elimination of deposits and ash hills, since these can be classified as waste disposal sites.

The Ministry of Environment has not established specific tasks or responsibilities for achieving the strategic objective set by the Parliament. Only one person in the Ministry deals with the issue of residual pollution, doing so only in addition to other duties. Consequently, the recommendations given in studies commissioned for residual pollution sites have not been implemented and the studies have not been introduced to local government bodies or the owners of sites. Since the latter are not aware of the sites' environmental condition, the changes therein and the dangerousness of thereof, it may happen, for instance, that the polluted area is turned into residential land and the local government body approving the detailed plans does not know that the land is polluted.

SAO proposals

- To develop the regulatory framework for eliminating residual pollution and compensating for the related damage which would specify the basic concepts, the responsibility for elimination and the monitoring obligations.

- To give priority to the organisational management and financing of the field. To this end, to impose clear duties on the Ministry's officials as regards dealing with residual pollution sites, to agree on their role with the local government and to find ways of increasing the financing of residual pollution elimination.

- To co-ordinate the list of residual pollution sites with the Ministry's subordinate agencies and local government bodies in order to get a complete idea of such sites. To make the map-based database of dangerous residual pollution sites available to the public, to integrate it with the environmental register and to ensure its use by local government bodies and environmental authorities.

Response from the Minister of Environment

The Minister of Environment responded to the proposals only partly, without presenting any positions on organisational management and co-operation.

The Minister did not see the need for a regulatory framework, arguing that the concept and regulation of residual pollution is in controversy with the EU legislation and the Estonian environmental law has been

already harmonised with that of the EU. However, the Minister maintained that the problem of residual pollution could be solved by way of improving the implementation of the current regulatory framework, particularly through increased financing.

As regards making the residual pollution database available to the public, the Minister stated that all environmental authorities have the necessary facilities. The creation of a single Internet-based GIS database is necessary, but unreal at the moment. The Minister did not take a position on possible integration with the environmental register.

Responsibility for elimination

Since the legislation does not regulate the compensation for environmental damage related to residual pollution and the framework for the obligations to eliminate residual pollution is even more fragmented and unclear, it is essential to include environmental agreements in contracts for the privatisation and the purchase and sale of government property. The privatisation and sale of such property has mostly been the responsibility of other Ministries and, as a result, the environmental protection obligations in the contracts are vague. Furthermore, the Ministry of Environment does not have sufficient information on these obligations to allow identifying the very entities responsible. The Minister of Finance maintains that the government property privatisation contracts usually impose the obligation to bear the cost of eliminating environmental damages on the entity receiving the privatised property.

Also, the Ministry does not pay much attention to preventive action, which would help to avoid the reoccurrence of the same problems and the imposition of new obligations on the government – at the time the other public departments have not been informed how environmental protection obligations could be set out in the contracts.

SAO proposals

- To determine the persons responsible for the elimination of residual pollution at specific sites. This requires determining the owners and their obligations (analysis of the legislation, privatisation contracts, contracts of purchase and sale, etc). The owners subjected, by means of contracts, to the obligation to eliminate environmental damage, must be required to comply with the contractual obligations related to the environment.

- To ensure that the contracts of purchase and sale of residual pollution sites clearly specify, who is responsible for what when pollution occurs and when the already known pollution is to be eliminated. Also, the contract must include the buyer’s obligation to include similar responsibility provisions in the contract upon the transfer of the site.

Response from the Minister of Environment

The Minister agreed to the proposal to analyse the earlier privatisation contracts in co-operation with the Ministry of Economic Affairs and Communications, but did not respond to the proposals to require compliance and to supplement contracts of purchase and sale.

Positions of the SAO with regard to the response form the Minister of Environment

The concept of residual pollution and the regulation of the field are not in conflict with the EU law. The fact that the EU does not regulate the field does not mean that Estonia may not do so where necessary.

Neither can the SAO agree with the position of the Minister of Environment that the problem of residual pollution could be solved by way of improving the implementation of the current regulatory framework. The field is partly governed by the Waste Act and the Water Act, but there is no comprehensive legal framework.

Unfortunately, the Minister of Environment did not respond to the proposal to give priority to the arrangements for eliminating residual pollution, including organisational management and determination of responsibilities, and only noted that usually the government must eliminate the residual pollution. The SAO finds that the government has not exhausted all the possibilities to determine the persons responsible for eliminating residual pollution at specific sites.

The SAO does not agree in full with the position of the Minister of Environment that no additional monitoring is needed at sites where residual pollution has been eliminated. Even such sites entail

potentially dangerous pollution, which could reoccur when the environmental condition changes. The SAO believes that the elimination of residual pollution has not received enough attention and therefore the risk resulting from residual pollution to the environment and the population has not decreased during the audited period.

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