

矿业权的特征探讨

谢贵明

(吉林国地矿业权评估有限公司,吉林 长春 130021)

摘要:矿业权是矿产资源所有权中分离出来的一种权能。矿业权的设置和管理是市场经济体制下对矿产资源管理体制改革的必然要求和中心环节。本文从矿业权的概念、物权法律特征、经济学特征、资源运用特征、矿产资源所有权与矿业权关系,以及矿业权的高额特性、现状和作用等方面探讨了矿业权的特征。

关键词:矿业权;物权法律特征;经济学特征;资源运用特征;商品特性

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一、矿业权的概念

矿业权可定义为直接支配国家所有的矿产资源进行开发利用并享受因此所得利益的一种权利。开发利用的具体方式若是探矿则矿业权就是探矿权;开发利用的具体方式若是采矿,则矿业权就是采矿权。

二、矿业权的物权法律特征

1. 矿业权是矿产资源所有权中分离出来的一种权能

我国《宪法》和《矿产资源法》规定,矿产资源只有国家所有的一种形式。《宪法》第九条明确规定:“矿藏、水流、森林、山岭、草地、荒地、滩涂等自然资源,都属于国家所有,即全民所有;由法律规定属于集体所有的森林和山岭、草原、荒地、滩涂除外。”《矿产资源法》第三条第一款规定:“矿产资源属于国家所有,由国务院行使国家对矿产资源的国家所有权,地表或地下的矿产资源国家所有权,不因其依附的土地的所有权或者使用权的不同而改变。”

因此,我国矿产资源所有权就是国家依法对矿产资源享有占有、使用、收益和处分的权利。矿业权是国家为了获得所有者的收益而从矿产资源所有权中分离出来而设置的一种权能。

2. 矿业权具有物权的特征

矿业权的权利主体是特定的,义务主体是不特定的,社会上所有人都负有不得侵犯他人的矿业权的义务,矿业权的客体是特定发现的和没有发现的矿产资源,具有特定性。矿业权具有独占性和排他性。矿业权具有对客体的依法支配和管领权利。矿业权受保护,保护的方法具有广泛性。

3. 矿业权是一种他物权、限制物权和用益物权

矿业权是矿产资源所有权分离出来的使用权能、收益权能

和依法占有权能,以矿产资源的利用并获取收益为目的。矿业权的依法取得就意味着矿业权人依法在一定时空范围内实际支配和控制了矿产资源,即矿业权具有矿产资源的占有权能的性质,是一种不完全的有限的占有。矿业权的依法取得,使国家暂时或长期失去部分或全部所有权能。矿业权人不能改变矿产资源的国家所有权,但矿业权人可依法转让矿业权。由此可见矿业权是一种他物权、限制物权和用益物权。

4. 矿业权是财产权

矿业权人依法对其矿业权享有占有、使用、收益和处分权。在矿业权的初始状态,即矿业权与矿产资源所有权没分离状态,矿业权归国家所有,国家享有所有者的全部权能。当矿业权与矿产资源所有权相分离后,矿业权不仅有财产权属性,而且有资产属性和商品属性。

三、矿业权的经济学特征

从经济学的角度考查,矿业权是矿业市场中决定谁支配运用国有矿产资源的规则,这种规则必须由矿业权法律制度给予界定和保障。

1. 矿业权的初始界定

我国矿业权的初始界定或静态界定是由《宪法》和《矿产资源法》确立和保障的,即矿业权的起始点归国家所有。矿业权是矿产资源的唯一所有者国家为保证和获得所有者的利益,而从矿产资源的所有权中分离设置的一种权利。所以我国矿业权在起始状态是国家所有,由国务院行使对矿业权的所有权。

2. 矿业权的动态运动

矿业权的动态运动就是矿业权与矿产资源所有权相分离的表现形式,也就是实现矿产资源最优配置和运用的形式。在

计划经济时期,矿业权与矿产资源所有权是一体的,没有分离,也没有必要分离。而在市场经济体制中,矿业权与矿产资源所有权的分离是必须的,这种分离是实现所有者权益和矿产资源最优应用、最优配置的唯一途径和方式。

矿业权市场实质就是矿业权的动态运动。矿业权从矿业权的初始状态国家所有运动变化为矿业权人所有,就是矿业权的有偿出让,形成了国家垄断的矿业权一级市场。矿业权一级市场的最佳方式就是取消行政审批无偿授予,采用经过评估后招标挂牌拍卖等方式有偿竞争取得。

矿业权人依法行使对矿业权的处置权,即对矿业权依法转让,使矿业权不断运动转移,这就形成了矿业权的二级市场。矿业权二级市场的实现是矿产资源合理开发使用、提高经济价值的内在必然要求。

3. 矿业权是广义的,矿业权运动的方式是动态的

矿业权是矿产资源所有者国家为实现所有者权益而设置的一项权利。因此,随着市场经济和矿业经济的发展,凡是由于矿产资源的运用而能给所有者带来收益的权利都属矿业权的范畴。矿业权运动的方式也将随着市场经济的发展而动态变化。目前招标挂牌、拍卖、出售、作价出资、合作、重组改制、出租、抵押等是矿业权运动的方式,将来必定会产生一些新的矿业权运动方式,如矿业权的交换、分解和组合等;将来有些方式要改变或消灭。总之在一级出让市场,凡是能给国家带来利益的矿业权运动方式都是可取的;在二级转让市场,凡是能提高国家权益和给矿业权人带来利益的矿业权运动方式都是可行的。

4. 矿业权是一组整体权利

矿业权是一组整体权力,而不是单独的权力。这组整体权力是由《宪法》和《矿产资源法》以及其它有关环境、土地、森林、水土、民事、规划等法律和风俗习惯等社会行为规范来规定的。也就是说矿业权虽然是由《宪法》和《矿产资源法》规范的一种权利,但这种权利同时受其它法律和风俗习惯等社会行为准则的规范,矿业权人有使用矿产资源的权力,同时也有合理利用开发矿产资源、保护矿山生态环境等义务。

四、矿业权的资源运用特征

从资源运用的角度分析矿业权的特征,矿业权就是矿产资源的使用权、收入权和转让权等权力。

使用权就是对矿产资源使用的完全支配权,是决定矿产资源是用还是不用、何时使用、以什么方式使用的权力。收入权就是拥有自由应用矿产资源带来的权利收益。转让权就是对矿产资源的处置权利。

在矿业权的使用权、收入权和转让权中,转让权最重要;转让权是矿业权的一种运动,转让权的实现可提高矿产资源的经济价值,提高矿产资源所有者的权益;转让权的形成和繁荣,就是矿业权二级市场的形成和繁荣。

五、矿产资源所有权和矿业权

矿产资源所有权是作为所有者的国家依法对矿产资源享

有占有、使用、收益和处分的权利。矿业权是从资源运用的角度所界定的矿产资源的使用权、收入权和转让权。在矿业权与矿产资源所有权没有发生分离时,两者是同一含义。

在市场经济条件下,当矿业权与矿产资源所有权发生分离时,矿业权对资源的运用效果和矿业权人的经济行为是最重要的,矿产资源所有权并不重要。

六、矿业权的商品特征

矿业权具有商品属性,是一种特殊商品。矿业权作为一种特殊商品,与其它商品相比,其特点主要是投资风险高、依附于矿产资源实体、缺少可比性和受技术经济条件制约。

矿业权投资风险高是由于矿产资源的赋存条件复杂和成矿作用复杂所决定的。开发利用矿产资源前期投入大,开发利用投资风险高。一般来说建筑石材、石料的矿业权投资风险较小,沉积成因的层状矿床的采矿权投资风险增大,脉状不规则状和成分不均匀的矿种以及成矿作用复杂的矿种的采矿权投资风险最高。

矿业权依附于矿产资源实体而存在,是一种非长久和非永久的财产权。由于已发现的矿产资源是有限的,开采后不能再生,随着矿产资源开采完毕,矿业权也随之灭失。

矿业权缺少可比性,即使是相同矿种或同一地区的矿种的矿业权也缺少可比性。矿产资源的赋存的空间、赋存状态、产状组合形态特征和地区分布都是很不均匀的,矿业权的价值受矿产品市场影响,所以矿业权之间的可比性差。矿业权的可比性差这一特点,决定了每一个矿业权的运动都必须认真科学地进行评估。

矿业权受技术经济条件制约是指矿业权的设置受技术经济条件的制约,矿业权的设置不是固定不变的,而是变化发展的。随着技术经济条件的发展,人类利用矿产资源的新发现和水平的提高,矿业权的设置不是一成不变的。

七、矿业权的现状

1. 矿业权大多都包含国家投资

我国发现和未发现的矿产资源大多都包含了国家的地质勘探投入和科学研究投入。由于我国长期实行计划经济体制,各种地质工作的投资全部来自于国家地勘投入;即使市场经济发展到今天,地勘投资主体多元化,但国家投资仍是地勘投资的主要来源。

2. 国有地勘单位拥有大量的探矿权

国有地勘单位占有国家投资形成的丰富的地质资料和成果,国家大量的探矿权实际由国有地勘单位占有。这些探矿权是国家和地勘单位的财富。

3. 国有矿山企业拥有主要价值的采矿权

国有矿山无偿拥有占主要价值的采矿权,是计划经济体制下国家投资地质工作、国家无偿行政划拨矿产资源、国有矿山无偿开采矿产资源、矿产资源所有权和矿业权不分离等原因造成的。

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而直接影响评估对象的准确性及合理性。因此,应当找到一个妥善解决的办法。

比较合理的解决办法是将采矿部分中可利用、可回收设备单独列出,进行折旧,到矿山服务年限期满时将这部分残值作为现金流入收回。

三、对矿山闭坑后土地复垦费用问题不可忽视

目前,我国耕地面积不是在扩大,而是在日益减少,因此国家对可利用土地实行保护性政策。有些矿山在开采过程中会涉及耕地占用问题,而按现行土地法规的规定,矿山占用耕地必须在矿山闭坑后复垦利用(国外有些国家不仅要求复垦而且要求恢复植被),河北省规定复垦费为10~15元/米²,对于占用耕地较多的矿山企业,土地复垦费用不是一个小数目,应在对采矿权评估时加以认真对待。

土地复垦工作一般在矿山闭坑后进行,即在矿山服务年限期满后开始支出复垦费用,因此,对一个涉及占用耕地的采矿权项目评估时,应在矿山服务期满前最后一年作出处理。应用贴现现金流量法时,可在最后一年将涉及的土地复垦费流出;应用收益法时,可在最后一年将土地复垦费列支成本。

四、应对地质环境影响加以考虑

环境保护在国民经济建设中的地位越来越重要,党和政府非常关心和重视这个问题,我们矿业权评估工作也应当包含对环境影响的考虑。

一个已开发的矿山如果环保工作做不好,例如废渣废料不

合理地存放及处理,都会给当地居民的生产、生活造成直接或间接的危害,有的虽然现阶段没有得到体现,但在不久的将来必会对当地及周边地区生态环境造成影响,一旦出现由于矿山开采造成的环境灾害,那么矿山企业必须拿出一部分资金进行赔偿和治理,从而使该矿山整体价值降低,这是我们评估工作应该关注的问题。

当一个评估项目启动后,评估人员到现场勘察矿业权情况时,除了解地形地貌、矿业权活动情况、抽样查看部分工程、考察采矿、选矿设施等内容外,还应当注意观察搜集矿山开采给当地环境的影响,当需要对环境进行治理时,应列出治理环境所需费用,作为现金流出(贴现现金流量法)或列支成本(收益法)。

五、应考虑矿山的安全因素

近些年来,矿山安全事故频发,使国家和矿山企业蒙受了巨大的经济损失,也给受害者及家属造成了人身伤害和痛苦。基于矿山对地质环境影响同样的理由,一个正常运营的矿山安全程度的好坏,亦直接关系到其矿业权的实际评估价值,这也是我们评估工作应该纳入的范围,但矿山安全的衡量标准难以掌握,这需要有关从事矿业权评估研究的部门拿出一套切实可行的办法,以便使矿山安全程度问题在矿业权中得到量化,使矿业权评估对象的真实价值充分得到体现。

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4. 矿业权取得方式开始从无偿到有偿转变

过去矿业权取得的主要方式是行政无偿授予,现在矿业权的取得开始实行有偿取,有偿取得的形式有一对一的方式出让、招标投标挂牌方式的市场竞价出让。

八、矿业权的作用

1. 矿业权初始界定为国家所有,是实现资源合理开发利用和建立矿业市场经济的前提条件。只有矿业权的初始界定国家所有从法律上实现以后,才能通过市场竞争实施矿产资源的有效运用。

2. 从矿产资源运用的角度,矿产资源所有权并不重要,矿业权是最重要的。矿业权在运动中(出让和转让)明确地界定了矿业权人,实现了矿产资源的运用有明确的行为主体、责任主体和利益主体,也就是矿产资源的使用权、收入权、转让权都明确界定给了矿业权人,同时只有矿业权明确界定给了矿业权人,才能实现根据市场的变化有效地运用资源。

3. 矿业权制度建设至关重要。矿业权制度直接决定矿产资源经济活动中不同主体的行为方式和行为目的。一个好的矿业权制度是国家所有者权益最大化实现,矿产资源最优化合理开发利用,矿业秩序良好,矿业权人依法为自己的利益努力

经营,矿山企业经济效益良好,矿山生态环境保持良好,整个矿业欣欣向荣。

矿业权制度实质是矿业权的取得和保护及矿产资源的运用和收益的准则。一个好的矿业权制度,将使矿业权主体创造出丰富多彩的矿产资源运用组合,矿业权市场规范有序发达。

4. 矿业权的设置是矿产资源管理制度深化改革之必须,是矿业经济融入市场经济之必须,是矿业经济发展与世界矿业经济接轨之必须。矿业权制度的建设和完善,有利于保证矿产资源国家所有者权益,有利于保证矿产资源国家投资者和其他投资者权益,有利于矿业权市场建立和发展,有利于矿产资源的合理开发利用,有利于保护矿山生态环境,有利于矿山秩序的良好、稳定、有序,有利于矿山经济的持续繁荣和发展。

参考文献:

- [1] 向松祚,韩小明. 市场经济新体制[M]. 北京:中国人民大学出版社,1993.
- [2] 仲志伟,曾绍金. 矿业权评估指南[M]. 北京:中国大地出版社,2001.
- [3] 王志明. 民法学[M]. 北京:法律出版社,2000.

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ABSTRACTS

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Planning and Sustainable Development of Mineral Resources

ZHAO Li-xin

(China University of Geology, Beijing 100083, China)

Abstract: The paper systematically introduces main content of China's mineral resource planning under market economy system. Then it analyses relations between planning and sustainable development, and it gives relevant proposals.

Key words: planning for mineral resource; market economy; sustainable development

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Exploitation and Management and Sustainable Development of Mineral Resources

ZHAO Fang

(Inner Mongolia Department of Land and Resources, Huhe-

haote 010020, China)

Abstract: The paper discusses grim situation facing China's mineral resources, and it analyses many unfavorable factors for exploitation and management of China's mineral resources. Then, it points out relevant goal and measures according with sustainable development, such as, carrying out mineral resource law, promoting ultimate change of utilization and management of mineral resources, strengthening international cooperation of mining industry, and controlling environmental pollution of mine.

Key words: mineral resources; mining industry; sustainable development; ecological environment reserve of minerals

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Value Representation of Mining Rights from National Allocated Geological Prospecting Expense and Benefit Participation of Geological Prospecting Organizations

LUAN Ji-feng

(Dalian Jinshitan Administration Committee, Dalian Liaoning 116031, China)

Abstract: The paper considers that the value of mineral resource is represented at two aspects, one is possessor's rights and interests, and the other is return on investment and relevant profit of proving up and mining mineral resources. The paper discusses geological prospecting organization's participation of benefit of mining rights, and it points out the proportion of the state.

Key words: national allocated geological prospecting expense; value of mining rights; geological prospecting organization; participation of benefit; ownership

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Complexity and Coordination of Minerals Development in Western Region of ChinaXIA Qing^{1,2}, LIANG Yu²

(1. Beijing University of Science and Technology, Beijing 100083, China; 2. Heilongjiang College of Science and Technology, Jixi 158105, China)

Abstract: It is foundation and guarantee for economic and social development in western region of China to explore and use mineral resources within the region. However, the activities are not isolated, which have the characteristics of complexity, opening and intergrowth. Therefore, the quality should be considered while making the orientation of development.

Key words: western region; mineral resources; coordination; complexity; thinking of study

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To Open Equity Market of Mining Rights under Mining Rapid DeclineWANG Jian-hui¹, MA Bai-zhuang², YANG Xin-jian²

(1. Haitong Securities Ltd., Shenzhen 518000, China; 2. Yunnan Geology and Mineral Resources Ltd., Kunming 650051, China)

Abstract: China's mining industry faces severe resource crisis, which is caused by old system during the period of planned economy. With the development of market economy and deepening of reform, China's mining industry must establish and improve equity market of mining industry. Therefore, the paper puts forward the proposals for setting up corresponding institution, policy and statute and professional training, etc.

Key words: situation of mining industry; equity market of mining rights; mineral resources

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Thoughts on Equity Market of Mining Industry

GAN Fei, Ding Feng

(China Institute of Land and Resource Economics, Beijing

101149, China)

Abstract: The paper analyzes the composition of equity market of mining industry, and it expounds the source of mining capital and the role of agencies and governments in mining financing. The author also studies present status of China's mining financing, and it provides the proposals for the development of China's mining financing.

Key words: equity market of mining industry; mining financing; proposals for policy

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Measures to Strengthen Competitive Power of Geological Mapping Organizations

LIU Jia-fa

(Zhejiang Provincial Mapping Brigade, Hangzhou 310030, China)

Abstract: The paper analyses the problems facing geological prospecting mapping organizations, such as, driving force of reform and innovation were weakened, actual total strength was declined, the structure of talent and knowledge were difficult to adapt to market competition. Then it puts forward the proposals for solving the problems, including to deepen reform, set up technical innovation mechanism, develop good operation environment, encourage brand management, enhance internal management and to improve enterprise culture.

Key words: geological mapping organization; competitive power; new high mapping technology

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Approach to the Characteristics of Mining Rights

XIE Gui-ming

(Jilin Guodi Mining Rights Appraisal Ltd., Changchun

130021, China)

Abstract: Mining rights are separated from minerals ownership. Establishment and management of mining rights are the focus and requirement for re-

structuring administrative system of mineral resources. The paper discusses the characteristics of mining rights from the following aspects, which are the concept of mining rights, characteristics of property law, characteristics of economics, characteristics of resource use, relation between ownership and mining rights of mineral resources, and commodity attribute, current status and role of mining rights.

Key words: mining rights; characteristics of economics; characteristics of resource, use; characteristics of commodity; characteristics of property law

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Problems Incurred in the Practice of Mining Rights Appraisal

LU Jian-hua, ZHANG Li-ming

(Tangshan Lande Mining Rights Appraisal Consultation

Ltd., Tangshan Hebei 063000, China)

Abstract:《Guide to Mining Rights Appraisal》has guiding significance, but it has shortage in containing the whole fields. The paper discusses the problems incurred in the practice of mining rights appraisal, such as, determining mineable reserves, dealing special mining facilities and expenditure of land reclamation after closing mine, geological environmental impact, mine security factors. The paper also gives proposals for solving the problems.

Key words: mining rights appraisal; mineable reserves; special facilities; land reclamation; geological environment; security factor

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Several Foreign Statistical Rules of Finding Typical Deposits

WANG Wen, WANG Yong-sheng

(China Institute of Land and Resource Economics, Beijing

101149, China)

Abstract: With statistical method, the paper studies foreign 26 different minerals and finding history of 70 typical deposits. Then, it sums up foreign rules involved in the work of prospecting earlier stage, technical use, mineralized region, reuse of material, exploration procedure and prospecting organization in the course of finding deposit. Moreover, it puts forward the proposals for China's exploration.

Key words: typical deposit; statistic; rule

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Characteristics and Trend of Foreign Geological Prospecting Organizations

QIAN Li-su

(China Institute of Land and Resource Economics, Beijing

101149, China)

Abstract: Generally, foreign geological prospecting organizations include two kinds: one is the organization engaging in national geology survey, the other is the corporation to explore minerals. The paper analyses the characteristics and trend of foreign geology survey institution. Then, it discusses structure model, administrative organ of foreign geological prospecting corporation, as well as type, policy-making manner and prospecting procedure of foreign geological prospecting organization.

Key words: geological prospecting organization; geology survey institution; geological prospecting corporation

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Equity Market and Financing of Mining Industry

ZOU Yong-sheng

(China Institute of Land and Resource Economics, Beijing

101149, China)

Abstract: The paper introduces the formation of mining equity market and the relationship among investor, operator for capital, and operator for production. Moreover, it introduces transition and circulation of capital in the

market. Then, it introduces foreign financing of minerals exploration, including financing ways in different stages and applied conditions and advantages & disadvantages of all ways.

Key words: mining capital; mining financing; equity market

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Foreign Transfer Way and Management System of Mining Rights

HAO Fang, LIU Yur-xia

(China Institute of Land and Resource Economics, Beijing

101149, China)

Abstract: The paper mainly introduces foreign transfer way of mining rights, including provision about acquisition and transfer. Then, it introduces different management means of mining rights in foreign countries, including classification management and grade management. It also introduces foreign measures supporting the development of the mining rights so as to fulfill regular transfer. The paper also makes a brief introduction to major content of foreign exploration agreement.

Key words: mining rights; transfer way; management system; exploration agreement

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The Practice and Discussion of Restructuring No. 2 Branch Bureau under China's Metallurgical Prospecting General Bureau

QING Yong-he

(No. 2 Bureau under China's Metallurgical Prospecting General Bureau, Fuzhou Fujian 350001, China)

Abstract: No. 2 Branch Bureau under China's Metallurgical Prospecting General Bureau is one of earliest restructured organization, taking the whole bureau as a unit. For 8 years, economic gross and staff wage have increased greatly, quantity and quality of assets have improved remarkably, industrial structure have tended to be more reasonable and competitive power have strengthened effectively. The paper summarizes the advantages & disadvantages and success & failure of restructuring the bureau, and it points out the orientation of reform in the future.

Key words: No. 2 Branch Bureau under China's Metallurgical Prospecting General Bureau; taking the whole bureau as a unit; restructuring as a whole; practice; tentative plan

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Brief Discussion of Higher Professional Education and Geological Prospecting Economic Development

SUN Zhong-yi

(Anhui Professional College of Industrial Economy, He fei 230051, China)

Abstract: The paper expounds the characteristics of higher professional education, and it analyses current status of talent shortage in geological prospecting industry. Then, it discusses important position and role of higher professional education in geological prospecting economic development. Moreover, it puts forward the measures and policies about strengthening higher professional education to serve as geological prospecting economic development.

Key words: higher professional education; geological prospecting economy; applied talent; sustainable development

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Simple Analysis of the Reason and Countermeasure against False Account Information

DONG Guo-fang¹, CHENG Jiang-tao²

(1. NO. 3 Shandong Exploration Institute of Geology and Mineral Resources, Yantai 264003, China; 2. Shandong Geological Survey Insti-