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ISSUES OF LEGAL REGULATION OF ENSURING INDUSTRIAL SAFETY OF MINING COMPANIES IN THE OIL AND GAS COMPLEX

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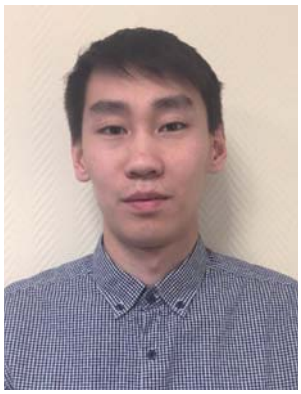

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Abstract: *The problems of legal regulation of industrial safety in the oil and gas complex are among the most topical. Upon development of the fields containing hydrocarbon raw materials, the producing companies use sophisticated advanced technologies, and hydrocarbon raw materials are explored in places being more and more difficult to access. At the same time, there are always risks of occurrence of emergencies and accidents, which can lead to death of people, damage to their health, and property losses.*

Relations that arise upon ensuring industrial safety of the producing companies in the oil and gas complex are public relations, which are also the subject matter of the energy law. The state influences these relations by issuing normative legal acts, exerting state control, and performing regulatory and supervisory activities.

Requirements to the producing companies relating to ensuring laws in the sphere of industrial safety extend to the entire "life cycle" of the relevant hazardous production facilities including design, construction, reconstruction, operation, decommissioning, and emergency situations. These requirements include the need to identify the producing facility according to the hazard class, to obtain a declaration of safe industrial practices, and to submit the collected data to Rostekhnadzor to register the facility in the register of hazardous production facilities.

Keywords: *energy law, legal regulation of industrial safety, hazardous production facility, producing companies of the oil and gas complex.*

The issues of legal regulation of public law relations in the sphere of industrial safety involving oil and gas companies rightly become the subject of scientific research. [1]

As justly noted by A.A. Ustinov, amendment of the laws in the sphere of industrial safety, adoption of the required normative legal acts and exclusion of provisions that contradict the acts having the supreme legal force are required to create a reliable and transparent mechanism for ensuring safe operation of the hazardous production facilities including those in the oil industry. [2]

In order to consider the problems of ensuring industrial safety, it is necessary to analyze principal normative legal acts governing legal relations in the specified sphere. Laws in the sphere of ensuring industrial safety are actively developing; amendments and supplements are introduced into them with due account for development of technologies and equipment, and emerging risks.

The analysis of the current laws testifies to the desire of the legislator to most fully and properly regulate relations with regard to industrial safety at all levels of normative legal acts.

First of all, it should be noted that the Russian Federation is a party to Convention No. 174 of the International Labor Organization "On Prevention of Major Industrial Accidents" concluded in Geneva in 1993 and ratified by Russia in 2011. This Convention contains definitions of such concepts as "major accident", "emergency situation", "hazardous facility", and "hazardous substance". The Convention establishes the basic mechanisms of interaction between businesses and competent (state) authorities. It should be noted that the principal provisions of the above convention are reflected in the federal laws of the Russian Federation on industrial safety.

The main normative legal act governing relations under consideration is the Federal Law "On Industrial Safety of Hazardous Production Facilities". The law is one of the sources of energy law and it refers to federal laws governing certain relations in the fuel and energy sector, regardless of the specific industry (electric power industry, oil industry, gas industry).

While analyzing the above Federal Law, it should be noted that over the past few years, it has been significantly amended. In particular, it refers to introduction of division of all hazardous production facilities as per hazard classes with relevant legal consequences and to the reform of the institution of industrial safety expert review. These innovations are aimed at improving efficiency of state regulation of the relations under consideration.

Article 2 of the Federal Law defines the HPF with reference to Annex 1 to the law.

Being governed by Annex 1 to the law, it is worth noting that in the oil and gas production complex, many facilities are classified as the HPF for several reasons: drilling site, well stock, oil preparation and collection point, fixed (offshore) platform, rig site, underground gas storage, etc.

Let us now dwell on the division of the HPFs as per the hazard class and the significance of such a division for the oil and gas complex facilities. According to paragraph 3, Article 2 of the Federal Law "On Industrial Safety of Hazardous Production Facilities", the hazardous production facilities (HPF) are divided into the following hazard classes:

HPF of extremely high hazard — hazard class I;

HPF of high hazard — hazard class II;

HPF of medium hazard — hazard class III;

HPF of low hazard — hazard class IV.

Various facilities of the oil and gas complex may have this or that hazard class for various reasons. So, the HPF will be classified as such on the basis of the presence of hazardous substances in quantities specified in Tables 1 and 2 of Appendix 2 to the Federal Law. For example, the HPFs containing 2,000 tons or more of flammable gases will be classified as the facilities of hazard class I.

The meaning of the HPF classification lies in various requirements imposed on the owners of these facilities. For example, at the HPFs of hazard classes I and II with an indicia of mining, the organization operating the HPF shall create auxiliary mine rescue crews. Moreover, the organizations operating the HPFs of hazard classes I and II are obliged to create industrial safety management systems and to ensure their functioning. It is established that declarations of safe industrial practices are mandatory for the HPFs of hazard classes I and II where operations are performed.

Moreover, the provision of paragraph 5.1, Article 16 of the Federal Law "On Industrial Safety of Hazardous Production Facilities" is important; according to it, the interval of planned inspections of the entities operating the HPFs is established: for the HPFs of hazard classes I or II, no oftener than once per year; for hazard class III, no oftener than once per three years; and for the HPFs of hazard class IV, no inspections are performed.

Thus, it should be noted that the classification of the hazardous production facilities (including those in the oil and gas complex) established by the legislator allows for flexible state regulation of relations in the sphere of industrial safety and adequate response to the level of risks that arise out of the HPF of a particular hazard class.

The subordinate regulation is of great importance for the legal regulation of industrial safety. According to Article 4 of the Federal Law

"On Industrial Safety of Hazardous Production Facilities", in addition to the above-mentioned law, legal regulation is also performed by acts issued by the President and the Government of the Russian Federation. Federal norms and rules on industrial safety are of particular importance.

So, for example, in accordance with paragraph 5, item 3, Article 4 of the Federal Law "On Industrial Safety of Hazardous Production Facilities", the Government of the Russian Federation establishes the procedure, under which federal norms and rules in the sphere of industrial safety are developed and approved. Thus, the Provisions on Federal Service for Environmental, Technological and Nuclear Oversight of Russia (Rostekhnadzor) refer adoption of federal norms and rules in the sphere of industrial safety to the powers of the said agency.

It is Rostekhnadzor that is the main federal executive authority in the sphere of industrial safety. According to the above provisions on the federal service, Rostekhnadzor has a wide range of powers including powers relating to normative legal regulation, control and supervision in the sphere of industrial safety. In the structure of Rostekhnadzor, there is a Department for Supervision of Oil and Gas Complex Facilities. [3]

The most important Rostekhnadzor's acts of normative and legal regulation that ensure industrial safety in the oil and gas complex are the federal norms and rules in the sphere of industrial safety: "Safety Rules in the Oil and Gas Industry", "Safety Rules for Offshore Oil and Gas Complex Facilities", and "Industrial Safety Rules for Development of Oil Fields by the Mining Method". Since the above rules reflect the specific character of industrial safety regulation in the oil and gas industry, we should dwell on the content of the above documents in more detail.

Safety rules in the oil and gas industry apply to such HPFs as wells drilled for search, exploration, and development of oil, gas and gas condensate fields as well as wells drilled to eliminate gas and oil flows and springs. While analyzing this normative act in the sphere of industrial safety, it is possible to say that it contains a number of requirements for ensuring industrial safety. The requirements are imposed on the organization operating the HPF. These requirements are of a very different nature. For example, there are requirements to the personnel (as related to labor organization, training and certification of employees, etc.). Pursuant to paragraph 392 of the Rules, an employee (employees), among other things, being responsible for functioning of the industrial safety management system shall be appointed from among the managers of the organization. Some provisions are directly aimed at ensuring safety of the personnel: according to paragraph 861, workers performing chemical cleaning shall be dressed in special clothes, rubber gloves and goggles; Chapter XXXIV establishes requirements for organization of work places and equipping workers with personal protective equipment.

The requirements of industrial safety may be divided into conditional groups: (1) the requirements that are imposed on the design documentation, equipment, workers prior to the direct production process; (2) the requirements that are imposed on a particular production process directly during its performance (for example, well development and testing, execution of drilling work at the multiple well platform, preparatory and derrick installation operations, etc.); and (3) the requirements that are imposed in the event of an accident (for example, elimination of accidents during geophysical operations).

As for the "Safety Rules for Offshore Oil and Gas Complex Facilities" federal norms and rules in the sphere of industrial safety approved by Order of Rostekhnadzor No. 105 dd. March 18, 2014, it is worth noting the significant special features associated with execution of work by the oil and gas complex facilities at sea. First, paragraph 3 of the Rules defines the HPFs of the offshore oil and gas complex including: well stock, drilling sites, fixed platforms, offshore piers, floating drilling rigs (including semi-submersible and self-elevating drilling vessels), floating process systems, underwater mining complexes, and other facilities. Compared to the general safety rules in the oil and gas industry, the "Safety Rules for Offshore Oil and Gas Complex Facilities" have a slightly different structure that distinguishes: "general provisions", "requirements to design, construction and operation", "requirements to

production processes" as well as two annexes to the rules. According to paragraph 70, only people of majority age can work at an HPF at sea. This general limitation is not specified in the Rules approved by Order of Rostekhnadzor No. 101 dd. March 12, 2013, which testifies to higher requirements to the personnel at the offshore oil and gas complex facilities. In general, it is worth noting the consideration of the specific character of offshore oil and gas production; for example, in paragraphs 80 to 130, considerable attention is paid to rescue equipment as in the event of accidents at the HPFs of the offshore oil and gas complex, rescue is associated with much greater difficulties as compared to the onshore facilities.

Finally, the "Industrial Safety Rules for Development of Oil Fields by the Mining Method" federal norms and rules in the sphere of industrial safety approved by Order of Rostekhnadzor No. 501 dd. November 28, 2016, establish norms regulating industrial safety of oil mines.

While performing comparative analysis of these Rules against other federal norms and rules in the oil and gas industry, it should be noted that these Rules are the most detailed. In general, it is possible to notice a similar structure and a set of general requirements to operation of the HPF: the requirements to the personnel, to documentation, and to organization of work. The requirements to certain production processes inherent exclusively in development of oil fields by the mining method are of specific nature: for example, the requirements to abandonment and conservation of mine openings, ventilation devices, ropes, towing and hanging devices, construction of underground wells, etc.

Finally, local acts of legal entities play an important role in the system of legal regulation of relations in the sphere of industrial safety. For example, Gazprom, PJSC, approved a policy in the sphere of occupational and industrial safety, which is applicable to Gazprom, PJSC, and all its subsidiaries and organizations. According to the content of this document, the objectives are set in the sphere of occupational and industrial safety: creation of safe working conditions and preservation of life and health of employees of the company; ensuring reliable operation of the hazardous production facilities; and reduction of the risk of accidents at the HPF. Another example of local rule-making is the "Unified Occupational and Industrial Safety Management System in Gazprom, OJSC" standard of Gazprom, OJSC [5]. This standard is widely used at the enterprises of the Gazprom group. The practice of local rule-making in the sphere of industrial safety should be mentioned since it allows for more efficient provision of industrial safety at the level of a certain organization, and, moreover, contains higher requirements to ensuring industrial safety as compared to those established in the laws.

It is also practical to dwell on the legal analysis of the judicial practice relating to settlement of disagreements between the producing companies and the authorized state bodies in connection with compliance with industrial safety requirements.

So, an application of the drilling company for cancellation of the ruling on bringing to administrative liability was the judicial matter [6]. As indicated in the court's decision, the Rostekhnadzor department performed an inspection of compliance of the executed work and the construction materials used for the capital construction project — the prospect well, and the results of this work with the requirements of technical regulations, other normative legal acts and the design documentation. Relations with regard to construction of the well were regulated by a contractor agreement between the customer and the drilling company. The inspection revealed numerous violations that were classified by the administrative authority as a violation of industrial safety requirements as provided for by Article 9.1 of the Code of Administrative Offenses. The following was mentioned among the revealed violations: operation of pressure gauges on the air collectors with the expired mark of state inspection; expired certificates for the "Well Control. Well Management in Gas, Oil and Water Flow" course of the driller and the assistant driller; lack of registration of the hazardous production facility (drilling rig). Therefore, the drilling company and the customer violated the requirements imposed on both the equipment and the personnel. The court concluded that the requirements of the Federal Law "On Industrial Safety of Hazardous

Production Facilities", the Safety Rules in the Oil and Gas Industry, and other normative legal acts were violated. The claimant (the drilling company), in its turn, referred to the fact that the administrative authority violated the procedure for performance of inspections established by Federal Law No. 294-ФЗ dd. December 26, 2008, but the court did not accept these arguments. According to the appellate court, the inspection is one of the possible resources for obtaining information on the offense. In the course of its performance, it is possible to detect violations committed by persons, for which no inspection has been performed. The court pointed out that the Rostekhnadzor body actually inspects certain facility rather than the subjects registering all violations revealed at a particular facility. Therefore, the administrative authority shall check all revealed violations, submit the information to other supervisory bodies, or respond at its own discretion given it has relevant powers.

Based on the above, it is possible to come to the following conclusions. Currently, the system of legal groundwork for industrial safety of the hazardous production facilities in the oil and gas industry relating to production is still being formed.

The requirements to the producing companies extend to the entire "life cycle" of the relevant hazardous production facilities including design, construction, reconstruction, operation, decommissioning, and emergency situations. These requirements include the need to identify the production facility according to the hazard class, to obtain a declaration of safe industrial practices, and to submit the collected data to Rostekhnadzor to register the facility in the register of hazardous production facilities.

The norms of industrial safety also relate to the requirements to the personnel working at the producing facility. These requirements are differentiated depending on the specific character of a particular method of oil or gas production and use of complex, hazardous equipment, and they are usually expressed in the requirement pursuant to which the workers shall have relevant skills and knowledge.

The federal laws and subordinate acts adopted in elaboration thereof are aimed both at ensuring industrial safety in the oil and gas sector as a whole and at ensuring industrial safety of specific activities: at offshore oil and gas facilities, oil production by the mining method.

Herewith, it should be noted that at present, there is potential for development of legal regulation in the sphere of industrial safety. It refers to development of hydrocarbon raw materials in the Arctic zone. Business activities in the Arctic region shall be performed with due account for the importance of preserving its fragile ecosystem as well as for the difficult climatic conditions of this region. The requirements to industrial safety of oil and gas production facilities in the Arctic region shall be increased to ensure an adequate level of safety of the personnel, the environment and property of the producing companies. In view of the foregoing, it is possible to propose amendments to the regulatory framework or to adopt a relevant subordinate legal act establishing higher requirements and, most importantly, taking into account the specific nature of development of energy resources in the Arctic region. ■

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