

COMPENSATION FOR DAMAGE TO HIGHWAYS CAUSED BY CONSTRUCTION OF GAS MAINS

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Legal studies have been conducted on various aspects of legal regulation of construction of energy facilities. At the same time, many aspects are still worth looking at and being studied for the purpose of legal regulation improvement. Gas mains are being constructed in every part of Russia. The construction process generally requires a lot of equipment, materials and common mineral resources (sand, crushed stone, etc.). Heavy and/or large vehicles are often used to deliver them to the construction site. Considering this, construction of gas mains increases the load on highways.

In accordance with Article 31, Clause 14, of Federal Law No. 257, the costs of technical evaluation of highways, their reinforcement or implementation of special measures to furnish highways, highway segments, structures and utilities crossing highways with necessary facilities should be reimbursed by the party to the benefit of which transportation by specific vehicles is performed. This article addresses the question of who this party is in construction of gas mains and who should bear the above expenses, describes a correlation between the regulations establishing requirements for reimbursement of expenses for technical evaluation of highways and the regulations establishing the obligation to compensate for damage caused by heavy vehicles.

Keywords: energy law; legal regulation of construction of gas mains; compensation for damage to highways caused by construction of gas mains.

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stone, etc.). Heavy and/or large vehicles are often used to deliver them to the construction site. Considering this, construction of gas mains increases the load on highways.

Federal Law No. 257 On Roads and Road Activities in the Russian Federation, and Introduction of Amendment to Specific Laws of the Russian Federation dated November 8, 2007 (hereinafter referred to as Federal Law No. 257) established uniform legal grounds for

activities related to highway design, construction, modernization, repair, maintenance, use, and management.

Article 5 of Federal Law No. 257 contains a classification of Russian highways. Depending on their purpose, highways are divided into federal, regional or inter-municipal, local, and private.

According to Federal Law No. 257 dated November 8, 2007:

A large vehicle means a vehicle the dimensions of which with or without load exceed the allowable dimensions established by the Government of the Russian Federation (Article 3, Clause 18, of Federal Law No. 257);

A heavy vehicle means a vehicle with empty or laden weight and/or axle load exceeding the allowable vehicle weight and/or allowable axle load established by the Government of the Russian Federation (Article 3, Clause 17, of Federal Law No. 257).

According to Article 29, Clause 1 (2), of Federal Law No. 257, movement of heavy vehicles with empty or laden weight and/or axle load exceeding the allowable vehicle weight and/or allowable axle load by more than 2%, and/or of large vehicles and vehicles transporting hazardous cargo without special permits on highways, as well as movement of vehicles with a plated weight exceeding 12 tons on federal public highways is not allowed without paying a fee in compensation of damage to federal public highways caused by such vehicles.

As stated in Article 31, Parts 1 and 2, of Federal Law No. 257, movement of large vehicles and/or heavy vehicles with empty or laden weight and/or axle load exceeding the allowable vehicle weight and/or allowable axle load by more than 2% on highways is allowed under special permits.

To obtain a special permit, one must have the route of a heavy and/or large vehicle or a vehicle transporting hazardous cargo approved.

The procedure for issuing special permits is established by a government agency authorized by the Government of the Russian Federation (Article 31, Clause 9, of Federal Law No. 257).

Currently, this procedure is established by:

Order of the Ministry of Transport of the Russian Federation No. 167 on Approval of the Procedure for Issuing a Special Permit for Movement of Heavy and/or Large Vehicles on Highways, dated June 5, 2019; [3]

Order of the Ministry of Transport of the Russian Federation No. 119 on Approval of the Vehicle Weight and Dimension Control Procedure, Including Arrangement of Vehicle Weight and Dimension Control Stations, dated March 29, 2018; [4]

Order of the Ministry of Transport of the Russian Federation No. 90 on Approval of the Procedure for Establishment of a Fixed Route for Heavy and/or Large Vehicles, dated March 12, 2018; [5]

Order of the Ministry of Transport of the Russian Federation No. 107 on Approval of the Administrative Policy of the Federal Road Agency on Rendering State Services Associated with Issue of Special Permits for Movement of Vehicles Transporting Heavy and/or Large Cargo on Highways, if the Route or a Part of the Route of the Vehicle Runs via Federal Highways, Segments of Federal Highways, or Two or More Constituent Territories of the Russian Federation, or Crosses the Russian Border, dated March 28, 2013. [6]

The procedures for compensation for damage caused by heavy vehicle and determination of the extent of such damage are established by the Government of the Russian Federation.

From February 1, 2020, the document regulating these procedures is Decree of the Government of the Russian Federation No. 67 on Approval of the Rules of Compensation for Damage Caused by Heavy Vehicles, Amendment and Repeal of Specific Regulations of the Russian Federation dated January 31, 2020. [7] Decree of the Government of the Russian Federation No. 67 of January 31, 2020, superseded Decree of the Government of the Russian Federation No. 934 on Compensation for Damage Caused by Vehicles Transporting Heavy Cargo on Highways of the Russian Federation dated November 16, 2009, and Decree No. 590 on Certain Issues of Determination of the Extent of Damage Caused by Vehicles Transporting Heavy Cargo on Highways of the Russian Federation dated June 28, 2016, as amended.

Payment and collection of charges in compensation for damage is arranged by the Federal Road Agency, Russian Highways State Company, executive bodies of constituent territories of the Russian Federation, local authorities, owners of private highways with

respect to their respective segments of highways within the route of a vehicle.

Damage should be compensated by the owner (proprietor) of the heavy vehicle (Article 31, Clause 6 (2), of Federal Law No. 257).

Therefore, considering that the compensation for damage is paid by the heavy vehicle owner, these costs should be included in the price of the general contractor agreement for gas mains construction. Costs are estimated at the stage of development of design estimates and detailed design documents based on the required number of trips of heavy vehicles, the purpose of the highways along the route and the distance.

Sometimes, in accordance with Article 31, Clause 14, of Federal Law No. 257, movement of a vehicle transporting hazardous, heavy and/or large cargo may require a technical evaluation, reinforcement of highways or implementation of special measures to furnish highways or segments thereof with necessary facilities.

The procedure for highway technical evaluation is established by Order of the Ministry of Transport of the Russian Federation No. 150 On the Highway Technical Evaluation Procedure dated August 27, 2009 [8].

There are also cases when the vehicle (road train) weight with or without load exceeds the actual load capacity of artificial structures along the route of the heavy vehicle.

If a technical evaluation of highways is needed, highway owners, upon receipt of a request from the authorized body, submit information on the need to conduct a technical evaluation of the highways or segments thereof and the expected cost of the evaluation to the body.

The authorized body informs the vehicle owner about it to obtain their consent to conduct a technical evaluation of the highways or segments thereof and pay the expenses.

At the same time, in accordance with Article 31, Clause 14, of Federal Law No. 257, it is the party to the benefit of which transportation by the vehicle is performed who is to pay for the technical evaluation of highways, their reinforcement or implementation of special measures to furnish highways, highway segments, structures and utilities crossing highways with necessary facilities. Expenses are reimbursed before obtaining a special permit. Furthermore, the compensation is paid to the legal entities and

sole proprietors that conduct the evaluation and implement such measures.

In construction of gas mains, the party to the benefit of which the transportation is performed is usually an investor rather than the vehicle owner.

The highway technical evaluation results show whether movement of heavy and/or large vehicles along the proposed route is possible, what the conditions of such movement are like, whether reinforcement of highways or special measures to furnish highways or segments thereof with necessary facilities are needed and how much these measures will cost.

If special measures to furnish highways or segments thereof with necessary facilities are required, the vehicle owner submits its consent to implement them to the authorized body.

Time and conditions of highway reinforcement and/or implementation of special measures to furnish highways or segments thereof with necessary facilities are determined depending on the scope of work to be performed by the owners of the highways, structures and utilities crossing highways.

As mentioned above, the expenses incurred by legal entities and sole proprietors while reinforcing highways or implementing special measures to furnish highways or segments thereof with necessary facilities are reimbursed by the party to the benefit of which the transportation is performed (Article 31, Clause 14, of Federal Law No. 257).

Following the technical evaluation of highways or segments thereof and/or reinforcement of highways, or implementation of special measures to furnish highways or segments thereof with necessary facilities, the highway owners submit an approval of the proposed route of heavy and/or large vehicles and an estimate of the amount charged for damage to the highways caused by heavy vehicles to the authorized body.

Thus, considering that the party to the benefit of which the transportation is performed is to pay for the highway technical evaluation, their reinforcement or implementation of special measures to furnish highways, segments thereof, or structures and utilities crossing highways with necessary facilities, these costs are not included in the general contractor agreement for gas mains construction.

A three-party agreement may be entered into, under which one party performs the reinforcement

of highways and/or implements special measures to furnish highways or segments thereof with necessary facilities (the contractor), the highway owners are responsible for acceptance of the activities performed, and the party to the benefit of which the transportation is performed (the investor) reimburses the expenses incurred by the contractor.

The rules of using private highways are determined by owners and proprietors thereof in accordance with this Federal Law, other federal laws and other regulations of the Russian Federation, laws and other regulations of the constituent territories of the Russian Federation, municipal regulations (Article 27, Clause 3, of Federal Law No. 257).

If a private highway is to be used, a special permit is issued by the highway owner (Article 10, Clause 7, of Federal Law No. 257).

The issue of collection of any charges for issuing special permits by private highway owners still lacks regulation.

In practice, an agreement is entered into directly with the highway owner and may include either monetary compensation for damage to the highway or performance of highway restoration activities.

According to Article 31.1, Clause 1, of Federal Law No. 257, movement of vehicles with a plated weight exceeding 12 tons on federal public highways is allowed subject to compensation for damage to the highways caused by such vehicles.

The vehicle plated weight means the weight of an equipped vehicle including the cargo,

driver, and passengers in kilograms stated as the maximum permissible weight in the vehicle data sheet (vehicle registration certificate), in the vehicle type approval, or in the vehicle safety certificate (Article 31.1, Clause 3, of Federal Law No. 257).

The vehicle owner is responsible for compensation for damage (Article 31.1, Clause 6, of Federal Law No. 257).

The amount of and procedure for compensation for damage to highways caused by vehicles with a plated weight exceeding 12 tons are established by the Government of the Russian Federation (Article 31.1, Clause 8, of Federal Law No. 257).

The documents establishing this procedure and amount is Decree of the Government of the Russian Federation No. 504 on Collection of Charges in Compensation for Damage to Federal Public Highways Caused by Vehicles with a Plated Weight Exceeding 12 Tons, dated June 14, 2013 (along with the Rules of Collection of Charges in Compensation for Damage to Federal Public Highways Caused by Vehicles with a Plated Weight Exceeding 12 Tons). [9]

Therefore, considering that the compensation for damage is paid by the vehicle owner, these costs should be included in the price of the general contractor agreement for gas mains construction. Costs are estimated at the stage of development of design estimates and detailed design documents based on the required number of trips of vehicles with a plated weight exceeding 12 tons on federal public highways and the distance. ■

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