Rodnik Legal Center

IPY Project:

Monitoring of Development of Traditional Indigenous Land Use Areas in the Nenets Autonomous Okrug,
Northwest Russia

LEGISLATIVE REQUIREMENTS FOR THE OIL AND GAS INDUSTRY AND PROTECTION OF THE RIGHTS OF INDIGENOUS NUMERICALLY SMALL PEOPLES OF THE NENETS AUTONOMOUS OKRUG

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Introduction

The purpose of the present work is the review and the analysis of legislative and statutory acts related to oil and gas extraction in the territory of the Nenets Autonomous Okrug (NAO). The main focus of this work is based on questions concerning requirements and obligations which should be carried out by the oil and gas extraction companies, regarding the interests and the rights of indigenous peoples (INSPN) [2] as well as the preservation of the environment.

Considering the above named questions it was also necessary to investigate acts for the exploitation of oil and gas resources, the procedure of allocation of subsoil resources, the rights of the indigenous people living in this area, and also requirements imposed on the oil and gas extraction companies in connection with the preservation of the environment.

Without studying these questions it is impossible to estimate, whether the individual activities of extracting of oil and gas in the NAO are lawful, whether the rights of INSPN are violated by the procedures of rendering permissions or by the realization of activities.

There is another problem which deserves mentioning: A number of rights of indigenous peoples defined by the legislation have a general declarative character, and they are lacking to define the duties of the resource extractors to preserve these rights. At the same time, applying positions of clauses 2 and 18 of the Constitution of the Russian Federations defining the validity of human rights, it is probably possible to achieve enforcement and observance of indigenous peoples' rights by means of the Office of Public Prosecutor and through legal proceedings. Questions concerning the practice of protection of these rights, however, are outside of the scope of this study.

[2] INSPN: Indigenous numerically small peoples of the North

I. General questions

1. Rights of INSPN to conduct a traditional way of life and protection of their primordial residence area

The Russian Federation according to Clause 69 of the Constitution of the Russian Federation "…guarantees the rights of numerically small indigenous peoples according to the conventional principles and norms of international law and the international contracts of the Russian Federation". The protection of the primordial inhabitancy and a traditional way of life of indigenous numerically small ethnic communities according to item "m" of Clause 72 is to be carried out jointly by the Russian Federation and the subjects of the Russian Federation.

In the Russian Federation 3 Federal Laws are completely devoted to questions on rights of INSPN:

- The Federal Law of April, 30th, 1999 N 82-FZ "On guarantees of the rights of numerically small indigenous peoples of the Russian Federation" (with changes of 22 August 2004, 26 June 2007);
- The Federal Law of 20 July 2000, N 104-FZ "On the general principles of organizing communities of numerically small indigenous peoples of the North, Siberia and the Far East of Russian Federation" (with changes of 21 March 2002, 22 August 2004, 2 February 2006);
- The Federal Law of 7 May 2001, N 49-FZ "On Territories of Traditional Nature Use of numerically small indigenous people of the North, Siberia and the Far East of Russian Federation" (with changes of 26 June 2007).

Besides, a number of acts contain positions, which define the special status of INSPN, related to the protection of their traditional way of life and primordial inhabitancy.

Thus, like for instance, "traditional places of residence and economic activities of numerically small indigenous people of the Russian Federation" are under special protection according to Part 3 of Clause 4 of the Federal Law of 10 January 2002, N 7-FZ "On protection of the environment".

The list of the rights awarded to representatives of INSPN, which could be used in their relationships with the oil and gas enterprises, is defined in the Federal Law of 30 April 1999, N 82-FZ, ”On guarantees of the rights of numerically small indigenous peoples of the Russian Federation”.

Clause 8. The rights of numerically small peoples, associations of numerically small peoples and persons belonging to them, to protection of their primordial inhabitancy, traditional ways of life, trades and crafts:

1. Numerically small peoples, associations of numerically small peoples with the aim of protection of their primordial inhabitancy, traditional ways of life, trades and crafts have the right:

1) to use gratuitously the grounds of various categories in places of traditional nature use and economic activities of numerically small peoples, which are necessary to practise their traditional trades and crafts, and common subsoil resources, as established by the federal legislation and the legislation of the subjects of the Russian Federation;
2) to participate in controlling the use of the grounds of various categories necessary for practising traditional trades and crafts of numerically small peoples, and common minerals in places of traditional nature use and economic activities of numerically small peoples;
3) to participate in controlling the observance of Federal Laws and laws of the subjects of the Russian Federation on the protection of the natural environment at industrial use of the grounds and natural resources, on construction and reconstruction of economic and other objects in the traditional places of residence and economic activities of numerically small peoples;
6) to participate in carrying out ecological and ethnologic assessments by developing federal and regional state programs of natural resource development and protection of the natural environment in places of traditional residence and economic activities of numerically small peoples;
8) on the indemnification for losses, caused to them as a result of damage to Territories of Traditional Nature Use by economic activities of organizations of all types of ownership, as well as physical persons.

According to the Federal Law "On guarantees of the rights of indigenous numerically small peoples of the Russian Federation" in the edition of 22 August 2004 and of 26 June 2007, authorities of the subjects of the Russian Federation have no powers to pass acts in the field of protection of rights of INSPN. Nevertheless, these questions at the level of the Nenets Autonomous Okrug (NAO) are regulated by federal legislation, and also by legislative acts of the NAO, devoted law relations, for example, the Law of NAO of 29 December 2005, N 671-OZ "On regulation of land issues on the territory of the Nenets Autonomous Okrug", the Law of the NAO of 2 June 2003, N 416-OZ "On Subsoil resources", the Law of the NAO of 15 March 2002, N 341-OZ "On reindeer husbandry in the Nenets Autonomous Okrug".

According to Part 4 of Clause 17 of the Law of the NAO of 15 March 2002, N 341-OZ "About reindeer husbandry in Nenets Autonomous Okrug", "… the persons, working in reindeer husbandry, their authorized representatives and representatives of the social movement 'Association of Nenets People Yasavey' have the right to put forward requests of carrying out ecological and ethnologic impact assessments of economic and other activity infringing interests of reindeer husbandry and to participate in carrying out of the given impact assessments".

2. Territories of traditional land use and oil and gas exploitation

One of the ways of protecting traditional way of life and primordial inhabitancy of INSPN are Territories of Traditional Nature Use (TTNU). Their concept, as well as the procedures of establishing and managing them are regulated by the Federal Law of 7 May 2001, N 49-FZ "On Territories of Traditional Nature Use of indigenous numerically small peoples of the North, Siberia and the Far East of the Russian Federation" (with changes from 26 June 2007).

According to Clause 1 of this law TTNU of INSPN are especially protected natural territories established for INSPN to practise traditional nature use and conduct a traditional way of life. According Clause 5 these TTNU can be at a federal, regional or local level.

Clause 12 of the law defines the procedure of withdrawal for state or municipal needs of the lands and other, individual natural objects, which are situated within the limits of TTNU obligatorily be granted to INSPN and their communities, as well as the indemnification for losses caused by such withdrawal.

As TTNU are especially protected natural territories, a special legal regime is established within their boundaries, which includes a limitation of carrying out economic activities, which contradict the purposes of the creation of such territories. The legislation of the Russian Federation does not contain an obvious interdiction of carrying out activities related to investigation, extraction and transportation of oil and gas, but in the Law of the Russian Federation "On Subsoil resources" , Clause 8, is defined that "using of subsoil resources in especially protected territories should take place in accordance with the status of these territories". Thus, in cases where the Regulations for TTNU contain an interdiction to carry out oil and gas activities within their borders, subsoil resourcess cannot be allocated to these purposes.

The procedures of formation and managing TTNUs at a regional level within the territory of the Nenets Autonomous Okrug is regulated by "Regulations of Territories of Traditional Nature Use of indigenous numwerically small peoples of the North in the Nenets Autonomous Okrug", approved through the Decree of Administration of the Nenets Autonomous Okrug of 29 December 2001, N 1025.

Besides this, a number of regulations of the Laws of NAO of 29 December 2005, N 671-OZ "On regulation of land issues on the territory of the Nenets Autonomous Okrug" and from 2 June 2003, N 416-OZ "On Subsoil resources" also mention this question.

Part 2 of Clause 28 of the Law of NAO "On regulation of land issues on the territory of the Nenets Autonomous Okrug" repeats regulations of the Federal Law "On Territories of

Traditional Nature Use". It also describes the procedures for land allocations, for use and protection of the TTNU of regional level, the procedures of nature use in the specified territories and their borders established by the Administration of the NAO according to federal legislation, as well as present and other laws of the NAO.

Part 6 of Clause 29 states that "withdrawal of the lands or other termination of rights to the lands for needs contradicting their special-purpose designation within the limits of the especially protected natural territories, is not accepted". In this part, the Law of NAO contradicts the above-mentioned Clause 12 of the Federal Law "On TTNU", which provides an opportunity of such withdrawal.

At the present time, there are established a number of TTNU on the territory of the NAO, through regulations approved by the Administration of NAO in 2002. Among them are TTNU of regional level "im. Vyucheyskiy", "Erv", "Rassvet Severa", "Kolguev" and about at least four oher TTNU. All territories are created with the purposes of protection of the rights and legitimate interests of INSPN in Nenets Autonomous Okrug, the preservations of their culture, traditional way of life and traditional economic activities. But none of these regulations contains a precise list of what is forbidden within the borders of the TTNU.

Despite of this, all normative-legal acts are limiting the possibilities of conducting oil and gas activity within the limits of TTNU, in line with especially protected natural territories. It is therefore necessary to use TTNU as the mechanism for the preservation of primordial inhabitancy and traditional way of life of INSPN in the NAO.

3. General questions of legislation on mineral exploitation

Questions concerning the exploitation of subsoil resources, including extracting of oil and gas, are basically regulated by the Federal Law “On Subsoil resources”. Besides this, more specific questions are in part regulated by the Land, Forest and Water Codes of the Russian Federation, as well as by the Federal Law ”On protection of the environment”, “On ecological impact assessment” and a number of subordinate acts.

Subsoil resources within the borders of the Russian Federation, including the subsurface space and its mineral, power and other resources, are subject to state ownership. Private or municipal property of subsoil resources is not approved.

As the exploitation of subsoil resources performs joint activities in the Russian Federation and its subjects, there are laws and subordinate acts at the regional level regulating questions of the exploitation of subsoil resources, including the extraction of oil and gas. In 2003 the Law of Nenets Autonomous Okrug “On Subsoil resources” was passed, which underwent several changes in 2005 and 2006.

Clause 35 of the Federal Law “On Subsoil resources” defines as the primary goals of state regulation of the exploitation of subsoil resources, the continuous reproduction of the mineral and raw material base, its rational use and protection of subsoil resources in the interest of present and the future generations of the people of the Russian Federation.

According to Clause 6 of the Federal Law “On Subsoil resources”, subsoil resources are objects of investigation and extraction of minerals, including waste mining and the related processing procedures; construction and operation of underground structures, which are not related to the extraction of minerals, is one of the ways of using such resources.

Subsoil resources can simultaneously be appointed for geological studies (research, investigations) and mineral extractions. Extraction can then be carried during or after the geological studies.

II. Regulation of mineral exploitation and indigenous rights in the NAO during the stage of allotment of exploitation sites

4. The process of allotment of exploitation sites

Clause 10.1. The law of the Russian Federation "On subsoil resources" defines the legal basis for user's rights of subsoil resource sites, i.e. the fundamentals of allotting subsoil resource sites to their users. Such fundamentals are decisions of the supreme bodies of authorities of the Russian Federation or subjects of the Federation. Depending on the kinds of subsoil resources they are approved by the Government of the Russian Federation or the subordinate authorized bodies. In particular, for extraction of minerals on subsoil resource sites of domestic sea waters, the sea territory and the continental shelf, the decision of the Government of the Russian Federation is necessary. "Marine" subsoil resource sites for the purpose of geological investigations are approved through federal bodies the State Subsoil Resource Fund. On subsoil resource sites of local level and common minerals the decision is approved by the government bodies of the subjects of the Russian Federation.

The right to use subsoil resources occurs on the following preconditions:

- the decision of a commission, created by Federal controls of the State Subsoil Resource Fund; representatives of the enforcement authority of the corresponding subject of the Russian Federation join complimentarily into the framework for consideration of applications for user rights of subsoil resource sites;
- the decision of the competition or auction commission concerning the granting of user rights for subsoil resource sites, for the purpose of investigating and extracting minerals, or for the purposes of geological studies of subsoil resource sites, investigation and extraction of minerals (under a combined license), with the exception of subsoil resource sites of internal sea waters, the territorial sea and the continental shelf of the Russian Federation;
- the coming into force of a consortium agreement on division of production, concluded in accordance with the Federal Law "On Consortium Agreements on Division of Production".

Permission to take subsoil resources into use is granted by a special state sanction in the form of a license containing a form sheet with the State Emblem of the Russian Federation, as well as text, graphics and other appendices. The latter is an integral component and defines basic conditions for using subsoil resources. The order of issuing licenses for the exploitation of subsoil resources is defined in clause 11 of the Law of the Russian Federation "On Subsoil resources".

The license is the document certifying the right of its owner to use subsoil resource sites within certain borders according to the specified purpose, during a limited period of time at observance by the owner of conditions stipulated in advance. Between representatives of the government bodies and the subsoil resource user a contract can be signed (although this is not obligatory), with a description of the conditions applying to the use of such sites, and the obligations of the parties in connection with the performance of the specified contract.

The license certifies the right to geological investigations of the subsoil resources, to develop the mineral deposits, to carry out waste mining and related processing, and other sorts of exploitation of subsoil resources, which is not elated to mineral extraction. It is possible to receive one license covering several kinds of subsoil resource use.

The granting of the license for using subsoil resources is carried out at the consent of the land owner, the land user, or the tenant on allotting the corresponding ground area for the work connected with geological studies and other exploitation of subsoil resources. Allottment of the ground area for carrying out geological investigations and other exploitation of subsoil resources is carried out according to an order regulated by the legislation of the Russian Federation, after the project of carrying out the specified work has been approved.

The granting of licenses for the right of exploitation of subsoil resources is carried out through competitions or auctions. The mechanism of license granting is legislatively defined in the "Regulations on the procedure of licensing for subsoil resource users" (Decision of VS of the Russian Federation of 15 July, 1992 N 3314-1; with changes of 26 June 2007) and the "Instruction on the procedure of granting of concessions for development of gas and oil deposits" (ratified by the decision of *Gosgortekhnadzor* of the Russian Federation of 11 September 1996, N 35; with changes of 13 July 2006).

The procedure for allocation of subsoil resource sites:

- Definition of preliminary concession boundaries.

- Announcement of an auction, or competition, which allocates sites for development, is published by a special authorized body in a federal, republican, regional press, an independent press organ, and a local press organ, not later than 3 – for large objects not later than 6 – months prior to the date of the event.
- Submission of applications from the enterprises .
- Preliminary examination of applications (elimination), if an auction will be carried out. For competitions a preliminary expert examination is not conducted.
- After acceptance of the application form for participation in a competition the geological information package on a subsoil resource site of interest is given to the applying enterprise.
- On the basis of the geological information the applying enterprise when due hereunder develops and informs on the basic technical and economic parameters of carrying out the work related to the planned development of the subsoil resource.
- Carrying out of the auction or competition by a commission of experts. Decision of auction or competition.
- Decision of the authorities on the allocation of the subsoil resource site on the basis of decisions of the expert commission of the auction or competition.
- Outline and statement on the technical recultivation, restoration of the land within the borders of the plot area (preliminary agreement). Allocation of the plot area in accordance with the Land Code of the Russian Federation.
- Carrying out of a state ecological impact assessment of the materials substantiating the license.
- Licensing to the winner of competition or auction.
- Registration of the license in federal or territorial geological funds (within a month from the moment of its receipt). The license comes into force after its registration.
- Authorities are obliged to publish in the media lists of all enterprises participating in competitions or auctions, a list of the enterprises which have received licenses, and also conditions on which licenses have been given. The specified data should be published not later than 30 days from the date of decision on the results of a competition or an auction.
- Specification of concession boundaries.
- Outline of the resource exploitation project, other project documentation.
- Exploitation of the resource

These procedures of resource exploitation in the NAO are regulated by the Law of the Nenets Autonomous Okrug from 2 June 2003, N 416-OZ "On Subsoil resources". According to a preamble of this law:

"The major task of the law is the establishment of relationships directed towards hte rational exploitation of subsoil resources, nature protection norms and environmental safety, a combination of the exploitation of subsoil resources and the preservation of the traditional way of life of the indigenous peoples of the North".

The law regulates the procedure of allocating subsoil resource sites for exploitation, the exploitation itself, and the procedures of termination of the resource exploitation, defining details of the terms of the federal legislation. According to our investigations the specified law (clause 35) includes special duties of the license owner (subsoil resource user):

- - to follow up the conditions described by the license and the license agreement (contract) on the right of subsoil resource use, the agreement on division of production and other agreements (contracts) concluded on their basis, including the agreements with indigenous peoples of the North;
- - to exploit a subsoil resource site with respect to the rights of indigenous people of the North to protection of their primordial inhabitancy, traditional way of life and occupations.

Thus, the law among other obligations demands the observance of the interests of INSPN during the exploitation of resources.

5. The process of allotting ground for investigation, extraction and transportation of oil and gas. Conditions and restrictions

According to item 4 of Clause 88 of the Land Code of the Russian Federation, paragraph "Industrial areas", ground areas for the development of minerals are given to mining and oil and gas companies after registration of the concession boundary and the statement on land recultivation and restoration subsequent to exploitation.

Thus, the obligation to restore and recultive grounds damaged during oil and gas extraction is legislatively established.

Clause 29 of the Land Code of the Russian Federation stipulates that allotting ground of state or municipal ownership to citizens and legal persons, is carried out in accordance with government agencies or local self government bodies, which possess the allotment rights within the limits of their competence.

Extracting subsoil resources presumes the construction of various objects. The Land Code of the Russian Federation regulates the questions of allocation of the ground areas for constructions. Part 3 of Clause 31 of the Land Code of the Russian Federation says:

> "3. When allotting ground areas in places of traditional nature use and economic activities of indigenous peoples of the Russian Federation and ethnic communities for purposes, which are not connected with their traditional economic activities and traditional crafts, one should organize meetings and public referenda concerning withdrawal – including repayment – of the ground areas for state or municipal needs and allotting the ground areas for the construction of objects, which infringe the interests of the specified peoples and communities.
>
> The executive government or local government bodies assigned by Clause 29 of the Land Code, are responsible for the preliminary coordination in locating the objects in accordance with the results of such meetings or referenda."

The procedures for carrying out such referenda and meetings are regulated by special federal and regional legislation.

Peculiarities of ground relations in connection with the allotment of grounds for constructions and locatings of objects, the work connected with subsoil resources extraction, and also peculiarities of the legal regime on areas of traditional nature use and economic

activities of INSPN, are regulated by the Law of NAO from 29 December, 2005, N 671-OZ "On regulation of land issues on the territory of the Nenets Autonomous Okrug".

This law establishes the following procedures of allotting ground areas for constructions and locating of work connected with subsoil resource use.

Clauses 19 and 21 state that for the allotment of ground areas for constructions and locating of objects, work connected with subsoil resource extraction, and also for carrying out prospecting in state lands of the Nenets Autonomous Okrug, it is necessary to present:

- an approved plan for the recultivation the grounds;
- the consent of the main land user (tenant), and in the case of legal necessity, the consent of the representatives of the INSPN or ethnic communities, including tribal communities, for the withdrawal of the grounds.

Part 3 of Clause 21 of the mentioned Law of NAO relates to the decision of the Administration of Nenets Autonomous Okrug on allotting ground areas for carrying out prospecting works, including the duties of the tenant to re-establish the ground conditions in a way suitable for their assigned use, to perform necessary recultivation, and other conditions stipulated by the current legislation.

For carrying out prospecting works, ground areas are given in rent for the term of not more than one year.

Clause 22 of the given law also establishes restrictions and an interdiction on allotting grounds for construction and accommodation of objects and work related to the exploitation of subsoil resources. The ground areas are not allotted in such cases, where their planned use forms a direct threat towards environmental safety of the population or the land, or towards preservation and development of the traditional way of life and economic activities of INSPN.

Clause 29 of the given Law of NAO states the general rules of allotments and use of grounds in places of traditional nature use and economic activities of INSPN. It contains the following main provisions:

- the regulation of use and protection of the grounds in places of traditional nature use and economic activities of INSPN is differentiated according to a zoning of territories, and should be compatible with the customs of people in question, and not create obstacles for their activities;
- in places of traditional nature use and economic activities of INSPN in the territory of Nenets Autonomous Okrug a special legal regime of land use can be established;

- when allotting ground areas in places of traditional nature use and economic activities of INSPN and ethnic communities for purposes not related to their traditional economic activities and traditional crafts, the opinion of these peoples (communities) is to come to light through public referenda concerning the withdrawal of the ground areas for state or municipal needs and the construction of objects, which infringe the interests of the mentioned peoples and communities.
- conditions for the allotment of ground areas in places of traditional nature use and economic activities of INSPN should provide compensations for all losses caused by the withdrawal of these areas. The size of the specified losses is defined by an agreement between the parties and is calculated according to regulations established in the current legislation;
- when allotting ground areas in places of traditional nature use and economic activities of INSPN and ethnic communities, an agreement can be entered between proprietors of the ground areas, land owners, land users, tenants, and persons to whom the ground areas are allotted, or in favour of which the user rights are restricted, about indemnification of the losses connected with damage, pollution, unauthorized autocratic use, or other infringement of the rights of the mentioned peoples and communities. The size of compensation is defined in the agreement.

Thus, the legislation of the Russian Federation and the NAO provides obligations to coordinate with INSPN the allotment of the ground areas for purposes, which are not connected with conducting a traditional way of life, and also the necessary conditions concerning compensations and indemnifications of the resulting losses of INSPN.

6. Problems concerning state assessment

State Environmental Assessment

The basic mechanism of environmental preservation, which was used in Russia until 1 January 2007 in order to prevent the negative influence on the environment, was the State Environmental Assessment. Practically of all kinds of economic activities were subject to the State Environmental Assessment (SEA).

Since 1 January 2007, after a modification of the Federal Law of 18 December 2006, N 232-FZ, "On modification of the Town-planning Code of the Russian Federation and separate acts of the Russian Federation" (with changes of 8 November and 4 December 2007) the role of the SEA is considerably reduced.

Before the specified law came into force the concept of environmental assessment included "an establishment of the conformity of the planned economic and other activity with environmental requirements and a definition of the admissibility of the realization of the object of the environmental assessment, with an outlook on the prevention of possible adverse influences of this activity on the surrounding environment and the social, economic and other consequences of the realization of the object of the environmental assessment".

From 1 January 2005 this concept sounds "an establishment of the conformity of the documents and/or the documentation proving that the planned object of the environmental assessment of economic and other activity, with the environmental requirements established by technical regulations and the legislation in the field of environmental protection, with an outlook on the prevention of negative influences of such activity on the environment".

When comparing these definitions some major main differences can be seen. First, the subject of the assessment since 1 January 2007 are not the economic activities, but the documents and the documentation of the assessment. Second, all social, economical and other consequences of the realization of the economic activities disappear from the purposes of the assessment. Third, and this is most important, from this moment it is necessary that technical regulations coincide with the environmental requirements. As of today, no technical regulations on the maintenance of environmental safety exist (under planning by the Government of the Russian Federation, such rules cannot be developed earlier than in 2008). One more difference is that now the environmental assessment does not urge the decision on the admissibility or inadmissibility of planned economic activities, but it only controls the conformity with the environmental requirements.

The law has brought changes into a significant number of federal laws, including "On environmental assessment", "On protection of the environment", "On the protection of Lake Baikal", "On an exclusive economic zone", "On fauna", "On protection of population and territories against extreme situations of natural and technogenic character" (hereunder project documentation for nuclear energy use) and a number of others, which are not related to habitation.

From all specified laws the norms stating the necessity of carrying out a State Environmental Assessment for various objects were removed, and replaced by a State Expert Appraisal of the project documentation provided by the Town-planning Code.

Despite of these changes, licenses for subsoil resource utilization are subject to SEA. Clauses 11 and 12 of the Federal Law "On environmental assessment" state that licenses for activities which can affect the environment are subject to both the SEA of federal level, and the SEA of regional level**.**

Clause 14 contains a list of necessary conditions for the carrying out of the SEA. One of such conditions is the presence of an estimation of the impact on the surrounding environment through the economic and other activities which are subject to the SEA, and also a documentation of discussions with the public and public organizations (associations) organized by local government institutions.

In this way, a SEA should precede the granting of a licence for the development of oil and gas projects. Representatives of INSPN have the opportunity to participate in the estimation of the environmental impact (EEI) as well as directly in the SEA.

State assessment of the project documentation

As a result of changes in the Town-planning Code of the Russian Federation, which have come into force on 1 January 2007, oil and gas development projects are subject to state assessment.

In the Town-planning code of the Russian Federation, Clause 49, the legislator defines the objective of state assessment of the project documentation and results of technical investigations: an assessment of conformity of the project documentation with requirements of technical regulations, including sanitary, epidemiologic and environmental requirements, requirements of cultural heritage protection, requirements of fire, industrial, nuclear, radiation and other safety, as well as results of technical investigations, and an assessment of conformity of results of technical investigations with requirements of technical regulations.

As it was noticed above, technical regulations in the field of environmental protection are absent. It is thus quite possible that the environmental assessment will not be carried out at all.

It is also necessary to note that in Clause 48, Item 12 of the Town-planning Code, in the framework of project documentation for the state assessment, the estimation of environmental impact (EEI) is not mentioned. There is only a list of measures concerning the protection of the environment (not even the measures themselves). At the same time, Item 2 of Clause 32

about the compulsion of carrying out of EEI in view of alternative variants and with obligatory participation of the public, is excluded from the Federal Law ”On protection of the environment”.

From all this can be concluded that after exclusion of these objectives from the State Environmental Assessment, the process of EEI may not be carried out at all.

Ethnological assessment

The concept of ethnological assessment is introduced by Clause 1 of the Federal Law of 30 April, 1999, N 82-FZ, “On guarantees of the rights of numerically small indigenous peoples of the Russian Federation”. According to Item 6 of the specified clause “ethnological assessment is a scientific investigation of the influence of changes of the primordial inhabitancy of indigenous small indigenous people and the welfare situation on the development of an ethnic group”.

According to Clause 8, Part 6 INSPN have the right “to participate in the work on environmental and ethnological assessments during the process of development of federal and regional state programs for natural resources development and protection of the environment in places of traditional nature use and economic activities of indigenous peoples”.

Except for these positions, the Russian legislation contains no references regulationf the process of ethnological assessments and their status.

Despite of this, experience of carrying out ethnological assessments of oil and gas development projects exist from the Yamal-Nenets Autonomous Okrug and Sakhalin Oblast.

Clause 17, Part 4 of the Law of Nenets Autonomous Okrug from 15 March, 2002, N 341-OZ, “On reindeer husbandry in the Nenets Autonomous Okrug” states that “persons engaged in reindeer husbandry, their authorized representatives and representatives of the public movement “Association of Nenets People ‘Yasavey’ have the right to put forward proposals on carrying out environmental and ethnological assessments of economic and other activity infringing the interests of the reindeer husbandry, and to participate in carrying out these assessments”.

In spite of the fact that regulations for ethnological assessments are not clear, INSPN of the Okrug and their authorized representatives can demand that such assessments are carried out, when planned oil development projects infringe their interests.

7. Opportunities for participation of representatives of INSPN in making decisions infringing their interests

Based on the above analysis, it is possible to draw the conclusion that participation of INSPN in decision-making on the carrying out of oil and gas development projects is possible at the following stages:

1) At the stage of allocation of the ground areas by referenda, meetings and coordination with representatives of INSPN

Legislation stating these rights:

- Clause 31, Item 4 of the Land Code of the Russian Federation;
- Clauses 19, 21, 29 of Laws of NAO from 29 December 2005, N 671-OZ, "On regulation of land issues on the territory of the Nenets Autonomous Okrug"

2) At the stage of the Estimation of Environmental Impact (EEI)

As the substantiation of a license is a matter of a State Environmental Assessment, and as carrying out an EEI is obligatory according to the current legislation, participation of the public should take place as stated in the "Position on estimation of environmental impact of planned economic and other activity in the Russian Federation", approved by the Order of *Goskomekologiya* of the Russian Federation of 16 May 2000, N 372, (hereafter called Position).

This Position defines main principles of carrying out of an EEI, which include: the principle of presumption of potential harm of any planned economic activity; compulsion of carrying out EEI at all stages of preparing the documentation of this activity; compulsion of consideration of alternative variants; the principle of public participation in preparation and working at EEI at all stages, and others (section II).

Section IV of the Position describes in detail the order of informing and participation of the public during EEI, that enables citizens and public organizations of INSPN in practice to realize the rights. Practically, the EEI in our country is a unique operating mechanism of public participation in the acceptance of environmentally significant decisions. It includes:

- the duty of the customer to inform the public at all stages of the EEI and to consider their proposals, notes and comments;
- public discussions of planned activity, including public hearings;

- an opportunity of presenting of notes, proposals and comments to the customer at all stages of the public discussion.

3) At the stage of the Public Environmental Assessment (PEA)

The process of carrying out a PEA is regulated by Clauses 20-25 of the Federal Law "On environmental assessment". Main provisions of these clauses are:

- Public Environmental Assessment is organized and carried out under the initiative of citizens and public organizations (associations), and also under the initiative of local government bodies by public organizations (associations), which according to their charters work on the protection of the environment, including organisation and carrying out of environmental assessments. Public organisations must be registered according to the legislation of the Russian Federation (Clause 20);
- PEA is carried out with respect to the same objects as the subsequent or simultaneous SEA (Clauses 21, 22);
- the Public organizations (associations) which are carrying out a Public Environmental Assessment have the right (Clause 22):
  - to receive from the customer the documentation on the object of the environmental assessment, in the same form as given to the SEA;
  - to participate as observers in sessions of expert commissions of the State Environmental Assessment and to participate in concluding discussions and public discussions under the PEA carried out by them;
- PEA (Clause 23) is carried out after its registration in local government institutions;
- the number of reasons for possible refusal in registering a PEA is limited (Clause 24);
- the conclusion of the PEA is reported to the federal executive authority in the field of environmental assessment, which is carrying out the State Environmental Assessment, to the customer preparing the documentation which is subject to Public Environmental Assessment, to the bodies which decide on the realization of the project subject to environmental assessment, to the local government bodies, and can also be handed over to other interested persons (Clause 25);
- the conclusion of PEA gets validity after it has been stated by federal executive authority in the field of environmental assessment or by a government institution of an administrative unit of the Russian Federation. (Clause 25).

4) At the stage of the State Environmental Assessment (SEA)

According to Clause 19 of the Federal Law ”On environmental assessment” citizens and public organizations (associations) in the field of environmental assessment have the right

- to put forward propositions on carrying out, according to the current Federal Law, of public environmental assessment of economic and other activity, which infringes on the ecological interests of the population living in given territory;
- to direct in writing to federal executive authorities and government bodies of administrative units of the Russian Federation their substantiated suggestions on environmental aspects of planned economic and other activity;
- to be informed about assessment results by federal executive authorities and government bodies of administrative units of the Russian Federation, which are carrying out the SEA on concrete objects of environmental assessment;
- to carry out other actions in the field of environmental assessment, which are not prohibited by the legislation of the Russian Federation.

The assessment conclusions prepared by a SEA expert commission and at the decision about the realization of the given project should consider the material submitted to the SEA expert commission and reflect public opinion.

III. Relations of indigenous rights and duties of oil industry

8. Questions on environmental protection during oil and gas exploration

Preservation of the environment is a necessary requirement for oil and gas development. As the traditional way of life of INSPN is closely connected with the condition of the environment, the right to a favorable environment is stated in Clause 42 of the Constitution of the Russian Federation, for all INSPN, closely connected with the right of not? conducting a traditional way of life and protection of the primordial inhabitancy.

Questions concerning the preservation of the environment are determined in the Constitution of the Russian Federation, Federal Laws, and other statutory acts.

Clause 4 of the Federal Law of 10 January 2002, N 7-FZ, "On preservation of the environment" specifies objects of special protection alongside with the objects included in the World Heritage List, the state natural reserves, national natural parks, areas of primordial inhabitancy, places of traditional nature use and economic activities of indigenous people of the Russian Federation.

Below, excerpts of the basic legal certificates adjusting questions of environmental protection and natural resources at oil and gas exploration are listed.

General questions of environmental protection at the development of subsoil resources

The Federal Law of 10 January 2002, N 7-FZ, "On preservation of the environment"

Clause 34. General requirements of environmental protection at locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, installations and other objects:

1. Locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, constructions and other objects rendering direct or indirect negative influence on the environment, are carried out according to requirements of environmental protection. Thus actions should be carried out to secure

environmental protection and restoration, rational use and reproduction of natural resources, and maintenance of environmental safety.

2. Infringement of requirements of environmental protection entails a stop by court order of locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, installations and other objects.
3. The termination in full of locating, designing, constructing, reconstructing, commissioning, operation, preservation and liquidation of buildings, structures, installations and other objects at infringement of requirements of environmental protection is carried out on the basis of a decision y court and/or arbitral tribunal.

Clause 51. Requirements of environmental protection related to waste of production and consumption

1. Waste of production and consumption, including radioactive waste, are a subject to gathering, use, neutralization, transportation, storage and a burial place, conditions and methods shuld be safe for an environment and are adjusted by the legislation of the Russian Federation.
2. These actions are forbidden:
    - dumping of waste of production and consumption, including radioactive waste, in superficial and underground water reservoirs, in water accumulation areas, in the subsoil and on ground;
    - deposition of dangerous and radioactive waste in territories adjoining to cities or rural settlements, in forests and parks, resorts, health-improvement or recreational zones, on migration routes of animals, close to spawning areas and in other places, where they constitute a danger to the environment, ecosystems or human health;
    - burial of dangerous and radioactive waste in water accumulation areas for underground water reservoirs used as sources of water supply or balneological purposes, or for the extraction of valuable subsoil resources;
    - import of dangerous waste and radioactive waste to the Russian Federation with the purpose of their deposition or neutralization.
3. Conditions concerning waste of production and consumption, including dangerous waste and radioactive waste, are regulated by the corresponding legislation of the Russian Federation.

The decision of the State Mining Directorate (Gosgortekhnadzor) of the Russian Federation from 6 June 2003, N 71, "On the statement of 'Rules of protection of subsoil resources'"

1. During the exploitation of subsoil resources it shall be taken care of the safety of life and health of the population, protection of buildings and constructions, air, ground, forests, water, fauna and other objects of the environment.
2. During the exploitation of subsoil resources, regular control of environmental conditions and performed nature protection measures shall be carried out. If necessity is given, the project documents will be changed concerning the application of more effective measures on environmental protection.
3. Grounds destroyed through mining work shall, after the cessation of the work, be brought into a suitable condition for further use.

   When work results in the destruction of the soil cover, the fertile ground layer shall be removed, stored and used on recultivited or unproductive ground.
4. During the development of mineral deposits, actions to prevent water and wind erosion, salting, bogging or other sorts of fertility loss shall be carried out.
5. During the exploitation of superficial and ground water, the needs of the population for drinking and household water, the protection of water from pollution and exhaustion, and the prevention and elimination of harmful influence of mining and sewage on the environment shall have priority.
6. Within the limits of the concession hydro-geological survey and control of the ground and surface water conditions shall be provided.
7. The allocation in settlements of dumps of … and waste deposits, being a source of air pollution by dust, harmful gases, evil-smelling substances, ….

Duties of the user of subsoil resources concerning environmental protection

The Law of the Russian Federation of 21 February 1992, N 2395-I "On subsoil resources", Clause 22, states the duties of users of subsoil resources, including the preservation of the environment.

Clause 16 of the Law of NAO "On exploitation of subsoil resources … " establishes the following duties of the subsoil resource users. The user of subsoil resources is obliged to observe:

1) the requirements of the legislation and approved technical standards (norms, regulations), when due hereunder, at conducting work connected with the exploitation of subsoil resources and at primary processing of minerals;

2) the requirements of technical projects, plans and schemes of mining development,

…

7) the standards approved (norms, regulations), when due hereunder, regulating the protection of subsoil resources, air, ground, forests, water, and buildings and constructions from the harmful influence of the work connected with the exploitation of subsoil resources;

8) that sites and other natural objects devaluated during the exploitation of subsoil resources shall be brought into a suitable condition for their further use;

…

10) the conditions established by the licence or the agreement on the section of production, and the timely and correct entering of payments for the exploitation of subsoil resources.

…

- the requirements of the legislation of the Russian Federation and the Nenets Autonomous Okrug in the field of environmental protection.

Users of subsoil resources or other legal and physical persons, which are involved in the exploitation of subsoil resources, should have special qualification and experience, confirmed by a state license (certificate, diploma) to carry out such kinds of activities: geological prospecting, search, investigation, various ways of mineral extraction, construction and operation of underground constructions, and other activities related to the exploitation of subsoil resources.

Two Governmental orders of the Russian Federation, the one of 21 August 2000, N 613 "On urgent measures for prevention and removal of spills of oil and oil products" (with changes of 15 April 2002), and the Governmental Order of the Russian Federation 15 April 2002, N 240 "On the order of the organization of actions under the prevention and removal of spills of oil and oil products in the territory of the Russian Federation" establish duties for campaigns carrying out extraction and transportation of oil, on the preparation and performance of emergency plans. The approval of the specified normal-legal certificates is urgent under the presently developing oil extraction in the NAO.

In the territory of the Okrug also apply the "Regulations of the organization of actions under the prevention and removal of spills of oil and oil products in territory of Nenets Autonomous Okrug", approved by the Resolution of the Administrations of the Nenets

Autonomous Okrug of 24 October 2002, N 595, which also describe duties of users of subsoil resources in this sphere.

Protection of water objects

The Water Code of the Russian Federation

Clause 52. Use of water objects for investigation and extraction of minerals.

1) Use of water objects for investigation and extraction of minerals shall be carried out according to the present Code and the legislation on subsoil resources.

Clause 55. Basic requirements for protection of water objects …

2. During the use of water objects physical or legal persons are obliged to carry out measures for water householding and measures for protection of water objects according to the present Code and other federal laws.

Protection of woods and forest plots

Forest plots of state or municipal property can be leased for geological studying of subsoil resources and for the development of mineral deposits.

Geological studies of subsoil resources on lands of the "Forest Fund" without allocation of a forest plot is permitted on the basis of the sanctions of Government bodies and local government institutions, as far as such work does not entail the felling of forest plantings.

The Forest Code of the Russian Federation

Clause 21. Construction, reconstruction and operation of objects, which are not part of the forest infrastructure.

1) Construction, reconstruction and operation of objects, which are not part of the forest infrastructure, on the "Forest Fund" are permitted for:
    - geological studies of subsoil resources;
    - development of mineral deposits.

Clause 25. Types of forest use…

- Geological studies of subsoil resources, development of mineral deposits.

Clause 43. Use of forests for geological studies of subsoil resources, for development of mineral deposits.

1. Use of forests for geological studies of subsoil resources and development of mineral deposits can only be carried out according to Clause 21 of the Land Code.
2. Forest plots of state or municipal property are leased for geological studies of subsoil resources and development of mineral deposits, except in the cases stipulated by Part 3 of the present clause.
3. On the basis of sanctions of government bodies and local government institutions, geological studying of subsoil resources in lands of the "Forest Fund" is permitted without allocation of a forest plot, as far as such work does not entail the felling of forest plantings.
4. The regulation for the use of forests for geological studies of subsoil resources and for development of mineral deposits is established by the authorized federal executive authority.

9. Compensation of damage to the traditional way of life and Territories of Traditional Nature Use as a result of oil and gas investigations, extraction and transportation

As stated above, according to Clause 8 of the Federal Law of 30 April 1999, N 82-FZ, **"**On guarantees of the rights of numerically small indigenous peoples of the Russian Federation**"** INSPN have the right to compensation for damage caused to the Territories of Traditional Nature Use of indigenous peoples through economic activities organizations of all forms of ownership or physical persons.

A similar norm is contained in Clause 29 of the Law of NAO from 29 December 2005, N 671-OZ, "On regulation of land issues on the territory of the Nenets Autonomous Okrug":

- conditions for the allotment of ground areas in places of traditional nature use and economic activities of INSPN should provide compensations for all losses caused by the withdrawal of these areas. The size of the specified losses is defined by an agreement between the parties and is calculated according to regulations established in the current legislation;
- when allotting ground areas in places of traditional nature use and economic activities of INSPN and ethnic communities, an agreement can be entered between proprietors of the ground areas, land owners, land users, tenants, and persons to whom the ground areas are allotted, or in favour of which the user rights are restricted, about indemnification of the losses connected with damage, pollution, unauthorized autocratic use, or other infringement of the rights of the mentioned peoples and communities. The size of indemnification is defined under the agreement of the parties.

Thus, both the federal and regional legislation state the right of INSPN in the NAO to receive compensation for the damage rendered by oil and gas exploitation to their traditional nature use and a traditional way of life. The procedure of payment, i.e. concrete calculations of the sum of the damage which is subject to compensation as mentioned above is basically defined under the agreement between the parties.

The legislation of the NAO demands agreements between users of subsoil resources and representatives of INSPN at a stage of development of the project. The advantage of this requirement is the fact that the law guarantees a compensation of damage to the INSPN; the

disadvantage is the fact that the real impact on the Territories of Traditional Nature Use and the traditional way of life can be much larger than paid off under the agreement.

If the parties disagree about the size of indemnifications for really caused damage, they have the right to bring the case to court.

Clauses 77-79 of the Federal Law "On preservation of the environment" stating the duty of full indemnification of damage to the environment, as well as a regulation of the payment, can be used to calculate the real damage compensation.

According to Clause 78, the calculation of the size of the environmental damage caused by the infringement of the legislation on environmental protection, is originating in the actual expenses for the restoration of the devaluated environment in view of the suffered losses including the missed benefit, as well as the costs of recultivation and other reconstruction projects or – when absent – corresponding to the rates and calculation methods for the amount of environmental damage approved by executive authorities.

At the federal level of the Russian Federation a number of methods to estimate damage are approved:

- the method of damage estimation and calculation of the size of damage from the destruction of fauna and the infringement of its life space, approved by the State Environmental Authority (*Goskomekologiya*) of the Russian Federation on 28 April 2000;
- methodical indications from the assessment and the compensation of the damage to the environment as a result of environmental law infringement, approved *Goskomekologiya* on 6 September 1999.

A number of the normative legal documents are operative recommended to use for estimation and compensation of damage as a result of environmental law infringement, approved by decree of *Goskomekologiya* of 23 July and other documents.

At the NAO level the regulation "Rates for calculation of the size of compensation for damage caused by legal and physical persons through illegal hunting, gathering, preparation or destruction of objects of fauna and flora of the Red Book of Nenets Autonomous Okrug, as well as the destruction and deterioration of their living space", approved by the NAO Administrations on 26 January 2005, N 23.

Unfortunately, from our knowledge, these calculation methods mismatch the real size of the caused damage and losses, as well as expenses for restoration of the natural condition of the primordial environment.

IV. Termination of mineral exploitation and liability for infringement of legislation

10. Basis for termination of exploitation rights

Infringements of license conditions and systematical infringement of instructions by the resource users form a basis for the termination of exploitation rights**.** If the resource user does not comply to obligatory reporting as demanded by the legislation, a prescheduled termination of the granted rights is possible. (According to Clause 21 of the Law of the Russian Federation "On subsoil resources" and a Part of 3 Clause 16 of the Law of NAO "On exploitation of subsoil resources … ").

Liquidation and preservation of the enterprises

After the exploitation of minerals, after the expiration of the licence, or after the prescheduled termination of exploitation rights, the enterprise is subject to liquidation or preservation.

11. Responsibilities concerning infringement of mineral legislation

Administrative liability

Clauses 7.3., 7.4., 7.10., 7.14. and 7.16 of the Code on Administrative Offences (КоАП - KoAP) state the responsibility in the form of monetary administrative penalties for the following offences:

Clause 7.3. KoAP - for exploiting subsoil resources without permission (license) or with infringement of the conditions stipulated by the permission (license);

Clause 7.4. KoAP - for arbitrarily building in mineral exploitation areas without a special permission, or for not following to the requirements for safety of buildings and constructions at the exploitation of subsoil resources;

Clause 7.10. KoAP - for arbitrarily giving user rights for ground, subsoil resources, forest plots or water objects, or arbitrarily exchanging grouns or subsoil resource sites, forest plots or water objects;

Clause 7.14. KoAP - for carrying out earth, construction or other works without the permission of the state authority for cultural heritage protection;

Clause 7.16. KoAP - for illegal alienation of grounds on specially protected historical or cultural lands.

The maximum penalty for infringement of the clauses of the KoAP amounts to:
for citizens: 2 000 rbl.
for officials: 5 000 rbl.
for juridical persons: 40 000 rbl.

The criminal liability

The Penal Code of the Russian Federation (UK RF) is stipulating the responsibility for infringement of safety regulations for mining, construction or other works (Clause 216 of Penal Code), for infringement of regulations of protection and exploitation of subsoil resources at planning, allocation, construction, commissioning and operation of mining enterprises or underground constructions, which are not connected with extraction of minerals, and also for arbitrarily building in mineral exploitation areas (Clause 255 of Penal Code).