

CONCEPT AND TYPES OF ENERGY FACILITIES IN THE OIL INDUSTRY

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The article is devoted to the peculiarities of the legal regime of energy facilities in the oil industry, the concept of such facilities, their types, and possible classification. The article discusses the current state of the regulatory framework that establishes the legal regime of the energy facilities in the oil industry. The author examines the rules of the current laws, which contain the basis for classification of the energy facilities, in particular, the judicial practice has been analyzed. The article analyzes the legal nature of public relations arising in the oil industry. The public relations arising in the oil industry include without limitation public relations that are formed in the process of exploration, production, oil refining, transportation of oil, petroleum products, oil supply, supply, sale and purchase of petroleum products. Therefore, the energy facilities of the oil industry mean facilities intended for exploration, production, transportation, storage, and sale of oil and petroleum products. The author proposes a classification on the following grounds: by function; by attribution to movable or immovable property; by attribution to divisible or indivisible property; by attribution to hazardous production facilities; and by anti-terrorist security.

Keywords: energy law, energy facility, legal regime of the energy facilities in the oil industry, classification of energy facilities in the oil industry.

In the modern economy of the Russian Federation, the oil industry plays a significant part. Of all goods exported from the country, oil and petroleum products make up the majority (approx. 49% as of 2018), and this fact alone gives the right to assert the importance of the energy sector as a whole and the oil industry for the state. That is why the legal support of the oil industry deserves special attention.

Currently, there is no unified act regulating public relations in the oil industry. As a result of the absence of such a law and application of separate subordinate acts, there is no

legislative definition of the energy facilities of the oil industry.

There are not many legal studies on the legal regime of the energy facilities in the oil industry yet. Various aspects of the legal regime of the energy facilities in the oil industry are considered in the works of V.Yu. Gusakov, K.V. Korepanov, V.V. Romanova, and R.N. Salieva.

V.Yu. Gusakov examines the peculiarities of the legal regime of the oil and gas industry. [1]

K.V. Korepanov explores the peculiarities of the content of the legal regime of trunk pipelines for transportation of oil and gas. [2]

While considering the legal regime of the energy facilities, V.V. Romanova examines the conceptual apparatus, the peculiarities of the legal framework of these facilities for various reasons, and also emphasizes that the peculiarities of the legal regime of the energy facilities apply to the entire “life cycle” of these facilities, including the stages of design, construction, operation, modernization, reconstruction, repair, and decommissioning. [3]

While considering the peculiarities of the legal regime of the energy facilities, R.N. Salieva notes that “the systemic regulation of the energy facilities based on the uniform concepts of the energy facilities has not yet been established, but in certain energy sectors, regulatory legal acts defining the types and legal regime of specific facilities have been adopted”. [4]

Public relations in the oil industry are governed by various sources of law. The following should be noted among them: the Civil Code of the Russian Federation, the Code of the Russian Federation on Administrative Offenses, the Land Code of the Russian Federation, the Criminal Code of the Russian Federation, the Tax Code of the Russian Federation, the Urban Development Code of the Russian Federation; Law of the Russian Federation No. 2395-1 dated February 21, 1992, *On Subsoil*, Federal Law No. 256-Φ3 dated July 21, 2011, *On Safety of the Fuel and Energy Sector Facilities*, Federal Law No. 187-Φ3 dated November 30, 1995, *On the Continental Shelf of Russia Federation*, Federal Law No. 225-Φ3 dated December 30, 1995, *On Production Sharing Agreements*, Federal Law No. 116-Φ3 dated July 21, 1997, *On Industrial Safety of Hazardous Production Facilities*, international treaties of the Russian Federation as well as many sublegislative regulatory legal acts.

In 2010, the Ministry of Energy prepared a draft of the new Federal Law *On the Fundamentals of State Regulation of Production, Refining and Transportation of Oil and Petroleum Products*. However, as a result, the document was returned for revision, and was never adopted.

However, this draft contains provisions that are of interest for us in the context of the subject matter under consideration, namely, it contained a rather broad conceptual apparatus including

many remarkable definitions. These definitions have not yet been fixed in a normative way, and setting in the law would help to clearly analyze the issue of classifying the facilities in the oil industry in more detail. For example, a very good definition of the oil refinery was given according to the draft law, it is “a single property and technological complex including facilities, structures, installations, and equipment and ensuring implementation of primary and/or secondary processes to refine petroleum products, stable condensate and a wide fraction of light hydrocarbons for production of the petroleum products that comply with the laws of the Russian Federation on technical regulation”. A similar definition is contained in Decree of the Government of the Russian Federation No. 1039 dated December 21, 2009, *On the Procedure for Connection of Oil Refineries to Trunk Oil Pipelines and/or Petroleum Product Pipelines and Accounting of Oil Refineries in the Russian Federation*. However, it uses the term “plant”, and it is impossible to say with absolute certainty that this Resolution can be referred to while defining the refinery as a single property and technological complex.

If we compare the legal support of the oil industry with other branches of the energy sector, we can see that the laws are incoherent: in some cases, the concept of the energy facility is used and a list of them is given, while the others contain only a list, and the term is missing in them. For example, the Federal Law *On the Electric Power Industry* specified a list of energy facilities. The legislator understands them as meaning those facilities that are used at all stages of industrial processes of the electric power industry (production, transmission and dispatching control) as well as the facilities used in the electric grid sector. That means, based on this definition, that the construction facilities are power plants, power units, electric power installations, power transmission lines, etc. Likewise, in the Federal Law *On the Use of Nuclear Energy*, the nuclear energy facilities are understood to mean all structures, buildings, vessels, and other vehicles containing nuclear reactors as well as nuclear installations and other facilities.

What is also worth paying attention to, is the conceptual apparatus contained in Article 2 of

Federal Law No. 256-Φ3 dated July 21, 2011, *On Safety of the Fuel and Energy Sector Facilities*. The fuel and energy sector facilities mean those facilities that are involved in the industries of the fuel and energy complex: electricity, oil, gas, peat, coal, etc., as well as related supply and infrastructure facilities; however, the facilities themselves are not mentioned (except for the nuclear energy sector).

To define the concept of the energy facility in the oil industry, first of all, it is necessary to single out the range of public relations arising in the oil industry.

The public relations arising in the oil industry include without limitation public relations that are formed in the process of exploration, production, oil refining, transportation of oil, petroleum products, oil supply, supply, sale and purchase of petroleum products.

This is due to the sequence of processes required to obtain the final product: initially, the areas is explored for the possible presence of a field, a well is drilled, and the hydrocarbons are produced, then the produced oil is transported to the primary collection point, the oil storage tanks (here it is important to distinguish between trunk and infield pipelines: the infield pipelines ensure transportation of oil between the clusters or to the point of primary collection), or directly to the refinery. At the refinery the oil is separated into various fractions and the petroleum products are made of them: gasoline, kerosene, diesel, fuel oil, etc. After refining, petroleum products are sent for distribution, and ultimately, for example, gasoline is supplied to the gasoline station for sale.

Taking into account this chain of processes, it seems correct to propose the following wording: the energy facilities of the oil industry are facilities designed to handle hydrocarbons at all stages of the oil industry, from their exploration and production to supply to the end users.

Returning to the process chain and having analyzed each of the stages, we can see that special facilities are used at each stage it will be useful to us later for the classification by function.

So, today, there is no statutory classification of the energy facilities in the oil industry. Attempts were made to delineate the facilities; however, only on one basis (according to

attribution to hazardous production facilities in Order of the Ministry of Energy No. 48 dated February 10, 2012) and this categorization will be borrowed in the proposed version of the classification of the facilities.

It is proposed to classify the facilities on the following grounds:

- 1) by function;
- 2) by attribution to movable or immovable property;
- 3) by attribution to divisible or indivisible property;
- 4) by attribution to hazardous production facilities;
- 5) by anti-terrorist security.

The first basis of the classification is by function.

The oil industry is defined as an economic sector engaged in production, refining, transportation, storage, and sale of oil and related petroleum products; therefore, the facilities operated in the industry shall be categorized on the basis of this definition.

Oil is produced by drilling wells. Therefore, the facilities used in this process can be attributed to the oil production facilities. They are drilling wells, offshore oil platforms, pump stations, etc.

As a rule, oil is refined at oil refineries, and the oil refining plants and refineries shall be referred to the oil refining facilities.

We can refer the trunk pipelines, the field pipelines, the oil pump stations, and the tankers to the transportation facilities; and the most obvious distribution facility is the tank farm.

It is also possible to distinguish the storage facilities based on the fact that in the intervals between the stages of production and transportation, transportation and distribution, special storage facilities are being built and equipment for storage of oil and petroleum products is used.

At the moment, it is possible to make a list of the primary energy facilities of the oil industry subdivided by function:

Production	Well clusters
	Drilling rigs
	Offshore platforms
	Oil treatment plants
	Separation units

Transportation	Loading stations
	Oil collection, treatment and pumping points
	Trunk pipelines
	Infield pipelines
	Tankers
Storage	Oil-loading ports and terminals
	Booster pump stations
	Tank batteries
	Warehouses for storage of oil and petroleum products with a capacity exceeding 2,000 cum
	Tank farms
Refining	Compressor stations
	Oil refinery employing 10 people or more
	Refineries
	Atmospheric-vacuum devices
Sale	Gasoline stations
	Tank farms

Next, it is planned to consider the possibility of classifying the facilities according to the attribution of the facilities to movable or immovable property under the current laws.

Pursuant to the provisions of Article 130 of the Civil Code of the Russian Federation, all facilities that are securely and inextricably connected to the land, which cannot be moved without damage to their purpose, that is, land plots, subsoil plots, buildings, structures, and construction projects in progress, shall be referred to immovable property. Moreover, other property can be referred to immovable property by law.

Federal Law No. 122-Φ3 dated July 21, 1997, *On the State Registration of Rights to Immovable Property and Transactions Therewith* specifies a similar definition of immovables, and Article 1 states that the residential and non-residential premises and enterprises that are deemed to be property complexes shall be also referred to immovable property.

Moreover, Article 1 of the Urban Development Code of the Russian Federation specifies that buildings, structures and construction projects in progress shall be attributed to capital construction projects; however, excluding temporary constructions, kiosks, sheds, and other similar structures.

Letter of the Ministry of Economic Development No. Д23и-2426 dated July 11,

2014, specifies that upon settlement of the issue of recognizing any property as the immovable one, it shall be necessary to take into account the purpose of the property and the circumstances related to its creation.

For example, let us consider the issue whether the pipelines are movable/immovable.

The Urban Development Code specifies a list of linear facilities (Article 1) - they are pipelines, highways and railway lines as well as structures of a similar nature (they also include power transmission lines, linear cable structures, etc.). The issue whether the linear facilities in general and the pipelines in particular pertain to immovable property is settled in various ways — however, we can turn to judicial practice.

In the Judgement on case No. A29-3550/2007 dated May 23, 2008, the Volga-Vyatka District Commercial Court established that the subject of the dispute in the form of a gas pipeline was both underground and above-ground structure, and also had crossings over the streams. Moreover, 10 road crossings were designed. Therefore, the gas pipeline under consideration meets the criteria of immovable property as it is securely connected with the land, and it is not possible to move it without disproportionate damage to the purpose (Judgement dated May 23, 2008 on case No. A29-3550/2007). [5]

There is also judicial practice, which makes it possible to attribute the oil wells to immovable property. In its Judgement dated August 5, 2009, on case No. A22-1177/08/14-153, using a similar reference to the Civil Code of the Russian Federation, the Sixteenth Commercial Court of Appeal identified the disputed wells as immovable property. [6]

Offshore floating platforms and tankers are one of the most interesting facilities in this category.

Pursuant to the Merchant Shipping Code of the Russian Federation (Article 376), there are two conditions, under which registration of ownership in the register of vessels under construction is possible: either the vessel shall have a keel or, if an expert opinion is issued on equivalent construction work. Upon registration of ownership, the authorized body shall issue a certificate in the relevant form.

According to Article 130 of the Civil Code of the Russian Federation and Article 376 of the Merchant Marine Code of the Russian Federation mentioned above, the marine vessels, which include tankers, are immovable property.

Now let us consider offshore oil platforms. There are several types of oil platforms:

- stationary;
- loosely fixed to the seabed;
- semisubmersible drilling platform;
- jackup rig;
- drillship;
- floating storage and offloading unit;
- floating production, storage and offloading unit;
- tension leg platform (vertically moored floating base).

There are different judicial practices on the issue of classification of the offshore platform as immovable property.

In 2014, the Astrakhan region Commercial Court considered case No. A06-10109/2014. The Federal Tax Service assessed a tax on the company in the amount of one million Rubles for the period of operation of the offshore oil platform as well as fines and penalties. The inspectorate considered that the oil platform erected at the Korchagin field pertained to vehicles and, based on this conclusion, it made the relevant calculations. [7]

The Moscow City Commercial Court, on the contrary, considered this platform to be immovable property and declared the earlier award null and void. The court identified the offshore platform as a complex production facility consisting of residential and industrial buildings connected on a permanent basis and communicated through a bridge. The platform cannot be regarded as a vehicle since it is securely fixed on the seabed with piles. [8]

In this article, we will also dwell on the peculiarities of the legal regime of the energy facilities of the oil industry from the point of view of anti-terrorist security.

First, one should refer to the provisions of Federal Law No. 256-Φ3 dated July 21, 2011, *On Safety of the Fuel and Energy Sector Facilities*. This law establishes the concepts of the fuel and energy sector facilities, i.e. the facilities that are

involved in the industries of the fuel and energy complex: electricity, oil, gas, peat, coal, etc., as well as related supply and infrastructure facilities. Moreover, the definition of the linear facilities characterized as linearly extended facilities of the fuel and energy complex, that are used as intended for transmission of energy or transportation of resources (power transmission lines, trunk pipeline, etc. may be referred to these facilities), is given. Therefore, the oil industry facilities are specifically mentioned in the definition, but they are not listed.

It is also important that a separate article of this law is devoted to the categorization of the fuel and energy facilities. Upon categorization, the following information is taken into account:

- whether the facility in question is a critical facility for the infrastructure and ensuring the efficiency of the fuel and energy complex;
- whether social and economic consequences during a hypothetical accident are possible, and if possible, on what scale;
- whether the facility in question has critical elements;
- whether the facility in question has potentially hazardous areas;
- whether the facility in question has weaknesses.

Taking into account these features, three categories of the fuel and energy sector facilities are established from the point of view of anti-terrorist security: of high, medium and low hazard.

The next basis of the classification under consideration will be attribution of the energy facilities in the oil industry to hazardous production facilities.

According to the rules of the Federal Law *On Industrial Safety of Hazardous Production Facilities*, 4 categories of hazardous production facilities are established:

- Class I – extremely high hazard;
- Class II – high hazard;
- Class III – medium hazard;
- Class IV – low hazard.

This categorization of the facilities brings us to already mentioned order of the Ministry of Energy No. 48.

The Appendix to this order offers a fairly clear separation of the facilities on the following grounds:

- Critical:
 - 1) Pipe-end oil pumping and booster stations
 - 2) Loading stations
 - 3) Oil-loading ports and terminals
 - 4) Oil and gas collection, treatment and pumping points
 - 5) Oil and gas treatment plants, etc.
 - Fire and explosion hazardous:
 - 1) Tank batteries
 - 2) Warehouses for storage of oil and petroleum products with a capacity exceeding 2,000 cum
 - 3) Oil refinery employing 10 people or more
 - 4) Warehouses of explosives and materials
 - Vital infrastructure:

- 1) Oil refineries
- 2) Gasoline stations, more than 50 km away from a nearest gasoline station

So, taking into account the above, it seems possible to determine that the energy facilities of the oil industry are facilities intended for exploration, production, transportation, storage, and sale of oil and petroleum products. The proposed definition and classification of the energy facilities in the oil industry make it possible to identify the peculiarities of the legal regime of these facilities, gaps and inconsistencies in legal regulation, and to prepare proposals for their elimination. ■

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