

**FEDERAL ARBITRATION COURT of the FAR EAST CIRCUIT**

of the Russian Federation

**The DECISION**

of the Arbitration Court of Appeals

Khabarovsk

February, 19, 2003

Federal Arbitration Court of the Far East CIRCUIT

Presiding: S.A.Logvinenko

Judges: O.N.Trofimovoj and G.V.Kotikovoj

Plaintiff: the representative did not appear

Defendant: the representative did not appear

Has reviewed in judicial session the appeal complaint of the Sakhalin Energy Investment Company, Ltd. in the Arbitration Court of the Sakhalin District's decisions of 10/14/2002 and of 12/20/2002 on the case #A59-2680/02-C8.

Judge V.V.Ivanov made the initial decision on the case. In appeal instance, judges G.V.Bojko, T.G.Prudej, V.V.Shevchenko have considered the case of the Sakhalin Energy Investment Company, Ltd.'s claim to void the Federal entity Sakhalinrybvod's regulation # 4 of 6/21/2002.

This decision of the Federal Arbitration Court of Far East CIRCUIT is effective 2/19/2003, in accordance with Article #176 of the Arbitration Remedial Code of the Russian Federation.

The Sakhalin Energy Investment Company, Ltd. (further - the Company) has appealed to the Arbitration Court of the Sakhalin District with a request to overturn the decision of the Federal official entity Sakhalinrybvod (further - Sakhalinrybvod) #4 of 06/21/2002 to impose a penalty in the amount of 100,000 rubles for refusal to provide updated, complete, credible information regarding environmental conditions.

The decision dated 12/20/2002 in the appeal instance stands without changing the initial appeals court decision of 10/14/2002. The plaintiff's claim was refused based on case materials that confirm the Company's ecological offences. Moreover, the court has not found any violations in Sakhalinrybvod's actions to impose an official penalty as stipulated by the current legislation.

Disagreeing with the judicial penalties, the Company has filed an appeal complaint in which it asks to investigate the legality of the above decisions in the municipal and arbitration courts. In the opinion of the Company, the court of both instances, while considering of the dispute, violated the regulations of due procedural rights. Substantiating the reasons for the complaint, the Company specifies the failure of the court of law to apply certain laws. Since the challenged Sakhalinrybvod's decision was not executed while examining the case, the court should apply the Articles of Federal law "Regarding Ratification of the Russian Federation Code on Administrative Offences" # 196-F3 of 12/30/2001. The new Administrative Code reduces the responsibility for the administrative offence committed by the Company.

Moreover, the court did not take into consideration the circumstance that an administrative penalty presumes the existence of an offence—damage to the environment and public health—while there is no proof of damage by the named Company, and therefore, the plaintiff considers that there is no fact that an ecological offence has been committed.

Specifying the infringement of procedural regulations, the Company refers to the illegitimacy of the court action in

including the Sakhalinrybvod letter (#17-3436 of 06/19/2002) in the case materials. The letter explains the rights and duties of a penalized person. The letter was not presented to the municipal court as proof of environmental damage.

In addition to the appeal complaint of 12/30/2002, the plaintiff again emphasizes the infringements of procedural rights in regards to a failure to apply the proper legal procedures.

Sakhalinrybvod, in its written response, disagreed with the reasoning behind the appeals and considers its actions lawful and substantiated. Sakhalinrybvod asks the court to allow the penalty rulings to stand and the appeal complaint - without satisfaction.

Despite the fact that both parties were duly notified of the time and place of the appeal complaint hearings, neither appeared while the court was in session.

Having reviewed the materials of the case and verified the correct application of the judicial regulations and procedural rights, the court of appeal instance find no legal grounds for satisfaction of the appeal complaint.

According to the case materials, on 06/21/2002 Sakhalinrybvod issued Decision #4 bringing the Company in ecological administrative account and fining it 100,000 rubles for infringement of the requirements stipulated by Article 84 of the Law of the Russian Federation "Regarding protection of the environment" #2060-1 of 12/19/1991 (including additions and amendments). The basis for penalty is the Company's refusal to grant updated, full, and verified information regarding environmental conditions, as stated in the Company's letter of 05/22/2002.

The Company, in disagreement with Sakhalinrybvod's decision, has challenged it judicially.

The Arbitration Court of both instances, declining to satisfy of the Company's appeals, recognizes that the proofs submitted to the Court confirm the fact of environmental offence by the Company. Thus, the Court concludes that the order and terms of the penalty imposed on the Company by Sakhalinrybvod do not contradict appropriate actions of entities existing to ensure preservation of the environment, whose tasks include realization of state control over conditions of water biological resources as well as compliance with nature protection legislation. The requirements were violated. It should be recognized that the conclusions of the Arbitration Court are lawful, as they correspond to established circumstances of the case and are based on legislation regulations pertaining to the given circumstances.

From materials of the case, it is clear that Sakhalinrybvod is the regional management entity of the federal entity, and as such is responsible for the protection of fauna and its environment. Sakhalinrybvod is part of a government system whose concern is the realization of assigned tasks and functions as determined by the Law of RSFSR "Regarding protection of the environment", the Law of the Russian Federation "Regarding fauna," applicable decrees of the Russian Federation Government relating to government-authorized bodies, and by Sakhalinrybvod's regulations.

As follows from case materials, in December 2001 and in April 2002, within the framework of nature protection enforcement, Sakhalinrybvod requested ecological data from the Company (letters #17-4243 of 12/20/2001 and #17-1632 of 04/25/2002). These request letters stated specific due dates. In its letter #02-499 of 05/22/2002 the Company refused to comply with the request to provide ecological information to Sakhalinrybvod. In connection with this, on 06/19/2002 Sakhalinrybvod reported this administrative infringement and issued the challenged decision on 06/21/2002.

According to Article 84 of the Law of RSFSR "Regarding protection of environment" (valid in the considered period), officials and citizens, enterprises, establishments, and organizations that cause ecological offences and, in particular, refuse to grant updated, full, and credible information about a condition of the natural environment, are subject to fines by administrative order.

Hence, the case materials disprove the applicant's appeal complaint argument that there was no ecological offence and that there is no proof of a committed offence. Moreover, Article 84 of the Law of RSFSR "Regarding protection of environment" states that the illegal actions specified in the Article are recognized to harm the environment on the basis of their perpetration requiring no burden of proof in any given instance and without regard to the size of damage in each instance.

This Court disagrees with the Company's assertion that the Court failed to apply federal regulations "Regarding implementation of Russian Federation code for administrative offences;" since the subject of the legal contest was

the decision of the administrative body regarding penalty, not collection of said penalty.

References by the Company to the Court's infringement of regulations of procedural rights are unreasonable, as they do not correspond to regulations established in Article 268 of the Arbitration Remedial Code of the Russian Federation (2002).

Under such circumstances, the decision of the Municipal Court and the decision of the appeal instance correspond to the law and are not subject to cancellation.

In view of aforementioned, guided by Articles 286-289 of the Arbitration Remedial Code of the Russian Federation, the Federal Arbitration Court of Far East Circuit

HAS RESOLVED

That the decisions of 10/14/2002 and 12/20/2002 by the Arbitration Court of the Sakhalin District on case #A59-2680/02-C8 are remain unchanged; the appeal complaint is left without satisfaction.

The above decision is valid upon its acceptance.

Presiding: S.A.Logvinenko

Judges: O.N.Trofimova

G.V.Kotikova