

Questions to Party Concerned

1. Please clarify whether the Conclusion of state environmental review (expertiza) is final decision according to the legislation of Kazakhstan. In this regard, please explain what legal consequences will follow after the working project "Bypass Temirlanovka" is agreed upon. Please provide the Compliance Committee with the copy of the Conclusion of state environmental review (expertiza) of working project "Bypass Temirlanovka" together with its cover page (title page).

Answer.

According to Article 51 para 2 of the Environmental Code of the Republic of Kazakhstan the positive Conclusion of the state environmental expertiza includes recommendations on the admissibility and the possibility of making a decision on the implementation of the object of environmental expertise. Also, according to article 202 para 1 of the Code, construction and reconstruction of objects are carried out in the presence of positive conclusions of state ecological and sanitary-epidemiological expertiza.

According to article 51 para 4 of the Environmental Code it is prohibited banks and other financial institutions to fund and implement projects of economic and other activities for which required conducting of the state environmental expertiza without a positive conclusion of the state ecological expertise.

A copy of a cover page is attached.

2. In its response to the questions of the Compliance Committee, the Party Concerned stated that due account was taken of the comments from the public on the working project "Bypass Temirlanovka". The communicant disputes this. To the end please specify in detail how the public authority has taken into account the comments received.

Answer.

According to the minutes of public hearing on 27.10.2010 in the village Temirlanovka from the public there were not expressed objections or any comments on the implementation of the object of expertiza that have been taken into account during the environmental expertiza. In this case, the head of the Public Monitoring Group Mr. B. Issaliyev submitted to Directorate comments on the EIA of "Bypass Temirlanovka", which were taken into account when carrying out state ecological expertiza.

3. Please provide the Compliance Committee with precise, step-by-step the procedural obligations on (i) public authorities and (ii), the developer in handling comments submitted by the public before, during or after the public hearings within the framework of conducting EIA and the state environmental review (expertiza).

Answer.

As mentioned above, any comments have not had during the public hearings. In addition, the legislation of the Republic of Kazakhstan does not provide a mechanism of taking into account the comments before and after the public hearing. Therefore, in the case of receipt of comments at the public hearing, they would be taken into account, and a section of EIA would be finalized by the Customer on the comments.

According to paragraphs 60, 61 of the Instruction for the conduct of the Environment impact assessment of planned economic and other activities during the drafting of pre-plan, plan, pre-project and project documentation, approved by order of the Minister of Environment Protection of the Republic of Kazakhstan on June 28, 2007 № 204-p (registered in the Ministry of Justice of the Republic of Kazakhstan on July 23, 2007 № 4825):

The Customer (the developer) shall organize the registration of written suggestions from the public on the draft EIA;

analyze comments and suggestions from the public on the draft EIA and take a decision on redrafting the EIA taking into account public opinion; ensure that the public consultation process is documented; record received written proposals and comments on the draft EIA;

compile a record of public hearings, which establishes the main subjects of discussion and disputes between the public and the Customer;

prepare of a commentary on consideration of suggestions and comments from the public in the project documentation.

According to para 20 of the Rules of conducting the public hearings, approved by Order of the Minister of Environment Protection of the Republic of Kazakhstan dated on May 7, 2007 # 135-p (Registered with the Ministry of Justice of the Republic of Kazakhstan on May 30, 2007 # 4687) at conducting the state environmental expertiza the Customer shall submit protocol of public hearings and the draft with the results of the EIA revised with taking into account public opinion in case of a its qualified study, based on normative legal acts of the Republic of Kazakhstan, as well as commentary on the public proposals for which the Customer considers unreasonable changes and additions to the project.

4. According to the legislation of Kazakhstan, is there an obligation for the public authority to publicize the conclusion of the state environmental review (expertiza)? To this end, please clarify how and to what extent is article 6 para 9 of the Aarhus Convention implemented in the legislation of Kazakhstan?

Answer.

According to article 6 para 9 of the Aarhus Convention each Party shall ensure that when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based. This para is implemented in below specified norms implemented in legislation of the Republic of Kazakhstan.

According to article 57 para 5 of the Environmental Code of the Republic of Kazakhstan following the adoption of decision on conclusion of the state environmental expertise, all persons concerned shall be provided with opportunity to obtain information on the object of expertise in the manner prescribed by the Code.

In accordance with article 165 of the Environmental Code of the Republic of Kazakhstan:

- the timing and procedure for the provision of environmental information by public authorities established by the legislation of the Republic of Kazakhstan on administrative procedures and the procedure of consideration of citizens' requests;

- persons and legal entities, except those specified in para 1 of this article shall provide the requested environmental information within one month from the date of receipt of the request;

- access to environmental information relating to the procedure for environment impact assessment and decision-making process of planned economic and other activities provided in the manner prescribed by the authorized body in the field of environmental protection.

In accordance with para 5 and 6 of the Regulations on access to environmental information relating to the procedure for environment impact assessment and decision-making process of planned economic and other activities approved by order of the Minister of Environment Protection of the Republic of Kazakhstan on July 25, 2007 № 238-p. (Registered in the Ministry of Justice of the Republic of Kazakhstan, August 16, 2007 N 4876):

- persons concerned can obtain access to the documents of state ecological expertiza indicated in para 3 of this Regulation by sending a written request to the authorized body;

- in accordance with legislation the authorized body within 15 calendar days shall give a written response indicating the time and place where will be possible to learn the materials indicated in para 3 of this Regulation.

Para 3 of the Regulation indicates that information relating to the procedure for environment impact assessment and decision-making process of planned economic and other activities includes the materials of the state ecological expertiza:

- 1) the draft EIA;
- 2) the conclusions of external experts for the draft EIA;
- 3) protocol of public hearings on the draft EIA;
- 4) a written requests on the draft EIA from persons concerned;
- 5) conclusion of the state environmental expertiza.

This material should not contain confidential information.

5. Please provide the Compliance Committee with the minutes, summary of outcomes and other relevant documentation from the meeting held at the Ministry of Environment Protection of Kazakhstan on 14 December, 2011.

Answer.

Protocol of the meeting is attached.