

## THE LEGAL BASIS AND CONDITIONS OF MINE RECLAMATION CONDUCTING IN UKRAINE AND IN THE USA



**Anna Misinkevych**

*PhD in Law,*

*Associate professor of Labor Law,*

*Land Law and Commercial Law Department*

*of Khmelnytsky University of Management and Law*

*Named after Leonid Yuzkov, Khmelnytsky, Ukraine*

**UDK 349.4**

**Abstract.** The article discusses the main legal issues of carrying out mine reclamation on the degraded, damaged and contaminated lands in Ukraine. Moreover, the authors studies the legal mechanism of conducting mine reclamation in the USA and suggest borrowing the system of obtaining permits for surface mining and even conducting land restoration. The scholar analyzes the effectiveness financial and legal policy of carrying out mine reclamation in the USA. Furthermore, it is offered to develop and adopt the National Program on Land Use and Protection for effective restoration of the lands, which were affected by mining or the other economic activity. The article draws attention to the introduction on the legal level reclamation of the rural lands and the lands adversely affected by past coal mining practices.

**Keywords:** *mine reclamation, land restoration, legal mechanism, a contaminated land, an abandoned land, a degraded land, legal relations of mine reclamation, surface mining.*

### Introduction

One of the most important tasks of the land reform in Ukraine is implementation of rational land use and protection of this natural resource according to a decree "On the Land Reform", which was passed by the Verkhovna Rada of the Ukrainian Socialist Republic. Supporting this position Constitution of Ukraine and Land Code of Ukraine proclaim that land is the main national wealth, which is under special state protection. However, during the twenty-eight years of the state independence this issue has not been solved yet. In addition according to experts the ecological condition of Ukraine's land is extremely critical and this situation confirms statistics that 144 thousand hectares land area is a contaminated, abandoned and degraded in our country [1]. One of the most considerable restorative measures of the land resources is mine reclamation. Nowadays we have not strong legal mechanism, which could regulate legal relations of mine reclamation in Ukraine. Due to the fact that it is planned to adopt a law "On land circulation" in our state, so we have to develop a legal mechanism of land restoration by conducting mine reclamation. This will lead to improvement of soil fertility on the rural lands and it will provide that land owner will be obliged to carry out restoration measures on the land. In our understanding we should borrow the legal model of mine reclamation from economically development country. In our opinion the most successful state in this legal direction in the world is the United States, because this country during 60 years (1978 - 2018) has been could restore 2.78 million acres of land by conducting mine reclamation after coal mining industry [2] and has strong legal mechanism, which provides effective restoration the contaminated, abandoned and degraded lands.

### Analysis of the latest researches and publications

The legal problems of carrying out mine reclamation in Ukraine and in the various foreign countries were explored such scientists as: O. Vivcharenko A. Getman, P. Kulynych, V. Kurylo, V. Lebid and N. Gavrysh. However,

these scholars did not learn the legal mechanism of mine reclamation on a contaminated, abandoned and degraded land in the USA.

### Formulation of the research goals

**The purpose of this article is** research the legal basis and conditions of mine reclamation

conducting in Ukraine and in the USA and the laws, which ensure implementation of the legal mechanism with regard to protection and restoration land resources after mining industry and certainly borrowing the legal experience in this direction from economically developed country.

### Presenting main material

Nowadays one of the leading countries in mine reclamation is the United States, which has a perfect legal mechanism in the regulation of mine reclamation relations. The basic law of mine reclamation in the USA is the "Surface Mining Control and Reclamation Act of 1977" (OSMRE) [3], which holds the whole legal procedure regarding issuance permit for mining operations and development, approval the mine reclamation programs and of course their realization within the specified time by the legislation. This law has federal level and its principles have been implemented by the whole states of the USA. However, Ukraine has plenty of the legal acts such as: the Land Code of Ukraine [4], the law of Ukraine "On the Lands Protections" [5], the law of Ukraine "On Land Management" [6], the order of the State Agency of Land Resource of Ukraine "On Approval of the Procedure for Issuance and Cancellation of Special Permits for Removal and Transfer of Soil Cover (Fertile Soil Layer) on the Lands" [7], which try to regulate legal relations of mine reclamation. These acts have many legal voids and don not ensure land restoration after mining.

The main basis of mine reclamation carrying out in the USA is obtaining permits for mining and for conducting mine reclamation. In according with the sections: 502, 503, 504 and 506 of the OSMRE person who would like to mining has to obtain a permit issued by the Office of Surface Mining Reclamation and Enforcement and approve the plan of mine reclamation, which must comply of the Federal programs and State programs. All permits shall be issued for a term not to exceed five years, but if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the regulatory authority may grant a permit for such longer term [3]. Moreover, each applicant for a permit shall be required to submit to the

regulatory authority as part of the permit application a reclamation plan. Furthermore, this law claims that each applicant for permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United State certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate to compensate any persons damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of State law [3]. However, at the section 15 of the "Subsoil Code of Ukraine" proclaimed that subsoil is given for temporary using from five to fifty years and this period may be extended [8]. In our opinion we should borrow the experience of mining in the USA, because it is short period of the land use which could provide effective realization of the principles of Land Law of Ukraine such as: protection and rational use of land, and ecological security of natural resources. In addition nowadays we have problems with technical equipments at the mines and the procedure of surface coal mining and carrying out of mine reclamation in our country which are very dangerous for our health, property and safety. Therefore the next position which would be effective for our legal relations of mine reclamation must be introduction of insurance policies for the legal entity that have deal with surface coal mining, because today we have not such legal and financial guarantees in this way.

The next step of mine reclamation in the USA provides that each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program shall be accompanied by fee as by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program. The regulatory authority may develop procedures so as to enable the cost of the fee to be paid over the term of the permit. Furthermore, all operators

of coal mining operations shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of thirty five cents per ton of coal produced by surface coal mining [3]. We think it is a perfect legal mechanism which helps successfully provide mine reclamation, because the USA has special Financial Fund to which operators permanently pay a certain amount for the coal mining. These funds are accumulated in this Financial Fund and in the future they go towards to the restoration of the degraded, damaged lands after surface coal mining. However, our legislation has not such strong financial mechanism which provides effective carrying out of mine reclamation, because our state obliges legal entities who conduct surface coal mining independently at the own expense to carry out the restoration of such lands. This situation leads to the fact that a plenty of mines in Ukraine are becoming the bankrupts and cannot conduct mine reclamation. These financial liabilities from the legal entities come to the state, but such huge amount of money our state's budget has not funds for these restoration works. So, we have a great number of the contaminated, degraded, damaged and abandoned lands.

The compulsory condition in the USA of getting the permit for mining is approval the plan of mine reclamation which has to meet the requirements of State Reclamation Programs that is approved and promulgated by the Secretary of the Interior and the Office of Surface Mining Reclamation and Enforcement. The section 405, 503 and 508 of the OSMRE point out that each reclamation plan has to consist of:

- 1) The identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought;
- 2) The condition of the land to be covered by the permit prior to any mining including: the uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining and the capability of the prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and if applicable, a soil survey; and the productivity of the land prior to mining,

including appropriate classification as prime farm lands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management: the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclamation land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, State and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

- 3) A detail description of how the proposed post mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use [3].

In addition this law requires and ensures implementation of the points which consist of the detailed estimated timetable for the accomplishment of each major step in the reclamation plan and the consideration which has been given to making the surface mining and reclamation operations consist with surface owner plans, and applicable State and local land use plans and programs [3]. It should be noted that all the technical and legal documentations of mine reclamation must comply with environmental requirements which are contained in the section 515 of the OSMRE. Moreover, the reclamation plan, the surface coal mining operations and all applications of mining have to be promulgated by the regulatory authority and only after that the mining operators must have been got the permits for mining.

However, Ukrainian legislation has not clear legal mechanism for obtaining permits for mining and mine reclamation; because in the first we have not special law "On mine reclamation" and in the second our legislation has a lot of the legal loopholes. For instance, in order to our mining operators could get the permits for mining he should obtain the special permission for subsoil use within specific areas (section 16 of the Subsoil Code of Ukraine) [8], obtain the mining allotment (section 17 of the Subsoil Code of Ukraine) [8], allotment a land from the state and communal property for land using (section 123 of the Land Code of Ukraine) [4], signing

a land lease agreement (the law of Ukraine "On Land Lease" [9], section 124 of the Land Code of Ukraine) [4] and signing a concession agreement (the law of Ukraine "On Concession") [10], development of a working mine reclamation project (section 26 of the law of Ukraine "On Land Management") [6].

It should be noted that one of the serious problem in the legal relations of mine reclamation is imperfect procedure for approval of the mine reclamation project in our state. The land legislation of Ukraine notes that the land owners and land users who carry out mining are obliged to develop a mine reclamation project and only after this they would be able to get the land for mining. However, the section 186 of the Land Code of Ukraine proclaims that the mine reclamation projects are developed and approved by the customers [4]. To our understanding it is legally illiterate because the land owners and land users who carry out mining cannot provide a competent conclusion on this issue. Therefore, we suggest borrowing the legal experience of the USA and this document must be approved by the special public authority and then this mine reclamation project has to be promulgated.

The next issue of the legal relations of mine reclamation in Ukraine it is lack of approved the National Program on Land Use and Protection, which is the main basis for the development and approval the mine reclamation project after industrial mining. We could claim that according to Ukrainian's scientists and lawyers the provisions of this program should be based on principles of socio-economic policy of the state to prevent the state crisis in the field of land use and protection, and also creating the conditions for the comprehensive development of the productive forces, and contain the special system of the preventive measures. This legislative program should become a part of state's policy which will aimed at the balanced satisfaction of the needs of the population and sectors of the economy in land resources, rational use and land protection against degradation, depletion and lead to increased production of national economic products, and to the care and preservation of landscape and biological diversity while creating environmentally safe conditions for society and for economic activity [11, p. 5 - 6].

In the USA such programs are very important element for conducting of mine

reclamation too and even the OSMRE (sections 503 and 504) points out that these restoration programs include criminal and civil liabilities for legal entity if they do not carry out the restoration works after mining. So we think this legal position is a really effective and we will be able to borrow such idea at our legislation. We would like to add that these State Reclamation programs in the USA have approved State Reclamation Plan for each territory in the country and every applicant for mining has to implement this specific reclamation project in his work.

Additionally we think that we should borrow the legal experience in conducting reclamation of rural lands from the USA, because the Land Fund of Ukraine consists of 90 % of the rural lands and their environmental situation is unsatisfactory. We could confirm this fact by referring to the scientists' assessment that approximately 6,5 million hectares of rural lands are degraded and contaminated [12]. Moreover, such land needs restoration through reclamation and the OSMRE describes very effective the legal mechanism on this issue. So, the section 406 of the OSMRE points out that in order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners including owners of water rights, residents, and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water, woodland, wildlife, and recreation resources, and agricultural productivity of such lands [3].

Furthermore, the landowner shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner to be needed on the lands for which the plan was prepared. In those instance where it is determined that the water rights or water supply of a tenant, landowner,

including owner of water rights, resident, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners in consultation with appropriate State and Federal agencies. In addition we think very useful and considerable the legal mechanism regarding reclamation of rural lands in the USA is that the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner [3]. We could confirm that after restoration these lands will be so profitable for business and it is perfect opportunity for the Ukraine's economic growth, and ecological safety. It should be noted that we have a number of the laws which tries to regulate land restoration through mine reclamation in our country, but a single comprehensive law "On mine reclamation" we have not passed yet.

We consider that another important provision which should be borrowed from the legal mechanism of the USA is reclamation of land adversely affected by past coal mining practices, because our state has plenty of such lands, which need to be restored. The section 407 of the OSMRE points out that if the Secretary or the State pursuant to an approved State program makes a finding of the fact that lands or water resources have been adversely affected by past coal mining practices then upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and

advertising once in a newspaper of general circulation in the municipality in which the land lies, the Secretary, his agents, employees, or contractors, or the State pursuant to an approved State program, shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Moreover, the State, his agents, employees, or contractors or the State pursuant to an approved State program, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act condemnation of property nor trespass thereon. In addition the Secretary or the State pursuant to an approved State program, may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the Secretary determines that acquisition of such land is necessary to successful reclamation [3]. To our opinion it is perfect legal point, because our state authorities do not have such powers for land withdrawing and carrying out mine reclamation on land adversely affected by past coal mining practices and we need approve these requirements in our legislation.

## Conclusions

Consequently, analyzing the American legislation we propose to pass a law of Ukraine «On mine reclamation», which would regulate the legal mechanism of the mine reclamation conducting on the degraded, damaged and contaminated lands in Ukraine. In addition, we need to improve legal mechanism of getting permits for mining and conducting mine reclamation borrowing legal experience from the USA in this issue. Furthermore, we should at the legislation level to pay attention the problem restoration of the rural lands and lands adversely affected by past coal mining practices.

## References

1. Implementation of land protection measures during 2010–2018: Materials of the State Service of Ukraine for Geodesy, Cartography and Cadastre. - Available at: <https://land.gov.ua/info/okhorona-zemel/>.
2. Land reclaimed from mining in the United States from 1975 to 2018, by type (in acres). - Available at: <https://www.statista.com/statistics/875838/mining-land-reclaimed-by-type-united-states/>.
3. Surface Mining Control and Reclamation Act of 1977: Wikipedia. – Available at: [https://en.wikipedia.org/wiki/Surface\\_Mining\\_Control\\_and\\_Reclamation\\_Act\\_of\\_1977](https://en.wikipedia.org/wiki/Surface_Mining_Control_and_Reclamation_Act_of_1977).
4. Land Code of Ukraine: law of Ukraine date October 25, 2001, № 2768–III. - Available at: <https://zakon.rada.gov.ua/laws/show/2768-14>. (application date 28.10.2019).
5. On the Lands Protections: law of Ukraine date June 19, 2003, 2059-VIII. - Available at: <https://zakon.rada.gov.ua/laws/show/962-15>. (application date 28.10.2019).
6. On Land Management: law of Ukraine date May 22, 2003, 155-IX. - Available at: <https://zakon.rada.gov.ua/laws/show/858-15>. (application date 28.10.2019).
7. On Approval of the Procedure for Issuance and Cancellation of Special Permits for Removal and Transfer of Soil Cover (Fertile Soil Layer) on the Lands: law of Ukraine date April 01, 2005, v-199484-05.- Available at: <https://zakon.rada.gov.ua/laws/show/z0070-05>. (application date 28.10.2019).
8. Subsoil Code of Ukraine: law of Ukraine date July 27, 1994, 2320-VIII. - Available at: <https://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80>. (application date 28.10.2019).
9. On Land Lease: law of Ukraine date October 6, 1998, 2597-VIII. - Available at: <https://zakon.rada.gov.ua/laws/show/161-14>. (application date 28.10.2019).
10. On Concession: law of Ukraine date October 10, 2019, 155-IX. - Available at: <https://zakon.rada.gov.ua/laws/show/155-20>. (application date 28.10.2019).
11. Cherpezyk O. Z., Karpluk I. R. Strategic role of the national program of land use and protection // Land management and cadastre, 2008, № 4. P. 4 – 11.
12. Who kills Ukrainian lands or how to stop soil degradation - Available at: <https://agropolit.com/spetsproekty/566-hto-vbivaye-ukrayinski-zemli-abo-yak-zupiniti-degradatsiyu-gruntiv>.