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## **LEGAL REGULATION OF MINE RECLAMATION ON THE DEGRADED, DAMAGED AND CONTAMINATED LANDS IN UKRAINE AND IN THE USA**

*The legal experience has been analyzed of the mine reclamation on the degraded, damaged and contaminated lands after mining in the US in the article. There are a lot of legal and environmental issues in the field of these legal relationships that require immediate settlement in Ukraine. This highlights the statistical data, which submits State Service of Ukraine for Surveying, Mapping and Cadastre. USA is one of the leading countries in effective implementation of such land-legal measures, which is confirmed by statistical and scientific data. The legislation has been examined for carrying out mine reclamation in the USA namely, state-legal regulation, financial and legal mechanism, technical and legal mechanism, and land-use management in this article. One of the main problems of legal mine reclamation relationship, which exists in Ukraine is the lack of specialized legal act, state standards, state legal policy, the financial and legal mechanism for restoring degraded, damaged and contaminated lands, which exist on the territory of our state. It should be noted, that the author analyzes the powers of the special state bodies in detail, which dealing with the issues of mine reclamation in Ukraine and the United States, and proposes to improve this legal institution in our country. Scientific research pays a lot of attention the issue of the financial and legal provision of mine reclamation and the special state structure that manages*



*this area of legal land relationships in the United States. This body is the Abandoned Mine Reclamation Fund. In addition, the article examines the legal responsibility in this area of legal relationships and analyses the international legal activities of various American organizations regarding practical and scientific coverage and the mine reclamation conducting in this country. The author proposed borrowing some aspects of legal regulation of mine reclamation from the US to Ukraine to prevent environmental disaster that exists on our lands.*

**Keywords:** mine reclamation, degraded lands, damaged lands, contaminated lands, legislative provision, State legal policy, specialized bodies authority on mine reclamation, financial and legal mechanism.

For effective development of Ukraine as an economically strong state it is necessary to ensure the protection and restoration of lands which according to the Constitution of Ukraine is the main national wealth and is under special state protection.

Today the ecological state of land resources in Ukraine is extremely critical. Many lands are degraded, damaged, contaminated and polluted due to industrial activities. This is evidenced by the statistics submitted by the State Service of Ukraine for Surveying, Mapping and Cadastre. The total area of lands in the state that requires restoration is 1.1 million hectares, 644 thousand of which — are degraded lands, 435.4 thousand are unproductive and 11.9 thousand hectares are technologically contaminated lands [1]. Among the land degradation processes in Ukraine the most large-scaled is erosion (about 57.5 % of the territory) [2]. The most polluted, degraded and damaged lands in Ukraine are in Donetsk, Luhansk, Lviv, Zaporizhia, Mykolaiv and Kherson regions [3].

The article is a comparative legal analysis of legal regulation of mine reclamation on the degraded, damaged and contaminated lands in Ukraine and in the USA.

One of the effective recovery measures of such lands is reclamation. It includes a range of financial, legal, surveying and organizational measures to ensure the return of lands to the quality of the pre-restoration previous state with the revitalization of landscape structure and efficient improvement of soil fertility. Conducting of mine reclamation in Ukraine will provide welfare, health, and safety for the Ukrainian people.

Today in Ukraine there is no current legislation legal mechanism that would provide the legal settlement of mine reclamation in the country after mining. Firstly, the law that exists in this area of relationships includes general rules, which are declarative. Such legal acts are Land Code of Ukraine art. 166, art. 168 [4]; the Law of Ukraine «On Land Protection» art. 52 [5]; the Law of Ukraine «On Land Management» art. 25 [6]; Order of the State Committee of Ukraine for Land Resources «On approval of the issuance and revocation of special permits for the removal and transport of soil (topsoil) of land» [7]. Secondly, there is no specialized law of Ukraine



«On reclamation», which should delineate in detail the legal procedure of mine reclamation. Third, there is the lack of state legal policy of Ukraine for conducting mine reclamation of contaminated, damaged and degraded lands after mining. There is no developed and adopted at the state level National Program «On protection and rational use of lands in Ukraine,» which would ensure the adherence of environmental legislation of Ukraine by the entrepreneurs and order them to carry out mine reclamation. Failure to state legal policy for the protection of land resources in the Ukraine confirmed the Concept of the State Target Program for the Development of Legal Land Relations in Ukraine for the period up to 2020, which indicates the absence of:

- balanced state land policy and its implementation mechanism;
- an effective system of financial, economic and land management mechanism for legal land relations and land use;
- coordination of functions of the State Service of Ukraine for Surveying, Mapping and Cadastre and other executive bodies and local authorities;
- **consistent state policy on integrated development of land legislation, financing of implementation of land management and the introduction of a land cadaster, formation of investment-attractive land use;**
- a well-balanced state policy of formation and development of the market of agricultural lands;
- underestimation of complexity, the scale and specificity of changing legal land relations in the course of economic reforms [8].

Fourth, the absence of specialized government agency, which would supervise and control over the reclamation of the lands of Ukraine. Fifth, the law of Ukraine does not define the range of subjects that have to carry out reclamation and the objects of reclamation. Finally, there are neither legislative financial and legal procedures of mine reclamation on damaged, degraded and polluted lands nor specialized financial fund, which would have to manage this process. In the legislation of Ukraine, there are no legal sanctions for not carrying out mine reclamation.

Thus, Ukraine's lack of legal framework of mine reclamation that would contain clear legal procedures for recovery of degraded, polluted and damaged land has led to the fact that within 24 years of independence of Ukraine mine reclamation has not been performed. Therefore, such a complex ecological and legal situation that exists in the country urgently needs the legal research of experience on reclamation in economically developed countries with the possibility of borrowing it into our legislation.

Investigating the legal problems of lands restoration after industrial use, we can dare to say that in today's world one of the leading states, which effectively conduct mine reclamation, is the USA.

This state is one of the first countries in the world, which began to conduct the after-mining reclamation on damaged, degraded and polluted lands. The mine reclamation in the US was first performed in 1918 in Indiana [9, c. 158]. The US is also the very first country in the world that has legally enshrined the legal mechanism for mine reclamation. The US



is also the very first country in the world that has legally enshrined the legal mechanism for land reclamation. One of the first USA states that passed a law on reclamation was West Virginia in 1939. The next states that legislatively solved the issue with the mine reclamation are Indiana in 1941, Illinois in 1943, Pennsylvania in 1945 [9, c. 159]. Due to the fact, that a number of USA states had the laws, which varied in legal regulation of reclamation on damaged, degraded and polluted lands, it became necessary to generalize their legal positions at the federal level in a single law. Therefore, in 1977 the USA Congress developed and adopted the «Surface Mining Control and Reclamation Act» (SMCRA) [10].

SMCRA determines the clear legal procedure of mine reclamation in the US. First, this law established the basic public authorities and spelled out the scope of their powers to ensure the conducting of mine reclamation in the US. This public authority is the Department of the Interior with its specially authorized government body, which deals with mine reclamation after mining the Office of Surface Mining Reclamation and Enforcement.

This body authority has a great range of powers in these legal relationships. In this article, we try to describe its most important functions of mine reclamation conducting based on American legislation. Office of Surface Mining Reclamation and Enforcement has to:

- administer the programs for controlling surface coal mining operations;
- review and approve or disapprove State programs for controlling surface coal mining operations and reclaiming abandoned mined lands;
- administer the State grant-in-aid program for the development of State programs for surface and mining and reclamation operations;
- **administer the program for the purchase and reclamation of abandoned and unreclaimed mined areas;**
- administer the surface mining and reclamation research and demonstration project authority consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations and assist States, local governments, and other eligible agencies in the coordination of such programs and other [10]. As we see this functions are very narrow and specific. This is one of the main aspects of a successful environmental situation in the United States.

Although Ukraine has some special public authorities, which have certain powers in legal mine reclamation, but they are imperfect. Such public authorities are State Service of Ukraine for Surveying, Mapping and Cadastre; and State Environmental Inspectorate of Ukraine; State Inspection of Agriculture of Ukraine. For instance, State Service of Ukraine for Surveying, Mapping and Cadastre, has to:

- participation in the implementation of national and regional land protection programs;
- ensuring the preparation and implementation of organizational, economic, environmental and other measures aimed at the rational use and protection of land;
- use and protection of land, formation of the ecological network;



— implementation monitoring and protection of the lands [11].

State Environmental Inspectorate of Ukraine has to:

— **implementation of state control over compliance with the requirements** of the legislation of Ukraine on land protection by executive authorities and local self-government bodies, individuals and legal entities;

— implementation of measures to prevent the pollution of land by chemical and radioactive waste, sewage;

— compliance with environmental safety in the development of new techniques and technologies for the treatment of soil and for the design, location, construction, reconstruction, commissioning of plants, buildings and other facilities;

— participation in the development of the legal regulations in the field of land protection;

— implementation of environmental requirements in granting the ownership and use, including leased land [12].

State Inspection of Agriculture of Ukraine, shall:

— fulfillment of conditions for removal, preservation and use of the fertile layer of soil during mining, geological exploration, construction and other works related to violation of the soil cover;

— timely carry out the mine reclamation of the disturbed lands in the volumes provided for by the mine reclamation project; Land management;

— timely carry out of the enterprises, institutions, organizations of all forms of ownership the measures for preservation, reproduction and increase of soil fertility;

— survey of land plots to be mine reclamation and issuing special permits for the removal and transfer of the soil covering land under the project, as well as inspection of land plots, which caused damage as a result of their unauthorized occupation, use not for the intended purpose, removal of soil cover without special permission;

— submission of the proposals for financing of the lands protection measures;

— calculation of the amount of damage caused by the unauthorized occupation of the lands, use them not for their intended purpose, removal of soil without special permission and taking measures to recover it in accordance with the procedure established by law [13].

When we analyse the powers of state authorities in Ukraine and in the USA we come to the conclusion, that the functions of our public authorities are general and they do not have a clear legal mechanism of mine reclamation. Moreover, there is a duplication of powers between our public authorities in this area of legal relationships. This complicates the conducting of mine reclamation and in some cases prevents its implementation in our areas. Therefore, the Ukrainian lands are in such difficult environmental situation.

To my mind, we must be created one specialized state body authority on the example of the Office of Surface mining Reclamation and Enforce-



ment, which has specific and very narrow powers of the mine reclamation conducting.

Secondly, the set of subjects and objects of reclamation in the US as well as the system of sanctions for not carrying mine reclamation has been determined. Third, SMCRA developed and approved the Federal Reclamation Programs and State Reclamation Programs, and Environmental Protection Standards for reclamation in the USA, which provide the legal procedure for mine reclamation in the US. Fourth, the system of obtaining permits for mine reclamation in the US has been developed. Finally, SMCRA has established financial and legal mechanism for funding the mine reclamation of damaged, degraded and polluted lands after mining in the US. This issue is dealt by the created Abandoned Mine Reclamation Fund, which is directed the Secretary of Interior. The USA law sets that, this Fund generated by grants is established by each State pursuant to an approved State program. In our country mine reclamation is carried out at the expense of the state budget, but since the independence of Ukraine the funds for mine reclamation have not been allocated. Ukrainian legal entities and individuals, who excavate minerals do not pay any fee for the mine reclamation.

In USA law any user charge imposed on or for land reclaimed, after expenditures for maintenance have been deducted. Money in the Abandoned Mine Reclamation Fund may be used for the following purpose: reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of coal mine subsidence [10]. So, SMCRA describes specific technical and land management measures, which are paid by the individuals and the legal entities for the land restoration and the environment. This money comes to the Abandoned Mine Reclamation Fund from the indicated persons and then it is sent to the appropriate mine reclamation programs in the USA.

In our opinion, payment mechanism for carrying out the mine remediation is also very effective in the United States. Ukraine is able to borrow it, in spite of our different legal systems. So for example, all operators of coal mining operations subject shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary of the Interior, whichever is less, expect that the reclamation fee for lignite coal shall be at a rate of 2 per



centum of the value of the coal at the mine, or 10 cents per ton, whichever is less [10]. All in all, such fee is not big for the individuals and the legal entities, who carry out mining and they pay it every quarter. In addition, this financial mechanism is so convenient for our country because, if the mine company goes bankrupt, the Abandoned Mine Reclamation Fund will pay to cover all the costs for mine reclamation due to the permanent financial revenues to it.

It should be noted about so effective sanctions for non-payment of coal mining fee in the USA. This is indicated in SMCRA. For instance, any person, corporate officer, agent or director, on behalf of a coal mine operator, who knowing makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification required in this section shall, upon conviction, be punished by a fine of not more than \$ 10,000, or by imprisonment for not more than one year, or both [10]. To our mind such sanctions should be installed in our Land Laws. This legal mechanism will provide restoration of the degraded, damaged and contaminated lands in Ukraine after coal mining.

Since the action of SMCRA in the USA the reclamation in: Colorado, Iowa, Oklahoma, Alaska, Mississippi, Pennsylvania, Virginia, Illinois, Kentucky, North Dakota, Indiana, Texas and others has successfully been conducted [14].

In addition to this, in the United States there is the National Mining Association (NMA) which effectively protects the legal interests of companies engaged in mining and conducts reclamation of lands. NMA is the only national organization in the US, which aims to support the national policy in the protection and management of natural resources [15]. In this direction The American Society of Mining and Reclamation (ASMR) was created which includes 20 members from around the world and which has international status. This public association is called to investigate the problems of natural resources reclamation [16].

Consequently, analyzing the American legislation we propose to adopt 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 create specialized state body authority on the example of the Office of Surface mining Reclamation and Enforcement, which has specific and very narrow powers of the mine reclamation conducting. Furthermore, we must be created the specialized Abandoned Mine Reclamation Fund, which will regulate the financial and legal mechanism of mine reclamation in Ukraine. It will enable to control the extraction of minerals by the individuals and the legal entities and bring them to justice for non-payment of mine reclamation in our country.



### References

1. Здійснення заходів з охорони земель протягом 2010–2017 років : **Матеріали** Державної служби України з питань геодезії, картографії та кадастру. URL : <https://goo.gl/k4sJwq>.
2. Про основні засади (стратегія) державної екологічної політики України на період до 2020 року : Закон України від 21.12.2010 р. № 2818–VI // Відомості Верховної Ради України. 2011. № 26. Ст. 218.
3. Ерозія / Вікіпедія. URL : <https://goo.gl/q5s62s>.
4. Земельний кодекс України від 25.10.2001 р. № 2768–III // Відомості Верховної Ради України. 2002. № 3–4. Ст. 27.
5. Про охорону земель : **Закон України від 19.06.2003 р. № 962–IV** // Відомості Верховної Ради України. 2003. № 39. Ст. 349.
6. Про землеустрій : **Закон України від 22.05.2003 р. № 858–IV** // Відомості Верховної Ради України. 2003. № 36. Ст. 282.
7. Про затвердження Порядку видачі та анулювання спеціальних дозволів на зняття та перенесення ґрунтового покриву (родючого шару ґрунту) земельних ділянок : **наказ Державного комітету України по земельних ресурсах** від 04.01.2005 р. № 1 // Офіційний вісник України. 2005. № 4. Ст. 236.
8. Концепція Державної цільової програми розвитку земельних відносин в Україні на період до 2020 року : **схв. розпорядженням Кабінету Міністрів України** від 17.06.2009 р. № 743–р / Верховна Рада України. Законодавство України. URL : <https://goo.gl/yvCCJx>.
9. *Мосинец В. И., Грязнов М. В.* Горные работы и окружающая среда. М. : Недра, 1978. 192 с.
10. Surface Mining Control and Reclamation Act of 1977 / Wikipedia. URL : <https://goo.gl/ASR8nL>.
11. Про державну службу України з питань геодезії, картографії та кадастру : постанова Кабінету Міністрів України від 14.01.2015 р. № 15 / Верховна Рада України. Законодавство України. URL : <https://goo.gl/o5DFqx>.
12. Про Державну екологічну інспекцію України : Указ Президента України від 13.04.2011 р. № 454/2011 // Урядовий кур'єр. 2011. № 83. 11 травня.
13. Про Державну інспекцію сільського господарства України : Указ Президента України від 13.04.2011 р. № 459/2011 // Урядовий кур'єр. 2011. № 88. 18 травня.
14. Office of Surface Mining Reclamation and Enforcement. URL : <https://goo.gl/8kRRF9>.
15. The National Mining Association (NMA). URL : <https://goo.gl/Py4TF5>.
16. The American Society of Mining and Reclamation (ASMR). URL : <https://goo.gl/6QbQMV>.

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**Місінкевич А. А. Правове забезпечення проведення рекультивациі деградованих, пошкоджених та забруднених земель після видобутку корисних копалин в Україні та в США**

Аналізується правовий досвід проведення рекультивациі деградованих, пошкоджених та забруднених земель після видобутку корисних копалин у США. В Україні існує багато правових та екологічних проблем у сфері цих правовідносин, які потребують негайного врегулювання. Це підкреслюються статистичними даними, які подаються Державною службою України з питань геодезії, картографії та кадастру. США є однією з передових країн за ефективністю здійснення таких земельно-правових заходів, що підтверджується статистичними та науковими даними. Досліджується законодавчі норми щодо проведення рекультивациі в США, а саме державно-правове регулювання, фінансово-правове, технічно-правове та землевпорядне. Однією з головних проблем рекультивацийних правовідносин, що існують в Україні — це відсутність спеціалізованого нормативно-правового акта, державних стандартів, державно-правової політики та фінансово-правового механізму щодо відновлення забруднених, деградованих та пошкоджених земель, які існують на території нашої держави. Необхідно зазначити, що детально аналізується повноваження спеціальних органів державної влади, які займаються питанням проведення рекультивациі в Україні та в США та висловлюються пропозиції щодо удосконалення цього правового інституту в нашій державі. Приділяється значна увага питанню фінансово-правового забезпечення проведення рекультивациі та спеціальній державній структурі, яка керує цією сферою земельно-правових правовідносин у США. Таким органом є Державний фонд занедбаних земель після видобутку корисних копалин у США. Окрім цього, вивчається юридична відповідальність у цій сфері правовідносин та аналізується міжнародно-правова діяльність різноманітних американських організацій щодо практичного та наукового висвітлення й проведення рекультивациі у цій країні. Пропонується здійснити запозичення деяких аспектів правового врегулювання рекультивацийних правовідносин із США до України для запобігання екологічній катастрофи, що існує на наших землях.

**Ключові слова:** рекультивация земель, деградовані землі, пошкоджені землі, забруднені землі, законодавче забезпечення, державно-правова політика, спеціалізовані органи державної влади з питань рекультивациі, фінансово-правовий механізм.



### **Мисинкевич А. Л. Правовое обеспечение проведения рекультивации деградированных, поврежденных и загрязненных земель после добычи полезных ископаемых в Украине и в США**

Анализируется правовой опыт проведения рекультивации деградированных, поврежденных и загрязненных земель после добычи полезных ископаемых в США. В Украине существует много правовых и экологических проблем в сфере этих правоотношений, требующих немедленного урегулирования. Это подчеркивается статистическими данными, которые подаются Государственной службой Украины по вопросам геодезии, картографии и кадастра. США является одной из передовых стран по эффективности осуществления таких земельно-правовых мер, что подтверждается статистическими и научными данными. Исследуется нормы о проведении рекультивации в США, а именно государственно-правовое регулирование, финансово-правовое, технико-правовое и землеустроительное. Одной из главных проблем рекультивационных правоотношений, существующих в Украине, — это отсутствие специализированного нормативно-правового акта, государственных стандартов, государственно-правовой политики и финансово-правового механизма по восстановлению загрязненных, деградированных и поврежденных земель, которые существуют на территории нашего государства. Необходимо отметить, что подробно анализируется полномочия специальных органов государственной власти, которые занимаются вопросом проведения рекультивации в Украине и в США и высказываются предложения по совершенствованию этого правового института в нашем государстве. Отводится значительное внимание вопросу финансово-правового обеспечения проведения рекультивации и специальной государственной структуре, которая руководит этой сферой земельно-правовых правоотношений в США. Таким органом является Государственный фонд заброшенных земель после добычи полезных ископаемых в США. Кроме этого, изучается юридическая ответственность в этой сфере правоотношений и анализируется международно-правовая деятельность различных американских организаций по практическому и научному освещению и проведения рекультивации в этой стране. Предлагается осуществить заимствования некоторых аспектов правового урегулированию рекультивационных правоотношений из США в Украину для предотвращения экологической катастрофы, существует на наших землях.

**Ключевые слова:** рекультивация земель, деградированные земли, поврежденные земли, загрязненные земли, законодательное обеспечение, государственно-правовая политика, специализированные органы государственной власти по вопросам рекультивации, финансово-правовой механизм.

