

PROBLEMS OF NATIONAL PUBLIC AND PRIVATE LAW

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PERMITS FOR THE USE OF NATURAL RESOURCES IN UKRAINE: PRESENT REGULATION, PROBLEMS AND PERSPECTIVES

The article on the basis of interpretation of the legislation makes the analysis of the permit system for the use of natural resources. The author defines the concept, types and general classification of permits that certify use of natural resources. The separate analysis is given to the main novations of permits legislation in 2014, aimed at reducing the number of permit documents and simplification of the procedure of their issuance.

However, the article indicates a number of existing imperfect features of the permit system and some further steps aimed at improvement the issuance of permits for use of natural resources were offered.

Key words: permit system, permit document, special use of natural resources; permit for the use of natural resources.

Introduction

In Ukraine, permit procedures occupy a certain place in the administrative system for the regulation of natural resources. Many aspects of the permit system reflect of the relationship between natural resources and nature. First, the purpose of permitting regulations is to provide legal security and prevent harmful environmental and societal effects. Second, the procedure for issuing permits for the special use of natural resources is designed to prevent uncontrolled, new uses of certain elements of nature. Third, the permitting function of the authorities is directed towards the regulation of state accounting and control systems in the sphere of environmental protection, and is implemented through the issue of permits for the special use of natural resources permits and disposal of hazardous substances and waste into the environment¹.

The permit system for the use of natural resources

The procedure for issuing permits for the special use of natural resources had long been regulated by natural resources codes and laws, and subordinate legal acts. The 2005 law 'On Licensing System in the Field of Business' integrated general natural resource permit requirements with the requirements of the aforementioned Act². The unification aimed to simplify permit procedures, but it did not get the desired results. A more positive outcome is the transition to issuing permits according to the 'the single window' principle.

The law 'On Licensing System in the Field of Business' uses a generalised notion of 'permitting document', which includes permits, conclusions, resolutions, approvals, certificates and some other documents that permitting authorities issue to business entities. The Act considers natural resources to be objects that require permitting documents. Permitting documents for natural resource use, depending upon the type of resource, take different forms and are issued by different authorities. The literature considers that permitting documents related to the environment validate the ecological safety of executive business activities carried out to fulfil the will of the government entity³.

The 2011 law 'On List of Permitting Documents in the Field of Business' approves a list of permitting documents and imposes a ban on any document not included in this list, and any law that

1 Костицький, В.В. (2012). *Екологічне право України*: підручник. Дрогобич: Коло, 262.

2 Закон про дозвільну систему у сфері господарської діяльності 2005 (Верховна Рада України).

Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/2806-15>> (2015, March, 7).

3 Романяк, М.М. (2010). *Адміністративно-правові засади дозвільної діяльності у сфері забезпечення екологічної безпеки*: автореф. дис. ... канд. юрид. наук. Ірпінь, 12.

purports to create a new permitting document¹. In practice, there are still a number of permitting documents that remain in addition to the list. These are generally attached to special laws not covered by the general permit law. There are also several groups of documents that differ in character and function to permitting documents that are necessary for the use of natural resources. These include:

- basic permits for the use of natural resources, being permits that directly reinforce the right to special use of natural resources;
- supporting documents, being documents that precede the issuing of permits but which are necessary to obtaining a permit, for example the approval of a petition by a water user to obtain a special water use permit; and
- related documents, being those not directly related to the obtaining of a permit for the use of natural resources but without which it is impossible to carry out the permit activity, for example a hunter may need a permit to hunt, a hunters certificate and a permit to carry hunting weapons.

In many cases, natural resource users require a number of different types of permitting documents from a dozen state bodies, the order of their issuing being determined by different laws. For example, to use underground water one may need to obtain a special water use permit, a permit for use of subsoil resources, special permits for designing and constructing facilities for extraction, and prior consents from certain state and local authorities.

Reduction of the number of permitting documents

On 9 April 2014, the Verkhovna Rada of Ukraine adopted the law 'On Introduction of Amendments to Certain Legislative Acts of Ukraine Regarding the Reduction of the Number of Permitting documents². The Act came into force on 26 April 2014 and amended 38 laws covering permit matters in Ukraine. The Act abolished 59 permitting documents which had been included in the List of Permitting Documents in the field of business, and 27 permitting documents that had not been included in the List but the necessity of obtaining them was determined by other special laws. In addition, the Act simplified a number of permit procedures, limited their scope, and increased the validity term.

As mentioned by the legislative entities presenting the bill, the main reasons for abolishing certain permitting documents were:

- duplication of permitting documents and the facilities for which they are issued;
- unjustified use of permitting documents as tools for regulating business activities;
- the necessity to obtain permitting documents for activities that do not pose significant risks to human health or the environment; and
- a lack of coordination in provisions of certain Ukraine laws.

Concerning the scope of protection and use of natural resources, the Act made a number of significant changes to simplify permit procedures in the waste management area. In addition, the Act contained a number of provisions concerned with permitting documents for the use of natural resources. In particular, a number of permitting documents for certain uses of natural resources were canceled, including permits for the use of natural plant and medicinal resources of local importance. The Act cancelled a significant number of permits in the renewable energy sector because they complicated the process of developing new alternative energy sources. Cancelled permits include permits for the:

- production, transmission and supply of electricity, heat and mechanical energy from renewable energy sources;
- production of geothermal energy;
- installation of renewable energy generation equipment that uses solar radiation, wind, and sea waves to create entities of alternative energy;
- construction of power networks to supply renewable energy to consumers; and
- connection of renewable energy plants to the power network of Ukraine.

The Act abolished a significant number of supporting and related permits, including:

- permits for the import and export of vegetation and wildlife species listed in the Red Book of

1 Закон про перелік документів дозвільного характеру у сфері господарської діяльності 2011 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/3392-17>> (2015, March, 7).

2 Закон про внесення змін до деяких законодавчих актів України щодо скорочення кількості документів дозвільного характеру 2014 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/1193-18>> (2015, March, 7).

Ukraine;

- permits for special work on the construction of facilities for water extraction; and
- permits for the use of animals in entertainment, sport and organisation of leisure time.

In the latter case, the law already provides for permits for the keeping and breeding of animals in captivity and the use of animals in entertainment, sport and organisation of leisure time¹.

The Act simplified the procedure for obtaining basic permits by canceling additional permit procedures, specifically approvals issued in accordance with established procedure. These include:

- approvals of permits for designing and constructing facilities for the extraction of underground waters;
- approvals of petitions by water users wishing to obtain special water use permits; and
- approvals of petitions for the use of subsoil resources for the purpose of geological exploration and development of mineral deposits of local or national importance, and for purposes that are not related to mining.

An important innovation of the Act, in most of the cases, is the established order of permit issuing when the permitting authority does all the necessary activities to obtain approvals, conclusions and other documents required to issue the permitting document, without the involvement of the applicant. In particular, the Act revised regulations concerning pre-approvals in the issuing of special water use permits². Previous legislation determined that water users who wanted to obtain special water use permits had to first obtain approvals from several other authorities. These included:

- permits from State Agency of Water Resources to use surface waters;
- permits from State Service for Geology and Subsoil to extract underground waters; and
- permits from Ministry of Health to use water resources for medical treatment.

These approvals were classified as permitting documents and were granted by the permitting centers in the general terms. After obtaining the appropriate approvals, applicants then applied to a state body to get a 'final' special water use permit. The new Act changed the Water Code of Ukraine so that the state body issuing the special water use permit directs the application to the aforementioned state bodies that provide the pre-approvals. These bodies then provide their conclusions about the possibility of issuing a permit within an established deadline. This means water users who want to obtain a special use permit no longer need to repeat the same procedure to obtain permit approvals and the final permit.

Problems and prospects of improving of the legislation in this sector

The decrease of the issuance procedures of permissive documents and its improving is still the most urgent issue in the context of improvement of the legal regulation of economic activities and natural resources, in particular.

The new system to reduce the number of permits does not mean a lack of control over particular activities. In most cases, permitting documents overlap each other in that there is one general issue permit and separate permits for each operation. The scope of the new permitting regulation did not pose any social or ecological risk, and did not need any restrictions from government. The trend towards deregulation of business activities is inherent in most of the modern program documents of Ukraine, including the Association Agreement between Ukraine and the EU³.

However, the current Ukraine permit system for natural resource use is far from perfect. Permits are still determined by dozens of different Acts, including general laws and natural resource codes. Issuing procedures for certain types of permitting documents are still not defined in any detail. There are a large number of bodies in the permit system that belong to different parts of the state apparatus, including central executive bodies and their territorial subdivisions or local authorities, and local self-governance authorities. There is still no single approach to the regulation of permit procedures which are frequently non-transparent, lengthy and complex.

The current state of legal regulations concerning natural resource use permits requires significant

1 *Закон про тваринний світ 2001* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/2894-14>>; *Закон про захист тварин від жорстокого поводження 2006* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon1.rada.gov.ua/laws/show/3447-15>> (2015, March, 7).
2 *Водний кодекс України ст. 48 (1995)* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80/page2>> (2015, March, 7).
3 *Угода про асоціацію з ЄС 2014* (Кабінет Міністрів України). *Урядовий портал*. <http://www.kmu.gov.ua/kmu/control/uk/publish/article?art_id=246581344> (2015, March, 7).

improvement, including a reduction in the number of permitting documents.

The legislative and executive bodies must solve the immediate problems in this sphere:

- the further reduction of the quantity of the permissive documents in natural resources use and shifting the focus on more flexible forms of regulation – for example on the contractual procedure of regulation. The contractual regulation will allow to take into greater account of the public interests of society, the individual interests of economic entities and to ensure the concretization of rights and obligations of specific types and areas of natural resource. The wide use of contractual form of regulation of appropriate use of natural resources is very expedient precisely in relations of industrial development of natural resources;

- preservation of the permit system regulating the use of natural resources with respect to individual users of natural resources – citizens who carry out such natural resources uses as hunting, fishing, forest side, trapping animals for keeping and breeding them in captivity and so on. Thus, permitting in these cases should be maximally simplified and carried out exclusively on a "single window" principle;

- expansion of existing system of licensing authorities and creation of extensive local and regional system (based on a "single window" principle") which must serve to verify the completeness and reliability of the information while filling applications for permits, redirect the applications by departmental affiliation and provided the tests, conclusions approvals without involving the applicant;

- legislative support and practical implementation of adequate liability of officials for improper fulfillment or violation of the requirements of the current legislation on the procedure for issuing permits and the possibility of immediate and low-cost appeal against refusal to issuing permits in the courts of administrative jurisdiction;

- ensuring of establishing and maintaining the publicly available system of information on the list of permits, their forms, technical and other requirements for the related activities, the value of such documents, the requirements to be met by economic entity, application receiving and issuing period, and creation of the national register of permits issued by the entities, their duration and permitting requirements, which the entity should comply;

- determining the procedure and legalization of the status of international certificates of conformity and other permits issued by an authorized licensing authorities of other countries, in the case of activity on the territory of Ukraine.

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