

ENVIRONMENTAL LAW ISSUES IN UKRAINE



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Conceptually, environmental liability under Ukrainian law can be divided into two separate categories. The first category is liability for one's own acts that result in the pollution of land, water and air. The second category of liability is strict liability for pre-existing conditions on a site.

A. *Basic Legislative Framework for Environmental Regulation: Pollutant Discharge Standards and Limits*

As you can appreciate, Ukraine is still at a relatively early stage in the development of a legal framework for environmental regulation. The Law of the Ukrainian Soviet Socialist Republic, "On the Protection of the Environment", dated June 25, 1991, as amended (the "Environmental Protection Law"), is still the principal source of environmental rules in the country, although it has been significantly amended since its enactment. The Ukrainian Civil Code, Code of Administrative Violations and Criminal Code also set important standards for liability for violation of environmental laws.

In accordance with the Environmental Protection Law and other legislation, Ukraine has adopted a system of standards and norms (hereinafter "standards") governing the discharge or emission

(hereinafter "discharge") of pollutants, radiation, and noise (hereinafter "pollutants") into the environment (including onto the land, into the air, into the water, and into the subsoil and underground waterways) as a result of an enterprise's activity.

Other important sources of environmental law include: the Ukrainian Land Code, the Code of Ukraine on the Subsoil, the Law "On the Protection of the Atmospheric Air", Supreme Rada Decree No. 2751-XII, dated October 29, 1992, which approved a procedure for limiting, temporary prohibiting (suspending) or terminating the activities of enterprises and objects violating applicable environmental legislation. There also have been a series of important decrees of the Plenum of the Ukrainian Supreme Court which has further clarified the rules in this area.

Such standards identify permissible levels of discharges by enterprises of particular pollutants and establish a schedule of payments for discharges of pollutants within these established limits. However, upon exceeding the established limits, payments for discharges of pollutants are made of a company's profits.

In addition to these payments, the Environmental Protection Law also establishes similar payment regimes for:





- (a) the "special use" of natural resources, i.e., for manufacturing or industrial uses within prescribed limits (Article 43); and
- (b) for the deterioration of the quality of natural resources (In such cases, payments are considered as penalties and are paid out of profits) (Article 45).

B. Liability for the Violation of Ukrainian Environmental Laws

The issue of liability for: (i) violations of Ukrainian environmental law and (ii) injury caused to third parties as a result of violation of environmental legislation must be understood apart from regulatory requirements relating to payments for discharges of pollutants into the environment. Such liability can take the following forms:

- (a) civil liability to third parties and/or the environment (in the person of the State Prosecutor), including compensation for damages or costs of clean up;
- (b) criminal liability to the State (only in respect to physical persons, including officers and directors of an enterprise);
- (c) administrative liability to the State (only in respect to physical persons, including officers and directors of an enterprise); and

- (d) disciplinary liability of an individual to one's employer (Environmental Protection Law, Article 68).

Under Article 69 of the Environmental Protection Law, a party or parties causing injury to a third party or parties as a result of a violation of applicable environmental legislation must fully compensate the injured party for actual damages, lost profits and/or moral damages irrespective of whether the liable party or parties made all requisite payments to the State for discharge of pollutants, environmental contamination or deterioration of the quality of natural resources. Liability may be joint or several, depending on whether the parties acted in concert.

Further, a director or other company official - foreign or Ukrainian national - acting in the course of his or her official duties may be subject to disciplinary, administrative or criminal liability for causing or assisting the company in causing the injury. However, the company official does not share civil liability with the company if he or she acted within the scope of his or her duties, although a company arguably could seek indemnification from such individual.

Under Article 68 of the Environmental Protection Law, enterprises (or physical persons) that are at fault for the said violations shall be obliged to compensate the damage caused. The application of disciplinary, administrative, civil and criminal liability envisaged by Ukrainian law does not relieve those at fault from the obligation to compensate the damage caused as well as for removal of the detrimental consequences.



Under Article 69 of the Environment Law, as a rule, damage resulting from violation of environmental legislation shall be compensated in full. Persons who suffered such damage shall be entitled to compensation of the profits lost for the period which is necessary for recovery of health, quality of the environment and rehabilitation (restoration) of the natural resources.

Similar provisions are envisaged by the Code of Ukraine on the Subsoil (Articles 65 – 67) and Water Code (Articles 110 and 111).

Under Article 188-5 of the Code of Administrative Violations, the failure of a physical person (private or official) to comply with injunctions or orders of officers responsible for state control in the area of environment, shall result in fines (up to UAH 255, which is equivalent of about USD 50).

Under Articles 240 – 242 of the Criminal Code of Ukraine physical persons who violated environmental law and thereby created hazards for human health or created certain other detrimental consequences shall be subject to criminal liability (the sanctions being in the range from fines to five years imprisonment).

As one can appreciate, the foregoing provisions, while envisaging a number of a broad range of various sanctions, do not contemplate the suspension or termination of the relevant works. Nonetheless, these measures are envisaged by Ukrainian law.

Specifically, as follows from the Law Of Ukraine “On Licensing of Certain Types of

Business Activities” dated 01 June 1 2000, a licensing body or a relevant other authorized body shall be entitled to issue an injunction demanding from the licensee the removal of violations and consequences thereof or to cancel the issued license. Obviously, the cancellation of the license results in termination of the licensed business activities.

Further, pursuant to Articles 3 and 4 of the Supreme Rada Resolution No. 2751 dated October 29, 1992 governing rules for limitation, suspension or termination of activities in the event of violation of environmental legislation, Ukrainian bodies responsible for control in the sphere of environment or other authorized bodies (including the municipal ones) shall be entitled to limit, suspend or terminate relevant activities in the event of the specific violations of the environmental laws.

Resolution No. 2751 lists such a broad number of various violations that it is fair to say that practically any departure from the environmental rules may result in the limitation, suspension or termination of relevant activities.

The recommencement of activities of enterprises that have been subject to such sanctions shall be effected only upon written permission of the state body which applied limitation or prohibition or a body to which the first one is subordinate.

Finally, it should perhaps be noted that the Ukrainian Ecological Inspection (entitled to effect various verifications of activities) has a broad power to apply sanctions for violation of ecological law, including the limitation or



suspension (but not termination) of relevant activities of the enterprise.

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