

Mining in Ukraine: Overview of the Legislature

Mining industry in Ukraine is regulated by the Subsoil Code of Ukraine, various Ukrainian laws, legislative acts, as well as orders of ministries and regulations.

The basis for subsoil use, including geological study, underground construction, and mining - is a special subsoil use permit (hereinafter - The Permit) issued by the State Service of Geology and Subsoil of Ukraine (hereinafter - Derzhgeonadra). Issues of granting, validity, renewal, of permits for all types of subsoil use are regulated by the "Procedure for granting special subsoil use permits" approved by the Cabinet of Ministers of Ukraine № 615 of 30.05.2011.

Using our company, UkrLithiumMining LLC (ULM) as an example – we will show how these procedures work.

Getting the Permit

ULM received a permit № 6195 dated 03.04.2017 for the extraction of lithium ores from the Polokhivske deposit. At the same time, an agreement on the terms of subsoil use was concluded between ULM and Derzhgeonadra.

This agreement includes the Work Program, which defines the main stages of preparation of the deposit for operation and the beginning of ore mining.

Changing the Work Program

In December 2022, Law 2805 was adopted, which amended the Subsoil Code. According to this Law 2805, now there must be specific reasons for changing the terms in the work program:

The subsurface user has the right to extend the time limits performance of work related to mining minerals in the case of the following grounds:

- 1) subsoil user with for reasons beyond his control, he did not receive the right to use the land plot, within the area of which the subsoil plot is located, within the period stipulated by the work program;
- 2) certified force majeure circumstances Chamber of Commerce and Industry of Ukraine (at the validity period of such circumstances);
- 3) suspension of action and (or) cancellation of the permit for the use of subsoil, recognized as illegal (groundless) in accordance with the decision of the court that received it legal force (for the period of such suspension and (or) cancellation);

- 4) the occurrence of a delay in issuing the necessary permit documents necessary for the implementation of the work program, for reasons independent of the subsurface user (for the period of such delays);
- 5) the need to conduct additional geological studies, including in connection with the need for reassessment mineral reserves according to international standards;
- 6) change during the use of the subsoil of mining and geological, technical, technological or other conditions that led to the need to conduct additional geological exploration (mining) works and (or) changes in technology or the method of carrying out works on geological study, including research and industrial development, minerals and (or) extraction of minerals minerals or useful components;
- 7) non-receipt of industrial inflow of hydrocarbons according to the results drilling a well, which is indicated in the passport of such a well.

At the same time, it is prohibited to make changes to the maximum terms of work specifically for the extraction of minerals for a period of more than 24 months (in case of development of mineral deposits by open method) or 36 months (in case of development of mineral deposits underground or combined method) from the term established by the program of works in the edition, which was concluded at the time of granting the special permission to use subsoil.

That is, in the presence of the above-mentioned reasons, the work program can be changed, but not for more than 24 or 36 months. But the positive point is that Law 2805, also in connection with the war, has already automatically extended the terms of the work program for the period of war and 3 months after war, as well as an additional 18 months at the request of the subsoil user.

The technicals of obtaining the Permit

The reason for obtaining the permit was that the company at its own expense conducted a preliminary geological and economic assessment and official confirmed the reserves in the State Commission of Ukraine for Mineral Resources (hereinafter - SCR). According to the legislation in force in 2017, this made it possible to purchase a permit at a price in accordance with the "Methodology for Determining the Initial Sale Price at Auction of a Special Subsoil Use Permit".

Among the special conditions of the permit was "within three years to perform a detailed geological and economic assessment of lithium ore reserves of Polokhiv deposit and submit for approval to the State Committee of Ukraine." In 2017-2018, the company conducted a detailed geological and economic assessment of the field, which included drilling wells, documentation and testing of the core, laboratory and analytical

studies, calculation of lithium ore and lithium dioxide reserves and reporting. The report was reviewed and the ore reserves were confirmed at SCR.

Following the additional drilling in 2019-2020 the ore resources were confirmed by a Competent Person in accordance with the requirements of the JORC Code. In 2021, an inclined drillhole for engineering and geological purposes was passed through the field, and three vertical holes were drilled for hydrogeological research.

Validity of the permit № 6195 is from 03.04.2017 - to 03.04.2037(20 years). According to the Subsoil Use Agreement, the validity period may be extended with with no limitations provided that appropriate amendments to the Work Program are added – until a full depletion of the mine resources/reserves.

There is no mining capital spending required, as long as the company is duly fulfilling the agreed upon Program of Works for the given deposit.

The Permit does not explicitly forbid the extraction other minerals. However, the company has to approve a certain number of reserves of feldspar (or other minerals) with the State according to a standard procedure

The Subsoil Code of Ukraine stipulates that if a user has not started using subsoil within two years without good reason, the right to use subsoil shall be terminated. However, such terms (2 years)taking into account the need for additional research (geological, engineering-geological, technological, etc.), design time (1 - 2 years) and construction of underground mining and ground structures, etc. - are unrealistic and, most likely, the legislation will be amended accordingly.

So far, in order to amend the Work Program, which is an integral part of the Subsoil Use Agreement, subsoil users (and ULM as well) has used the term "valid reasons". Pursuant to Clause 3.3 of the Subsoil Use Agreement, the Company submitted to the State Committee for Geodesy and Mapping the relevant written justifications and supporting documents, and taking into account the necessary changes to the Work Program. According to the Program the mining is scheduled to begin in 2Q2025.

Construction design documentation

All construction design documentation for the mining project is a subject to mandatory state examination. Examination of construction projects is carried out in the manner prescribed by the Cabinet of Ministers of Ukraine by expert organizations, regardless of ownership, which meet the central executive body's criteria that ensure the formation

and implementation of state policy in construction architecture urban planning. Construction activities. In particular, the examination is conducted by the state enterprise Ukrderzhbudekspertyza, which also has 24 regional branches in each region of Ukraine. The cost of operating a comprehensive state examination of investment programs in total is up to 10 percent of their development cost. The full term of its holding should not exceed 45 calendar days. That is, this applies to the examination of construction documentation. It does not apply to investment in subsoil use.

The new Law 2805 makes it easier to deal with special permits, allowing them to be freely sold to other subsoil users. Laws 1116 "On state support of investment projects with significant investments in Ukraine", as well as Laws 1293 and 1294, which provide for tax and regulatory benefits for investors, are also in force in Ukraine.

Carrying out of the complex state examination of other investment programs and construction projects is provided by local and branch (interbranch) services of Ukrinvestekspertiza. The cost of conducting a comprehensive state examination of investment programs in full is up to 10 percent of the cost of their development. The total length should not exceed 45 calendar days.

Prior to the start of operation of the field, it is necessary to obtain a so-called mining allotment. Mining is a part of the subsoil provided to users for the industrial development of mineral deposits. Subsoil use outside the mining allotment is prohibited. It is provided by the government executive agency that implements state policy in the field of labor protection.

The mining allotment is applied for after the finalization of the mine design – BEFORE the construction of the mine.

Important - it is worth noting that Law 2805 has already canceled the obligation for subsoil users to obtain a mining license in the future. Law 2805 will enter into force on March 28, 2023

For the purposes connected with subsoil use, land lots are also given to the company by the state for mining infrastructure. ULM already owns lots of land with a total area of 34 hectares for the location and operation of main and ancillary buildings and structures related to subsoil use. If necessary, ULM will be able to purchase several more land lots.

Local ESIA (OVD) procedures

Prior to the development of the field, it is necessary to also assess the environmental impact of the planned activities (mining), which is a local Ukrainian ESIA. The main stages include: preparation and publication of a report on planned activities and an environmental impact assessment report; public discussion of the report, which is held in the form of public hearings and in the form of written comments and suggestions; as well as obtaining an opinion on the environmental impact assessment. All these requirements are mandatory.

In theory, the shortest timeframe for local ESIA can be around 4 to 6 months. In our case, for the final report to be credible – we need to do a mine/plant design first in order to determine the pollution levels of the area. Once that is done – we can quickly finish the local ESIA part and publish a final report.

Rules of technical operation, projects and plans for the development of mineral deposits and mineral processing are agreed by subsoil users with the government executive agency that implements state policy in the field of labor protection.

In case of violation of the essential requirements of the legislation, the use of subsoil may be limited, temporarily prohibited (suspended) or terminated solely on the basis of an independent decision of the court to which the state geological service applies.

Subsoil use in Ukraine

Subsoil use in Ukraine is paid. Upon receipt of the permit, the fee for issuing the license established following the Government Methodology shall be borne, and it shall also be paid if the license is extended for the next period. In addition, the fee for subsoil is collected in the form of a tax - rent for the use of subsoil for the extraction of minerals. Rental rates for the use of subsoil for the extraction of minerals are set as a percentage of the value of marketable products of the mining enterprise (Tax Code of Ukraine, Article 252).

Thus, for metals that do not belong to uranium-containing, ferrous, non-ferrous, and alloying metals (lithium is rare), the rate is set at 5% of the value of extracted minerals. Thus, it is a national tax paid from the beginning of mining.

In addition, there is an environmental tax in Ukraine. It consists of ponds for emissions of pollutants into the atmosphere, into water bodies, and for mining waste placement in specially designated areas. Their amount is determined by Articles 240-247 of the Tax Code. It is usually 3-5 percent of the cost of production. The environmental tax will be significantly higher in ore processing to obtain lithium products - carbonate hydroxide. It is also a national tax.

The draft of the completely new Code of Ukraine on the Subsoil was ready and submitted to the Government for consideration in October 2021. But due to the obvious difficulty of quickly adopting such a voluminous and radically new law, it has not yet been submitted to the Parliament for consideration, and the terms of this are not yet publicly known. Instead, members of parliament single-handedly drafted Law 2805, which was approved in December 2022 and will take effect on March 28, 2023.

This law amends the current Subsoil Code, improving it and eliminating many problems for subsoil users: allows the sale of special permits to other subsoil users, eliminates the extension fee the validity period of special permits, transfers the procedure for obtaining special permits into electronic form and improves it, obliges the state control body to suspend the effect of a special permit or completely cancel it only based solely on an independent court decision, etc.

In particular, the draft of updated Subsoil Code specifically states in Article 74 – that for the extraction of minerals, the validity of the permit is extended as many times as necessary for the full development of the field and can not be limited to the number of times.