

Establishing damage to land in Ukraine

Introduction

1. Areas of land fund losses in Ukraine

2. Methodologies for establishing damage

2.1. Land fund losses

2.2. Damage to land resources

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The hostilities in Ukraine are affecting not only the health of Ukrainians but also the natural resources of the country, particularly its land. Agribusinesses, whose main production asset is land, are primarily interested in being able to compensate or recoup the losses caused by land contamination and littering during the military actions.

1. Areas of land fund losses in Ukraine

The Order for the determining the damage and loss resulting from the armed aggression of the Russian Federation against Ukraine, adopted by the Cabinet of Ministers of Ukraine, outlines the specific areas in connection with the damage caused to the land fund of Ukraine, in particular:

a) losses of the land fund, which includes losses of the land fund as well as related lost profits. Determination of damage and losses is carried out in accordance with the Methodology, approved by an order of the Ministry of Agrarian Policy, in agreement with the Ministry of Integration. The regional state administrations (during martial law – military administrations) are responsible for determining damage and losses in this area. In determining damage and losses the following indicators shall be assessed:

- actual costs for recultivation of lands that were damaged as a result of military operations, construction, arrangement, and maintenance of engineering and fortification constructions, fences, boundary signs, boundary openings, means for arrangement of the state border;
- losses incurred by owners (land users) of land plots of agricultural purposes;
- expenditures for restoration of land melioration areas;
- de-mining costs.

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b) damage caused to land resources, which includes damage caused by pollution and contamination of land resources. Determination of damage and losses shall be carried out in accordance with the methodology approved by the order of the Ministry of Environmental Protection and Natural Resources of Ukraine upon submission of the State Environmental Inspection in agreement with the Ministry of Reintegration of Temporarily Occupied Territories. The State Environmental

Inspection is responsible for determination of damage and losses in this direction. When determining damage and losses the following indicators are assessed:

- damage of soils and land plots due to soil contamination with substances negatively affecting their fertility and other useful properties;
- damage of soils and land plots as a result of contamination of land plots with foreign objects, materials, waste and/or other substances.

2. Methodologies for establishing damage

Currently, the indicators for establishing damage caused to land resources are being supplemented and elaborated. In particular, the Methodology approved by Order No. 295 of the Ministry of Agrarian Policy of 18.05.2022 (Methodology No. 1) is used to determine the damage and losses, as well as the lost profit due to losses of the land fund.

To determine the amount of damage caused to land resources as a result of contamination and/or littering, the Methodology approved by Order No. 167 of the Ministry of Environmental Protection and Natural Resources of Ukraine of 04.04.2022 (Methodology No. 2) is used.

2.1. Land fund losses

Methodology 1 establishes the procedure for determining costs of land owners/users for land reclamation. Such costs are based on the budgeted cost of the works projected for the corresponding implemented working projects of land management for reclamation of disturbed lands.

The amount of damage caused to agricultural land owners (users) shall be determined in accordance with the Order on determining damages and compensation for land owners/users, approved by Resolution of the Cabinet of Ministers of Ukraine No. 284 (hereinafter – the Order).

Under the Order, the following shall be subject to compensation:

- the value of residential houses, production, and other buildings and structures, including incomplete construction;
- the value of fruit and other perennial plantations;
- the value of forest and tree and shrub plantations;
- the value of water sources (wells, ponds, reservoirs, boreholes, etc.), irrigation and drainage systems, anti-erosion and anti-landslide structures;
- expenses incurred or required to improve land quality;
- other losses of land owners/users, including lessees, including lost profit, if they are justified.

The amount of losses in this case is determined in full according to the real value of the given property at the time of damage, including the costs incurred or necessary to improve the land quality.

However, it should be noted that the Order is presently very rough and needs to be brought in line with the current reality.

Methodology No. 1 also defines the procedure for calculating costs of restoring

amelioration areas. Such costs are determined based on the estimated cost of works in relevant projects of reconstruction and capital repair of amelioration systems and separate objects of engineering infrastructure. These projects should be developed in accordance with the relevant State Construction Norms.

2.2. Damage to land resources

Methodology No. 2 specifically deals with determining damage and loss caused to land and soils due to land contamination and littering. The procedure established by Methodology No. 2 applies to all lands in Ukraine regardless of their categories and forms of ownership.

According to Methodology No. 2, soils are considered contaminated if negative qualitative changes are detected in their composition.

Soils are considered littered if there are foreign objects, materials, wastes, or other substances on the land plot, which have appeared as a result of emergencies or armed aggression and hostilities.

The facts of land contamination and/or littering, as well as the scale thereof, can be established by authorised persons by means of inspecting land plots, remote sensing data, studies of soil samples, processing conclusions of various surveys, explanatory notes, certificates, documents, materials, information received from any sources, operational communications of individuals and legal entities, etc.

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The amount of damage is calculated by authorised persons, carrying out state supervision (control) over observance of requirements of legislation on environmental protection. At present, the State Environmental Inspection of Ukraine is designated as such authority.

The amount of damage is calculated based on the documents and materials, confirming the fact of soil pollution, as well as on the normative monetary evaluation of the land plot with polluted soil. Data of normative monetary evaluation of such a land plot shall be obtained from any sources.

With respect to land plots whose monetary evaluation has not been carried out or in case it is impossible to obtain relevant data, the monetary evaluation of the land plot shall be calculated as an average normative monetary evaluation of the arable land area in the region multiplied by the coefficient causing adverse environmental impact on soil fertility that equals 300.

The amount of damage from soil pollution is determined according to the formula established by Methodology No. 2.

Analysis of this formula allows Ukrainian agricultural companies to prepare for damage assessment in advance by collecting information necessary to determine the amount of damage, namely:

- normative monetary value of the land plot whose soils have been contaminated or littered (in UAH per square metre);
- area of the land plot whose soils have been contaminated or littered (in square

metres).

Ukrainian agricultural companies can establish a preliminary area of contaminated or littered land by carrying out a relevant inventory procedure and drawing up an Act on the area of polluted land.

It is also advisable, in case the cultivation of such lands ceases, to issue an appropriate order on impossibility of their cultivation.

The other components of the formula are predominantly indicators to be determined by the competent state authorities of Ukraine or calculated values (e.g., reclamation costs).

Such components (coefficients, standards, etc.) are calculated based on various legislative acts and methodologies (the Methodology for determining the amount of damage caused by contamination and littering of land resources due to violation of environmental laws, approved by Order No. 171 of the Ministry of Environmental Protection; Resolution of the Cabinet of Ministers of Ukraine No. 1325 "On approval of norms of maximum allowable concentrations of hazardous substances in soils, as well as of the list of such substances"; the Methodology for determining the amount of damage caused by unauthorised occupation of land plots, use of land plots not for their designated purpose, land damage, violation of the regime, norms, and rules of their use, approved by Resolution of the Cabinet of Ministers of Ukraine No. 963).

The mentioned methodologies also establish the lists of substances and wastes that could be considered as contaminants or littering. Such lists require further elaboration due to the specific nature of pollutants and waste of military origin.

All materials used for the calculations are compiled in a separate file by the State Environmental Inspection.

A copy of such calculations along with the materials can be obtained by state authorities, local authorities, and law enforcement bodies.