

MICHIGAN DEPARTMENT OF NATURAL RESOURCES	PROCEDURE FOREST, MINERAL AND FIRE MANAGEMENT MINERAL AND LAND MANAGEMENT SECTION	NO. 2306.E7
		APPROVED: February 7, 2003

SUBJECT: Mineral Lease Bonds – Invoking/Collection Procedures

POLICY: It shall be the policy of the Natural Resources Commission (NRC) to manage State-owned minerals in a manner that protects and enhances the public trust. Surface and mineral ownership may be consolidated when it is in the best interests of the State. Minerals shall be developed in an orderly manner to optimize revenue consistent with other public interest and natural resource values.

PURPOSE: All Lessees are required to post a lease performance bond to guarantee that the Lessee and Lessee’s heirs, executors, administrators, successors, and assigns shall faithfully perform the covenants, conditions, and agreements specified in the lease and the laws and rules of the State. The Department of Natural Resources (Department) may elect to invoke the bond and collect a reimbursement of funds under the following conditions: (1) where a Lessee has failed to correct violations of a lease or any of the applicable laws or rules which govern the leasing program, and the Department has had to expend State funds to correct the violations to protect the safety and security of the public or to protect the land or environment from damage or destruction, (2) where the Lessee has failed to make royalty payments to the State as required by the lease, (3) to collect against a judgment decided by a court of law pertaining to the Lessee and a State lease or leases, or (4) to reimburse the State for expenditures made by the State to correct violations or defaults which resulted in the expenditure of State funds. If the amount of the lease performance bond in effect becomes depleted or partially depleted because of any claim or claims, the Lessee shall file a new or additional lease performance bond.

RELATED

PROCEDURES: Mineral Lease Compliance Procedure No. 2306.E8.
Mineral Lease Forfeiture Procedure No. 2306.E9.

WHO	DOES WHAT
Mineral and Land Management Staff	1. Works with Department staff to identify a specific default in the performance of an express or implied covenant of a lease, or a violation of an applicable law or rule that governs the State mineral leasing program.
Section Manager	2. Determines if violation or default may require immediate corrective action and the expenditure of State funds: <ul style="list-style-type: none"> a. To protect the health, safety or welfare of the public. b. To prevent damage or destruction of the resource, environment or real property.
Mineral and Land Management Staff	3. If said default or violation does not require immediate corrective action and expenditure of funds by the State, the Department through the Forest, Mineral and Fire Management (FMFM), follows the Procedures for Mineral Lease Compliance (No. 2306.E8). <ul style="list-style-type: none"> a. If Lessee fails to correct default within the time period specified in the Procedures for Mineral Lease Compliance, the Department may elect to expend funds to correct the default or violation, and may proceed with forfeiture of all or a portion of the lease rights. b. If State funds are expended, the Department collects against the bond to recover the expended dollars, as outlined in step number 12. The bond can be invoked whenever State funds are expended by the Department, Department of Environmental Quality or other State Agency, to: (1) correct a default or violation of any State lease, rule or law, and/or (2) collect unpaid production royalties due the State.

WHO	DOES WHAT
Mineral and Land Management Staff (Continued)	<p>4. If said default or violation does require immediate corrective action and the expenditure of State funds, works with Department staff, as needed, to:</p> <p>a. Document default or violation for use in collecting against bond. Documentation may include, but is not limited to:</p> <ol style="list-style-type: none"> 1) A written report of the violation or default. 2) A site map showing the location of the violation or default. 3) Photographs and/or video images of the violation or default.
Section Manager	<p>5. Recommends course of action to FMFM Chief and seeks approval to proceed with emergency action.</p>
FMFM Chief	<p>6. Approves appropriate emergency actions or directs staff to follow Mineral Lease Compliance Procedure No. 2306.E8.</p> <p>7. Determines the funding source of State revenue to be used to correct the default or violation.</p>
Mineral and Land Management Staff	<p>8. If authorized by FMFM Chief, follows the Department procedures for emergency situations regarding the use of contractors, etc., and the expenditure of State funds outside of the contract process.</p> <p>9. Documents the funding source and the amount of money expended by the State to correct the default or violation.</p> <p>a. Retains in file a copy of bill and payment information.</p> <p>10. Documents the corrective action taken by the State.</p> <p>a. Written description of corrective work completed by a private contractor or State employee.</p> <p>b. Photographs and/or video images of the corrective action or of the site after corrective action has been completed.</p> <p>c. Written reports by local government inspectors, law enforcement agents, or regulatory officials, as applicable.</p>
Section Manager	<p>11. Attempt to obtain reimbursement of the expended State funds directly from the Lessee. Mails a letter to the Lessee, by Certified United States mail, return receipt requested, to the Lessee's last known address, which contains the following information:</p> <p>a. Notice that a serious default or violation of the State lease, rules or laws by Lessee required immediate corrective action on behalf of the State and the expenditure of State funds.</p> <p>b. Identification of the violation and a description of the corrective action taken by the State.</p> <p>c. Notification of the amount of money expended by the State to correct the default or violation.</p>

WHO	DOES WHAT
<p>Section Manager (Continued)</p>	<ul style="list-style-type: none"> d. Notification that the Lessee has 30 calendar days, pursuant to the lease terms and conditions, to reimburse the State in the amount expended, or the State will invoke the lease performance bond and collect through the bond. e. Notification (if applicable) that a collection against the bond may leave the Lessee without sufficient bonding to cover their State lease interests and that they would be required to file a new or additional lease performance bond. f. Notification (if applicable) that the letter serves as the required 30 day Notice of Noncompliance as provided for in the lease, and that if payment is not received by the Department within 30 calendar days, the Department may, in addition to collecting on the bond, seek forfeiture of all or a portion of the lease rights (see Procedures for Mineral Lease Forfeiture No. 2306.E9).
<p>Mineral and Land Management Staff through FMFM Chief</p>	<ul style="list-style-type: none"> 12. If Lessee fails to reimburse the State within the stated time period, proceeds to invoke the lease performance bond and collect the appropriate amount of funds, as outlined below. Upon direction of the Chief of the FMFM, staff may also proceed with forfeiture of all or a portion of the lease rights as outlined in the lease and the Procedures for Mineral Lease Forfeiture (No. 2306.E9). <ul style="list-style-type: none"> a. If the bond posted by Lessee is a cash bond or a Certificate of Deposit, the Department withdraws the amount owed to the State and sends a letter to the Lessee, by Certified United States mail, return receipt requested, to the Lessee's last known address, which contains the following information: <ul style="list-style-type: none"> 1) Reference to previous letter demanding payment, and Lessee's failure to tender payment within the time period specified. 2) Notification that the amount has been withdrawn from the Lessee's bond. 3) Notification (if applicable) that Lessee now is not sufficiently bonded with the State and must file a new or additional lease performance bond or risk noncompliance on this and other State leases. 4) Notification (if applicable) that Department is proceeding with forfeiture (see Procedures for Mineral Lease Forfeiture No. 2306.E9). b. If the bond is a surety bond or an irrevocable letter of credit: <ul style="list-style-type: none"> 1) Mails a letter to the issuer of the bond, by Certified United States mail, return receipt requested. Said letter to contain the following information: <ul style="list-style-type: none"> a) Reference to the bond number or a photocopy of the irrevocable letter of credit. b) Notification that State funds were expended to correct a lease, rule or law default or violation by the Lessee (include copies of paid invoices). c) Description of the specific lease, rule or law violation or default. d) Description of corrective action taken by State and amount of State money expended. e) Notification that State is invoking the bond in the amount specified, with instructions that a check in that amount made payable to the State of Michigan be returned to the DNR FMFM.

WHO	DOES WHAT
<p>Mineral and Land Management Staff through FMFM Chief (Continued)</p>	<p>2) Mails a letter to Lessee, by Certified United States mail, return receipt requested, to the Lessee's last known address, which contains the following information:</p> <ul style="list-style-type: none"> a) Reference to previous letter demanding payment, and Lessee's failure to tender payment within the time period specified. b) Notification that the Department is invoking the lease performance bond and is in the process of collecting against the bond. c) Notification (if applicable) that Lessee is not sufficiently bonded with the State and must file a new or additional lease performance bond or risk noncompliance on this and other State leases. d) Notification (if applicable) that the Department is proceeding with forfeiture (see Procedures for Mineral Lease Forfeiture No. 2306.E9).
<p>Mineral and Land Management Staff</p>	<p>13. Monitors receipt of money from bonding institution.</p> <ul style="list-style-type: none"> a. Deposits money collected from bond into the applicable account: <ul style="list-style-type: none"> 1) For cases where State money was expended to correct a State lease, rule or law violation or default, money is deposited into the account where the money to provide the corrective action was taken. 2) For unpaid royalty, the money is deposited into the proper royalty account, i.e., the Michigan Natural Resources Trust Fund or Game and Fish Protection Fund.