

MICHIGAN DEPARTMENT OF NATURAL RESOURCES	PROCEDURE FOREST, MINERAL AND FIRE MANAGEMENT MINERAL AND LAND MANAGEMENT SECTION	NO. 2306.E9
		APPROVED: February 7, 2003

SUBJECT: Mineral Lease Forfeiture Procedure

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: Whereas it shall be the policy of the Director of the Department of Natural Resources (Department) and Forest, Mineral and Fire Management (FMFM) to require each Lessee to be in full compliance with all statutes, rules, policies, procedures and lease covenants, express or implied, which govern the State’s Mineral Leasing Program. In instances where a Lessee has defaulted in the performance of any express or implied covenant of a lease, or has violated any of the applicable laws or rules which govern the leasing program, the Department shall provide the Lessee with the appropriate written notice as outlined in the lease document. Depending on the severity of the default or violation and the actions taken by the Lessee to correct said default or violation, Department may: (1) allow additional time for Lessee to correct the default or violation, (2) may utilize the Hold Action List, and/or (3) may proceed with lease forfeiture in accordance with 1929 PA 81, MCL 554.281; MSA 26.1161. Forfeiture occurs when the Department has followed the Procedures for Mineral Lease Compliance and the Lessee has failed to correct the identified default or violation.

Lessees placed on the Hold Action List will be prevented from obtaining additional leases, assignments, easements, and other discretionary approvals while they remain on the list. Placement on the Hold Action List will not affect the Department’s right to invoke the lease performance bond or to pursue forfeiture of lease rights.

RELATED

PROCEDURES: Mineral Lease Compliance Procedure No. 2306.E8.
Mineral Lease Bonds – Invoking/Collection Procedure No. 2306.E7.

WHO	DOES WHAT
Mineral and Land Management Staff	<ol style="list-style-type: none"> 1. Work with Department staff, as needed, 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. 2. Initiates Mineral Lease Compliance Procedure No. 2306.E8, Steps 1-20.
Section Manager	<ol style="list-style-type: none"> 3. If Lessee has not demonstrated clear intent and progress toward correcting default or violation within the timeframe designated in the original Notice of Noncompliance, or if Lessee fails to correct the identified default or violation within any extensions of time granted by the Department, seeks approval from FMFM Chief to: <ol style="list-style-type: none"> a. Proceed with forfeiture of lease rights as outlined below. b. Collect against Lessee’s performance bond, if applicable, as outlined in Mineral Lease Bonds – Invoking/Collection Procedure No. 2306.E7.
FMFM Chief	<ol style="list-style-type: none"> 4. Provides authorization to proceed with lease forfeiture or directs staff on appropriate course of action.

WHO	DOES WHAT
Mineral and Land Management Staff through FMFM Chief	<p>5. If authorized to proceed, adheres to the following forfeiture steps, as required by MCL 554.281; MSA 26.1161.</p> <p>6. Sends Lessee a written notice that the lease has been forfeited. This notice is mailed by Certified Mail, return receipt requested, to the Lessee’s last known address. Letter must include the following information:</p> <ul style="list-style-type: none"> a. Date lease was forfeited (usually the day after the end of the time period designated in the initial Notice of Noncompliance or end of the extended time period). b. Identification of the specific violation or default for which lease was forfeited. c. Reference to previous notice of violation or default which was mailed to Lessee. d. Reference to the failure of the Lessee to correct the identified violation or default within the required time period. e. Notification that Lessee is obligated to record a signed surrender/release of the lease with the appropriate county register of deeds within 30 days of the date of forfeiture (include copy of surrender/release form for use by Lessee). Notification to include requirement that Lessee provide Department with a copy of the recorded surrender/release, and that said copy must be received by the Department within seven calendar days from the date of recording.
Mineral and Land Management Staff	<p>7. Contacts the appropriate register of deeds office upon expiration of 30 days noted in 6.e. to determine if Lessee/successor has filed the required Affidavit of Forfeiture.</p>
Mineral and Land Management Staff through FMFM Chief	<p>8. If Lessee fails to record a signed surrender/release as required by law, Department shall deliver to Lessee/successor by Certified Mail, return receipt requested to their last known address, the following notice:</p> <p>“To _____: The State of Michigan, owner of the following described land situated in _____ County, Michigan, to-wit: (description of land) upon which a lease dated the _____ day of _____, 20____, was given to _____, Lessee, does hereby notify you that the terms of said lease have been broken by the owner thereof, that the State of Michigan hereby elects to declare and does declare the said lease forfeited and void, and that unless you do within thirty days from this date notify the register of deeds of said county as provided by law, that said lease has been forfeited, the State of Michigan will file with the said register of deeds an Affidavit of Forfeiture as provided by law; and the State of Michigan hereby demands that you execute or have executed a proper surrender of said lease and that you put the same on record in the office of the register of deeds in said county within thirty days from this date.</p> <p>Dated this ____ day of _____, 20____.</p> <p>9. If Lessee fails to file with the appropriate register of deeds an Affidavit of Forfeiture as outlined above, and the Department believes that the forfeiture will not be contested, the Department takes the following action. If the Department believes that forfeiture will be contested, the Department follows the steps outlined in Section 10. below.</p> <ul style="list-style-type: none"> a. Thirty (30) days after service of the notice described in 8. above, file an affidavit with the register of deeds office where the leased lands are located stating that the State of Michigan is the owner; that the Lessee/successor has failed or neglected to comply with the terms of the lease; reciting the facts constituting the failure; and stating that the lease has been forfeited and is void. A copy of the notice of forfeiture and the manner of service is to be made part of this affidavit. <p>Along with notice, provide the appropriate register of deeds office with a letter that explains the notice and the responsibilities of the register of deeds office under MCL 554.281; MSA 26.1161.</p> <ul style="list-style-type: none"> b. Contacts appropriate register of deeds office 31 days after service of the notice described in 9.a., to determine if Lessee/successor has given notice regarding the lease.

WHO	DOES WHAT
Register of Deeds Office	<p>c. If within 30 days of the filing of the Department’s affidavit as set forth in 9.a., the Lessee/successor does not give notice to the register of deeds that the lease is not forfeited and that the Lessee/successor still claims an interest in the lands, the register of deeds shall record the affidavit and forfeiture will be complete.</p>
Mineral and Land Management Staff through FMFM Chief	<p>d. If within 30 days of the filing of the Department’s affidavit as set forth in 9.a., the Lessee/successor does give notice to the register of deeds that the lease is not forfeited and that the Lessee/successor still claims an interest in the lands, the register of deeds shall not record the affidavit. The Department shall request assistance from the Office of the Attorney General to bring suit against the Lessee/successor to quiet title, and to obtain consequential damages and costs, including reasonable attorney fees. Forfeiture will be determined in a court of law.</p> <p>FMFM Chief sends memo to the Liability Management Section, Office of Human Resources requesting assistance from the Office of the Attorney General in pursuing forfeiture of lease rights or other enforcement actions. Copies of this memo are provided to all Department Divisions which could be affected by this action.</p> <p>10. If Lessee fails to file with the appropriate register of deeds an Affidavit of Forfeiture as outlined above, and the Department has reason to believe that the forfeiture will be contested:</p> <p>a. The Department requests assistance from the Office of the Attorney General to bring suit in a court of competent jurisdiction to obtain the surrender/release, and to recover in such action of the Lessee, his successors or assigns, the sum of \$100.00 as damages, and all costs, together with a reasonable attorney’s fee for preparing and prosecuting the suit, and to recover any additional damages that the evidence in the case will warrant. Forfeiture will be determined by a court of law.</p> <p>b. FMFM Chief sends memo to the Liability Management Section, Office of Human Resources as outlined in Section 9.d. above.</p>
Mineral and Land Management Staff	<p>11. If well and/or associated production equipment remains on-site after forfeiture of lease, work with regulatory agency(s) to secure the site and shut-in the well, if needed.</p> <p>12. Once forfeiture is completed, and the Department has collected all costs, damages, payments, etc., as required under the lease or as stipulated through a court of law, and the Lessee has no other issues with the Department which put them on the Department Hold Action List, staff:</p> <p>a. Sends Lessee a notice that they have been removed from the Hold Action List.</p> <p>b. Removes Lessee from the Hold Action List and Lease Violation Log (if Lessee is in compliance on all other State leases held by Lessee.)</p> <p>Lessee is not to be removed from Lease Violation Log or Hold Action List if they have been put on the lists for defaults or violations concerning another State lease.</p>