



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN

DEPARTMENT OF NATURAL RESOURCES

LANSING



REBECCA A. HUMPHRIES
DIRECTOR

SUBMITTED: December 7, 2009

MEMORANDUM TO THE DIRECTOR

Information: Natural Resources Commission

Subject:

Updated Nonmetallic Mineral Salt Lease and Nonmetallic Mineral Leasing Procedures
FOR INFORMATION ONLY

Authority:

Part 5, Department of Natural Resources, Section 502, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

Discussion and Background:

The existing nonmetallic lease was updated to include potash as a producible mineral; update terms to be commensurate with other leasing programs; and, establish a royalty rate for potash based on review of existing state lease royalty rates. A workgroup of interested parties that included state, industry, and interested groups or individuals were formed to review and update the nonmetallic mineral lease procedures. The updated terms for the lease and procedures include:

Adding the nonmetallic mineral potash, on the existing salt lease; establishing a five percent of sales royalty rate for potash; and, adding a nomination fee of \$300.00 per 640 acres, within four (4) contiguous sections,

Notice:

This item appeared on the Department's December 28, 2009 Business Calendar and is being submitted for information on January 7, 2010, and will be eligible for approval on February 4, 2010.

NATURAL RESOURCES COMMISSION

Keith J. Charters, Chair • Mary Brown • Hurley J. Coleman, Jr. • John Madigan • Timothy L. Nichols • J. R. Richardson • Frank Wheatlake

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Recommendation:

The updated nonmetallic mineral salt lease and the nonmetallic mineral lease procedures be adopted pursuant to committee and staff recommendations.

Lynne M. Boyd, Chief
Forest, Mineral and Fire Management

Russ Mason, Ph.D., Chief
Wildlife

Kelley D. Smith, Ph.D., Chief
Fisheries

Arminda S. Koch
Resource Management Deputy

I approve the staff recommendation.

Rebecca A. Humphries
Director

Approval Date

*** DNR POLICIES & PROCEDURES ***

27.23-09 – Nonmetallic Mineral Leasing – State-owned Lands (Revised: ____/____/2009)

Supersedes:

Natural Resources Policy 2309 (dated) 11/08/1985)
DNR Procedures 2309.09 Nonmetallic Mineral Leasing Policy-State Owned Lands (3/11/1999)

Policy:

It shall be the policy of the Natural Resources Commission (NRC) to manage state-owned lands in a manner that protects and enhances the public trust. Nonmetallic minerals shall be developed in an orderly manner to optimize revenue consistent with other public interest and natural resource values.

Purpose:

The state of Michigan owns over 4.0 million acres of combined surface and mineral rights, and an additional 2.3 million acres of mineral rights only. Also, the state owns 25 million acres of Great lakes bottomlands. Under the provisions of PA 451 of 1994, Part 5 Section 502, the NRC and Director of the Department of Natural Resources (DNR) are responsible for managing these lands and mineral resources to ensure protection and enhancement of the public trust.

The DNR is authorized to enter into nonmetallic mineral leases through both the public oral or sealed bid auction (lease auction) and the direct lease process. Lease auctions may be scheduled, subject to demand.

NONMETALLIC MINERAL LEASING PROCESS PUBLIC SEALED BID OR ORAL AUCTION

WHO

DOES WHAT

Mineral and Land Management Section (MLMS) Staff

1. Sets a proposed lease auction date and associated nomination period for the nomination of state-owned lands to be considered for offering for lease through the public oral or sealed bid auction (lease auction) process. Lease auction type to be determined by MLMS.
2. Secures suitable location for a lease auction to be held. Staff should try to use no cost public facilities, if possible.
3. Makes arrangements for the services of a contract auctioneer and recording contractor, if applicable.
4. Publishes notice of open nomination period and nomination requirements/procedures through advertisement published in trade journals, through the posting of the information on the DNR web site and using appropriate mailing lists.

Nominators

5. Nominate state-owned lands to be offered for lease through the lease auction process by submitting nomination to MLMS, Forest, Mineral and Fire Management (FMFM), through the Cashier's Office, by letter, or on a form approved by the DNR with nomination fees of \$300.00 per 640 acres in up to four contiguous sections.

Cashier Office

6. Applies the process date and control number to the application letter and forwards the original documentation and a copy of the check submitted for nomination fees to MLMS staff.

MLMS Staff

7. Reviews the nomination to determine identity of nominator, description of land nominated, and to ensure the proper nomination fee has been paid. Enters this information into the Land Ownership Tracking System (LOTS), including the process date and control number applied by the Cashier's Office. The names and addresses of all severed surface owners of state mineral rights must be furnished to MLMS staff for notification, at the time of nomination.
8. Nominations that are incomplete and are not corrected by the end of the nomination period or are submitted after the nomination period will be returned to the nominator. Nomination fees are not refundable.
9. Provides a list of parcels to nominator to check for accuracy.
10. Coordinates the field review/lease classification process as outlined in the lease classification process, listed below.
11. Compiles a list of leasable lands and associated classifications.
12. Creates an auction list.
13. Mails out notification of intent to lease to township supervisors and county clerks of affected township and counties.
14. Publishes a notice of lands and their classifications considered for leasing, to provide for public comment and review. This notice is published in newspapers circulated in the counties where the lands are located, or in the major regional newspapers at least 30 days in advance of the DNR Director's decision to hold a lease auction.
15. Following a public comment period, prepares memo, for the Director, to hold a lease auction and approve parcel classification.

MLMS Staff and Management Assistant

16. Types and reviews memo for Director's approval and forwards to MLMS Section Manager for review and approval.
17. Publishes a notice in the DNR Calendar notifying the public that the DNR is seeking comments from the public and the Director's approval of a lease auction and parcel classifications. The lease auction must be publicized in the DNR Calendar for a period of at least seven days prior to Director's approval.

MLMS Section Manager

18. Reviews memo, makes any necessary changes and forwards to FMFM Chief's Executive Assistant.

FMFM Chief's Executive Assistant

19. Reviews and forwards memo to the Division Chiefs and Resource Management Deputy within the Resource Management Bureau for review and approval.

Resource Management Bureau

20. Reviews, signs and forwards memo to the Director for action.

DNR Director

21. Approves parcel classifications and the lease auction.

MLMS Staff

22. Mails or emails lease auction book or parcel list to Nominators.

23. Publishes lease auction book or parcel listing on the DNR website.

24. Publishes advertisement of lease auction in selected industry trade publications.

25. Conducts a public lease auction of state nonmetallic leases through the open oral auction or sealed bid process, as determined by the DNR. Auctions are held under the following standard terms and conditions, except as hereafter provided:

A. Registration of bidders

- 1) Only qualified bidders may participate in the lease auction.
 - a) Parties interested in bidding, or their authorized representative, must be present at the oral auction.
 - b) Bids may be submitted by individuals of legal age, a partnership, corporation or other entity qualified to do business in the state of Michigan. All prospective bidders must submit proof as follows:
 - i. Corporations or partnerships must provide MLMS with a copy of "Certificate of Good Standing" or "Certificate of Limited partnership."
 - ii. Persons doing business under an assumed name must provide MLMS with a copy of "Certificate of Persons Conducting Business Under Assumed Name."
 - iii. Individuals must provide MLMS with proof of legal age. This can be in the form of a birth certificate or valid driver's license.
 - iv. Entities listed on the DNR's Hold Action List are ineligible to participate in any lease auction as long as they remain in violation of lease terms.

B. Bidding (to determine the one time bonus payment).

- 1) The minimum bonus bid shall be determined by the DNR based on what nonmetallic product is to be leased when the royalty rate is predetermined.
- 2) The royalty, if not predetermined, will be the bid upon item. There will be a preset annual minimum royalty, but no minimum bonus.
- 3) Bid increments must in whole cents values.

C. Successful bidders.

- 1) Successful oral auction bidders must pay the entire bonus bid, plus the first year's rental payments, at checkout on the day of the lease auction. Payment can be made by cash, certified check, cashier's check, money order, or company check. Site drafts, in any format, will not be accepted.

- 2) Sealed bid lease auction successful bidders will be notified by mail and will need to pay the entire bonus bid plus the first year's rental payment or one half of the minimum royalty within 10 business days of notification, as applicable. If payment is not received as requested, the opportunity to lease will be passed on to the next highest bidder, at the option of the DNR.
- 3) Successful bidders must designate at checkout, the name of the individual or company to whom the lease will be issued. Leases will be issued to legal entities only.

26. Prepared lease auction summary.

MLMS Staff

27. Lease terms and rates.

- A. The lease term, rental, royalty and minimum royalty rates will be determined based on the type of nonmetallic mineral product to be leased.
- B. A lease performance bond shall be required of each lessee of state nonmetallic lease rights in order to assure faithful compliance with the terms and conditions of the lease. No lease will be issued without the minimum lease performance bond in place. The minimum bond to be maintained by each lessee, and the form of bond accepted, is determined as follows

1) Bond types accepted:

- a) Surety Bond
- b) Irrevocable Letter of Credit from a financial institution.
- c) Cash bond.
- d) Certificate of Deposit

2) Amount of bonding required:

AMOUNT OF BOND	MAXIMUM ACRES
\$10,000.00	0-500
\$20,000.00	501-2000
\$30,000.00	2001-5000
\$40,000.00	5001-10,000
\$50,000.00	10,001 or more

- C. Lessee must obtain and maintain liability and Worker's Compensation Insurance.
- D. The lease shall contain a maximum of one section (approximately 640 acres).
- E. An annual mining and reclamation or exploration plan must be approved prior to any mining or exploration activity.

MLMS Staff

28. Publishes a notice in the DNR Calendar of intent to issue lease(s).

29. Prepares memo to the Director for approval of leases, and inserts DNR Calendar/approval eligibility dates.

MLMS Management Assistant

30. Submits memo to MLMS Section Manager for review and approval.

Note: Direct leases can be approved by FMFM Chief as delegated by the DNR Director.

MLMS Section Manager

31. Reviews memo, makes any necessary changes and forwards to FMFM Chief's Executive Assistant.

32. Reviews and forwards memo to the Division Chiefs and Resource Management Deputy within the Resource Management Bureau for review and approval.

Resource Management Bureau

33. Reviews, signs and forwards memo to Director for action.

MLMS Staff

34. Publishes a notice in the DNR Calendar notifying the public that the DNR is seeking comments from the public, and Director's approval of lease issuance. Notice must be publicized in DNR Calendar for a period of at least seven days prior to Director's approval.

DNR Director

35. Approves issuance of leases.

MLMS Staff

36. Upon Director approval:

- A. Prepares Transportation and Natural Resources (TNR) Committee agendas.
- B. Forwards TNR Committee agenda and memos to board members, secretary and other parties requiring copies.

Note: If fully-executed memo is not available, forwards copy of memo signed by FMFM Chief, and submits final copy to Board Secretary when returned from Director's Office.

- C. Places copy of agenda and memo in pending file drawer, with copies to MLMS staff.
- D. Attends TNR Committee meeting to present proposed items and address any questions raised by committee members.
- E. Notifies MLMS Management Assistant of TNR Committee's decision.

TNR

37. Approves leases, and presents to State Administrative Board, for approval.

State Administrative Board

38. Approves leases.

MLMS Staff or Management Assistant

39. Generates lease documents by completing the following steps:
 - A. Establishes the effective date, to be 30 days after Board approval.
 - B. Enters lease term information into LOTS and creates lease document(s).
 - C. Inserts the Director approval date at the top of the signature page for each lease.
 - D. Prepares cover letter and sends leases to the proposed Lessees for execution.

Lessee

40. Signs and obtains signature from notary for each lease signed.
41. Returns lease to MLMS, within 30 days, along with any other requested information or material.

MLMS Staff

42. Reviews lease documents for any changes made, and ensures that signature pages have been properly signed and notarized.
43. Reviews Lessee bond information to ensure proper bonding is in place.
44. Reviews Hold Action List to determine if any proposed Lessee is on the List. No leases will be granted to entities on the Hold Act List.

MLMS Management Assistant

45. Finalizes lease by obtaining signature from MLMS Section Manager and notary.
46. Applies stamp reflecting Board approval date to lease signature pages.
47. Makes copy for MLMS files.
48. Finalizes cover letter(s) to Lessee.
49. Mails original lease and cover letter to Lessee.
50. Prepares lease file and files a copy of the fully executed lease in file.

DIRECT LEASE PROCESS

The Director may enter into a direct Lease for the following reasons:

- Completion of a mining operation area, reclamation of a pit or offset acreage to an existing pit.
- Consolidation of fractional interests owned by applicant
- To governmental agencies (restricted to government use only)
- To severed surface owners

WHO

DOES WHAT

Nominators

1. Nominate state-owned lands to be offered for the direct lease process by submitting a nomination to MLMS, FMFM, through the Cashier's Office, by letter or on a form approved by the DNR with nomination fees of \$300.00 per 640 acres in up to four contiguous sections.

Cashier's Office

2. Applies the process date and control number to the application letter and forwards the original documentation and a copy of the check submitted for nomination fees to MLMS staff.

MLMS Staff

3. Reviews the nomination to determine identity of nominator, description of land nominated, and to ensure the proper nomination fee has been paid. Enters this information into LOTS, including the process date and control number applied by the Cashier's Office. The names and addresses of all severed surface owners of state mineral rights must be furnished to MLMS staff for notification at the time of nomination
4. Nominations that are not complete are returned to the nominator for correction. Nomination fees are not refundable.
5. Provides a list of parcels to nominator to check for accuracy.
6. Coordinates the field review/lease classification process as outlined in the Lease Classification Process, listed below.
7. Compiles a list of leasable lands and associated classifications.
8. Mails out notification of intent to lease to township supervisors and county clerks of affected township and counties.
9. Prepares and requires applicant to publish a notice of lands and their classifications considered for leasing, to provide for public comment and review. This notice is published in newspapers circulated in the counties where the lands are located, or in the major regional newspapers at least 30 days in advance of the DNR Director's decision to issue direct leases.

Note: Direct leases can be approved by FMFM chief as delegated by the DNR Director.

10. See steps 28 through 51 from Auction Section above.

LEASE CLASSIFICATION PROCESS

Classification categories recognize the DNR's proprietary rights over the land surface, and take into account the effects development could have on current and future land uses and other resource values

Classification categories are:

1. Nonleasable: No mineral rights are to be leased. This classification should be only used where the greatest emphasis is on protection of surface resources.

Criteria and examples include:

- A. Lands with specific deed or other legal restrictions prohibiting leasing or mineral development.
 - B. Certain islands where mineral production facilities would be undesirable.
 - C. Certain unique or sensitive areas (e.g. designated or critical dunes).
2. Nondevelopment: Leasable mineral rights where no surface disturbance will be allowed. These leases allow underground development while protecting significant other resources from the impacts of surface development. This category shall be applied to a variety of culturally or ecologically sensitive lands or areas where no development is acceptable.

The nondevelopment lease classification shall apply to lands meeting the following criteria or reasons for nondevelopment, and other lands as designated by the Department:

- A. Public parks and recreation areas, campgrounds, fish hatcheries, and research areas; lands dedicated under Part 351, wilderness and Natural Areas, of the Natural Resources Environmental Protection Act 1994 PA 451, as amended (NREPA); and similar facilities and sites. This may include up to a one-half mile buffer around the boundaries of such facilities, as appropriate.
 - B. Wetlands, sand dunes, steep slopes, highly erodible soils and other natural features and areas that are ecologically sensitive, special or unusual.
 - C. Unique biotic communities as listed or verified by the Natural Heritage Program.
 - D. Critical habitat for endangered, threatened, special-concern or sensitive species that cannot be accommodated by a Development lease with special conditions.
 - E. Special or unusual recreation or scenic areas, including designated Natural Rivers.
 - F. Islands.
 - G. Areas with archaeological or historical features.
 - H. All Great Lakes inland lake or stream bottomlands.
 - I. Lands with likely dispersed occurrences of any of the above.
 - J. State lands with deed or other legal restriction that prohibit surface development. This may include military lands where the leasing for mineral exploration or development is at the option of the Department of Military and Veterans Affairs.
 - K. Blocks of land with significant contiguous acreage which are unusual or valuable for one or more of the following characteristics:
 - 1) Limited accessibility by vehicles
 - 2) Relatively low-level of current development (roads, facilities, etc.).
 - 3) Important for maintaining the continuity of wildlife travel corridors.
 - 4) Important to diverse plant and animal communities by limiting isolation and fragmentation of forest/wildlife habitats.
 - L. Buildings, surface uses, or developments of a nature or located so as to preclude the location of a mining operation area.
3. Development with Restriction: Leasable mineral rights on which surface use is available and allowed under specific conditions. In some cases where issues of concern, such as those listed under nondevelopment classification, can be sufficiently protected with special development conditions. Such conditions would be included in the lease. These "Development" leases may include language pertaining to, for example: limited

surface disturbance (nondevelopment areas within the leased parcel), access locations, seasonal use restrictions, or other criteria and reasons listed in the nondevelopment classification. Special conditions would be in addition to standard provisions of the lease, and should be specified in the classification process.

4. Development: Leasable mineral rights on which surface use is available and allowed. Standard lease provisions and conditions would apply to this category.

All lands considered for leasing shall be thoroughly reviewed by the Department for classification. Such classification should also proceed in cooperation with relevant federal land managing agencies whenever action of one might directly affect the mineral or surface interests of the other.

CLASSIFICATION PROCESS

WHO

DOES WHAT

MLMS Staff

1. Receives nominations of state-owned lands to be offered for lease.
(See Leasing Process above for nomination procedures)
2. Enters the nominated parcels into the computerized Land Ownership Tracking System (LOTS), which:
 - a. Completes a check on all nominated lands to ensure that the lands are state-owned and that they are not currently leased.
 - b. Reviews the DNR database to determine if nominated lands have been previously classified as nonleasable, and reviews them to see if they should be removed from consideration.
 - c. Automatically flags lands acquired with federal funding (Dingell Johnson, Pittman Robertson, Land and Water Conservation Funds, State Wildlife Grants, North American Conservation Act, National Wetlands Conservation Grant, Endangered Species Section 6 Land Acquisition Funds or Landowner Incentive Programs) with a nondevelopment classification.
 - d. Enters eligible nominations into the Parcel Review System (PRS).
3. Generates a list of eligible nominations from LOTS. Sends the list to all nominators to verify that all nominations have been entered correctly into the system.
4. Generates a list of all nominated lands acquired with federal aid funding or other federal interest. Forwards this list to Wildlife Division.

Wildlife Division

5. Sends the list of nominated lands acquired with federal funding to the US Fish and Wildlife Service, along with a request to that agency for approval to lease the lands with the nondevelopment classifications.

MLMS Staff

6. Sends a request to review and classify lands for leasing to non-DNR reviewing agencies:
 - a. Department of Military and Veterans Affairs (if applicable)
 - b. Natural Heritage Program Specialist
 - c. Office of the State Archeologist
 - d. USDA Forest Service (if applicable)

Non-DNR Reviewing Agencies

7. Reviews lists of nominated parcels relative to the programs that they administer. Either enters classification and comments into PRS or returns classification recommendations and supporting background information to MLMS, within the time period specified.

MLMS Staff

8. Reviews information submitted by non-DNR reviewers to ensure that classification reviews have been submitted by all non-DNR agencies by the due date. Contacts non-DNR reviewers if there is a questions regarding the classification recommendations submitted. Enters data into PRS, if needed.
9. Mails individual notifications to severed mineral surface owners whose lands are underlain by state-owned mineral rights which are nominated for lease with specified time frame and contact information. Forwards all comments to Upper Peninsula (UP) Field Coordinator, or Lower Peninsula (LP) Field Coordinator, if in the LP.
10. Makes PRS available to all DNR reviewers. The identity of DNR reviews is set in advance by the DNR Land Administering Divisions (LAD). Changes in the identity of DNR reviewers are provided to MLMS by the Chiefs of the LAD's as need arises.

DNR Reviewers

11. Review lands and enters preliminary classification recommendations and comments in PRS.

DNR Field Coordinators

12. Reviews classification recommendations entered by DNR reviewers, and
 - a. Changes classifications and adds comments where appropriate.
 - b. Resolves any classification disputes.
 - c. Designates a classification recommendation in PRS.

MLMS Staff

13. Uploads final field classifications from PRS into LOTS.
14. Offers the lands for lease as applicable, through the public lease auction or direct lease process.

See Leasing Process above.

RECLASSIFICATION PROCEDURES

WHO

DOES WHAT

Lessee

1. Submits to MLMS an application to change classification of a portion of an existing state lease, or an entire existing state lease (application for amendment to state of Michigan lease for the purpose of parcel reclassification).

Application contains:

- a. Legal description of lands requested for reclassification.
- b. Desired classification.
- c. Supporting information, including proposed location of development and reason for reclassification.
- d. Non-refundable application fee of \$2,000.00.
- e. Name and address of severed surface owner(s), if applicable.

MLMS Staff

2. Sends letter of acknowledgement to applicant indicating time frame of reclassification process.
3. Reviews title information to determine if lands were acquired with federal aid funds (including Dingell Johnson, Pittman Robertson, and Land and Water Conservation Funds and others listed previously in 3C (page 3))
 - a. If yes, reclassification to anything other than nondevelopment is denied. Letter explaining denial of reclassification is sent to applicant.
 - b. If yes, and reclassification is to the nondevelopment classification, send notification to Wildlife Division so that they can notify US Fish and Wildlife Service of classification change.
 - c. If lands were not acquired with federal aid funds, proceed to next step.
4. Reviews classification history to determine if current classification is a result of recommendations from non-DNR reviewers.
5. Sends notice to severed surface owner, if applicable, of possible reclassification of parcel with specified time and contact for comments.
6. Publishes reclassification request on DNR on-line maps.
7. Sends a request to review parcels proposed for reclassification to non-DNR reviewing agencies.
 - a. Department of Military and Veterans Affairs (if applicable)
 - b. Natural Heritage Program Specialist
 - c. Office of the State Archeologist
 - d. USDA Forest Service (if applicable)

Non-DNR Reviewing Agencies

8. Reviews list of parcels proposed for reclassification relative to the programs that they administer. Either enters classification and comments into PRS or returns classification recommendations and supporting background information to MLMS, within the time period specified.

MLMS Staff

9. Reviews information submitted by non-DNR reviewers to ensure that reclassification reviews have been submitted by all non-DNR agencies by the due date. Contacts non DNR reviewers if there is a question regarding the reclassification recommendations submitted. Enters data into PRS, if needed.
10. Forwards all surface owner and public comments to Upper Peninsula (UP) Field Coordinator, or Lower Peninsula (LP) Field Coordinator, if in the LP.
11. Makes PRS available to all DNR reviewers. The identity of DNR reviewers is set in advance by the DNR Land Administering Division (LAD). Changes in the identity of DNR reviewers are provided to MLMS by the Chiefs of the LAD's as need arises.

DNR Reviewers

12. Reviews lands and enter preliminary reclassification recommendations and comments into PRS.

DNR Field Coordinators

13. Reviews reclassification recommendations entered by DNR reviewers, surface owner and other public comments and
- a. Changes reclassifications and add comments, where appropriate.
 - b. Resolves any reclassification disputes.
 - c. Designates a reclassification recommendation in PRS.

MLMS Staff

14. Uploads final field reclassifications from PRS into LOTS. If reclassification has been denied, sends applicant a letter explaining denial.

If reclassification has been approved:

- a. Determines if any additional bonus must be paid to the DNR. Additional bonus due for the change in classification is determined by calculating the average per acre difference between development and nondevelopment leases.
- b. Notifies the applicant of the terms of the change in classification, including any restrictions, additional bonus to be paid, public notice requirements, etc. If applicant agrees to the terms of the change in classification and submits the required additional bonus, if any, continues the process.
- c. Prepares and requires applicant to publish notices of lands and proposed reclassifications considered for leasing in newspapers circulated in the counties where the lands are located, or in major regional newspapers, at least 30 days in advance of the FMFM Chief's decision to reclassify the lands. The purpose of the notice is to provide the public adequate opportunity to review and comment on the reclassification of the lands. The classification of any description shall be determined by the DNR.
- d. Mails notice to the township supervisors in the township offices and to the county clerk in the county where the lands for lease are located, at least 30 days in advance of the FMFM Chief's decision to reclassify the lands. This notification will provide local units of government the opportunity to review and comments.
- e. Mails notice to DNR offices in appropriate locations for posting in public areas.
- f. Prepares memo to Chief, FMFM for approval of reclassification,
- g. Submits reclassification information for publication in the DNR Calendar, at least 30 days prior to reclassification approval.
- h. Prepares lease amendment showing the change in classification.
 - i. Incorporate any special provisions stipulated by DNR staff.
 - ii. If only part of the lease is being reclassified, lease may need to be split into separate leases.

FMFM Chief

15. Approves the amendment reclassifying a portion or all of the leased premises.

MLMS Staff

16. Mails amendment to Lessee for execution and return within 30 days.

Lessee

17. Executes the amendment and returns it to MLMS.

MLMS Section Manager

18. Executes the amendment on behalf of the DNR.

MLMS Staff

19. Mails one copy of the fully-executed amendment to the Lessee.

20. Posts lease worksheet and LOTS with changes.

21. Notifies Revenue Verification Unit of MLMS of amendment and change in lease classification.

22. Files fully executed amendment in lease file.

A. DEFINITIONS

1. **Commingled Waste Rejects** means waste rejects from property of the Lessee mixed with waste rejects from property of the Lessor.
2. **Exploration** means the processes involved in the search for and delineation of a nonmetallic mineral and/or nonmetallic mineral products to determine reserve.
3. **Exploration Activities** means those actions conducted upon the leased premises as a necessary part of exploration including geological, chemical and geophysical surveys, preparation of necessary roads and drill sites, drilling, sampling, analysis, testing, feasibility and environmental studies or other approved activities.
4. **Lessor** means the Director of the Department of Natural Resources for the State of Michigan.
5. **Leased Premises** means the land, property, and/or mineral rights of the Lessor herein leased to the Lessee.
6. **Mining** means part or all of the process involved in the harvesting and/or removal of nonmetallic minerals and/or nonmetallic mineral products including development, extraction, beneficiation, water storage, agglomeration and production of waste.
7. **Mining Operation Area** means the land area where active mining operations are, have been or are projected to take place, and as delineated in the mining and reclamation plan. Areas include, but are not limited to stockpiles, roads, processing plants, impoundments, treatment and settling basins, drainage ditches, water level control structures, and shipping facilities.
8. **Nonmetallic Minerals and/or Nonmetallic Mineral Products “for leasing purposes”** include, but are not limited to: anhydrite; gypsum; natural and artificial brines (salines) (including, but not limited to, iodine, bromine, calcium and magnesium compounds); potash salts; and salt. Other naturally occurring nonmetallic mineral salts not listed herein may also be leased on an individual basis subject to terms and conditions of the lease or as specified by Lessor.
9. **Paying Quantity** means production in the preceding twelve months sufficient to return royalties to the Lessor equal to or exceeding the minimum royalty.
10. **Potash** shall include the chlorides, sulfates, carbonates, borates, silicates, oxides and nitrates of potassium. (KCl, KO₂, or equivalents)
11. **Production** means the extraction, processing, stockpiling and/or sales of nonmetallic minerals and/or nonmetallic mineral products from the leased premises. For purposes of this lease, the sale of nonmetallic minerals and/or nonmetallic mineral products in place of or without extraction is not considered production, and shall not be used to calculate production royalties.
12. **Reclamation** means reconditioning or rehabilitation of the affected leased premises as delineated in the mining and reclamation plan or portions thereof by the Lessee for useful purposes and the protection of the natural resources, including the control of erosion and the prevention of land slides, slumpage and air, land and water pollution.
13. **Sales Value** means the value in U.S. dollars on the open market of all marketable products F.O.B. mining operation or processing plant after which sale the Lessee no longer holds an economic interest in the marketable nonmetallic minerals and as shown by sales receipts. If nonmetallic minerals and/or nonmetallic mineral products are not sold to an independent consumer on the open market at fair market value, but are processed further by a plant which is operated by the Lessee, or in which the Lessee has an interest, the equivalent sales value on the open market for the nonmetallic minerals and/or nonmetallic mineral products shall be:
 - (a) Estimated by Lessee, subject to review and approval of the Lessor or;
 - (b) Extrapolated, as mutually agreed to by Lessor and Lessee, from pertinent latest annual tabulations of the U.S. Geological Survey of averaged sales for regional States and related areas, and/or other similar publications.

For purposes of this lease, the sale of nonmetallic minerals and/or nonmetallic mineral products in place, or without extraction, is not considered production, and any sales value at that point shall not be used as the basis for calculation of production royalties.

Also for purposes of this lease, FOB mining operation or processing plant is defined as the mine, plant or stockpile for all nonmetallic minerals and/or nonmetallic mineral products except for bulk salt (NaCl) in solution which is extracted by solution mining in artificial brines or natural salines; FOB for this material shall be the wellhead.

14. **Short Ton** means 2,000 pounds avoirdupois.
15. **Tailings** means waste rejects that have been placed in a confined waste or storage basin.
16. **Tailings Basin** means land on which tailings are deposited including surrounding dikes constructed to contain the tailings.
17. **Waste** means soil and vegetation, overburden, waste rock, waste rejects directly resulting from, or displaced by, mining and deposited on the surface of the leased premises and other property under control of the Lessee. Waste shall not include waste rejects, as defined as "waste rejects" below.
18. **Waste Rejects** means materials having no present nonmetallic mineral value, separated from the concentrate of nonmetallic minerals and/or nonmetallic mineral products as the result of processing or concentration, as well as materials containing nonmetallic minerals which are not economically recoverable under existing market or technological conditions which may have been extracted and stockpiled in the process of mining from the leased premises. Waste rejects do not include natural salines.

B. TERM OF LEASE

1. This lease shall remain in force for a primary term of ten (10) years from this date and as to those portions of the leased premises included within a mining operation area, so long thereafter as there is either production of nonmetallic minerals and/or nonmetallic mineral products in paying quantities by Lessee from lands within such mining operation area, or there is reclamation activity as specified in an approved Mining and Reclamation Plan as obligations of the Lessee under the provisions of Section H of this lease which remains unperformed.
2. Lessor may, at its sole discretion, upon written application of Lessee, agree to an extension of the primary term of this lease.

C. ECONOMIC TERMS

1. Rentals

Lessee shall pay to Lessor rental as follows:

- (a) Rental for the first (1) through fifth (5) year shall be paid at the rate of \$3.00 per acre per year.
- (b) Rental for the first year shall be paid upon execution of the lease, and thereafter rental shall be paid annually in advance of the lease anniversary date. Lease rights shall terminate and the Lessee shall be required to file a release with the Lessor as hereinafter provided whenever any rentals coming due under the lease remain unpaid for a period of ten (10) days after the rental become due. Lessor may, at its sole discretion waive in writing termination of the lease for unpaid rental upon Lessee's submission in writing of proper and satisfactory proof as a cause, along with payments due. Any payments by Lessee after the due date shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- (c) Payment of either production royalties or minimum royalties from a mining operation area shall abate the rental on that part of the leased premises contained in that mining operation area. The abatement shall be effective on the rental due date following the rental period in which the abatement is granted.

2. Minimum Royalties

- (a) Lessee shall pay to Lessor a minimum royalty of \$10.00 per acre for the sixth (6) year of the lease and for each year thereafter the payment shall increase an additional \$5.00 per acre through the tenth (10) year. For the tenth (10) year of the lease and thereafter for the life of the lease, the minimum royalty shall be \$30.00 per acre per year.
- (b) These payments shall be paid annually in advance of the lease anniversary date. Lease rights shall terminate and the Lessee shall be required to file a release with the Lessor as hereinafter provided whenever these payments remain unpaid for a period of ten (10) days after the anniversary date. Lessor may, at its sole discretion, waive in writing termination of the lease for unpaid minimum royalties upon Lessee's submittal in writing of proper and satisfactory proof as to cause, along with payments due. Any payments by Lessee after the due date shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- (c) Approval of a mining and reclamation plan which includes a mining operation area shall abate all increases in the minimum royalty on that portion of the leased premises contained in the mining operation area. The abatement shall be effective on the next annual minimum royalty due date.

Thereafter, minimum royalties shall be paid at that constant rate until production of nonmetallic minerals and/or nonmetallic mineral products in paying quantities begins on that portion of the leased premises included in the mining operation area. If production of nonmetallic minerals and/or nonmetallic mineral products commences prior to the sixth (6) year of the lease, rental shall be abated and minimum royalties shall be paid at the rate of \$10 per year for each acre in the mining operation area.

- (d) Should the production of nonmetallic minerals and/or nonmetallic mineral products in paying quantities commence on the leased premises, the minimum royalties paid for that lease year for those lands included in the mining operation area shall be credited against the production royalties payable hereunder to the Lessor.
- (e) In the absence of production of nonmetallic minerals and/or nonmetallic mineral products in paying quantities before the expiration of the primary term of this lease, all minimum royalties paid shall be forfeited to the Lessor.

3. Production Royalties

- (a) Lessee shall pay to Lessor a production royalty for the nonmetallic minerals and/or nonmetallic mineral products produced and sold from the leased premises which shall be the product of:
 - (i) the sale value, as defined in this lease, of nonmetallic minerals and/or nonmetallic mineral products sold during the past calendar quarter; and
 - (ii) the production royalty rate according to the following schedules:

<u>Type of Salt and Mining Method</u>	<u>In Bulk</u>
Rock Salt (NaCl - halite)	
-- conventional dry mining	3.24%
 Sodium Chloride	
-- solution mining and natural brines	4.0%
 Potash	
-- solution mining	5.0%

- (iii) Royalties of all other products will be negotiated by Lessor and Lessee.
- (b) Production royalties shall be paid on a quarterly basis on or before the twenty-fifth (25th) day of January, April, July, and October of every year during the term of this lease for all nonmetallic minerals and/or nonmetallic mineral products sold during the preceding calendar year.
- (c) Lessee shall secure written authorization of the Lessor in order to delay any royalty payments beyond the date specified. Payments made after the due dates shall include interest at the rate of 1.5 percent per month, or at the maximum legal rate, whichever is less, on the amount of royalty unpaid. If royalty payments are delayed, or if such authorization is not secured, Lessor may, at its sole discretion, declare the lease defaulted under the provisions of Section D herein or invoke any other remedies available to Lessor under the lease. Lessor agrees that sales of nonmetallic minerals and/or nonmetallic mineral products on a consignment basis may be justification for allowing Lessee to delay payment of royalty payments beyond the date specified above, however if Lessor approves such delay, Lessor shall specify an alternate payment schedule binding on Lessee.
- (d) Lessee agrees that all royalties accruing to the Lessor herein shall be without deduction of any costs incurred by the Lessee unless agreed to in writing by the Lessor.
- (e) The Lessor is not liable for any taxes incurred by the Lessee and no tax deductions may be taken in computing the royalty.

4. Minimum Royalties In Lieu of Production Royalties

- (a) Lessee may, during the term of this lease and with the concurrence of the Lessor, suspend production of nonmetallic minerals and/or nonmetallic mineral products from a mining operation area established under the terms of this lease for up to two (2) cumulative years, or longer at the discretion of Lessor, and may in such case maintain this lease as to those portions of the leased premises contained in a mining

operation area by the payment of minimum royalties in lieu of production royalties. During such periods of suspended production, this lease shall not, as to those portions of the leased premises included in a mining operation area, be subject to expiration under the provisions of Section B of this lease. Lessee shall notify Lessor of each cessation of production.

- (b) The amount of the minimum royalties in lieu of production royalties shall be determined according to the schedule in part C2a of this lease, and shall be on a per acre basis prorated for the period of suspended production.
- (c) Minimum royalties in lieu of production royalties shall be paid within 30 days of notice to Lessor of suspension of production and annually thereafter. Lease rights shall terminate and the Lessee shall be required to file a release with Lessor as hereinafter provided whenever these payments shall be and remain unpaid for a period of fifteen (15) days after the payment is due. Lessor may, at its sole discretion, waive in writing termination of the lease for unpaid minimum royalties in lieu of production royalty payments upon Lessee's submittal in writing of proper and satisfactory proof as to cause, along with payments due. Any payments by Lessee after the due date shall include interest at the rate of 1.5 percent per month or at the maximum legal rate, whichever is less, on the amount unpaid.
- (d) Payment of minimum royalties in lieu of production royalties shall not serve to abate or affect any other minimum royalties which may be assessed for portions of the leased premises where a mining operation area has not been established.
- (e) Lessee's tax obligations, if any, continue as if production were underway.
- (f) When Lessee resumes the production of minerals and/or mineral products in paying quantities on the leased premises, the minimum royalties paid in lieu of production royalties for those lands included in the mining operation area, shall be credited against production royalties for that year payable hereunder to the Lessor.

D. DEFAULT OF LEASE

1. In the event Lessor shall determine a default in the performance by Lessee of any express or implied covenant of the lease, Lessor shall give notice in writing by certified or registered mail, addressed to Lessee's last address filed with Lessor, specifying the facts by which default is claimed. Except as to rental, minimum royalty, production royalty, and payments in lieu of production royalty requirements as heretofore provided, Lessee shall have thirty (30) days from date of receipt of notice to satisfy the obligation of Lessee, if any, with respect to Lessor's notice, or provide Lessor satisfactory proof that Lessee is not in default or if in default and Lessee is not able to cure within thirty (30) days, Lessee shall submit for Lessor's approval a performance schedule with a date certain to satisfy or cure default of Lessee.
2. If the default is not cured, as provided above, Lessor may take possession of the leased premises or any part thereof, and all nonmetallic minerals and/or nonmetallic mineral products, machinery, fixtures, improvements, and Lessee's personal property on the leased premises become the property of the Lessor. Lessor may then exclude Lessee from the leased premises and declare this lease terminated and Lessee's rights forfeited. Re-entry by Lessor does not eliminate any other legal remedy for Lessor. No tools, fixtures, machinery or other property of the Lessee shall be removed from said premises, and all sums due on royalties, damages, or other payments, shall be a lien on all implements, tools, movable machinery, and all other chattels used in operating said property, and also upon all of the unsold nonmetallic minerals and/or nonmetallic mineral products obtained from the land herein leased, as security for the payment of royalties, damages, or other payments. This lien may be foreclosed in the same manner as chattel mortgages are foreclosed.
3. Should Lessee be prevented from conducting exploration or mining operations or from mining minerals and/or mineral products under this lease, after effort made in good faith, for any reason beyond the reasonable control of Lessee (not including economic, budgetary or financial constraints, or conditions), this lease will be extended as to portions of the leased premises affected by such force majeure so long as Lessee is prevented from exploration, conducting mining operations or from mining minerals, and/or mineral products there from.
4. Before a lease will be executed for any State lands, unless waived by the Lessor, the Lessee shall file a Surety bond, irrevocable Letter of Credit or Cash bond acceptable to the Lessor, to insure that Lessee, its heir, executors, administrators, successors, and assigns, shall faithfully perform the covenants, conditions, and agreements specified in the lease, and the applicable laws and rules of the State of Michigan.
5. Lessee shall keep in full force and effect a sufficient bond to cover the acreage held under the lease as heretofore specified. If the amount of bond in effect becomes depleted or partially depleted because of any claim or claims, Lessee shall file a new bond as required by the Lessor.

6. Lessor may invoke part or all of the bond when it determines that part or all of the covenants, conditions or agreements specified in the lease are not being fulfilled. Invoking the bond is not necessarily related to any actions taken by Lessor under part D (1) above.
7. In addition to invoking a part of or all of the lease performance bond noted under D(6), the Lessor, at the Lessor's sole option, may determine that the Lessee be placed on a "Hold Action" list until such time as any and/or all infractions by the Lessee have been resolved to the satisfaction of the Lessor. Placement on said list may result in barring the Lessee from any further leases, assignments, easements, extensions or other approvals required by the Lessor. However, placement on said list does not eliminate the Lessor's ability to forfeit any or all parts of said lease under D(8).
8. If Lessee fails to address any claim of default as herein provided the Lessor may proceed, at its sole discretion, with forfeiture of all or part of said leased premises in accordance with the provisions of Act 81 of Public Acts of 1929, being sections 554.281 and 554.282 of Michigan Compiled Laws.

E. ASSIGNMENTS AND CONTRACTS

1. No assignments of this lease or any rights hereunder, shall be valid except upon written approval of the Lessor, and upon payment of an administrative fee as established by the Lessor in a published schedule. Such approval shall not be unreasonably withheld.
2. Assignments by Lessee of any portion of the leased premises shall be construed as creating a separate lease agreement as to the acreage or portions assigned. Development on the assigned acreage, after the assignment has been made shall not affect the rate of rental or term of the lease on the unassigned acreage; and, conversely, development on the unassigned acreage, after the assignment has been made, shall not affect the rate of rental or term of the lease on the assigned acreage.
3. If the Lessee's interest or any part thereof is assigned, each and every clause and covenant hereof shall extend to the assignee, its or their heirs, executors, administrators, successors, or assigns.

F. SURFACE USE

1. Lessee shall pay or agree upon payment to the surface owner, or any person holding under the owner, for all damages or losses (including any loss of the use of all or part of the surface), caused directly or indirectly by operations hereunder, whether to growing crops, buildings, to any person or property, or to other operations. Authorization to utilize the surface for a processing facility or well pads shall be granted by a surface use lease or other separate written permission approved by the Lessor. The surface use lease, or other separate written permission, shall specify the terms of use, rental amount, and requirements for abandonment and restoration of the site(s).
2. Before mining operations may be commenced on the land in which the State of Michigan owns mineral rights only, and as described in this lease, proof shall be submitted to the Lessor, in writing, that either voluntary agreement or stipulated settlement relative to surface use and damages has been reached between the Lessee or Lessee's authorized agent and the surface owner or D3 is invoked.
3. When a mutually satisfactory agreement relative to surface use and damages cannot be reached, either party can inform the Lessor, in writing, that a dispute exists and Lessor will notify both parties and will grant a negotiation period of thirty (30) days in which no mining operations may be conducted by the Lessee. This time period is to allow for the resolution of the dispute. If, at the end of this period proof of the agreement is not submitted in writing to the Lessor, mining operations will not be prohibited by the Lessor and resolution of the dispute rests solely with the Lessee and the surface owner independent of the Lessor.

G. RECORDS AND REPORTS

1. Production Reports
 - (a) Lessee shall keep an accurate account of all mining operations under this lease, including production sales, prices and dates of same, and shall submit to Lessor at the time of each quarterly payment of production royalties, a certified statement in duplicate, showing the quantities of nonmetallic minerals and/or nonmetallic mineral products produced in the past quarter, the quantities sold and quantities otherwise disposed of from the leased premises and methods used to determine same.
 - (b) If any nonmetallic minerals and/or nonmetallic mineral products produced from the leased premises are transported to a point outside of the mining operation area before being weighed, gauged or measured Lessee shall have all the material weighted, gauged or measured by the transporting firm and shall furnish Lessor with the transporter's statements of the weights of all shipments during the preceding quarter. Any written certificate or statement of any transporter concerning any shipment from the leased

premises and its weight and any copies of transcripts from the books of any transporter concerning shipments or their weights shall be prima facie evidence of those facts in any suit or controversy between Lessee and Lessor.

- (c) Lessee shall also furnish Lessor with annual reports on the anniversary date of the lease of the status of mining development and reclamation efforts to date and current mine maps of the leased premises and premises from which nonmetallic minerals and/or nonmetallic mineral products is mined showing the area mined, as well as any other pertinent information to determine royalties.
- (d) Upon termination of this lease or surrender of any part of the leased premises, Lessee shall furnish to Lessor an up-to-date report of all mining development and reclamation efforts conducted by Lessee on that part of the leased premises. This report shall contain suitable maps and information on the location and extent of surface workings, and other pertinent information, including the following:
 - (i) The tonnage (or equivalent unit of measure) and average quality of all nonmetallic minerals and/or nonmetallic mineral products mined from the leased premises.
 - (ii) The tonnage (or equivalent unit of measure) of all commingled nonmetallic minerals and/or nonmetallic mineral products as determined at the first point at which an actual weight measurement is taken.
 - (iii) The tonnage (or equivalent unit of measure) of nonmetallic minerals and/or nonmetallic mineral products from all premises, including the leased premises, processed at the processing plant, less losses which can be accounted for by Lessee.
 - (iv) The tonnage and average grade of concentrates or remaining product, dry basis, derived from the leased premises and all commingled nonmetallic minerals and/or nonmetallic mineral products.
 - (v) Tonnage of processed nonmetallic minerals and/or nonmetallic mineral products produced.
 - (vi) Tonnage (or equivalent unit of measure) of nonmetallic minerals and/or nonmetallic mineral products from which processed nonmetallic minerals and/or nonmetallic mineral products were produced.
 - (vii) Copies of receipts from sales of nonmetallic minerals and/or nonmetallic mineral products.
 - (viii) Such additional data on production and sales as may be necessary to determine royalty.

2. Waste Rejects Reports

- (a) Lessee shall keep an accurate and cumulative record of the operation of the processing plant producing the waste rejects, and Lessee shall annually before the sixtieth (60th) day following the anniversary date of this lease, furnish Lessor a waste reject report for the preceding lease year.
- (b) Any proportioning of the commingled waste rejects shall be made on the following terms:
 - (i) The proportioning shall be based upon dry short ton units of mineral values as determined by assay, tonnage measurement and/or metallurgical balances.
 - (ii) The total units of mineral values in the commingled waste rejects shall be determined by subtracting the total units of mineral values in the concentrate produced from the total units of mineral values in the crude nonmetallic minerals and nonmetallic mineral products entering the processing plant.
 - (iii) The units of mineral values in the waste rejects from this lease shall belong to the Lessor.

- 3. The Lessee shall, at the sole discretion of the Lessor, submit to an audit of all transactions, contractual relationships, volume, production, sales, valuation, or such other records as Lessor may determine appropriate which are related to establishment of gross proceeds, deductions, the State of Michigan's decimal interest and corresponding correctness of royalty payments of any other types of payments due to the Lessor. The audit may be performed by the Lessor, or contracted for by the Lessor, at the Lessor's discretion. The Lessee shall be responsible for the cost of the audit if, based upon the final audit report, any underpayment calculated before interest is in excess of five percent (5%) of the payment made for the audit period.

H. MINING AND RECLAMATION OPERATIONS

Mining and Reclamation Plan

- 1. No mining shall take place on leased premises without a mining and reclamation plan developed by Lessee and approved by Lessor.
- 2. If the surface rights are not owned by the Department, the Department shall notify the surface owner and provide an opportunity to review and comment on the plan prior to its approval.

3. Lessee shall reclaim the surface of the leased premises in accord with the approved mining and reclamation plan. The reclamation shall proceed concurrently with mine production in accordance with this plan and shall be completed following termination of mine operation.
4. A mining and reclamation plan for the leased premises shall be developed to ensure to the maximum extent practicable that:
 - (a) mining and extraction operations do not have significant adverse impacts on water quality, air quality, wildlife or fishery resources of the state, or public safety;
 - (b) waste piles are located, designed and utilized to minimize the threat to public safety, to minimize negative impacts on aesthetics, and to allow prescribed reclamation;
 - (c) mining is conducted in a manner which will prevent or mitigate hazardous conditions; and
 - (d) areas are reclaimed in an acceptable manner given prior uses, necessary disruption caused by mining operations, reclamation techniques, the public trust in the natural resources, and applicable statutes and ordinances.
5. The mining and reclamation plan shall include the following:
 - (a) Accurate plan maps, with appropriate scale, and other supporting data showing:
 - (i) Location of the proposed mining operation area.
 - (ii) Resources proposed to be affected throughout the mining phase, including existing groundwater, streams, lakes, wetlands, floodings and impoundments, threatened and endangered species and significant plant and animal communities.
 - (iii) Description of proposed development of the mining operation area including materials handling and overburden stripping plans on the leased premises.
 - (iv) Product and raw materials storage areas and loading facilities.
 - (v) Proposed and alternative locations where feasible, and designs of waste and waste reject piles, settling, tailings treatment basins.
 - (vi) Existing a proposed buildings, utility corridors, railroads, roads and auxiliary facilities to be used and/or constructed on leased lands.
 - (vii) Land contours, both existing prior to development and proposed after reclamation.
 - (b) A description of proposed reclamation of the mining operation area on the leased premises including:
 - (i) A description of the capacity of the land to support its anticipated use or uses following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses after reclamation.
 - (ii) Provisions for grading, establishing self-sustaining vegetation and stabilization that will minimize erosion and sedimentation and public health and safety problems of pits, banks, waste piles and waster reject piles, roads and tailings basins during and upon completion of the mining phase.
 - (iii) Provisions for buffer areas, landscaping and screening.
 - (iv) Estimated timetables necessary for accomplishing the events contained in the mining and reclamation plan.
 - (v) Evidence that all necessary permits and licenses required by Federal, State and Local units of government have been obtained.
6. The Lessor shall approve or reject the plan within one hundred twenty (120) days of receipt of a complete mining plan from the Lessee. If the Lessor rejects the plan, Lessor shall identify those elements of the plan involving activities on the leased premises which are likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein. The Lessor shall also identify those alternatives or mitigating measures (if any) which could make the plan acceptable. A meeting shall be held between the Lessee and the Lessor within sixty (60) days of the rejection of the plan in an attempt to resolve differences in the plan, should either party request it. Notice of such Lessor actions and any meetings shall be timely made to concerned parties. If Lessor denies the plan, Lessee may resubmit a plan(s) without prejudice.
7. Any change proposed in an approved plan shall be prepared and submitted as a modified plan in accordance with Section J(1)(c) above. If these change(s) would result in amendments of any permits or licenses issued by Federal, State or Local units of government, these amendments shall be obtained prior to submitting a modified plan and shall be attached to this plan. Any such changes shall not be commenced until Lessor has reviewed and approved such modified plan.

I. ENVIRONMENTAL TERMS

1. Any operations under this lease shall be subject to all applicable federal and state laws and rules now or hereafter in force. This lease is not in itself an authorization to drill, and issuance of drilling permits for specific locations is subject to separate application and approval by the Supervisor of Mineral Wells pursuant to Part 625, 1994 PA 451, as amended. No operations shall take place on state-owned surface without separate written permission(s) required by the Lessor and/or any other state or federal governmental agency.

For lands under this lease, the Lessee shall submit to the Lessor a complete copy of any application for permits to drill simultaneously with the submission of the application to the Supervisor of Mineral Wells.

2. No operations shall take place in: a) a wetland (as defined in Part 303 of 1994 PA 451, as amended); b) habitat identified as critical to the survival of an endangered species and designated under provisions of Part 365 of 1994 PA 451, as amended; c) a site designated by the Secretary of State to be of historical or archaeological significance; unless a plan can be mutually agreed upon by the Lessor and the Lessee to substantially eliminate negative impacts.
3. Notwithstanding areas identified in Section I(2), in areas identified by the Lessor as having special wildlife, environmental, recreational significance, and/or State surface, the Lessee agrees to submit and negotiate a Development Plan with the Lessor which will minimize negative impacts and will minimize surface waste established by the Supervisor of Mineral Wells.

The Development Plan shall be submitted to the Lessor simultaneously with the Lessee's submission of the drilling permit application to the Supervisor of Mineral Wells. Upon completion of a producible exploratory well, the Development Plan, if not already provided to the Lessor, shall be submitted thirty (30) calendar days prior to any further drilling permit applications or formation of the Production Unit.

The Lessor reserves the right to exclude certain sites from drilling and/or production activities in areas having special wildlife, environmental, or recreational significance, on State surface lands.

4. No solution mining well shall be drilled which is inconsistent with the Development Plan agreed to in I(3) or nearer than 1,320 feet to any lake or stream without the prior written consent of the Lessor. Great Lakes coastal shores shall be classified as nondevelopment within 1,500 feet of the shoreline unless a written exception is granted by the Lessor. To obtain the Lessor's consent, the Lessee will be required to demonstrate to the Lessor that the non-conforming well location will result in less environmental impact.
5. The Lessee shall route all pipelines from the well site to follow existing well roads or utility corridors and shall bury all pipelines below plow depth, unless the Lessor authorizes an exception in writing. Pipeline locations, as approved by Lessor, shall be covered by easement(s) in accordance with Section 324.2129 of 1994 NREPA, as amended.
6. Restoration shall be completed within nine (9) months of surface disturbance within the premises for well site(s), pipeline(s), road(s), and other development activities unless otherwise specifically approved in writing by the Lessor's authorized representative. Restoration shall be pursuant to requirements identified within the Surface Use Permit, easement or other similar written permission for the development activity.
7. The Lessee, when surrendering this lease, or portion thereof, or any well, shall leave the premises as required by applicable law and according to the terms and conditions of this lease and terms of any prior written permissions from the Lessor, and in a safe and orderly condition. All debris and materials, such as timbers, boards, sheeting, tanks, pipe tubing, and any other equipment used in operating this lease or a well, shall be removed from the leased lands when operations have ceased. Slush pits and burning pits shall be taken care of as required by applicable law and filled in. Upon failure of the Lessee to conform with these provisions, the Lessor shall have the right to enter on the property to repair damages and restore the property to a lawful, safe and sightly condition at the Lessee's cost or, at the Lessor's option, to invoke Paragraph D(6), D(7) or D(8). The Lessee may not escape any prior obligation of the lease by surrendering this lease, or any portion thereof.

J. STORAGE OF PRODUCT AND WASTE MATERIALS

1. Waste, Waste Rejects and Tailing Disposal
Waste materials resulting from the mining or concentration operations shall be deposited by the Lessee in accordance with the approved mining and reclamation plan. Waste materials shall not be deposited on other premises without a mutually agreeable method of accounting for the Lessor's interest.

2. Stockpiling

Nonmetallic minerals and/or nonmetallic mineral products taken from the leased premises, whether stockpiled or otherwise, shall at all times be kept separate and distinct from any other nonmetallic minerals and/or nonmetallic mineral products until measured and sampled to determine and preserve the rights and liens of the Lessor therein.

K. TAXES

1. Lessee shall pay all taxes and assessments, whether general, special or specific, including but not limited to property taxes, levied upon the leased premises, on any part thereof, or any property or improvements on the leased premises.
2. Upon the termination of this lease for any cause and with respect to any of the leased premises Lessee shall pay the taxes and assessments whether general, special or specific assessed or levied on all of the leased premises for the entire calendar year.
3. Lessee shall have the right consistent with statutes in such cases made and provided to contest the validity of any tax and assessment whether general, special or specific and may seek its cancellation, reduction, readjustment or equalization.
4. Lessee shall not permit the leased premises, any part thereof, any nonmetallic minerals and/or nonmetallic mineral products, or any improvements or personal property thereon, to be sold at any time for any taxes or assessments whether general, special or specific.

L. PROTECTION OF PROPERTY AND PUBLIC SAFEGUARDS

1. Lessee shall not alter, or authorize others to alter, the leased premises except as authorized by the lease.
2. Lessee shall maintain for the term of this lease, proper fences or other protective barriers around any open pits, shafts or other openings on the leased premises created by Lessee. Lessee shall further employ all reasonable and practical safeguards for the protection of all persons entering in or upon such leased premises used or occupied by Lessee in conjunction with operations under this lease.
3. At the termination of this lease, in whole or in part, for whatever reason, Lessee shall surrender the leased premises to Lessor in a safe condition. All pits, caves, openings, rooms, stopes, shafts, underground openings and other dangerous areas created by Lessee shall be fenced, filled or protected so as to adequately protect public safety to the satisfaction of Lessor. All production, injection, observation, or other wells related to a solution mining or natural salines mining facility shall be plugged and abandoned per Part 625, Mineral Wells and the surface use lease. Post-mining and lease termination requirements to fulfill the conditions of this section shall be specified in the Mining and Reclamation Plan under Section H of this lease.
4. Mine subsidence control shall be maintained in all mined out portions of the state minerals lease area.

M. LAWS, RULES AND REGULATIONS

1. Any operations under this lease shall be subject to all applicable local, federal, and state laws and rules now or hereafter in force. This lease is not in itself an authorization to explore or mine. In addition to compliance with the provisions of this lease, and particularly Sections I and J thereof, Lessee must obtain all permits which may be or are required under local, federal, and state laws or any rules or ordinances adopted thereunder.
2. No rules adopted by the State of Michigan or any agency thereof after the approval of this lease shall operate to affect the term of lease, rate of production royalty, rental, payments in lieu of production royalties, minimum royalties or acreage, unless agreed to by both parties.

N. INSURANCE

1. Lessee shall obtain and maintain all worker's compensation insurance as required by state law in accordance with PA 317 1969 as amended, as well as liability insurance and policies of insurance against risks in amounts customarily obtained in similar mining operations and shall furnish Lessor proof of insurance prior to the commencement of any operations.
2. All insurance shall be maintained by Lessee at its own expense. The companies issuing such policies shall also be required to furnish the Lessor written notice thirty (30) days prior to cancellation, termination, or other change of any insurance.

O. INDEMNIFICATION

1. In connection with all of its operations under this lease, the Lessee will save, protect and hold harmless the Lessor against any and all claims, demands, or judgments for loss, damage, death or injury to persons or property arising out of the Lessee's activities or operations on the leased premises, except with respect to claims of the Lessor, its assigns, contractors, employees, successors or agents unless the claims arise as a result of negligence or other tortious conduct of the Lessee or violations of the terms of this lease by Lessee. These provisions shall not be applicable to liability for damages arising out of bodily injury, death or damage to property of others not resulting from the negligence of the Lessee, its officers, employees, agents or contractors. Lessor shall give prompt notice to Lessee of any third party claim for injuries or damage made against Lessor.
2. The Lessee shall, at Lessee's expense, during the term of the lease and any extensions thereof, obtain and maintain insurance which insures the premises for public liability in amounts not less than those set below naming the State of Michigan, its several departments, commissions, boards, officers and employees as an additional insured and protecting against all claims, demands, actions, suits or causes of action, and judgments, settlements or recoveries, for bodily injury, death or property damage arising out of Lessee's use or occupancy of or operations conducted upon the leased premises. Lessee agrees to maintain minimum policy limits in the amount of \$1,000,000 per occurrence for property damage and \$1,000,000 per occurrence for bodily injury or death, and to provide the state with a certificate of insurance, within thirty (30) days following final execution and delivery of this lease to Lessee. The companies issuing such policies shall also be required to furnish the Lessor written notice thirty (30) days prior to cancellation, termination, or other change of any such insurance. The Lessor shall periodically review the level of the indemnification insurance and may require the amount of such insurance to be increased or decreased to reflect changes in risk exposure.

P. LESSOR RIGHTS

1. Lessor retains all of its timber, sand and gravel, coal, oil and/or gas, and other metallic mineral interests in the leased premises and any nonmetallic minerals or rights not included in this lease, and reserves the right to make any use of the leased premises, which may be undertaken without detriment to the rights and privileges herein specifically granted.
2. Lessor shall not be liable for any damages resulting from failure of its title to rights included herein; provided, however, that if the Lessor's title fails as to any or all of the rights covered by this lease, the Lessor shall refund to the Lessee all bonus, rental, minimum royalties, production royalties, or payments in lieu of production royalties made by the Lessee attributable to that part or portion of, or interest in, the title which has failed.
3. Should Lessor be prevented from complying with any express or implied covenant of this lease because of a force majeure (i.e., for any cause beyond the reasonable control of the Lessor such as, but not limited to, acts of God, legislative action, rules of any other governmental body, any judgment or injunctive order entered by a court of competent jurisdiction, acts of the public enemy, riots, strikes, labor disputes, labor or material shortages, fire or flood) then such covenant shall be suspended to the extent made necessary by the aforesaid force majeure.
4. Lessor, and any of its authorized employees, may at all times enter upon the leased premises and ascertain compliance with any condition of this lease and the kind, qualities and quantities of nonmetallic minerals and/or nonmetallic mineral products on the leased premises or removed therefrom. Lessor shall also have the right to check the movement of nonmetallic minerals and/or nonmetallic mineral products from the workings of the leased premises to storage and to the processing plant; to be present at all measuring, gauging, weighing and sampling stations; and to take samples and to observe the flow of nonmetallic minerals and/or nonmetallic mineral products from the leased premises through the processing plant. The Lessor shall have the right upon reasonable notice to examine the books, records and supporting documents of the Lessee insofar as they relate to the amount to production and sale of nonmetallic minerals and/or nonmetallic mineral products derived from the premises herein leased.
5. Lessor reserves the right to deny the Lessee from operations on the leased premises in connection with Lessee's operations on any adjoining or nearby property or properties except if the leased premises and the adjoining or nearby properties are within a common mining operations area.

Q. LESSEE RIGHTS

1. Lessee may from time to time surrender all or any part of the premises herein leased by giving notice in writing to the Lessor, Lessee shall not escape any prior obligation of the lease by filing a release. Upon surrender, Lessee shall execute and deliver to the register of deeds in the county wherein the land is situated for recording, a proper and sufficient instrument of release of all of Lessee's rights and interest under this lease, insofar as they apply to the premises surrendered, and shall have said instrument delivered to the Lessor within thirty (30) days after recording with register of deeds.
2. Lessee may at any time remove all machinery and fixtures placed on the leased premises by the Lessee, provided, however, that said Lessee has complied with and fulfilled all other provisions of the lease as herein provided.
3. Nearing the termination of the lease by any means except default under Section H of this lease, and with Lessee's fulfillment of all lease obligations, covenants, agreements and context of this lease, Lessee shall have one year, or longer at the discretion of Lessor, after termination in which to remove all tools, machinery, railway tracks, structures and all other property situated on the leased premises as to which this lease is being terminated, except any supports placed in shafts, drifts or openings, any timbers, framework or fences necessary to the use and maintenance of shafts or approaches to mines or tramways within the mines, or dikes, water level control structures, roads or other developments as specified by Lessor and mutually agreed to be Lessor and Lessee. If Lessee fails to remove its property within the specified period, the property shall become the property of Lessor and may be removed by Lessor with expenses recovered from the performance bond. By agreement of the parties, any of Lessee's property on the leased premises may become the property of Lessor.
4. In the conduct of approved mining operations of the leased premises, the Lessee is hereby granted the right, if it so desires, to mine and remove any nonmetallic minerals or nonmetallic mineral products included in this lease existing thereon, or on any part or parts thereof, through, or by means of, shafts, openings or pits which may be sunk or made upon adjoining or nearby premises owned or controlled by the Lessee, and may stockpile any nonmetallic minerals and/or nonmetallic mineral products from the leased premises or any part thereof upon stockpile ground situated upon any such adjoining or nearby premises.
5. Lessee may maintain and use roads, pipelines, electric transmission lines and other facilities which are located on surrendered portions of the leased premises, with written consent of Lessor, and payment of surface use fees as determined by the Lessor, so long as they are reasonably necessary to Lessee's operations on leased premises remaining under this agreement.
6. Lessee may mix nonmetallic minerals and/or nonmetallic mineral products taken from the leased premises with any other nonmetallic minerals and/or nonmetallic mineral products from other premises after the nonmetallic minerals and/or nonmetallic mineral products from the leased premises have been measured and sampled to determine and preserve the rights and liens of the Lessor therein.

R. EXPLORATION OPERATIONS

1. Exploration Plan
 - a. No exploration activity shall take place on leased premises without an exploration plan developed by Lessee and approved by Lessor.
 - b. If the surface rights are not owned by the Department, the Department shall notify the surface owner and provide an opportunity to review and comment on the plan prior to its approval.
 - c. Prior to commencement of exploration and annually thereafter on the lease anniversary, the Lessee shall submit to the Lessor for approval a plan outlining Lessee's proposed exploration activities on the leased premises during the ensuing year and exploration conducted to date, if any.
 - d. The exploration plan shall contain the following:
 - (a) a description of proposed exploration activities and locations of sites where such exploration activities and locations of sites where such exploration activities were, or are proposed to be, conducted; and
 - (b) locations and depths of any known existing exploration holes, trenches, pits, dikes and water level control structures; and
 - (c) locations of roads which were, or are proposed to be, constructed to carry forth exploration activities; and
 - (d) evidence that all necessary permits and licenses required by Federal, State and Local units of government have been obtained.

- e. Lessor shall approve or reject the plan, for reasons stated, within ninety (90) days of receipt of a complete exploration plan from Lessee. If Lessor rejects this plan, Lessee may resubmit a plan(s) without prejudice.
 - f. Any change proposed in the approved plan shall be prepared and submitted as a modified plan in accordance with section I(1) above. Any such changes shall not be commenced until Lessor has reviewed and approved such modified plan.
 - g. Upon the conclusion of exploration activities at a site, Lessee shall leave the site in a condition satisfactory to the Lessor. Lessor may require Lessee to barricade entrances to any roadways, drill sites, clearings and/or excavations on surrendered leased premises to recontour and/or reseed these areas, or to leave these areas as constructed.
2. Exploration Reports
- a. For the exploration conducted under this lease, the Lessee shall retain and store all factual exploration data and records at a location(s) mutually agreeable with Lessor and Lessee. The Lessor retains the right to examine all such data and records, including cores and samples in such a manner as to respect the confidentiality of such data and records as may be provided for under PA 315, 1969 or other applicable statutes.
 - b. Upon termination of this lease or surrender of any part of the leased premises, Lessee shall furnish to Lessor any cores or samples requested by Lessor, and an up-to-date report of all exploration conducted by Lessee on that part of the leased premises. Final reports shall contain copies of all factual data generated from exploration activities on the leased premises as of the date of surrender.

S. BONDING

- 1. Before a lease will be executed for any state lands, unless waived by the Lessor, the Lessee shall file a performance bond, acceptable to the Lessor, conditioned that Lessee, its 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 of Michigan which apply.
- 2. The Lessor shall determine, and set forth in a published schedule, the initial acceptable amount required for the performance bond. The Lessor shall annually review the level of the performance bond and shall require the amount of the bond to be increased or decreased to reflect changes in the cost of future reclamation of the leased premises. A review of the performance bond shall be made within thirty (30) days of receipt by Lessor of written notice of termination by the Lessee and shall consider adequacy of bond for removal of personal property not desired by either Lessee or Lessor.
- 3. Lessee shall keep in full force and effect a sufficient performance bond to cover the acreage held under lease as heretofore specified. If the amount of performance bond in effect becomes depleted or partially depleted because of any claim or claims, Lessee shall file a new performance bond as required by the Lessor.
- 4. Liability under the bond shall be for the duration of exploration, mining, and reclamation operations and for a period coincident with Lessee's responsibility under the approved reclamation plan.
- 5. Lessor may invoke part or all of the performance bond when it determines that part or all of the covenants, conditions or agreements specified in the lease are not being fulfilled and shall so notify Lessee. Invoking the performance bond is not necessarily related to any action taken by Lessor under part H of this lease.

T. RECLASSIFICATION OF LAND UNDER LEASE

- 1. The Lessee understands and agrees that the Lessor may at any time prior to the start of actual drilling operations, reclassify this lease as "nondevelopment" as defined in 1981 AACRS, R 299.8101. In the event of such reclassification, the Lessee agrees that its sole remedy, to the exclusion of any other at law or in equity, is to surrender this lease or a portion thereof to the Lessor in exchange for a refund of all bonus and rental payments made by the Lessee attributable to the lease or portion thereof surrendered. Where the land subject to this lease is reclassified as "nondevelopment", the Lessee at its option may be entitled to a refund equal to the difference between the average per-acre bonus paid for state development leases and for state nondevelopment leases at the same sale in the same vicinity if said nondevelopment leases were sold for less than the development lease. Upon surrender, the Lessee shall execute and deliver to the Register of Deeds a proper and sufficient release of the Lessee's rights.
- 2. For nondevelopment lease tracts other than those formally dedicated by the Lessor as state parks, state recreation areas, or wilderness and natural areas, the Lessor may grant a change of classification from a nondevelopment lease, or tracts therein, to a development lease classification if the Lessor finds that the

existing nondevelopment classification is in error or that there is a change in circumstances. In the event that a lease is reclassified as development, the Lessee shall pay compensation to the Lessor at least equal to the difference between the average per-acre bonus paid for state development leases and for state nondevelopment leases at the same sale in the same vicinity.

3. Notwithstanding the provisions of Section I, the Lessor shall not reclassify a lease as development if there will be impairment of any of the following: wetlands, endangered species habitat, historic, archaeological or cultural sites, areas of special wildlife, ecological or recreational significance.

U. NONDEVELOPMENT LEASE RESTRICTIONS

(This section pertains to nondevelopment leases only. A nondevelopment lease is identified by the prefix "N" in front of the Lease Number shown on page 1 of this document.)

1. All other provisions of this lease notwithstanding, it is understood that no drilling or development work shall be conducted on the surface of the land described in this lease without reclassification and/or the specific authorization of the Lessor. Reclassification or such authorization for this lease or any portion of the lands contained herein, will be granted at the sole discretion of the Lessor.
2. No operations shall be conducted until written instructions for the proper protection of any and all natural resource interests and/or surface values are issued by the Lessor.

V. NONDISCRIMINATION

The Lessee covenants and agrees for and on behalf of said Lessee, its successors or assigns that it will not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, natural origin, age, sex, height, weight, marital status, or a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The Lessee further covenants and agrees that it shall cause the foregoing covenant as to nondiscrimination to be inserted and made part of each contract or subcontract into which the Lessee enters, binding upon its contractors and subcontractors. A breach of these covenants shall be considered a material breach of the lease.

The said Lessor, by its Forest, Mineral and Fire Management, Manager, Mineral and Land Management Section, has signed and affixed the seal of the State of Michigan by virtue of action taken by the Lessor on _____, 20____, and the Lessee has signed and affixed its seal the day and year written below.

ACKNOWLEDGEMENT BY LESSOR

NATURAL RESOURCES DIRECTOR FOR
THE STATE OF MICHIGAN

By:

Thomas Wellman, Section Manager
Mineral and Land Management Section
Forest, Mineral and Fire Management
Department of Natural Resources

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Thomas Wellman, Section Manager, Mineral and Land Management Section, Forest, Mineral and Fire Management of the Department of Natural Resources for the State of Michigan.

PREPARED BY:

Forest, Mineral and Fire Management
Michigan Department of Natural Resources
PO Box 30452
Lansing, Michigan 48909-7952

_____, Notary Public
_____, County, Michigan
Acting in _____ County
My Commission Expires: _____

ACKNOWLEDGEMENT BY LESSEE

LESSEE:

By:

The foregoing instrument was acknowledged before me on this _____ day of _____, 20____, by _____ its _____.

_____, Notary Public
_____, County, State
Acting in _____ County
My Commission Expires: _____

This Lease was approved by the Michigan State Administrative Board on: