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GEOLOGICAL AND NATURAL HISTORY SURVEY

MINERAL PROSPECTING AND MINING TRANSACTIONS

by

Peter E. McKeever and John Preston

A MINING INFORMATION PROJECT FUNDED BY THE



Cover photo: Dolomite quarry operated intermittently with portable equipment and located north of Highway 18 near the east side of the village of Barneveld, Iowa County.

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UPPER GREAT LAKES REGIONAL COMMISSION

This investigation was accomplished with the financial assistance of the Upper Great Lakes Regional Commission, but the data, statements, findings, conclusions and recommendations do not necessarily reflect the views of the Commission.

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M. E. Ostrom, Director and State Geologist
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PREFACE

Minerals together with agricultural and forestry products are the primary source of wealth produced in our state and nation. Although the production of minerals requires only a small fraction of the state's total land surface as compared with either agriculture or forestry, mining activities generally are more disruptive to the land surface and require greater cost to rehabilitate.

The Upper Great Lakes Region has a long history of mining which predates discovery by European explorers. Although there have been periods of reduced activity, since about 1835 the intensity of mining in Wisconsin and throughout the Great Lakes Region has tended to increase. This increase is a reflection of increasing demand for mineral materials, of exploration which has yielded new deposits to supply these demands, and of advanced technology which has been applied to improve methods of prospecting, mining, and mineral processing.

Today, our nation is in the midst of what is described by some as a minerals crisis--namely, that our domestic and even world supply of minerals is not keeping pace with demands. Thus, one can expect that the search for minerals will continue to intensify and that mining activity will increase.

The sharp increase in mineral exploration and mining activity, especially over the past ten to fifteen years, has brought with it an increase in land negotiations for purposes of mineral prospecting and mining. Although this condition is rather general throughout the Great Lakes Region, it is particularly true in Wisconsin, where one rich deposit of copper and zinc with minor amounts of gold and silver has been located near Ladysmith in Rusk County and where the intensity of prospecting and land negotiation is at a very high level.

In addition, the general increase in production and consumption of non metallic minerals such as sand, gravel, and crushed stone, which are required by the construction industry, has heightened public concern over mining activities, especially where these activities occur in close proximity to urban areas. There is clear evidence to indicate that the proximity of such mines to consumers has a major effect on holding materials prices down and that it is possible to plan for and design mining activities in such a way that they are compatible with other activities and can thus be made a part of a multisequential land use plan. Yet, in spite of this, there is a rather general lack of knowledge regarding the importance of mining as the provider of basic and essential raw materials to supply society's constantly expanding and increasing mineral needs. In addition, this lack of knowledge extends to matters of land and mineral rights negotiations, the character of mineral deposits and minerals, mineral economics, and to land use planning.

The increased activity has increased the need for information and advice on matters relating to prospecting and mining in northern Wisconsin. In response to these needs the Wisconsin Geological and Natural History Survey, University of Wisconsin-Extension, in 1973 submitted a program proposal to the Upper Great Lakes Regional Commission to develop informational materials on prospecting and mining. The materials included projects to develop a model

zoning ordinance to provide for control of mining activities and for reservation of mineral deposits, to provide examples of metal and nonmetal prospecting agreements, mining leases, and alternative transactions, and to describe and discuss mineral rights. In addition, a list of consultants was to be prepared and a mining information "hot line" was to be made available to provide rapid response to questions relating to prospecting and mining.

This report, entitled "Mineral Prospecting & Mining Transactions," is one product of the mining information program. It is intended to provide examples and discussion of metallic and nonmetallic prospecting agreements, mining leases, and alternative transactions. However, because of the nature of such agreements and leases and the many forms they may take, from a brief oral commitment to a lengthy printed document, this publication should not be considered a comprehensive treatment, but rather a guide which can be used for reference in the preparation of such documents. It is believed, however, that the significant items which should be considered in such documents are included. All rental, royalty, and percentage figures are intentionally excluded as these vary with economic and natural conditions and are considered to be matters of negotiation between the potential lessor and lessee. For this and other reasons it cannot be over emphasized that the report is intended only as a guide and landowners are strongly urged to seek professional legal, geological, and engineering advice.

Materials used as examples and review of discussions for metallic mineral agreements was the primary responsibility of Jack Everett. Robert Fausett had a similar responsibility for nonmetallics. Peter McKeever and John Preston had the responsibility to draw together all materials from these and other sources into a coherent and useful document. Mr. McKeever previously worked as project assistant to Mr. John E. Kofron, Assistant Attorney General, Department of Justice to conduct a survey of the legal and economic aspects of mineral leasing for the Wisconsin Commissioners of Public Lands. The purpose of the project was to investigate mineral leasing practices in Wisconsin with particular reference to the specific leases that have been executed between various mining companies and state, county, and private interests. The commissioners' concern is that there seems to be no basis for evaluating the reasonableness of the various financial provisions that the companies are offering as part of their lease package.

Because this project was limited by time, funds, and staff it was not possible to obtain as broad a review as might have been desirable. For this reason, the views and opinions expressed should not be considered as necessarily representative of either State or Survey policy. However, it is believed that the report provides reasonable examples and discussion of the various kinds of prospecting and mining transactions which can be used for reference purposes by land owners.

M.E. Ostrom, Project Director

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This investigation was accomplished with the financial assistance of the Upper Great Lakes Regional Commission which is gratefully acknowledged.

The initial project proposal was prepared by Professors M.E. Ostrom, State Geologist and Director, Wisconsin Geological and Natural History Survey and Dunkin Harkin, Department of Agricultural Economics and the Center for Resources Policy Studies. The report was prepared on the basis of documents and advice provided from various sources and primarily by Jack Everett, consulting geologist, Robert Fausett, engineering geologist, and John E. Kofron, Assistant Attorney General, Wisconsin Department of Justice. Dr. Thomas O. Friz, Division of Conservation, U.S. Geological Survey, provided examples of agreements and consul on certain aspects of the manuscript. Rod Gallagher, president, Capital Sand & Gravel Company, provided information and discussion which was useful to the development of the report. Dr. M.E. Ostrom provided direction, guidance, and review throughout the project and supervised preparation of the final publication. The contributions of these persons is also gratefully acknowledged.

Discussion of metallic mineral agreements was the primary responsibility of Jack Everett and for nonmetallics, of Robert Fausett. The authors had the responsibility to draw together all materials into a coherent and useful document.

Appreciation is due to John Kofron as well as to Jim Kurtz, house counsel to the Wisconsin Department of Natural Resources, and to Professors Richard Barrows, Department of Agricultural Economics and John Roberts, project director, Upper Great Lakes Regional Commission and Department of Urban and Regional Planning for their review and comments. Dr. John Ross, Assistant Director, Institute for Environmental Studies and Professors Doug Yanggen, Department of Agricultural Economics, and James B. MacDonald, Law School and Institute for Environmental Studies also were sent review copies.

Editorial assistance was provided by the University of Wisconsin-Extension office of Editorial Services and is gratefully acknowledged.

The views and opinions expressed in the report are believed to represent a reasonable compromise among the various opinions. However, due to time constraints it was not possible to obtain as broad a review as might have been desired. For this reason, the views and opinions expressed are primarily, though not completely, those of the authors, and Messrs, Everett, Fausett and Ostrom and should not be construed as necessarily representative of either State or Survey policy.

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ABSTRACT

The report discusses metallic and nonmetallic prospecting agreements and mining leases. Alternative clauses for accomplishing certain goals and incorporating certain protections are presented. Purposes of the various clauses and provisions, as well as some indication of the circumstances when particular clauses are appropriate, are described in narrative discussion.

This report is not a comprehensive treatment of the subject, but is intended to serve as a guide for reference in the preparation of such documents. The possibilities are infinite; each prospecting agreement or mining lease should reflect the unique circumstances of the situation. An underlying philosophy of this document is the belief that private landowners and units of government should be as aware of the possibilities as a mining company is likely to be. LANDOWNERS ARE STRONGLY ADVISED TO CONSULT AN ATTORNEY AND A CONSULTING GEOLOGIST BEFORE DRAFTING OR SIGNING ANY AGREEMENT OR LEASE.

Metals and nonmetals are considered separately. Samples of a metallic mineral prospecting agreement and a metallic mineral mining lease are presented with discussion. A single document is used as a sample to cover nonmetallic mineral prospecting and mining. These sample clauses are not model clauses; any temptation that exists to use any of these clauses in the form found here should be strongly resisted. Each clause must be drafted with the unique situation of the landowner in mind.

INTRODUCTION

Mining, agriculture, and forestry industries are the primary sources of our state and national wealth. They combine to produce all of the material and food requirements of our civilization. However, minerals are generally less well understood by the average citizen than either agricultural or forestry products.

Agriculture and forestry require availability of suitable land which is determined on the basis of production capability. They depend on soil fertility and climatic conditions. Wherever these conditions are suitable, it is possible for agriculture and forestry to exist. In addition, the products of these industries are renewable in that they may be regrown and, thus, their supply is controlled primarily by the amount of land available for production. By way of contrast mineral deposits depend on geologic events and conditions that have caused them to be fixed in location, of limited size and purity, generally rare, nonrenewable and rarely visible at the earth's surface. Furthermore, although the amount of land used for mining purposes is substantially less than for either agriculture or forestry, it usually requires major disturbance of the land surface which will ultimately require a special effort and investment to rehabilitate.

The location of mineral deposits is fixed by past geologic events and this cannot be changed. Furthermore, the location is seldom known. What is known is that to provide for our future mineral needs, new deposits must be located and mined.

The locating and mining of mineral deposits requires that land be made available for these purposes. Because mineral deposits are rarely visible at the earth's surface, lands containing them have generally been used for other purposes. This situation has led to conflicts over land use, specifically the availability of land for prospecting and mining. For this reason, it is important for landowners to have at least a basic understanding of mineral deposits, mineral rights as they relate to surface property rights, and legal methods available to assure these rights. It is obvious that unless landowners have some knowledge of these factors, they could be at a distinct disadvantage when negotiating for the lease or sale of their mineral rights to another party. In addition, they should have some knowledge of the provisions to be considered in the preparation of any agreement, lease, or sale of their rights for purposes of prospecting or mining.

A mineral deposit is a concentration of useful minerals in sufficient quality to be mined, processed, and marketed at a reasonable profit under existing technologic and economic conditions. Such deposits are rare. Determination of the location of mineral deposits in the earth has become increasingly difficult as the "easy-to-find" deposits are exhausted. For this reason, sophisticated and detailed geological and geophysical studies involving both extensive field and laboratory work are required. These studies are extremely costly and usually well beyond the economic capability of individuals.

Metallic and nonmetallic minerals are distinguished primarily on the basis of their physical and chemical characteristics. Metals are defined by the U.S. Bureau of Mines as opaque, lustrous, elemental, chemical substances that are good conductors of heat and electricity and, when polished, good reflectors of light. Most elemental metals are malleable and ductile and are, in general,

heavier than the other elemental substances. Examples of metals are iron, copper, zinc, and silver. Nonmetals are chemical elements that do not exhibit most of the typical properties of metals. In terms of a broad class of mineral commodities nonmetals are characterized as rocks and minerals which are not produced as sources of metal and which are not fuels. Examples are dolomite, granite, sand and gravel, clay, salt, sulfur, and diamonds.

Metals commonly occur in combination with other elements from which they must be separated. Certain of them such as gold, silver, and copper may under certain circumstances occur naturally and require little processing. Although there are exceptions, it is generally accepted that metals are rarer than nonmetals and they require more processing. Thus, metals tend to be higher in price. In addition, because of their rarity metals are international commodities whereas most nonmetals seldom enter the world trade market.

The process of searching for mineral deposits is called prospecting. The extraction of minerals from the earth is called mining. From prospecting through mining, property owners are directly involved with mineral producers in the negotiation of prospecting agreements and mining leases. In addition, because mining affects the local environment as well as regional economic and social conditions, the public is intimately involved. Therefore, it is important that methods to safeguard the interests of all parties be clearly identified.

The primary purpose of this paper is to provide information on the provisions which should be included in typical mineral prospecting agreements, mining leases, and alternative types of transactions.

A major theme one should find running throughout this paper is the fact that all of these agreements are contracts. As such, they are derived by bargaining by both sides. All of the clauses are negotiable, and each side can be expected to bargain for the terms most advantageous to it. Obviously, if the two sides fail to agree, there will be no agreement.

The reader is cautioned that this paper is not intended to eliminate the need for competent assistance. The agreements and leases presented here are intended solely as guidelines and examples and should not be interpreted as directly applicable to all or even most prospecting and mining situations. Each situation can be expected to vary in response to problems related to ownership, type and occurrence of ore, markets, and other factors. However, every effort was made to cover major provisions that should and could be included in a proper agreement. Again, the reader is strongly advised to secure the services of a competent mining lawyer, or professional geological or mining engineer, for only they can guarantee that the agreement does, in fact, protect his interests.

Before prospecting or mining can commence, the mining operator may either secure an agreement option or a lease to perform these activities from the property owner; or he may acquire title to the property. He may also enter into a nonexclusive price agreement which may or may not provide for restoration of mined land. In either case, there must be a meeting of the two parties or their representatives to negotiate the terms of an agreement to lease, sell, or use the property.

The period of negotiation is an important period for both the landowner and the mining company. It must be assumed that an ore body may be found, even though the odds can be very low because of the scarcity of economic ore deposits. The company knows that hundreds of properties may be investigated without success before a deposit of mineable quality will be located. The landowner and the mining company should both undertake good faith negotiations with the goal that both parties will get the best possible agreement to which they are entitled. On the one hand, the company desires to reduce its costs and maximize its profits. On the other hand, the landowner desires an agreement that equitably yields the highest return and minimizes the possibility of environmental damages and the amount of interference with the owner's use of the property.

There must be a reasonable chance for success before the mining company takes the risks involved. The landowner should realize at the outset that although the company desires to prospect because it does not know that an economic deposit definitely exists, it has probably used airborne survey methods and other studies to decide to pursue ground prospecting on the landowner's property rather than elsewhere. Thus, the landowner has less information than the mining company as to the possibility of a valuable deposit. Of course, if there is a suspected deposit on his land the landowner will want to take this into account in the bargaining. During the initial period of negotiations the company will consider it desirable to maintain secrecy in order to prevent attracting competitors. Competitors could have the effect of dividing control of the land on one prospecting site and thus tending to discourage further exploration and development by any one of them.

Landowners should be certain that they are dealing with a reliable company or properly financed exploration group. The interests involved should be identified, and the company should disclose work already conducted and the reason for their interest. Their land situation should be explained as well as the objective and budget for their program.

Many large corporations have exploration subsidiaries using names other than their own. They may also explore in joint venture with other companies in order to share the risks and increase their chances of finding a deposit even though they would only end up with a partial interest. In Canada, many deposits have been discovered by small companies or by partnerships with sufficient risk capital to carry out a good exploration program.

There is little present value to mineral rights unless exploration is conducted and commercial concentrations of valuable minerals are found. With rare exception individual property owners cannot afford the expense of a detailed exploration program to determine the mineral-bearing potential of their land, which is a normal part of the risk assumed by companies. A company or coventure group is likely to desire that negotiations for exploration and possible mining be completed as soon as possible and an agreement signed. The landowner may also desire to learn what lies beneath his lands as soon as possible. Without exploration this is impossible. Thus, if the landowner desires to learn the mineral potential of his lands a prospecting agreement can be negotiated.

Any minerals that are present are not going to disappear or evaporate. However, in order to determine if a mineral deposit occurs on the property it is usually necessary that prospecting be done. An owner may decide not to permit prospecting and to simply let any minerals which may be found wait some years to be discovered. Although this involves certain risks, the value of the minerals may appreciate as they sit in the ground.

When interest develops for exploration in an area, the landowner has a chance to receive a short term monetary reward with relatively little risk. If the landowner decides to permit exploration on his property, it will be in the interest of both parties for them to cooperate. All questions concerning the proposed agreement should be answered to the complete satisfaction of both parties, and any modifications should be made. The landowner should not allow himself to be rushed into signing any agreement about which he has any questions or doubts and which he has not shown to his attorney.

If a commercially valuable deposit is discovered, both parties should benefit. If no deposit is discovered, only the company loses if the agreement contains proper strong provisions for restoration of the land and minimizing environmental damage. If negotiations are prolonged unnecessarily either or both parties may become discouraged, and the property not prospected. Although prospecting is a gamble, a risk, the mining business is sufficiently competitive that the possibility exists that if one company loses interest, another may take its place.

Again, it is highly recommended that a landowner contact a qualified consulting geologist or engineer and a mining attorney for advice. The state geologist can answer many questions that might arise and he is familiar with experienced consultants for certain areas. Special problems may develop on different properties and alternate types of agreements might be advisable for some owners.

It should be stressed that any agreement arising out of negotiations is a binding contract. It is the responsibility of both parties to negotiate what they can accept as a reasonable agreement. A person whose land is known to contain a useful deposit of minerals has more bargaining power than the person without this knowledge. Persons whose land may contain sand and gravel, must compete with other owners who may be closer to markets. Also, individual construction projects requiring large amounts of these materials may impose a term limit of demand either immediate or sporadic, but commonly with long intervals between use. For geologic, economic, social, and other reasons each potential mining situation is unique, and, therefore, each mining transaction of any kind will also be unique.

On the following pages are examples and discussions of prospecting agreements, mining leases, and other transactions which are intended for the advice of private landowners and local governments. The examples typify many of the problems common to mineral transactions. These guides should be individualized to fit both the needs of the company and the property owner. It is important to emphasize that these agreements are legal and binding contracts, and that both parties are free to bargain and negotiate for each clause. Usually the result of this bargaining will be a lease or other

agreement containing many of the clauses found here with specialized sections taking into account the various factors which are unique to the particular land and parties involved.

A brief explanatory note on the sample lease clauses is necessary. A word or phrase placed in parentheses in these samples is meant to indicate alternative wording if a different purpose or result is desired. In addition, the numbered lines are simply for reference. In a full agreement reference is easier if all the lines are numbered consecutively. Finally, if all these sample clauses were used in a single lease, it would be redundant. Certain general language can be, and is here, placed under various headings.

METAL PROSPECTING AND MINING TRANSACTIONS

Introduction

In Wisconsin, metals known to occur in concentrations of sufficient quality and quantity that they can be mined, processed, and sold at a reasonable profit are iron, zinc, lead, and copper. The future potential for development of new mines to extract these and other undiscovered metals is considered good. For this reason, it is expected that at least some and possibly many Wisconsin landowners will be involved in negotiations for permission to prospect for and to mine metallic minerals. The following paragraphs describe provisions which should be considered for inclusion in any metallic mineral prospecting agreement or mining lease. Examples of possible lease clauses are included for reference purposes.

Metal Prospecting Agreement

In order to commence prospecting, a company must first obtain permission. This is ordinarily accomplished by means of a prospecting agreement between the property owner and the prospector. A typical prospecting lease will usually begin with a section that identifies the parties involved, the land involved, and other relevant data. Such an introduction may read as follows:

- (1) THIS PROSPECTING AGREEMENT, made this _____ day of _____
- (2) 19____, by and between _____
(name) (address)
- (3) hereinafter referred to as "Grantor," and _____
(name)
- (4) _____ hereinafter referred to as "Grantee."
(address)

The identifications of the parties should include their full mailing addresses. If either party is a corporation, this clause should contain language to the effect that the corporation is registered to do business in Wisconsin and should identify the registered agent and his address.

WITNESSETH:

- (5) WHEREAS, Grantee desires to investigate any or all of the Grantor's
- (6) mineral interests in, on, and under the lands described herein as
- (7) the Premises, in order to determine whether minerals are present,
- (8) and if Grantee so elects, to eventually lease all or a portion of
- (9) said lands for the purpose of extracting and selling such
- (10) minerals; and

- (11) WHEREAS, the Grantor desires to have Grantee conduct said investi-
(12) gation upon the terms and conditions hereinafter set forth which
(13) will bring benefit to the parties hereto;
(14) NOW, THEREFORE, in consideration of the sum of _____ Dollars
(15) (_____) to the Grantor in hand paid by Grantee the receipt whereof
(16) is hereby acknowledged, and in further consideration of the
(17) covenants herein contained, the parties hereto understand and agree
(18) as follows:

Note all of the information contained in the introduction section. The parties and their address are clearly identified; the intent of the document as a whole is set forth; the land involved is identified as the Premises (see page 9); and a sum of money consummating the deal is recorded.

The consideration called for in line (14) is a lump sum payment to the landowner (the grantor) from the mining company or exploration concern (the grantee) for the privilege of signing the agreement, entering on the land, and prospecting for minerals. Business tax laws and business interests favor the grantee in such a way that the grantor should be fully satisfied with the amount received. This sum should be paid at the time the agreement is signed and is not to be confused with rental payments, which are considered on page 10. If the landowner is approached by more than one company interested in prospecting on the property, the right to prospect might be granted to the company willing to pay the highest bonus. Another way is to grant the rights to the company willing to offer the highest royalty rates. See the discussion on royalties under mining leases.

SECTION 1: DEFINITIONS

Discussion

Many leases presently contain a definition section. Such a section is necessary to clarify the intent of the parties and avoid a potential dispute at a later time. The definitions included will vary according to the situation. Below are some of the more typical definitions found in a metallic prospecting lease.

Example

Section 1: Definitions

- (1) The following words, where they appear in this agreement, shall have
(2) the meaning as set forth herein:

- (3) A. "Average Stumpage Rates" means the current annual timber
(4) stumpage rates as computed for the county by the Wisconsin Department
(5) of Natural Resources.
- (6) B. "Environmental Emergency" means ANY situation on the Premises
(7) which has arisen, or appears imminent, whether due to the action or
(8) inaction of Grantee, County or any third party, or due to natural
(9) causes, and which appears to exist in the judgment of the County
(10) Forest Administrator or the Department of Natural Resources, and
(11) to them warrants immediate preventive or curative action to
(12) protect a natural resource from serious damage or destruction.
- (13) C. "Minerals" means all minerals, whether metalliferous or non-
(14) metalliferous, and/or ores which contain mineral matter or substances,
(15) or concentrates thereof of any nature and character whatsoever
(16) (including, but not by way of limitation, chromium, copper, gold,
(17) iron, lead, molybdenum, nickel, potash, silver, sulphur, uranium,
(18) vanadium and zinc, excluding specifically sand and gravel, "weathered"
(19) granite, other nonmetallic rock products, oil, gas, casinghead
(20) gas, and other liquid or liquefiable hydrocarbons) now known or
(21) that may be subsequently discovered or subsequently classified as
(22) minerals, whether or not at the time of the execution of this
(23) agreement either party hereto contemplated exploitation of said
(24) mineral.

This definition of minerals is very broad, and not necessarily the standard definition for lease purposes. The parties could instead define minerals in a very limited sense, as for example, the specific mineral which is the subject of the search. The rights to any other minerals which might be found would then belong to the landowner.

- (25) D. "Mineral Interests" means the rights of the Grantor to minerals
(26) located in, on or under the Premises.
- (27) E. "Other Lands" means all lands within the vicinity of the Premises

- (28) where similar operations may be conducted from time to time,
(29) whether or not such Other Lands are contiguous to the Premises.
(30) F. "Premises" means that certain land and property situated
(31) in _____ County(ies), State of Wisconsin, described
(32) as follows _____ (give complete legal description)
(33) _____
(34) _____
(35) _____
(36) For the purpose of calculating any payments by the acre hereunder, the
(37) Premises are now estimated to contain _____ acres, more or less.

Note that a few of these definitions are applicable to the county as landowner. However, such definitions are easily convertible where a private individual owns the property. For instance, by substituting the word "Grantor" where county appears, the definitions should become applicable. It must be reiterated that each transaction contains unique aspects, and perhaps, a definition could clear up a potential ambiguity. It is of vital importance that both parties agree to and understand all definitions enclosed in the lease. The full legal description of the land is an absolute necessity.

If County Forest Lands are involved, they should be included in the land description and county and municipal officials should be aware of the provisions of Chapters 28 and 77 of the Wisconsin Statutes.

SECTION 2: TERM

Discussion

The term of the prospecting lease is important to both parties. This period of time is negotiable, but it is common for the term to be about five years.

Example

Section 2: Term

- (1) The term of the agreement shall be for five (5) years from the
- (2) effective date hereof.

It would be conceivable to insert a clause allowing renewal of the lease. However, this is a prospecting lease, not a mining lease, and such a clause would tend to discourage prompt exploration. It is in the landowner's interest

for the prospecting to be completed as soon as possible, for the possibility exists that one company may find a deposit overlooked by another company. The second company will not have the opportunity as long as the first agreement is in effect. If no deposits are found the landowner may desire to have his property released from the agreement as soon as possible so that it can be put to other uses. Finally, the company may wish to hold on to its rights to the land so as to exclude other mining companies from prospecting on them, thereby reducing competition. This is often disadvantageous to the landowner, because companies in competition with each other for the right to prospect on the lands may be willing to agree to terms more favorable to the landowner.

The five year prospecting term is common because it often takes a minimum of three years, depending on the methods being used and the previously obtained information available, for a company to conduct a thorough exploration.

SECTION 3: RENTAL

Discussion

This section determines the amount of money the property holder is to receive periodically for the use of his land during the period of exploration.

The amount of the rent should reflect a fair return to the landowner for the priority use of the land by the grantee for prospecting and exploration. The sum should be negotiated between the parties and should be mutually agreeable. Depending on the potential of the land to contain minerals, rentals are currently found of from less than one dollar per acre per year to more than five dollars per acre per year. The higher the rent the greater incentive there is for the company to conduct its exploration activities early and the greater return there is for the grantor.

Rental payments should be made annually in advance and should not be deductible from future royalties paid to the landowner if a commercial deposit is found and mined.

Quite often, the company will desire to release acreage from the agreement as the years go by. This is due to the fact that the land may have been explored and is not now needed by the mining concern. If such an agreement is included it is beneficial to the company because it will ultimately reduce their payments; and it may be beneficial to the property holder because it may encourage more rapid exploration which will have the effect to release the land at an earlier date for other use. The lessor will however lose the rental income, which may be substantial to the owner and insubstantial to the company. Note that all of the terms found below in the model clause are negotiable.

Example

Section 3: Rental

- (1) Upon the signing of this agreement by Grantor, Grantee shall pay
- (2) to Grantor as advance annual rental for the first year the sum of
- (3) _____ Dollars (\$) (or other) per acre. As advanced

- (4) annual rental for the second, third, fourth and fifth year,
(5) Grantee shall pay to Grantor the sum of _____ Dollars (\$))
(6) (or other amount) per acre within thirty (30) days of the anni-
(7) versary date of this agreement. A prorated credit shall (not) be
(8) given against the next annual rental payment due for such acreage
(9) as may have been released during the year preceding such annual
(10) rental payment.

To further encourage rapid exploration, another clause may be inserted requiring the company to do specific things. Below is an example of this type of clause.

- (11) In addition, Grantee agrees to spend or cause to be spent a sum
(12) equal to the greater of (a) _____ dollars (\$) _____) per year
(13) or (b) _____ dollars (\$) _____) per acre per year during the
(14) first _____ (_____) years, and _____ dollars (\$) _____) per acre
(15) per year during the last two (2) years of this easement in exploration
(16) for minerals in and upon the Premises or within the sections
(17) containing the lands retained at the end of each calendar year.
(18) Grantee agrees in addition, during the fifth year of this agreement,
(19) to drill at least one diamond drill hole to a depth of _____ feet
(20) within each description retained at the end of the fourth (4th) year
(21) of this agreement as a condition precedent to the exercise of its
(22) right to lease or purchase such description pursuant to this agreement.

SECTION 4: PROSPECTING RIGHTS

Discussion

A company will want an agreement that will assure it the following:

- (1) The exclusive right to explore for a predetermined period of time.
(2) The exclusive right to mine the ore body by the most practical method.
(3) Free and unrestricted access to the property.

- (4) The right to extract and remove any and all necessary samples of ores and minerals by either underground or open pit methods and an expression of the right to mine the desired minerals.
- (5) The right to use any part of the property to construct processing facilities and deposit tailings or waste rock.
- (6) The right to erect, construct, use and maintain on the property such roads, buildings, machinery, equipment, etc. as may be necessary to conduct mining, milling, and related operations.

The landowner's use of the land should continue during exploration as long as it does not interfere with the exploration work being conducted. The agreement should include provisions which insure that the landowner receives ample compensation for any crop, timber, or environmental damage, as well as for unexpected inconveniences.

Geophysical surveys will involve cutting lines in wooded areas or the placing of stakes in a field. Drilling requires road access and clearing of a site. Any damage whatsoever, such as to fences, should be repaired. Minor disturbances of the surface can usually be easily corrected or restored to normal; a provision should be included to insure they are. The provisions found below are designed as examples to cover some of these concerns.

Example

Section 4: Prospecting Rights

- (1) A. Grantor does hereby grant to Grantee exclusive permission to
- (2) prospect and explore for minerals, including but not limited to the
- (3) right to drill, take samples, conduct assays, (construct roads), and
- (4) prepare drill sites on, in, and under the Premises. Furthermore,
- (5) Grantor does provide that Grantee may use on the premises all such
- (6) vehicles, machinery and equipment as reasonably may be required for
- (7) the purposes of this agreement.
- (8) Grantee shall not unnecessarily cause environmental damage to any
- (9) waters, wildlife, fish, topographical features, vegetation or other
- (10) natural resources, and shall use the best available methods to
- (11) minimize environmental impact.
- (12) B. Grantee shall have the rights of ingress and egress to and from
- (13) the lands, in, on, or under which the mineral interests are located,

(14) to the extent Grantor has and may lawfully grant such rights, for
(15) the purpose of examining, investigating, and exploring the mineral
(16) interests and shall also have the right to remove reasonable amounts
(17) of ore or other materials for testing purposes.

(18) C. It is understood and agreed that Grantee's operations on, under,
(19) in, through, and from the Premises may be in conjunction with similar
(20) operations conducted or proposed to be conducted by Grantee upon,
(21) under, in, through and from other lands in the vicinity of the
(22) Premises. Grantor grants to Grantee (to the extent Grantee has said
(23) rights now or in the future) the right to conduct its operations
(24) upon, under, in, through, and from other lands. However, said right
(25) pertains to prospecting only, and shall not be construed as a grant
(26) of extralateral rights in conjunction with any mining lease which
(27) may be entered into between the parties hereto.

Often an agreement will remain silent on the topic of potential discovery of sand and gravel on the premises. It is recommended that this topic be discussed and appropriate arrangements made beforehand, rather than wait for a possible disagreement to arise. The lease can grant the company the right to use sand and gravel, to buy it, or reserve it for the land owner.

(28) D. In the event that sand, gravel, weathered granite, or non
(29) metallic rocks products are discovered by Grantee, Grantee shall
(30) notify the Grantor of such discovery. Grantee may (may not) use such
(31) sand or gravel, but shall pay to the Grantor a royalty of _____
(32) cents per cubic yard.

(33) E. Lessor reserves the right to grant leases, permits, or
(34) licenses to any portion of the surface of said premises to any
(35) third party, provided said use does not unreasonably interfere
(36) with Lessee's operations under this lease.

If the grantor is a county or municipality, or, in some cases, a private forest crop landowner, it may wish to include some protection in the lease of both the public lands and the public uses on those lands. An example of such protection is found below.

- (37) Grantee covenants that it will take all actions reasonable and
- (38) necessary to protect the public interest in those portions of the
- (39) described lands which are registered as Forest Crop Lands under
- (40) the Wisconsin Statutes from unnecessary damage by its exploration,
- (41) examination, and investigation, and Grantee further covenants that
- (42) it will fully inform the Grantor of every discovery of ore or
- (43) metallic minerals as soon as practical after such discovery is con-
- (44) firmed by grantee. Grantor shall continue to use the lands for
- (45) growing timber, sand and/or gravel operations, and other activities,
- (46) including farming, not inconsistent with the Forest Crop Law of
- (47) Wisconsin, and also, provided that such activities do not interfere
- (48) with the investigations of the Grantee.
- (49) Grantee covenants that it will obey any and all relevant and material
- (50) federal, state, county or municipal laws, rules and regulations.

SECTION 5: MANNER OF PROSPECTING

Discussion

In addition to setting forth the rights of the company, a good lease should include the duties of both parties with respect to prospecting. Such duties should include working in reasonable manner, fencing off the property, restoring the land, paying for damage, and curing any emergency that may arise. Many of the provisions may be omitted or other provisions added to the lease depending on the situation.

Example

Section 5: Manner of Prospecting

- (1) A. Grantee will conduct its operations on and off the Premises in
- (2) accordance with all applicable federal and state laws, rules, and
- (3) regulations and will particularly prospect in a manner which will

- (4) will minimize damage to natural resources on or off the Premises.
- (5) B. Grantee shall promptly and properly fence any and all pits,
- (6) shafts, fixed machinery or other hazards which it may dig or may
- (7) construct on the premises.
- (8) C. If any real or personal property of Grantor or third parties is
- (9) damaged or destroyed by virtue of Grantee's operations hereunder on
- (10) or off the Premises, Grantee shall restore, or pay for the restora-
- (11) tion of, the same to an acceptable condition and value or may, in
- (12) the case of personal property, pay fair market value of the damage
- (13) as compensation therefor.
- (14) D. Notwithstanding the foregoing provision, Grantee agrees to re-
- (15) imburse Grantor at double the current average stumpage rates for any
- (16) loss or damage to its timber, sawlogs, cordwood, or other forest pro-
- (17) ducts on or off the Premises which may result from grantee operations
- (18) on or off the Premises. Such wood products become the property of
- (19) Grantee.

Note in subsection 5(D), there is a provision requiring double damages for ruined timber caused by grantee. This payment schedule is, of course, subject to negotiation. If the grantor is a county, it would be helpful to have a required consultation clause for protection of the county lands; this is also applicable to municipalities.

- (20) E. Grantee must consult with and obtain the permission of the
- (21) County Forest Administrator or his designated representative (Grantor)
- (22) prior to Grantee's placement or construction of any road (or use of
- (23) any existing road), or drill site or Grantee's causing of any sub-
- (24) stantial surface damage, or disruption including but not limited to,
- (25) timber damage. Before granting permission to Grantor, the County
- (26) Forest Administrator (Grantor) shall consult with and obtain the
- (27) the concurrence of the Department of Natural Resources' local

(28) representative assigned by the Department to monitor the subject
(29) prospecting activities. For the purposes of such consultation,
(30) County's or the Department of Natural Resources' representatives,
(31) at County's or the Department of Natural Resources' sole risk and
(32) subject to such safety regulations as may be prescribed by Grantee,
(33) may have access to Grantee's workings on the Premises during regular
(34) business hours for the purpose of inspection of same so long as such
(35) access or inspection shall not interrupt Grantee's operations.
(36) However, in the event of an environmental emergency, access shall
(37) not be limited to regular business hours.

Subsection (F) is written primarily for counties. For private property lines 26 through 38 should be modified accordingly. Other types of environmental protections may be included in the lease. These are, of course, negotiable, but the clauses found below should be of assistance to landowners of all types concerned about protection of the surface environment.

(38) Grantee may (may not) post the Premises to prohibit hunting or
(39) fishing.
(40) F. Failure of Grantee to render aid and assistance to the reasonable
(41) limits of its capacity in the event of an environmental emergency
(42) caused by the action or inaction of Grantee shall be grounds for
(43) termination of this agreement by County (Grantor) without recourse
(44) of Grantee to any curative provision set forth in this agreement
(45) hereinafter.

(46) G. Anything to the contrary notwithstanding, a belt of terrain
(47) along the banks or shores of the following named body(ies) of water
(48) shall be preserved from surface prospecting damage, said belt having
(49) the width specified, as measured landward from the ordinary high
(50) water mark:

(51)	<u>Names of Waters</u>	<u>Width of Belt</u>
(52)		

If the landowner, whether public or private, wants a specific area protected, this protection can be included in the agreement. The possibilities are infinite; the landowner should be certain every desirable protection is included.

SECTION 6: TORT LIABILITY

Discussion

Because mining is an activity that usually uses large pieces of machinery and disturbs the surface, the chances of accident or injury are potentially great. It is for this reason that the property owner might desire to exclude himself from any liability caused by the mining company.

If, for instance, an innocent third party was injured on the premises, the landowner could be sued. By excluding himself from liability in the agreement, the landowner can require the mining company or the exploration group to assume the appropriate risks. The company may desire an equivalent clause protecting itself from liabilities derived from activities of the Grantor. The following clause will cover this area; other variations are possible.

Example

Section 6: Tort Liability

- (1) During the Prospecting Agreement term, Grantee shall protect and
- (2) indemnify and hold Grantor harmless from and against any and all
- (3) claims made by third parties for injury to, or death of, persons or
- (4) for damage to property arising from or on account of the operations
- (5) of Grantee on or off the Premises; and Grantor shall protect and
- (6) hold Grantee harmless from and against any and all claims made by
- (7) third parties or County for injury to, or death of, persons or for
- (8) damage to property arising from or on account of the operations of
- (9) the Grantor (or its agents or contractors) on or off the Premises.

SECTION 7: WORKMAN'S COMPENSATION LIABILITY

Discussion

In conjunction with Section 6, the following section more clearly spells out liability. It is good protection for the landowner, especially if the landowner is a government body.

Example

Section 7: Workman's Compensation Liability

- (1) Grantee agrees not to request any of the County's employees or board
- (2) members (Grantors) to perform work for Grantee, but should in viola-
- (3) tion of this agreement, this request be made by Grantee, its employees,
- (4) agents, etc., and should County's (Grantor's) employees be injured or
- (5) killed while performing said work (whether gratuitously or for
- (6) consideration) Grantee agrees to assume responsibility for said injury
- (7) or death and save County harmless from any and all claims including
- (8) Workmen's Compensation.

SECTION 8: PAYMENT OF TAXES

Discussion

Tax liability during the term of the exploration agreement should be specified. This section calls for the lessor to pay any and all taxes imposed or assessed against the land during the exploration period, provided the lessee shall reimburse the lessor for taxes levied against physical improvements made by the lessee.

Example

Section 8: Payment of Taxes

- (1) Lessor shall pay any and all taxes imposed or assessed against the
- (2) Premises during the term of this agreement or any extension thereof,
- (3) provided that lessee shall pay, or reimburse lessor for any and all
- (4) taxes levied upon physical improvements which lessee may cause to
- (5) be made to the lands during such period.
- (6) Lessor shall pay a proportionate share of any and all taxes
- (7) imposed or assessed against any part of the premises which Lessee
- (8) releases pursuant to this agreement during each year of the
- (9) agreement.

SECTION 9: TERMINATION BY RELEASE OF LANDS

Discussion

After exploration is completed on all or a portion of the lands, it may be determined that some of the lands are no longer useful to the company because commercial quantities of minerals are not indicated. The company may then desire to retain only the unexplored portions or the portions under which ore has been found and the adjacent portions needed to develop the mine. The landowner must decide whether he desires to release lands from the agreement periodically, thereby reducing the rent, but creating the possibility of using the land for other purposes. The landowner should consider the effect of a mine on the value of adjacent properties; a provision concerning the release of lands can provide desirable protections in situations where adjacent land values are reduced and the presence of the mine reduces the utility of adjacent lands. The landowner should be aware of these possibilities and draft the agreements accordingly. For example, he may wish to provide that if the land being used is less than 50% of the total acreage, then the company must pay a specific amount per acre. The possibilities are numerous; both parties must agree before an agreement is signed.

Example

Section 9: Termination By Release Of Lands

- (1) Grantee may, at any time or from time to time, during the term of
- (2) this agreement, execute and deliver to the Grantor for recording a
- (3) release or partial release, releasing to Grantor all or any part of
- (4) the Premises, and immediately upon such delivery, this agreement
- (5) shall terminate with respect to such part or all, as the case may
- (6) be, of the Premises, and Grantee shall be relieved of all obliga-
- (7) tions, liability or responsibility of every character whatsoever
- (8) thereafter to accrue with respect of that part or all, as the case
- (9) may be, of the Premises so released, provided all obligations,
- (10) liability or responsibility to date have been met and all provisions
- (11) for restoration, rehabilitation and reclamation have been complied
- (12) with by Grantee and such compliance confirmed by Grantor.
- (13) The amount of the payments provided herein shall be reduced propor-
- (14) tionately if this agreement is terminated or released with respect
- (15) to all or any part of the Premises.

The effect of release of lands is to absolve the grantee of all future obligations regarding rentals for the land and to dissolve all rights the grantee has to go upon the lands and prospect. The example contains a clause prohibiting the release of lands if the grantee has any outstanding obligations to the grantor or if the grantor is not satisfied with any restorative work done by the grantee. The parties can agree to provide for the release of lands at certain times, such as on the anniversary date of the agreement, and with or without notice, rather than "at any time or from time to time."

There are many other variations that may be negotiated in this area. For instance, the example states that delivery of a release or of a partial release results in immediate release of all or any part of the premises. The parties may wish to change this clause to allow release to take effect after 60 days. The parties could change lines 1 through 3 to read:

- (16) Grantee...."may notify the Grantor that it will at the end of sixty
- (17) days (60) herefrom, execute and deliver a release or partial release
- (18) releasing to Grantor.... _____."

Second, at the end of the paragraph, a sentence might be inserted clarifying payments. For example:

- (18) Payments shall for the released premises cease sixty (60) days after
- (19) notice of intent to release is given.

Finally, special release provisions could be added to insure restoration compliance. Line 11 could be augmented to include

- (20)complied with as determined by the County and the Department
- (21) of Natural Resources.

SECTION 10: REMOVAL OF PROSPECTING EQUIPMENT--CLOSING ROADS

Discussion

At the time the mining company terminates its lease on all or a part of the premises, certain duties should arise for each party. It is helpful if these duties are spelled out in the lease.

Most often restoration of the land and closing of roads are the most significant issues to arise between the parties after termination. Usually, the landowner may be granted the option whether to leave the roads open or to have them barricaded and seeded. These items are negotiable.

By clearly defining what each party expects from the other at the time of release, the chances for disagreement are minimized. Furthermore, if a landowner has a specific request of the company at release time, it would be wise to insert it within the agreement. Below is an example of this type of provision.

Example

Section 10: Removal of Prospecting Equipment--Closing Roads

- (1) A. Upon release of lands from the Agreement, in whole or in part,
(2) whether by the passage of time, surrender or otherwise, Grantee
(3) shall have the obligation to remove within _____ (____) days there-
(4) after from any of the lands as to which such Agreement is terminated,
(5) all of its machinery, equipment, tools, structures, or other
(6) property. However, by agreement of the parties hereto, any or all
(7) of such property shall become the property of the Grantor.
(8) Notwithstanding the foregoing, it is agreed that Grantee shall have
(9) and retain the right to maintain and use (after such termination)
(10) all roads, pipelines, electric transmission lines, and other facilities
(11) of Grantee, and ingress and egress to and from same, which may be loca-
(12) ted on such part or parts of the Premises on which this Agreement may
(13) have been terminated, so long as such roads, pipelines, other facil-
(14) ities, and rights of ingress and egress, are reasonably necessary to
(15) Grantee's operations on lands remaining under this Agreement, but
(16) when such necessity ceases, all property so retained shall be removed
(17) as provided herein.
- (18) B. If Grantee has built access roads on the Premises, Grantor shall
(19) have the option of requiring Grantee to barricade the entrance to
(20) said roadway(s) and to seed the roadway(s), or may require that
(21) Grantee leave the roadway(s) as constructed.
- (22) C. If Grantee has constructed pipelines, electric transmission
(23) lines or other facilities on the Premises, Grantor shall have the
(24) option of requiring Grantee to remove such pipelines, electric
(25) transmission lines, and other facilities, or may require that
(26) Grantee leave such facilities as constructed.

- (27) D. Prior to release of the lands, Grantee shall take any and all
(28) actions reasonably necessary to repair, prevent, and reduce
(29) scarring and erosion of the land, and pollution of the air, surface
(30) water or ground water.
- (31) E. All options herein shall be exercised in writing between the
(32) Grantor and the Grantee prior to release of any or all of the
(33) Premises.

SECTION 11: PROSPECTING REPORTS

Discussion

If the option to mine is released, the results of the exploration work should be reported to the grantor and the Wisconsin Geological and Natural History Survey. This includes factual data of geophysical surveys and drilling with the requirement that such information be kept confidential by the owner or his consultant. Records of geology and classifications of rocks and minerals along with assays should be included, but not interpretive data or estimates of tonnages. The company should not be obliged to divulge trade secrets even though such a clause would further knowledge of the state's geological situation; it may be possible to try to define "trade secrets," in the leases. Below is an example of this type of section.

Example

Section 11: Prospecting Reports

- (1) Grantee will fully inform County (Grantor) of exploration results
(2) as soon as practical after the option is dropped but in no case,
(3) without excuse, later than one year. Furthermore, while Grantee
(4) retains its prospecting rights hereunder to any of the Premises,
(5) it will deliver to County (Grantor) (Department of Natural Resources),
(6) with copies to the Geological and Natural History Survey, annual
(7) reports describing the general nature and location of the work
(8) performed.
- (9) Upon termination of this Agreement, Grantee shall furnish to County
(10) (Grantor) (Department of Natural Resources) and to the Geological
(11) and Natural History Survey, copies of the following data obtained

- (12) by Grantee during the term of this Agreement and relating to the
(13) Premises: maps showing the location of all drill holes drilled by
(14) Grantee on the Premises, the drill logs of such drill holes, any
(15) analysis of samples obtained from such drill holes and geological
(16) maps or cross sections, if any. No trade secrets concerning
(17) prospecting techniques need be divulged.

SECTION 12: OPTION FOR MINING LEASE

Discussion

This provision is probably the most important aspect of the entire prospecting agreement. After a mining company has expended the time, money, and effort to prospect the land, it will usually desire some guarantee for the exclusive option to mine any mineral deposits found. If such an option were not included in the prospecting agreement, the property owner might then bargain with other companies to mine the ore.

Example

Section 12: Option for Mining Lease

- (1) Grantor gives and grants to Grantee the exclusive option, exercisable
(2) at any time or times during the term of this agreement, to lease all
(3) or any part of the mineral interests described herein as the
(4) Premises and the lands herein described which are owned by Grantor
(5) or any portion or portions thereof, for the purpose of developing,
(6) mining, extracting, producing, treating, smelting, refining, or
(7) otherwise processing and selling, one or more of the minerals therein
(8) for a term of _____ years (and for so long thereafter as the
(9) parties may agree to) and for so long thereafter as Grantee shall
(10) produce or mine from the Premises minerals in commercial quantities
(11) upon the terms and conditions set forth in Exhibit A, entitled
(12) "Mining Lease," attached hereto and by reference made a part hereof
(13) (provided, however, that said lands have been withdrawn from entry
(14) as County Forest Lands as hereinafter provided). The lease provides

(15) that Grantee shall pay County a production royalty of _____ percent
(16) (____%) of and advance royalties, not creditable
(17) against production royalties, of _____ Dollars (\$____) per
(18) acre per year for the years _____ to _____ of the lease,
(19) _____ Dollars (\$____) per _____ acre per year for the years
(20) _____ to _____ of the lease, and _____ Dollars (\$____)
(21) per acre per year thereafter. If at any time or times during
(22) the term hereof Grantee elects to exercise its option to lease,
(23) it shall do so by notifying Grantor, which notice shall specify
(24) the portion or portions of the lands and mineral interests that
(25) Grantee elects to lease.

All the terms of this section may be subject to negotiation and change. For example, in line 7, the term of mining may be set at a different time limit and the option to renew may be made more flexible. The lease could read, "and for one additional term of _____ years," or the less flexible language often found on company printed form leases, "the right to extend the lease for a like term under identical provisions," could be used.

The parties might also agree to renegotiate the lease at the time of expires: line (7) might read ".... for a term of _____ years and for so long thereafter and under such conditions as the parties may agree to."

Also note that lines 12 and 13 are in parentheses. This clause should be inserted when grantor is a county. Similarly, counties will wish to withdraw forest lands they may own, when they engage in a mining contract. This type of provision is found below. It should be included as an additional clause within this section.

(26) County agrees that it will use its best efforts and will cooperate
(27) fully with Grantee to effect withdrawal as promptly as possible of
(28) the said lands from entry as County Forest Lands under Chapter 28 of
(29) the Wisconsin Statutes, and Grantee shall reimburse County for any
(30) amounts it shall be required to pay to the State of Wisconsin because
(31) of the withdrawal of any of said lands. County further agrees that
(32) after such notice, it will execute and deliver to Grantee a Mining
(33) Lease in the form of said Exhibit A, by which the portion or

- (34) portions of the lands and mineral interests specified in the notice
- (35) shall be leased to Grantee. County agrees to deliver said Mining
- (36) Lease within sixty (60) days after withdrawal has become effective.
- (37) Any lands actually withdrawn from entry as a County Forest shall be
- (38) removed from the terms of this Prospecting Agreement and shall become
- (39) subject to the terms of the Mining Lease attached hereto as Exhibit A.

A full mining lease is set forth beginning on page 41, with discussion. The landowner should consider that "under a mining lease" means that he retains ownership of the land. Thus, income received from mining will be spread out over many years rather than received at one time such as would be the case if the land were sold to the mining company. In addition, if mining takes place, the landowner may find that some other uses of the land will be restricted, particularly if the ore is extracted using open pit mining methods.

The landowner may desire to have an option to purchase the land in the prospecting agreement because he desires to realize any possible revenue in the relatively short term and in one lump sum. The mining company, on the other hand, may desire an option to purchase to insure that if it finds commercial deposits it will be able to extract them without continuing obligations to the landowner, including that of paying royalties for the duration of the mining operation and obligations regarding land use, restoration, and environmental concerns.

In a situation where it is determined that an option to purchase is preferable to an option to lease a section similar to the following should be inserted in place of Section 12.

Section : Option To Purchase (alternative to Section 12).

- (1) A. GRANT OF OPTION TO PURCHASE: The Optionor hereby grants to
- (2) Optionee the sole, exclusive and irrevocable option to purchase,
- (3) subject to the reserved royalty interest hereinafter set out and
- (4) free from other encumbrances, for the consideration and upon the
- (5) terms and conditions hereinafter set forth, the "Premises",
- (6) estimated to contain ____ acres less any lands released prior to exercise
- (7) of the option. Optionee may exercise the said option to purchase
- (8) by giving notice in writing to the Optioner of its intention to
- (9) do so at any time during the option term or any extension thereof.

(10) B. OPTION CONSIDERATION: In addition to the consideration above
(11) recited, Optionee agrees to pay Optionor the sum of \$ _____ per
(12) acre multiplied by the number of acres recited in subsection A
(13) above, on or before each subsequent anniversary date of this
(14) Agreement, so long as this Agreement remains in effect, and not
(15) terminated in any manner provided herein, including exercise.

(16) C. TERM OF OPTION: The option hereby granted shall be for a term
(17) of _____ year(s) from the date hereof; provided, however, that
(18) Optionee may extend the term for (____) additional periods of one
(19) year each by giving written notice of such extension to Optionor
(20) not less than 15 days prior to the expiration of the original or
(21) any extended term, and by depositing in Optionor's Account No.
(22) _____ at the _____ bank, _____
(23) the sum of \$ _____ per acre multiplied by the number of acres
(24) recited in subsection A above, on or before each subsequent
(25) anniversary date of this Agreement. Failure of Optionee to make
(26) such a deposit will automatically terminate this Agreement.

(27) D. PURCHASE PRICE: The purchase price under this option is
(28) (use either a or b):

(29) (a) the sum of \$ _____/acre of which \$ _____/acre is allocated
(30) to purchase of the surface and \$ _____/acre is allocated
(31) to the purchase of the minerals multiplied by the
(32) number of acres purchased;

(33) (b) the fair market value of minerals, building, structures,
(34) and improvements, timber and growing crops on said lands
(35) at the time of exercise. If the parties cannot agree on
(36) such fair market value, such value shall be determined

(37) by arbitration, as hereinafter provided.

(38) E. TITLE WARRANTIES: The Optionor represents and warrants to
(39) Optionee that he is the owner of the lands described as the
(40) Premises herein, and of all mining, mineral, oil and gas rights
(41) appertaining to said premises, which lands and rights are herein-
(42) after referred to as "mining lands".

(43) The Optionor covenants with Optionee that he has the right to
(44) enter into this Agreement and to option and dispose of the mining
(45) lands in the manner contemplated by this Agreement.

(46) The Optionor warrants and represents that, except as noted in
(47) Section , hereof, his title to the mining lands is valid and
(48) merchantable and free and clear of all claims or interest of others
(49) and free from any reservation of mining, mineral, oil or gas rights
(50) in the United States of America, the State of Wisconsin, or any
(51) person whomsoever.

(52) F. MORTGAGE, LEASE, OR OTHER LIEN: Optionor represents to Optionee
(53) that the following is a list of all mortgage or other lien claims
(54) and of all leases known to him covering the mining lands:

<u>Name & Address</u>	<u>Nature of Encumbrance</u>	<u>Approx. Amount</u>
---------------------------	----------------------------------	---------------------------

(55) G. EXERCISE OF OPTION: Optionee may exercise the option herein
(56) granted at any time while this Agreement remains in effect by notice

(57) in writing to the Optionor.

(58) The Optionor shall, upon full payment to him of the price
(59) specified in subsection D, and the consideration specified in
(60) subsection D, if that price has been established by mutual
(61) agreement, convey the mining lands to Optionee by good and
(62) sufficient warranty deed free and clear of all liens and
(63) encumbrances and reservations except the royalty reservation
(64) hereinafter provided for. Such payment and conveyance shall
(65) be completed in no less than sixty days after the exercise of
(66) the option, or as soon reasonably thereafter as title matters
(67) may be concluded. If the consideration provided for in sub-
(68) section B has not been established at the date of closing,
(69) Optionee will pay Optionor the amount established promptly after
(70) it has been established.

(71) Optionor shall furnish and deliver to Optionee at least
(72) thirty days prior to the date for closing a complete abstract
(73) of title currently continued by a recognized abstract company
(74) showing Optionor's title to be marketable and as called for in
(75) this Agreement. Optionee shall notify Optionor of any valid
(76) objection to the title within fifteen days after receipt of said
(77) abstract and Optionor shall have sixty days to cure any defect in
(78) the title. If such abstracts are not so furnished, or if Optionor
(79) fails or refuses to cure any defects of title, Optionee shall have
(80) the right to procure such abstracts as it deems necessary, and to
(81) cure any defects of title, including those listed in Section
(82) provided, however, that Optionee shall have the right to deduct
(83) from the purchase price specified in subsection D, all reasonable

(84) expenses incurred therewith.

(85) If Optionor owns less than the entire interest in the property
(86) Optionee may elect to purchase such interest, in which case the
(87) purchase price shall be reduced to that proportion represented by
(88) his actual interest in the land. In the event of a purchase of
(89) less than the entire interest, the royalties payable under Optionor's
(90) reserved royalty interest hereinafter provided for and the maximum
(91) royalty hereinafter provided for in Section _____ hereof shall
(92) be payable with respect to the entire mineral interest and Optionor
(93) shall be paid his proportion thereof.

(94) All real estate taxes shall be prorated as of the time of
(95) closing.

(96) H. PAYMENT OF TAXES: Optionor shall pay any and all taxes imposed
(97) or assessed against the lands during the option term or any
(98) extension thereof, provided that Optionee shall pay, or reimburse
(99) Optionor for any and all taxes levied upon physical improvements
(100) which Optionee may cause to be made to the lands during such period.

The private landowner should seriously consider the implications of including an option to purchase in the prospecting agreement. The purpose and effect of such an option is to give the mining company or the exploration group the right to buy the fee simple to the land, at a later date, for a price agreed to when the prospecting agreement is signed. The danger is that land values may be much higher in the future, particularly if it appears commercial deposits have been found. Of course, land values may also be lower. Many landowners have in the past signed prospecting agreements containing options to purchase believing that the option would never be exercised, only to find five years later that they are obliged to sell their land at less than its value at that time.

When the Lessee is given the right to "match any bonafide offer", it is usually based on the assumption that the Lessee needs to protect his development expense. However, by granting Lessee this right, it is possible that the landowner's heirs could be excluded from owning or purchasing the property. If it is the landowner's wish that the property be transferrable to heirs this should be noted in the option.

Should an owner desire to free himself from all aspects of the mining operation, an option to sell outright may be the best solution. Caution is

advised again on the time allowed for the offer of purchase since this instrument could be used to remove a source from competition until after contracts are awarded.

The inclusion of an option to purchase, and all its provisions, should be negotiated, and the advice of an attorney should be sought.

One definite advantage of an option to purchase to the seller is the tax saving on a capital gain. As a rule, a tract purchased outright returns only from a third to a tenth of the total cash value that would accrue from the payment of royalties accumulated from total recovery. However, if the landowner sells his property, he will not be able to deduct mineral depletion allowances. See discussion page 55.

Purchase options may vary as greatly as mining leases. Furthermore, they contain many of the same issues found in mining leases. They are highly negotiable items and can be made to fit every situation. As with lease agreements, it is wise to secure appropriate advice.

Most of the problems and issues considered in a mining lease should be considered in an option to purchase. An option to purchase may be included within a lease or be included in an independent document. If the property owner wishes to relieve himself of concerns involving the land or the actual mining, then this may be an appropriate alternative.

The form of the option may be simply a paragraph found within the lease or a lengthy, independent document of its own. The parties, terms, and warranty of title should be clearly stated. The term should be relatively short in order to avoid being denied royalty payments higher than the proposed purchase price. The method of electing to use the option should be equally clear.

Other clauses within an option should include the right for either party to terminate its option if one party does not fulfill his part of the contract. Arbitration procedures are recommended, but if the clause is within a lease, these settlement procedures probably will be included.

SECTION 13: WITHDRAWAL OF COUNTY FOREST LANDS FOR MINING

Discussion

In order to implement withdrawal of forest lands, counties may wish to set forth details for this procedure within the prospecting agreement. Such a section would help clarify the issue of withdrawal and approval, by setting forth procedures to be used and standards to be followed.

Example

Section 13: Withdrawal of County Forest Lands for Mining

- (1) A. At such time as Grantee notifies County of its election to
- (2) exercise its option to lease lands as provided above, it shall

(3) submit to County a plan of operation, rehabilitation, restoration
(4) and reclamation in substantial detail, which plan shall describe
(5) how it will mine, process, store and transport the minerals and
(6) restore the land. This plan shall be submitted to the County Board
(7) of Supervisors for approval by a two-thirds vote of its membership.
(8) The _____ County Board of Supervisors shall consider parti-
(9) cularly the following standards in determining whether approval
(10) shall be granted:

(11) (a) The measures to be taken during the period of mining
(12) operations shall minimize the possible adverse impact
(13) of the mining and processing operation upon the natural
(14) environment of _____ County and the State of
(15) Wisconsin; and

(16) (b) That the plan for the rehabilitation of the withdrawn
(17) lands after the cessation of mining operations shall
(18) provide a land use, which will rehabilitate or other
(19) wise make the mined area into a natural asset for
(20) _____ County and the State of Wisconsin.

(21) County's approval of the foregoing plan shall not be unreasonably
(22) withheld if Grantee's plan meets the above standards.

(23) B. Notwithstanding any provision herein to the contrary, the
(24) parties hereto agree that no language herein which purports to
(25) establish terms of a mining lease or which incorporates a mining
(26) lease by reference shall be construed to stop the State of Wisconsin
(27) Department of Natural Resources from attaching to any withdrawal
(28) order such conditions as it may deem reasonably necessary to minimize
(29) environmental damage and provide for environmental restoration.

SECTION 14: SERVICE OF NOTICE--MAKING REGULAR REPORTS

Discussion

Because certain provisions of the lease require notice to be given for particular events, it is quite helpful for each of the parties to establish rules for notice and location for notice to be sent. Below is a typical notice section. Please note that procedures are also set forth for mailing of periodic reports.

Example

Section 14: Service of Notice--Making Regular Reports

- (1) A. Any notice, required or permitted to be given or served upon
- (2) any party pursuant hereto, purporting to alter the status of the
- (3) parties or the premises, shall be sufficiently given, served or
- (4) made if sent to such party by registered mail addressed to such
- (5) party at the address set forth below, or to such other address as
- (6) such party shall designate by written notice to the other party as
- (7) follows:
- (8) To Grantor:
- (9)
- (10)
- (11) To Grantee
- (12)
- (13)
- (14) Notice given in such fashion shall be deemed received by the party
- (15) to whom addressed at the time indicated on the return receipt.
- (16) B. Routine or regular periodical reports and statements and
- (17) documents or any payments hereunder may, however, be made or sent
- (18) by regular mail; and if so addressed and mailed in due season, then
- (19) if any of the same shall not be received when due, the addressee
- (20) will notify the addressor in accordance with the provisions for

- (21) notice hereinabove of such failure of receipt and give the addressor
- (22) a reasonable time to follow up and secure the delivery of the state-
- (23) ment and report or a duplicate thereof or any payment, before
- (24) claiming any default on account thereof.
- (25) C. The name and address of _____'s resident agent for
- (26) service of process is: _____.

SECTION 15: PAYMENTS

Discussion

The place where payments are to be sent should also be specified.

Example

Section 15: Payments

- (1) All payments made by Grantee hereunder shall be made payable to the
- (2) Grantor at (address)

SECTION 16: GRANTOR'S RIGHT TO TERMINATE--GRANTEE'S RIGHT TO CURE DEFECT

Discussion

While this lease clarifies many aspects of potential problems, there must be provisions for grantor to terminate the lease. The reasons for such termination should clearly be spelled out. Such reasons may be, for example, failure to pay royalties due or failure of the company to keep up its obligation, including failure to keep open roads, failure to move equipment off of released lands, or failure to keep up with any environmental agreements provided for in this agreement.

However, the company has expended a great deal of effort and time in the prospecting of the premises and will desire protections to insure that the agreement is not terminated too easily. Therefore, quite often a provision is included to allow them a specific amount of time to cure any such defect in the performance of their obligation.

Example

Section 16: Grantor's Right to Terminate--Grantee's Right to Cure Defect

- (1) Grantor may not terminate this agreement unless (a) Grantee shall
- (2) fail to make payment of any amount of money due and payable by
- (3) Grantee to Grantor pursuant to this agreement, or (b) Grantee shall

- (4) fail to substantially perform its obligations hereunder; provided
(5) however, that in the event of such a default or defaults by
(6) Grantee and the election of Grantor to terminate this agreement,
(7) Grantor shall give Grantee written notice of its intention to
(8) terminate, in which notice Grantee must specify the particular
(9) default or defaults relied upon, and Grantee shall have (30)(____)
(10) days after mailing of such notice by Grantor to make good such
(11) default or defaults, or to call for arbitration. In the event
(12) Grantee makes good any such default or defaults within (30)(____)
(13) days, there shall be no termination.

SECTION 17: LITIGATION--INJUNCTION--ARBITRATION

Discussion

There is always the chance of a dispute; if one should arise it may be helpful for both parties to agree to a means of resolving the dispute out of court. Note, however, that the power to seek injunctions to prevent damage to the lessee is a benefit that should be given up only with great caution.

Example

Section 17: Litigation--Injunction--Arbitration

- (1) A. No disagreement or controversy or court proceedings shall inter-
(2) rupt the operations contemplated hereunder; provided, however, that
(3) nothing contained in this agreement shall prevent Grantor from
(4) obtaining a restraining order or injunction against Grantee for
(5) committing any breach of this agreement which would cause Grantor
(6) or his property substantial damage, nor shall anything
(7) contained herein prevent termination pursuant to this agreement.
(8) Such operations may be continued and settlements and payments shall
(9) be made hereunder in the same manner as prior to the arising of
(10) such disagreement or controversy, until the matters in dispute

(11) shall be finally determined as aforesaid; thereupon, payments or
(12) restitution shall be made in accordance with the decision.

(13) B. In the absence of substantial damage to grantor or his property
(14) any dispute arising out of this agreement, including such as may arise
(15) out of failure mutually to agree, shall be determined by arbitration
(16) under the laws of the State of Wisconsin in accordance with the rules
(17) of the American Arbitration Association then in force, including the
(18) rules of said Association relating to the manner of appointment of
(19) arbitrators, said arbitration to be held at such place within the
(20) State of Wisconsin as the said Association may determine and the
(21) parties hereto consent to the jurisdiction of the courts of the State
(22) of Wisconsin for the purposes of this paragraph.

(23) C. No disagreement or controversy or arbitration proceeding shall
(24) interrupt the operations contemplated hereunder. Such operation
(25) may be continued and settlements and payments shall be made here-
(26) under in the same manner as prior to the arising of such disagree-
(27) ment or controversy until the matters in dispute shall be finally
(28) determined by arbitration, as aforesaid; thereupon payments or
(29) restitution shall be made in accordance with the decision of the
(30) arbitrators.

Of course, the method of arbitration may be more specifically detailed. For example, the names and number of arbitrators could be supplied. However, this type of arrangement is not as flexible as a clause similar to that found in the section. It is possible to define, in the lease, the meaning of substantial damage found in line (13).

SECTION 18: FORCE MAJEURE

Discussion

Calamities can happen anytime. The parties may desire to define their resulting liabilities in advance.

Example

Section 18: Force Majeure

- (1) Grantee's failure to perform or comply with any of the provisions
- (2) of this agreement shall be excused if such failure to perform or
- (3) comply is caused by circumstances or conditions beyond the reason-
- (4) able control of Grantee, and is directly attributable to, but not
- (5) limited to, the following: Severe weather; unusual mining casualty;
- (6) civil or military orders, regulations or authority; insurrection,
- (7) riots, strikes; war or hostilities between any nations; embargoes,
- (8) (governmental orders or regulations); fire, accident, explosions,
- (9) floods; (lockouts), (differences with workmen); (delays of
- (10) carriers, lack of transportation facilities); commandeering or
- (11) requisitioning by any government or agency thereof; inability to
- (12) obtain materials, supplies or equipment; curtailment of, or failure
- (13) in obtaining, sufficient electrical power or any other similar
- (14) or different circumstances or conditions, whether or not the same
- (15) are herein enumerated.

All parts of this section are negotiable, particularly those parts in parenthesis. For example, it might be possible for the landowner to bargain with the company for continuance of the rental payments regardless of the disaster, strike, etc.

SECTION 19: DISCRETION AS TO WORK UNDERTAKEN--HIRING--BOND

Discussion

The company will want clear discretion in its operating procedures. However, the company should agree to carry out a reasonable amount of ground work to appraise the mineral potential according to conventional practice. Drilling can be done only at company discretion, but if a company leases a property at least one drill hole is often required.

Example

Section 19: Discretion As To Work Undertaken--Hiring--Bond

- (1) A. Except as set forth herein, Grantee makes no express or implied
- (2) covenant or agreement relating to the exploration, development,

- (3) mining or other operations of or upon the Premises or the marketing
(4) of any material therefrom, nor as to the conduct or the extent of
(5) any of the same. Whether or not any such explorations, develop-
(6) ment, mining or other operations or marketing shall at any time be
(7) conducted, the nature, manner and extent thereof shall be matters
(8) to be determined within the sole discretion of Grantee, except that
(9) Grantee shall be required to make _____ drill hole(s) during the term
(10) of this lease, pursuant to section 3 herein.

If a county is involved, it may wish to negotiate with the company to hire its local citizenry. Here is an example of such an agreement.

- (11) B. Grantee agrees that it will use its best efforts, to the degree
(12) practicable, to employ citizens of _____ County, Wisconsin,
(13) in its operations under this agreement and under any subsequent
(14) mining lease.

The landowner may wish to contract with the company to establish a bond; in some situations a bond is required by law. Such a bond would give the Grantor insurance to cover the cost of restoration of his lands.

Subsection (D) limits the company's liability except as provided by law.

- (15) C. Grantee agrees to supply County (Grantor) with a bond, guaranteed
(16) by acceptable sureties, in the amount of _____ to insure
(17) compliance with this agreement.
- (18) D. Except as otherwise specifically provided in this agreement,
(19) Grantee shall have no obligation, liability or responsibility what-
(20) soever to County (Grantor) for damages or injury to the Premises
(21) arising out of, caused by, or in any way connected with operations
(22) conducted by Grantee upon, under, in and through the Premises and
(23) similar operations conducted by Grantee upon, under, in and through
(24) Other Lands, except as may be provided by applicable law.

SECTION 20: COVENANTS--WARRANTED AND APPORTIONMENT FOR FAILURE

Discussion

Most leases require certain warranties and covenants to be made. Below are some examples.

Example

Section 20: Covenants--Warranted and Apportionment for Failure

- (1) A. This Agreement and the covenants and conditions herein contained
- (2) shall run with the land and shall be binding on and inure to the
- (3) benefit of the respective successors and assigns of the parties
- (4) hereto.
- (5) B. Grantor warrants and agrees to defend the title to the surface
- (6) ownership of the Premises and to the rights granted to Grantee
- (7) herein against any and all persons, firms, corporations, or govern-
- (8) mental entities claiming any right granted to Grantee herein against
- (9) any and all persons, firms, corporations or governmental entities
- (10) claiming any right, title or interest therein adverse to or in
- (11) derogation of County's title or of the letting and demising of the
- (12) Premises and said rights by County to Grantee.
- (13) C. Without impairment of the representations and warranties of
- (14) Grantor as set forth in above, if Grantor, at the time this Agreement
- (15) is executed or at any time thereafter, owns an interest in the
- (16) Premises less than the full and undivided mineral interest therein,
- (17) then whether or not such lesser interest is referred to or described
- (18) herein, Grantee may pay to County (Grantor) only that part of any
- (19) amount due and payable by hereunder which County's (Grantor's) interest
- (20) bears to the full and undivided mineral interest therein. Upon such
- (21) payment, Grantee shall not have any further obligation thereafter to
- (22) County (Grantor) or to any person or persons claiming by, through,
- (23) under, or against County (Grantor).

If the landowner has any questions about his mineral rights, as compared to the surface rights to the property, he is referred to Information Circular #25 in this series, entitled "Mineral Rights in Wisconsin."

SECTION 21: ASSIGNMENT

Discussion

When one party wishes to sell its claim or right to an item it owns or controls, this act is called assignment. Most companies would like to have the option to assign and/or subcontract its work to other persons. This action in no way reduces the company's liability to the land holder. Landowners who are approached by consultants or ore brokers wishing to negotiate prospecting agreements should be certain to find out if the consultant or broker represents a mining company or subsidiary.

Example

Section 21: Assignment

- (1) Grantee shall have the right to assign or subcontract to others the
- (2) performance of exploration and development work hereunder subject
- (3) to all of the terms of this agreement, but no such assignment or
- (4) subcontract shall relieve Grantee of its obligations to Grantor
- (5) hereunder. Said right of assignment includes the right of Grantee
- (6) and Grantor, at any time, to assign all or a part of its rights
- (7) and interests under this agreement to a successor of itself or its
- (8) parent as a result of a merger, consolidation or corporate name
- (9) change.

SECTION 22: GRANTEE LIABILITY

Discussion

In spite of Section 19(D), there are many types of damage the company should compensate the landowner for, especially if that landowner is a county.

Example

Section 22: Grantee Liability

- (1) Grantee agrees that in the course of its examination, investigation,
- (2) exploration and development, it shall not, interfere with the use
- (3) for forest crop purposes of such of the lands in, on, and under

(4) which the mineral interests are located as are registered under
(5) the Forest Crop Law of the State of Wisconsin provided, however, in
(6) the event that Grantee's operations shall require that said
(7) lands shall be used for purposes inconsistent with the
(8) Forest Crop Law, the Grantor shall, at the request of Grantee,
(9) withdraw such lands from registration, under said Law and
(10) Grantee shall reimburse Grantor for any amounts it may be
(11) required to pay the State of Wisconsin because of the withdrawal
(12) of said lands. Grantee agrees to compensate the Grantor for
(13) any damage or destruction of roads, fences, and buildings owned
(14) by the Grantor and existing on the lands on the date of execution
(15) of this agreement or constructed thereafter by the Grantor or its
(16) agents for its use in connection with its timber, farming, sand,
(17) and/or gravel operations as such damage or destruction results from
(18) and arises out of the activities of Grantee under this agreement
(19) and, further, Grantee agrees to compensate at fair market value
(20) the Grantor for any damage to or destruction of standing timber or
(21) crops of value caused by Grantee, its agents, or employees, such
(22) compensation for timber of value to be ascertained in accordance
(23) with the effective "Stumpage Values for Severance Tax" prepared by
(24) the Wisconsin Conservation Department under the Wisconsin Forest
(25) Crop Law

CLOSING, SIGNATURE AND DATE

The major provisions which should be considered in the preparation of a prospecting agreement have been covered in Sections 1 through 22. If the grantor and grantee are in agreement over the terms of the agreement, then it is ready to be signed. Be certain that the person signing has authority to enter into this type of agreement. It is usually wise to have the signatures notarized and the document, or an abridged version of it, recorded with the county register of deeds.

Finally, because a mining company needs an exclusive right to mine if ore is found, a mining lease is often combined with a prospecting lease as an "Appendix A". The next chapter discusses the sample mining lease clause.

CONCLUSION

Any agreement is a set of terms acceptable to all parties involved in a negotiation. It can consist of anything from a handshake and oral commitment to a detailed itemized set of specifications. The prospecting agreement presented above is intended solely as a model to provide guidance and should not be construed as universally applicable or even desirable. It is believed, however, that it covers all of the major factors which should be considered but not necessarily combined in such an agreement. In any negotiation for a prospecting agreement, the property owner is again encouraged to obtain the advice of an attorney and a consulting geologist and to not sign any agreement which is not fully understood and completely acceptable and satisfactory.

Metal Mining Lease

Many of the basic principles expressed in the prospecting agreement are equally applicable to a metallic mining lease. Therefore, the presentation of the metal mining lease will be similar to that of the prospecting agreement. However, where materials appear that are identical in nature with those presented in the prospecting section, reference will be made to them. You are cautioned to carefully examine the references in order to understand the full meaning and policies behind the various clauses found in the metallic mining lease.

INTRODUCTION

Discussion

If prospecting convinces the company or exploration concern that commercial quantities of ore exist, and the company decides to mine the deposit, the mineral rights are either leased or purchased subject to the terms as specified in the previously signed prospecting agreement. If the prospecting agreement gives the mining company an option to purchase, and the company exercises that option, the landowner is usually required to vacate the premises and he has no further direct interest in the land. If, however, the prospecting agreement gives the company the right to lease the land if it desires, the landowner has a strong and continuing direct interest in the land. A mining lease should indicate what mining is intended, the term of mining, purpose of the lease, definitions, amount of purchase or rental payments and royalties (advance and production), manner and timing of payment, tax liability, weights and analyses reports to be made, manner of mining, manner of stockpiling and work handling, mixing, treatment, lessor's lien, title to property (liens encumbrance), insurance and indemnity, termination and removal of property, assignment, force majeure, disputes, arbitration, notices, construction of lease, recording and release of premises and other topics of concern to either party.

The sample mining lease clauses presented below are intended solely as samples to provide guidance and should not be construed as universally applicable or even desirable. They were written to cover the major factors which should be considered in all situations for inclusion in a lease.

Usually a mining lease will begin with the preliminary, introductory data similar to that found in a prospecting agreement. Such an introductory section may read as follows.

Example

Introduction

- (1) This AGREEMENT, made and entered into as of the _____ day of
(2) _____, 19____, by and between (landowner) _____
(3) (Name) (Address)
(4) hereinafter called "Lessor," and (Mining Company) _____
(5) (Name) (Address)
(6) hereinafter called "Lessee".

Identification of the parties should include their full mailing addresses. If either party is a corporation, this clause should contain language indicating that the corporation is registered to do business in Wisconsin and identifying the registered agent and his/her address.

WITNESSETH:

- (7) Lessor is the owner of an interest in certain described lands
(8) situated in the State of Wisconsin, hereinafter referred to as the
(9) "Premises," containing approximately _____ net acres
(10) more or less.
(11) This agreement will set forth all of the terms and conditions
(12) under which Lessor grants to Lessee a mining lease of the Premises,
(13) for the purposes and for the term hereinafter provided.
(14) IN CONSIDERATION of the covenants and agreements hereinafter set
(15) forth, and of the sum of _____ Dollars (\$____) and other good and
(16) valuable consideration, the receipt and sufficiency of which is
(17) hereby acknowledged by Lessors, the above parties agree to the
(18) following:

This introductory section clearly identifies the parties involved, type of agreement, and location of premises. For more information regarding the section, please refer to Metals Prospecting Agreement, introductory section.

SECTION 1: GRANT

Discussion

Because the length of the term of a mining lease is likely to be long, it is wise to definitively spell out the exact nature of the lease. The company will want to insure its right to use all of the portions of the premises that are needed to conduct a successful operation. On the other hand, the property owner may wish to reserve for his own uses the remainder of the surface area. These types of agreements are provided for in the example found below. Note this example allows for assignment of mining rights to the land. Of course, this segment of the agreement as well as all others are dependent upon the negotiations.

Example

Section 1: Grant

- (1) Lessor hereby leases the Premises unto Lessee, its successors and
- (2) assigns, for the term and for the purposes hereinafter provided,
- (3) including, but without being limited to, all ores, minerals and
- (4) mineral rights, and all water and water rights, easements,
- (5) licenses, and rights-of-way owned by Lessor for use in connection
- (6) with or pertaining to the Premises during the term of this agreement
- (7) Lessor reserves all timber and timber rights and all other forest
- (8) products now or hereafter growing or upon the Premises, all surface
- (9) materials, energy-producing elements, oil, gas and nonmetallic rock
- (10) products, and the right to use the surface, including but not limited
- (11) to the right of access to the Premises, and the right to grant access
- (12) to the Premises to third parties provided that Lessor and its licensees
- (13) shall not unreasonably or unnecessarily hinder or interrupt Lessee's
- (14) operations. Lessor reserves the right to grant leases, permits, or
- (15) licenses to any portion of the surface of said Premises to any third
- (16) party, provided said use does not unreasonably interfere with
- (17) Lessee's operations under this lease.

Lessor may wish to keep for himself the rights to sand and gravel, water and water rights, and other minerals than the ones being sought by the company. Agreements of this type are part of the overall bargain between the two parties. To accomplish these exceptions to the lease, the parties should insert in line (4) after "mineral rights", the words "and excepting sand and gravel, (water and water rights) and (all minerals other than _____).".

Another alternative regarding sand and gravel is to give the company the right to remove sand and gravel from the premises at a negotiated price per ton or cubic yard. A variation is to provide that the landowner be paid a certain percentage of any revenues the company receives from selling the sand and gravel. Both these alternatives can be included in the mining lease. Likewise, the company can purchase water and water rights separately. Separate leases can be negotiated for any other mineral which may be found, as both parties are likely to want some provisions changed for different minerals, or the various provisions can all be included in one agreement.

If the landowner wishes to be more specific concerning sand and gravel, a more detailed provision may be set forth. For example:

- (18) Lessor excepts and excludes from the terms of this lease all sand
- (19) and gravel from the surface of the earth to a depth of 150 feet
- (20) which is not intermingled or associated with an ore body or pro-
- (21) duced as a by-product of mining operations; however, this pro-
- (22) vision shall not limit the right of lessee to explore and test the
- (23) Premises and to conduct mining operations on the Premises, subject
- (24) to the following provisions:
- (25) Whenever Lessee excavates ore, minerals or overburden from the
- (26) Premises, it shall have the option to either (a) remove the
- (27) excepted sand and gravel within the area of excavation, and make
- (28) adequate arrangements to deliver such sand and gravel to Lessor
- (29) in an accessible storage site on or near the Premises, or (b)
- (30) purchase the excepted sand and gravel located within the area
- (31) excavation, at its fair market value in place at the time of
- (32) taking.

Note that the price of sand and gravel is unspecified; this could conceivably lead to disagreement at a later date. An effort can be made to define the fair market value of the sand and gravel. For example:

- (1) Fair market value shall be the price Lessor would pay
- (2) if it purchased sand and gravel of comparable quality from the
- (3) supplier closest to the Premises, less transportation costs.
- (4) Should the parties be unable to agree on such a definition
- (5) they can rely on the arbitration procedures in the agreement
- (6) to resolve any conflicts which arise.

SECTION 2: TERM

Discussion

The term of a mining lease is often 25 years. An extension to mine on a continuing basis until all ore is removed may be guaranteed if the company is still in production at the end of the term. Note that a 25 year term, dictated in light of current markets and desires, is likely to be controlling a very different situation fifteen, twenty or twenty-five years later. The landowner may want an initial term of perhaps 10 or 15 years, giving him the opportunity to renegotiate the agreement. The company is likely to resist both the short term and the opportunity for renegotiation; the conflict might be resolvable by guaranteeing the company the exclusive right to renew or by prohibiting the landowner from leasing to any other company for a period of time. Both sides should balance their interests in setting the term, remembering that sticking to a hard line too vigorously may prevent reaching an agreement.

The extension provisions should be examined carefully. Perhaps, the property owner desires to insure that he receives more money in the future. A clause increasing royalties for each year of extension could also be added. This aspect of the agreement is vital to the company, because it wants the security of a lengthy lease; and it is equally vital to the owner because an indefinite extension could tie up the land for a long duration at prices that seem equitable today, but may not be in the future.

Example

Section 2: Term

- (1) This lease is granted for an initial term of _____ years
- (2) from and after the date hereof, unless terminated in the manner
- (3) provided in this agreement. Lessee shall have the right, at its
- (4) election, to extend, for not to exceed _____ years,

- (5) this lease if the royalties payable hereunder for minerals
- (6) actually mined from the Premises during the last year of the term
- (7) of this lease exceeded the minimum royalty established for such
- (8) year as long as production continues on the same basis, upon
- (9) terms to be agreed upon by the parties.

Note that this clause provides for an extension provided that mining continues. The landowner may desire this contingency, for it provides an incentive for continued production and prevents tying up the land for other uses in the absence of production.

Another alternative to the lease extension issue may be to define unproductivity in terms of idle consecutive days. Below is such an example. Again, it should be emphasized that the lessor should try to combine lease extension with productivity.

- (10) Such operations shall be deemed conducted on a continuous basis
- (11) unless and until, after the end of the initial term, a period of
- (12) two years elapses in which no mining or development or procession
- (13) is conducted, excluding, however, periods of force majeure
- (14) as defined below. Unless otherwise specified, all references
- (15) to the "term" of this Lease shall mean and include both the
- (16) initial term and the continuing term.

SECTION 3: PURPOSE

Discussion

For clarification, it is quite helpful to list the purpose and uses envisioned by the parties to this lease. Most agreements have some reference to the purposes of the lease, but it may take shape in many forms. Below is an example of this type of clause.

Note that the right to assign the rights granted under this lease is implied in this section. Also note that specific prohibitions are outlined within this section. Because each land site is unique, possibilities for these prohibitions become infinite. Specific environmental requirements could be inserted here.

Example

Section 3: Purpose

- (1) The purposes of this lease are to grant to Lessee, its successors
- (2) and assigns, the exclusive right to explore for, develop, mine,

(3) remove, leach in place, treat, produce, ship and sell, for its own
(4) account, all ores and minerals covered by this lease which are or
(5) may be found upon the Premises, so long as this lease remains in
(6) effect. Lessee is hereby granted the right to make any use or
(7) uses of the Premises consistent with the foregoing purposes,
(8) including, but without being limited to, the full right, authority,
(9) without being limited to, the full right, authority, and privilege
(10) of placing and using therein excavations, openings, shafts, ditches,
(11) and drains, and of constructing, erecting, maintaining, using, and
(12) at its election, removing, any and all buildings, structures, plants
(13) machinery, equipment, (Railroads), (roadways), pipelines, electrical
(14) power lines and facilities, (stockpiles), (waste piles,) (tailings
(15) ponds and facilities,) (settling ponds,) and all other improvements,
(16) property, and fixtures as may be necessary, convenient, or suitable
(17) for mining, removing, beneficiating, concentrating, (smelting)
(18) extracting, leaching, refining, and shipping of ores, minerals, or
(19) products thereof, or for any activities incidental thereto, or to
(20) any of the rights or privileges of Lessee hereunder.
(21) Lessee is further granted the right, insofar as Lessor lawfully may
(22) grant the right to remove lateral and subjacent supports, to cave,
(23) subside, (or destroy the surface or any part thereof, and to deposit
(24) earth, rocks, waste, lean ore, and materials on any parts of the
(25) Premises where it will not interfere with mining,) to leach the same,
(26) and to commit waste to the extent necessary, usual, or customary
(27) in carrying out any or all of the above rights, privileges and
(28) purposes; provided, however, that if any of the surface of the
(29) Premises is owned by third parties, the Lessee shall obtain
(30) appropriate permission from such owners as may be necessary for

(31) its operations and activities hereunder contemplated.

(32) Subject to the prior consent of Lessor, which consent shall not be
(33) unreasonably withheld, and subject to applicable State and Federal
(34) laws, rules, and regulations, Lessee is granted the right to use
(35) any surface or underground water developed or hereafter discovered
(36) in or upon the Premises.

(37) No sanitary landfills or refuse dumps shall be established by the
(38) Lessee on the Premises.

(39) The Lessee shall not dump any waste on the Premises without
(40) Lessor's prior consent.

(41) It is understood that this lease grants no more surface land rights
(42) than is reasonably necessary to accomplish the purpose of this
(43) lease. Lessee hereby agrees to conduct its operations in full
(44) compliance with all State and Federal laws and regulations pro-
(45) mulgated thereunder concerning protection of natural resources,
(46) pollution restoration, rehabilitation, and reclamation of property.

(47) IT IS PROVIDED, however, that if any of Lessee's operations here-
(48) under result in damage to Lessor's buildings, fences, personal
(49) property, or growing crops existing on the Premises on the date
(50) this lease is executed, Lessee shall reimburse Lessor for the
(51) reasonable value of the same.

(52) Lessee also agrees to compensate the Lessor for any damage to or
(53) destruction of standing timber of value caused by Lessee, its agents
(54) or employees, such compensation for timber of value to be
(55) ascertained in accordance with the effective (Stumpage Values for
(56) Severance Tax" prepared by the Wisconsin Department of Natural
(57) Resources under the Wisconsin Forest Crop Law (or other appli-
(58) cable standard agreed upon).

Remember that all of these provisions are subject to negotiation and change. This clause is presented here only as an example. The landowner may especially wish to negotiate to narrow the broad scope of the activities in lines (4), (5), (17), and (18). The language in lines (21) to (28) could permit highly undesirable environmental impacts on the landowner's property; while the company may feel that it needs a broad right to use the premises in aid of mining, it may be possible to put some controls into the lease. For example, the locations where earth materials may be deposited could be specified.

In lines (32) to (36) the mining company is granted the right to use any water on the property. This is a right that may be sold separately to the company.

The usual compensation to the lessor for damage to timber is twice its value.

Any additional provision that is needed to fit a particular situation may be drafted and placed here. The company, for example, may desire a provision that permits it to take advantage of both present and future mining technologies:

- (59) However, that nothing contained in this Paragraph shall prohibit
- (60) Lessee from exercising any of the rights granted hereunder by any
- (61) methods now or heretofore known or hereafter developed.

SECTION 4: DEFINITIONS

Discussion

The sole purpose for adding definitions to a lease is to increase clarity of the total document. For more information, refer to Section 1, of the Metals Prospecting Agreement.

Example

Section 4: Definitions

- (1) The following defined terms, wherever used in this agreement,
- (2) shall have the meaning set forth below:
- (3) A. "Ore" shall mean material from the Premises, the nature and
- (4) composition of which, in the sole judgment of Lessee, justifies
- (5) either (1) mining or removing from place during the term of this
- (6) lease, and shipping and selling the same, or delivering the same
- (7) to a processing plant for physical or chemical treatment, or (2)
- (8) leaching in place during the term of this lease.

- (9) B. "Lean Ore" shall mean material mined or extracted from the
(10) Premises which Lessee in its sole discretion determines not to
(11) process for the recovery of Minerals present or determines not
(12) to sell because of its grade, and Lessee's determination shall
(13) be final and conclusive.
- (14) C. "Waste" shall mean earth, rock, or material including
(15) minerals removed from place in the Premises as a result of mining
(16) or otherwise, during the term of this lease, but which is not ore
(17) or lean ore as defined above.
- (18) D. "Produce" shall mean the following:
- (19) (1) All ore, mineral, and other materials mined or removed
(20) from place in the Premises during the term hereof and
(21) shipped and sold by Lessee prior to treatment, and
- (22) (2) All concentrates, precipitates, and mill products produced
(23) by or for Lessee from ore mined or removed from place in
(24) the Premises, or from ore leached in place in the Premises,
(25) during the term of this lease.

The following three definitions concern the basis for the production royalty (See section 5). Only one such basis would normally be used in any lease. Remember that "standard" definitions really have no place in a mining lease that is drafted to reflect the unique circumstances of a particular situation. This also applies to the definition of the basis for the production royalty; each of these should be adapted to reflect the desires of the parties to the lease.

- (26) E. "Net Smelter Return" shall mean the net proceeds, after
(27) subtracting ____% of the freight charges, ____% of the cost
(28) of smelter treatment, ____% of the smelter deductions, and ____%
(29) of all other such charges separate from the Lessee's plant
(30) received by Lessee for the ores mined from the premises and
(31) from the concentrates and/or mill products produced therefrom
(32) when sold to a bona fide purchaser.

This definition is preferred by most companies and is termed "NSR".
The following approach is utilized by the Minnesota Department of Conservation.

(33) F. "Value of metal and mineral products" shall mean the value of
(34) metals and mineral products recovered in the mill concentrate from
(35) each ton of dried crude ore which shall be determined monthly as
(36) follows: Multiply the total pounds (or other measure) respectively
(37) of (name of principle metals) and each associated metal and mineral
(38) product recovered during the month in the mill concentrate from the
(39) mining unit, by the average market price per pound (or other
(40) measure) respectively for that month of each such fully refined
(41) metal and of each such mineral product. The total amount of
(42) (name of principle metal) recovered in any form in the mill con-
(43) centrate shall be valued for royalty purposes as fully refined
(44) metal. For the purpose of this lease, associated mineral pro-
(45) ducts shall mean the mineral products other than those that are
(46) principally valuable for their (name of principle metal) content.
(47) When less than fifty (50) per cent of any associated metal or
(48) mineral product recovered in the mill concentrate is sold or
(49) otherwise gainfully disposed of, then only the quantity of such
(50) associated metal or mineral product actually sold or otherwise
(51) gainfully disposed of shall be multiplied by the market price in
(52) determining the value of such metal or mineral product for royalty
(53) purposes. Add the values thus obtained for each such metal and
(54) each such mineral product for the month, and divide the sum by
(55) the total number of tons of dried crude ore from the mining unit
(56) concentrated in the mill during the month, to obtain the value,
(57) of the metals and mineral products recovered from each ton of

(58) dried crude ore. The average market price of other metals and
(59) of mineral products per pound (or other measure) for each month
(60) shall be that quoted for their usual and customary shipping
(61) quantities, f.o.b. the usual and customary place of shipment,
(62) United States import duty (if any) included, as reported in
(63) _____ (a specified Journal agreed upon by the
(64) parties). If said Journal or its successors ceases to furnish such
(65) quotations, or its quotations cease to be recognized in the trade,
(66) or a particular metal or mineral product is not listed, then
(67) the quotations of such other source as the parties may agree upon
(68) shall govern.

The following approach has recently been suggested by some observers of the mining industry. A discussion of its unique characteristics is found on page 56.

(69) G. "Net Taxable Income" shall mean the sum identified as net
(70) taxable income from the premises as filed, or as later adjusted,
(71) if the adjustment is higher than the original filing amount, on
(72) the mining company's federal tax return for the year.

(73) H. "Lessor" shall mean one or more persons or corporations
(74) giving the Premises in lease hereunder who shall have a joint or
(75) undivided interest in such premises. Wherever election or objec-
(76) tion is authorized to be made by the "Lessor," such election or
(77) objection must represent that of at least the majority in interest
(78) of such persons who fall within the term "Lessor" as herein
(79) defined.

(80) I. "Lessee" shall mean one or more persons or corporations
(81) taking the Premises in lease hereunder who shall have joint or
(82) undivided interest in such Premises. Wherever election or

(83) or objection is authorized to be made by "Lessee," such election
(84) or objection must represent that of at least the majority in
(85) interest of such persons or corporations.
(86) J. "Minerals" shall mean all minerals, whether metalliferous
(87) or nonmetalliferous, and/or ores which contain mineral matter or
(88) substances, or concentrates thereof, of every nature and character
(89) whatsoever including, but not by way of limitation, base and
(90) precious metals and iron, excluding specifically overburden
(91) materials, energy producing elements, nonmetallic rock products,
(92) now known or that may be subsequently discovered or subsequently
(93) classified as minerals, whether or not at the time of the execution
(94) of this Lease any "Mineral" was given any commercial consideration
(95) in connection with land values.

Remember that "minerals" can be defined much more narrowly. See the discussion page 8.

(96) K. "Tailings" shall mean the waste materials from the ore after
(97) minerals have been removed, extracted, or separated therefrom
(98) as a result of milling, processing, smelting, or otherwise reduced
(99) by Lessee.
(100) L. The term "Initial Processing" shall mean the initial milling
(101) of concentration or other first treatment of ore during which one
(102) or more mineral products are recovered from the ore for sale or
(103) further processing, and during which the first tailings and residue
(104) from the ore are discarded or deposited; this term shall not mean
(105) crushing, grinding, screening or leaching prior to the separation
(106) of valuable products from waste.
(107) M. The term "Premises" means the land described as follows
(108) _____ (give complete legal description)
(109) _____

These definitions cover most of the terms common to a mining operation. The lessor is advised to be certain he knows and understands what these definitions mean and how they are applied. Any others should be added to the agreement if necessary for the clarity of the agreement.

SECTION 5: PURCHASE PAYMENT AND ROYALTIES

Discussion

After the company has prospected on the land, and the mining lease is signed, the company may not start mining immediately. It may either be taking time to get properly organized and geared up to do the mining, or it may simply be sitting on the land, waiting for the market value of the mineral to increase before undertaking mining. This second possibility means that the landowner may receive no income while waiting for production to begin, unless the lease contains a provision for land rentals preceding mining as was provided for in the prospecting agreement.

This problem can be resolved by providing for the payment of advance royalties prior to production. They are usually assessed in a form similar to rent: a certain amount per acre per year. There are however distinct differences. Rent ceases when production starts and it is often credited against future production royalties. Advance royalties are assessed for the duration of the mining lease, and should not be credited against future production royalties. The landowner would maximize his return if the lease provided that advance royalties are required any time there is no production, but are not credited against future production royalties and are not offset by past production royalties. In some cases, the company may object to such provisions, and a compromise may be necessary.

The amount of the advance royalty can increase over time if the landowner desires to strengthen the incentive for the company to begin production. If the ore body is small but of very high quality the landowner will have a particular interest in encouraging mining, for his income will increase and his land will be returned to him for other uses at an earlier date.

In addition to payments received as rentals on the land and as advance royalties, the landowner will receive production royalties, a percentage of the value of the minerals extracted. The receipt of production royalties is the primary incentive the landowner has to enter into a mining lease, for they constitute the great part of the income from the agreement. In relation to production royalties, gross receipts from rents and advance royalties are usually very small. The lease should provide that production royalties are to be paid for all minerals extracted.

Negotiating the royalty rate is likely to be the most difficult and most important part of the lease for many landowners. The landowner should remember that the company usually has a better idea than he does about the kind of ore to be found, the amount of ore available and accessible, and its value. This may put the landowner in a disadvantageous bargaining position. One way he might approach this problem is to set a minimum amount of income he desires to receive from the production royalties, and then adjust the various considerations mentioned here to insure that amount.

The amount of the royalties can be set in two main ways. First, the landowner can simply agree to receive a given and flat sum of money periodically. For example, he could agree to accept as royalties \$1000 every year.

The obvious difficulty with this approach is that the landowner does not benefit in proportion either to the amount of ore extracted or to the value of the ore on the market. He receives a constant amount, regardless of inflation, production, market conditions, etc. Of course this means that if the mining operation is a marginal one, receiving the flat rate may be more beneficial than receiving a low variable royalty.

The second way of establishing royalties solves these problems. The landowner can agree to accept as royalty payments an amount which is a certain percentage of the value of the ore, mineral, or metal produced. Numerous alternatives are possible here. The parties will have to decide what the percentage is to be, at what stage processing it is to be determined, and whether or not it is to change over time depending on certain conditions or contingencies. It is possible for the royalty rate to increase over time, providing an incentive for the company to extract the ore as quickly as possible. It is also possible to have a higher royalty rate if open pit mining techniques are used, rather than underground mining, or the royalty rate vary with the depth of the ore body. These possibilities reflect the higher costs of underground mining and the greater amount of surface disturbance and disruption, noise and air pollution with open pit mining.

An important consideration for the landowner will be the tax consequences of different lease provisions and the resulting impact on revenues. For example, in a carefully drafted lease the landowner will be able to benefit from the depletion allowance provisions of the Internal Revenue Code. If the proceeds which the land owner is to receive from the mining company are payable only if, and when, the mineral is extracted, and the amount to be paid is a function of the amount produced, the landowner has leased his interest and the depletion deductions are allowable to the landowner. If the landowner receives a set amount, regardless of production, he is considered to have sold his interest in the minerals and the depletion deduction is not allowable. Additional financial benefits in this area may induce the landowner to accept a slightly lower royalty rate. The advice of an experienced attorney or accountant is strongly recommended.

It is also important that the basis for production royalty be chosen and defined with great care. Should the lease become a mine, it may generate ore worth tens or hundreds of millions of dollars. Under such circumstances an additional tenth of a percent of royalties may be worth tens or hundreds of thousands of dollars. The lessor should evaluate the company's offers with great care and should investigate the relative benefits of utilizing a production royalty base that is different from that selected by the company.

Generally, the mining industry offers are presented in terms of "net smelter return" (see definition E, page 50) which, in concept, is a measure of the net profits accruing from the deposit, after all of the costs of extraction, smelting, and marketing have been deducted. From the viewpoint of potential lessors this term suffers from two defects. First, the term is not standardized by the industry. In fact, it is defined differently by nearly every mining company and can thus vary greatly from contract to contract insofar as the actual revenue received by the lessor is concerned. Secondly, since it is a net smelter return, the company can, or may attempt to, deduct most or all of its costs, including trans-

portation costs, from the gross amount before figuring the production royalty. The effect can be substantial. For example, some idea of the effect of the inclusion of transportation costs in "net smelter return" can be seen when one realizes that the ore mined in Wisconsin must in many cases be shipped hundreds of miles to the nearest smelter. If, then, the royalty is promised upon the market value of the smelter's final product, less the transportation costs attributable to the mine, there may be very little "net return" remaining on which a production royalty is based.

If, on the other hand, the royalty is assessed earlier in the mining process, as for example, against the value of the mill concentrate, these costs would not be deducted which could increase the amount of royalty paid to the landowner. For example, since the ore is usually concentrated at the mine, the company has fewer costs to deduct, notably transportation and smelting costs. The concentrate can be dried, assayed, and weighed at the mine, possibly giving the landowner a higher return. The State of Minnesota has adopted this approach (see definition F, page 51).

An entirely different approach is to base the production royalty as a percentage of the company's "net taxable income" from the property as reported on the company's federal tax return (see definition G, page 52). This approach, currently under consideration by some mining industry observers, takes advantage of the fact that the minerals depletion allowance provides a built in incentive to maximize the property's "net taxable income" in most cases. In order to maximize the depletion allowance, the company must maximize its net taxable income from the property, as defined by the Internal Revenue Code. This in turn encourages the company to minimize its deductions attributed to the property for the transportation, management overhead, and other costs that can be shifted to the smelter and manufacturing operations. The effect is exactly the reverse of the "net smelter return" concept discussed above; that is, the royalty is tied to an income base which the company is seeking to maximize, not minimize.

It should be noted that there can be problems with this "net taxable income" approach, if the profitability of the industry changes so as to remove the incentive to maximize the depletion allowance, and also if the tax code is changed by Congress. As a result, if this approach is used, the lease should include a clause to the effect that the production royalty will be subject to renegotiation if the tax laws or profit conditions change.

In short, there are numerous alternatives available. In light of the potentially huge sums of money at stake, and the real possibility that a production royalty provision can be virtually worthless to the lessor if not properly drafted, the potential lessor is urged to insist upon a detailed illustration of the royalties to be expected under the company's offer. This example should include current transportation costs that would be paid by the lessee if the mine were currently operating in Wisconsin. The results should be compared with examples of the alternatives suggested above, as well as with any other alternative production royalty bases.

The landowner should also note that in all cases royalties are usually assessed as a percentage of value per unit volume. That is, 5% of the value of one ton of ore which has a 4% mineral content will equal 5% of the value of 320 pounds of mill concentrate which has a mineral content of 25%. Thus, if the landowner desires to realize a certain income from the agreement, he

should consider carefully the wording of the royalty provision and the possibility of deductions from the gross amount by the company. If the royalty he receives is tied to the value of the ore, his income will rise over the years if (1) the value of the ore in the market continues to rise and (2) the company continues to maintain its production levels.

A government agency (county, state, or federal) may be urged to consider lower rates than a private owner because of the numerous side benefits that they allegedly enjoy due to the economic benefits created by a new industry with the increased payrolls and taxes. Counties and other municipalities should, however, very carefully assess the situation and consider the source of the data, to insure that these economic benefits will in fact materialize to the extent expected before accepting lower royalty and rates.

The figures eventually used in the lease are the result of bargaining between the parties. They may be made higher or lower depending on the circumstances of the particular site. Below is an example for one type of royalty provision.

Example

Section 5: Purchase Payment and Royalties

- (1) The Lessee covenants and agrees that, so long as this lease continues
- (2) in force, it will pay to the Lessor, in payments as hereinafter
- (3) designated, purchase payment for surface rights, rentals, and
- (4) production royalties for ores or minerals mined from the Premises.
- (5) PURCHASE PAYMENT
- (6) Prior to the effective date of this lease, Lessee will pay Lessor
- (7) the sum of _____ Dollars (\$ _____) as payment for
- (8) surface rights, for the full lease acreage, determined at the rate
- (9) of _____ per acre for uncultivated land and _____ per acre
- (10) for cultivated land.
- (11) ADVANCE ROYALTIES
- (12) A. Prior to the effective date of this lease. Lessee will pay to
- (13) Lessor the sum of _____ Dollars (\$ _____) as advance
- (14) royalty for the full lease acreage for the unexpired portion of the
- (15) current calendar year from the effective date hereof, determined at
- (16) the rate of _____ per acre.
- (17) B. On or before January 1 of each succeeding _____ calendar years

- (18) Lessee will likewise pay Lessor _____ per acre on the acreage
(19) then remaining under the lease.
- (20) C. On or before January 1 of each succeeding calendar years
(21) Lessee will likewise pay Lessor _____ per acre on the acreage
(22) then remaining under the lease, and for any period of extension.
- (23) D. On or before January 1 of each succeeding calendar years
(24) Lessee will likewise pay Lessor _____ per acre on the acreage
(25) then remaining under the lease.
- (26) The payments under subsections A, B, C, and D herein shall be deemed
(27) advance royalties, and shall not be deemed rentals.
- (28) PRODUCTION ROYALTIES
- (29) For all ore mined from the Premises and shipped to a smelter or
(30) other purchasing agency or retained by Lessee for treatment in
(31) its facility, a production royalty of _____ percent (____%) of
(32) the (production royalty basis agreed to by the parties) received
(33) by Lessee for product.
- (34) Production royalty payments shall be made to the Lessor on or before
(35) the 20th day of January, April, July, and October on account of
(36) ores and/or concentrates and mill products thereof sold during the
(37) next prior calendar quarter.
- (38) The advance royalty and production royalty to be paid by Lessee
(39) hereunder is based upon the entire undivided interest in, and title
(40) to, all of the Premises as described above. If Lessor owns less
(41) than the entire undivided interest in all of the Premises, all
(42) payments to be made by Lessee to Lessor hereunder shall be reduced
(43) to the same proportion thereof as the interests of Lessor in the
(44) Premises bear to the entire Premises.

(45) If Lessee shall elect to retain all or any part of such concentrates
(46) for further treatment or processing in its own facilities or any
(47) facilities owned by a subsidiary of Lessee, fifty percent (50%) or
(48) more of which subsidiary is owned by Lessee, all concentrates so
(49) retained for purposes of royalty computation hereunder only, shall
(50) be deemed sold on the date on which shipped to such treatment or
(51) processing facility at a Net Smelter Return no less favorable than
(52) would be reasonably available to Lessee from other smelters at the
(53) time of such shipment. In such cases, if Lessor is not satisfied
(54) with the royalty settlement received, within ninety (90) days after
(55) the date of Lessee's royalty settlement Lessor shall set forth in
(56) writing Lessor's reasons for objecting and shall disclose the
(57) specific source and terms at which a better Net Smelter Return could
(58) have been procured by Lessee at time of sale.

Note: Lines (45) to (58) are applicable only if the production royalty basis selected is net smelter return.

(59) Provided, however, if minerals other than those specifically covered
(60) by this lease shall be found upon the Premises and shall be mined,
(61) removed therefrom, and sold by Lessee, the royalty thereon shall be
(62) determined by negotiations between the parties subject to the
(63) arbitration procedure herein. Should the Lessee decide not to mine
(64) and process any such minerals, Lessor reserves the right to explore
(65) for, mine, and remove such minerals from the Premises.

Within this subsection, lessor is required to file within ninety days written notice of his disapproval of royalty settlement. If the dispute continues to go unsolved, the arbitration section of the lease could be utilized to attempt to decide the differences.

It is conceivable that the royalty payments may be divided into specific categories. An example of this type of division follows. However, it is recommended that competent consultation be obtained because of the possible tax consequence if the property owner enters into this type of agreement.

(66) Lessee shall pay to Lessors a production royalty for all Product
(67) as defined above, shipped from the Premises during the term hereof
(68) and sold by or for Lessee, at the following rate:
(69) A. For all Product consisting of, or produced from, ore mined
(70) and removed from place in the Premises, _____ per cent
(71) (_____%) of the (production royalty basis agreed to by the
(72) parties).
(73) B. For all Product derived from ore leached in place in the
(74) Premise, _____ percent (_____%) of the (production royalty
(75) basis agreed to by the parties).
(76) C. For all Product consisting of ore mined or removed from place
(77) in the Premises during the term hereof and shipped and sold
(78) by Lessee prior to treatment, _____% of (production royalty
basis agreed to by the parties).

Another means of computing royalties is to allow royalty rates to increase with the value of the production royalty base similar to the example following this paragraph.

(79) Lessee shall pay to Lessor a production royalty for all product
(80) mined from Premises during the term hereof and sold by Lessee or
(81) treated by Lessee at the mine site. The term "ton" as used herein
(82) shall mean 2000 lbs. The amount of said production royalty payable
(83) to Lessor will be determined in the following manner:
(84) A. When (the production royalty base agreed to by the parties)
(85) for the metal produced under this lease from a ton of crude
(86) ore removed from said Premises are not greater than \$5.00,
(87) the royalty rate shall be _____ cents (\$ _____) per ton
(88) of crude ore.
(89) B. When the (production royalty base agreed to by the parties)
(90) for product produced under this lease from a ton of crude ore

- (91) removed from said Premises are a sum greater than \$5.00 and not
- (92) greater than \$50.00, the royalty rate shall increase in proportion
- (93) to the increase in such Net Returns along a straight line slope
- (94) computed to the nearest thousandth of a percent.
- (95) C. When the (production royalty base agreed to by the parties) for
- (96) product produced under this lease from a ton of crude ore re-
- (97) moved from said Premises are a sum greater than \$50.00 and not
- (98) greater than \$100.00, the royalty rate shall increase in pro-
- (99) portion to the increase in such Net Returns along a straight
- (100) line slope computed to the nearest thousandth of a percent.

The clauses presented in this section are merely examples of methods in determining royalty payments. None of these examples or figures can exactly be fitted to any specific arrangement. They are intended solely as a guide. Before deciding the royalty schedule to be inserted into a lease, especially if other than the flat rate, counseling with an attorney, mining consultant and an accountant is advised.

SECTION 6: PAYMENT OF ROYALTIES

Discussion

Because of the potentially large amounts of money involved, the exact nature of royalty payments should be spelled out. The example presented within this section should provide a fundamental format for manner of payment.

Example

Section 6: Payment of Royalties

- (1) All payments to be made by Lessee to Lessor hereunder may be made
- (2) by Lessee's check or draft mailed or delivered to Lessor at Lessor's
- (3) address for notice purposes, as set forth below, or for the account
- (4) of Lessor at such bank or banks, or elsewhere, in one of the United
- (5) States, as Lessor may designate from time to time by written
- (6) notice to Lessee. Such bank or banks shall be deemed the agent
- (7) of Lessor for the purpose of receiving, collecting, and receipting
- (8) for such payments.

SECTION 7: TAXES

Discussion

Many sections of a mining lease are included for the purpose of clarifying the respective party's rights and duties. The taxation liability issue is one area that should be clearly spelled out. For a similar policy of defining each side's rights and liabilities, please refer to Section 8, Metals Prospecting Agreement.

This particular section basically calls for the mining company to pay all those taxes connected with its works while exempting the company from taxation of Lessor's income or improvement made upon the property owner's land by someone other than the mining concern.

Example

Section 7: Taxes

- (1) Lessee shall pay promptly, before delinquency, all taxes and assess-
- (2) ments, general, special, ordinary and extraordinary, that may be
- (3) levied or assessed during the term of this lease upon the Premises
- (4) then remaining subject to this lease, upon all ore and Product
- (5) therefrom, and upon all Lessee's improvements and personal property
- (6) on the Premises, including any royalty taxes assessed against or
- (7) on account of the royalty payable to the Lessor under this lease
- (8) and all occupational taxes and any and all other taxes assessed on
- (9) account of Lessee's mining or other operations in or upon the
- (10) Premises while this lease shall remain in force with respect thereto.
- (11) All such taxes for the year in which this lease is executed, and
- (12) for the year in which this lease terminates, shall be prorated to
- (13) date of occupancy between Lessor and Lessee. Lessee always shall
- (14) have the right to contest, in the courts or otherwise, in its own
- (15) name or in the name of Lessor, the validity or amount of any such
- (16) taxes or assessments, if it deems the same unlawful, unjust, unequal
- (17) or excessive, or take such other steps or proceedings as it may
- (18) deem necessary to secure a cancellation, reduction, readjustment,

- (19) or equalization thereof, before it shall be required to pay the
(20) same. Lessee shall not permit or suffer the Premises or any part
(21) thereof to be conveyed, or title lost to Lessor, as the result of
(22) nonpayment of such taxes or assessments. Lessee shall upon request
(23) furnish to Lessor duplicate receipts for all such taxes and
(24) assessments when paid.
(25) Lessee shall not be liable for any taxes levied on or measured by
(26) income of Lessor.
(27) Nothing in the foregoing shall be construed to obligate Lessee to
(28) pay such portion of any tax as is based upon the value of
(29) improvements, structures, or personal property made, placed, or
(30) used on any part or parts of the Premises by or for Lessor or by
(31) an owner or Lessee of surface rights other than Lessee. If Lessor
(32) receives tax bills or claims which are the responsibility of
(33) Lessee hereunder, the same shall be promptly forwarded to Lessee
(34) for appropriate action.

The mining company may wish to insert a clause insuring them the right to contest in court any taxes it feels are unjust. Similarly, the property owner may wish to add a clause guaranteeing him that Lessee will supply him with xerox copies of taxes levied and amounts paid.

SECTIONS 8-9: MANNER OF MINING: CROSS-MINING

Discussion

In addition to defining the monetary obligation of each party, a mining lease should also clarify to a reasonable degree, the method of mining. By doing so, the property owner will not later be surprised or angered by some mining technique. Also, the mining company is given a fair idea of the limits within which it must operate.

Generally, clauses covering these issues put into leases may be difficult to enforce. Their main advantage, however, is to leave little room for surprises and to inform each party of things to expect. All shafts and openings should be sealed or fenced off. Any dangerous slope must be fenced off and posted. The state will supervise the installation and maintenance of these safety features. Certainly, it is advantageous to include clauses of these types of a lease.

The mining company should agree to comply with all local, state and federal laws pertaining to the protection of the environment and safety of its employees. Governmental agencies oversee the use of water and control any deposition of deleterious materials and pollution of the air or surface and ground water. The company should agree to provide and guarantee a reasonable plan for rehabilitation which clearly indicates how the mine, roads, and waste piles will be treated and control will be done to remove the plant and other buildings, and equipment. Rehabilitation to desired use is made possible through preplanning.

The following section, Cross-Mining, is generally included in most leases. Its basic purpose is to allow the mining company to mine most efficiently, even if it requires doing so over two different premises, i.e., two areas covered by different leases. A property owner should not be concerned about inclusion of this type of section, because he should receive all royalties for all the minerals mined from his property.

The property owner, private or public, may also wish to require the company to post a bond to insure proper mining performance. Wisconsin law requires that bond be posted for rehabilitation in most situations. See s.144.86 Wisconsin Statutes (1973).

Example

Section 8: Manner of Mining

- (1) All of Lessee's operations hereunder shall be conducted in a careful
- (2) and workmanlike manner, in accordance with accepted practices of
- (3) the mineral industry, without committing any unusual permanent
- (4) waste or injury to any mine in the Premises, or interference with
- (5) the subsequent operation thereof, it not reasonably necessary to
- (6) Lessee's operations.
- (7) Lessee further agrees that it will at all times duly comply with
- (8) all legal requirements for the fencing and other protection of
- (9) pits or other excavations made by it in the conduct of its
- (10) operations hereunder.
- (11) Lessee shall have no obligation, express or implied, to open or
- (12) develop any mine or mines in the Premises. Whenever Lessee deems
- (13) it necessary or advisable, Lessee may discontinue or resume explora-
- (14) tion, development, mining and production operations from time to
- (15) time during the term hereof, so long as it meets its obligations

- (16) hereunder to pay taxes, rents, and/or advance royalty.
- (17) Nothing herein shall require Lessee to develop a separate shaft or
- (18) shafts in the Premises, or prevent Lessee from exercising the cross-
- (19) mining rights hereinafter provided.
- (20) Lessee shall furnish to Lessor a performance bond up to an amount
- (21) equal to _____ per acre (withdrawn from registration under
- (22) the County Forest Law). Furthermore, Lessee hereby agrees to comply
- (23) with State and Federal Laws on restoration, rehabilitation and
- (24) reclamation.

Note that under this section there is no requirement that the company use the land. However, if such a practice continues through the original term, lessor, under the provisions of Section 2, need not extend the term of this lease.

If the property involved contains a great deal of timberlands, a procedure for notifying landowner of the removal of timber, and payment thereof is a wise item to include in a lease. Below is such an example. However, please remember that this type of clause should only be used in unique situations.

- (25) Lessee shall notify in writing before cutting or destroying any
- (26) timber or other assets of the Lessor on the Premises. Lessor shall,
- (27) within 60 days after the receipt of such notice, notify the Lessee
- (28) whether (when) the timber or other assets shall be removed or
- (29) destroyed. If the timber or other assets are to be destroyed,
- (30) Lessee shall forthwith pay the Lessor the reasonable value thereof
- (31) or as established in this lease. Any dispute as to the reasonable
- (32) value shall be settled by the arbitration procedure set forth here-
- (33) in. If the timber or other assets are to be removed, Lessor's
- (34) notification shall specify the date by which Lessor will effect such
- (35) removal. If Lessee promptly notifies Lessor of its desire to
- (36) proceed with removal prior to the date specified by Lessor, Lessee
- (37) may, at Lessee's expense, cause the timber to be cut and piled
- (38) on the Premises in accordance with standard logging practices, and

- (39) cause all other assets of Lessor to be stored on the premises in
(40) a reasonable manner. All such timber and other assets shall
(41) remain the property of Lessor.

In accordance with these provisions, Section 9 discusses the mining company's right to engage in the practice of cross-mining.

Example

Section 9: Cross-Mining

- (1) A. For the purpose of enabling Lessee to conduct, with greater
(2) economy and convenience, the mining and removing of ore from the
(3) Premises, Lessee is hereby granted the right, if it so desires,
(4) to mine and remove ore, product and materials from the Premises
(5) through or by means of shafts, openings, or pits which may be
(6) made in or upon adjoining or nearby property owned or controlled
(7) by Lessee.
- (8) B. Lessee may, if it so desires, use the Premises and any shafts,
(9) openings, and pits therein for the mining, removal, treatment, and
(10) transportation of ores and materials from adjoining or nearby
(11) property, or for any purpose connected therewith.
- (12) C. For the purpose of enabling Lessee to conduct, to the best
(13) advantage of the parties hereto, and with greater economy and con-
(14) venience, the mining, removal, handling, and disposition of ore
(15) and Product from the Premises, and from other lands in which Lessee
(16) or its affiliated companies may be conducting mining operations,
(17) the operations of Lessee, and the said operations on other lands
(18) may be conducted upon the Premises and upon any and all such other
(19) lands as a single mining operation, to the same extent as if all
(20) such properties constituted a single tract of land. Nothing herein
(21) shall relieve Lessee from its obligations for payments or reports
(22) as set forth in this agreement.

SECTIONS 10-13: STOCKPILING; WASTE; COMMINGLING; TREATMENT; RECLAMATION

Discussion

The following sections are concerned with the general manner in which the mining operations are to be carried out. The mining company will desire as few restrictions as possible, fearing that too many restrictions will raise costs so as to make the whole operation uneconomical. The landowner, on the other hand, desires restrictions that will insure that he or she receives all the royalties to which he is entitled and which insure that the company is not free to carry out the mining and dispose of the waste and tailings in ways which will damage the landowners property and environment. During the bargaining process both parties will be sizing up the other side trying to see what kind of restrictions will be put in the agreement, or left out, without losing the entire lease. The following sections should be construed only as examples, not as necessarily recommended guidelines.

Example

Section 10: Stockpiling; Waste

- (1) A. Stockpiling on other lands
- (2) Lessee shall have the right, at any time during the term hereof
- (3) to stockpile any ore or Product mined or produced from the Premises
- (4) at such place or places as Lessee may elect, either upon the
- (5) Premises or upon other lands owned or controlled by Lessee, its
- (6) successors or assigns. The rights and liens of the Lessor in and
- (7) to any such ore or Product stockpiled on other lands shall not be
- (8) divested by the removal thereof from the Premises, but shall be
- (9) the same in all respects as though such materials had been stock-
- (10) piled on the Premises. If such other lands are not owned by
- (11) Lessee, Lessee shall obtain from the owners thereof, a properly
- (12) executed instrument under which the owners of said other lands
- (13) agree to recognize the interests and liens of Lessor on ore and
- (14) Product stockpiles on said other lands.
- (15) The stockpiling of ore or Product from the Premises on other lands
- (16) shall not be deemed a removal or shipment thereof requiring pay-
- (17) ment of royalty thereon. The tax covenants set forth in this

(18) agreement shall apply to ore and Product from the Premises stock-
(19) piled on other lands.

(20) B. Stockpiling on the Premises

(21) Lessee shall have the right, at any time during the term hereof,
(22) to stockpile on the Premises any ore or lean ore mined or produced
(23) by Lessee or its affiliated companies from other lands. Lessor
(24) agrees to recognize the rights and interests of others in such ores
(25) and materials stockpiled on the Premises, and to permit the removal
(26) thereof by Lessee at any time during the term of the lease, or by
(27) the owners thereof for a reasonable time after termination of this
(28) lease, all without liability or expense to Lessor. All stockpiles
(29) on the Premises shall be so placed as not to interfere with
(30) mining operations on the Premises.

(31) C. Waste

(32) Waste or tailings from the Premises may be deposited on or off the
(33) Premises. Such materials may be deposited on the Premises subject
(34) to the Lessor's consent as provided in this agreement only if the
(35) same will not interfere with mining operations on the Premises.
(36) Nothing in this paragraph shall limit the above provisions in
(37) subsections (A) and (B) concerning stockpiling ore and Product on
(38) or off the Premises, nor diminish any interest in the waste or
(39) tailings which the Lesser has under this lease.

The landowner may wish to negotiate certain parts of a clause such as this. For example, in lines (21) to (23), the landowner may want to limit the amount of materials that can be stockpiled on the Premises. Also, the landowner may wish to make it crystal clear that wastes can be put only in places agreed to by him.

Example

Section 11: Commingling

- (1) After ore and Product from the Premises have been sampled, where
- (2) necessary, and weighed or measured by volumetric survey, truck
- (3) factors, or other industry practices, in such manner as will permit
- (4) the computation of royalty to be paid hereunder, Lessee may commingle
- (5) the same with ores, lean ores, or waste products from other lands.

Example

Section 12: Treatment

- (1) Lessee shall have the right, but shall not be required, to benefici-
- (2) ate concentrate, smelt, refine, leach, and otherwise treat, in
- (3) any manner, any ore Product, and materials mined or produced from
- (4) the Premises and from other lands. Such treatment may be conducted
- (5) wholly or in part at a plant or plants established or maintained
- (6) on the Premises or on other lands. Such treatment shall be con-
- (7) ducted in a careful and workmanlike manner. The tailings and
- (8) residue from such treatment shall be deemed waste, and may be depo-
- (9) sited on the Premises. Tailings and other residue resulting from
- (10) the milling of the ores produced from the Premises shall belong to
- (11) Lessor and shall remain part of the Premises and subject to this
- (12) lease during the term thereof. Should Lessee find it necessary to
- (13) store such tailings and/or other milling residue off the leased
- (14) Premises, it shall do so only with Lessor's knowledge and without
- (15) loss of ownership to Lessor.

The landowner should be aware that the language in this example would permit the company to erect and operate a smelter on the premises. Before including such language, the landowner should consider whether he desires to have a smelter on his land, should the company desire to build one. Also, permitting the company to deposit the tailings on the premises in an uncontrolled fashion may result in large piles of rock and very poor opportunities for restoration or for any other uses of the land for some time to come. In this regard, see ss.144.80 to 144.94, Wisconsin Statutes (1973), the Mining Reclamation Act. This act gives the Wisconsin Department of Natural Resources broad responsibilities for the production of mineral resources and the reclamation of mining areas.

Example

Section 13: Weights; Analysis

- (1) Lessee shall measure ore, weight other Product, and take and analyze
- (2) samples thereof, in accordance with sound mining and metallurgical
- (3) practice, and shall keep accurate records thereof as a basis for
- (4) computing royalty payments. These records shall be available for
- (5) inspection by Lessor at all reasonable times, subject to this
- (6) agreement.

In sum, Sections 8-13 are simply guidelines for the mining operation to follow. If there are specific individual requests that either the mining company or the landowner wish to make, these may also be included in one of these clauses.

SECTION 14: REPORTS: INSPECTION

Discussion

In order for the property holder to make certain that he receives the proper royalty, a procedure for inspecting and reporting should be instituted within the lease. This procedure need not be complicated, nor does the Lessor have to use the option of inspecting and/or auditing all company's records but the procedure should be included. The paragraphs below are designed to be merely an example of this procedure. Different situations may call for an alternative format.

Example

Section 14: Reports; Inspection

- (1) A. Annual Reports
- (2) Lessee shall deliver, each year during the term hereof, copies of
- (3) such maps and other engineering data concerning the quality and
- (4) location of ore and material mined from the Premises and the true
- (5) conditions of workings and location of stockpiles as Lessee custom-
- (6) arily prepares or obtains for its own records, which information
- (7) shall not require preparation of special records or reports by
- (8) Lessee. This information shall be furnished, on or before the
- (9) first day of March in each year during the term hereof, and the

(10) data contained therein shall be stated as it existed at the close
(11) of the preceding calendar year.

(12) Lessee shall (not) be required to disclose its own current estimates
(13) and calculations of the grade and tonnage of ore reserves.

(14) On or before the first day of March in each year during the contin-
(15) uance of this lease, Lessee shall also furnish to the Lessor a
(16) report of all exploration carried on during the previous calendar
(17) year by the Lessee on the Premises, which report shall show the
(18) location of all work of exploration (geological, geophysical,
(19) geochemical) and the results thereof, the character of any ore
(20) or rock encountered in drilling, and the analyses that the Lessee
(21) has made of such ore, including results of any research work
(22) conducted.

(23) All exploration data submitted to Lessor shall be kept confidential
(24) by Lessor and his consultants, except for data pertinent to that
(25) part of the Premises as to which this lease is terminated, and
(26) except for disclosure on a confidential basis to Lessor's author-
(27) ized representatives and agents, unless Lessee shall agree to its
(28) disclosure, or unless such information shall otherwise become public
(29) knowledge, within such period.

(30) B. Quarterly Reports

(31) Before making any payments of Production Royalties under Section 5,
(32) Lessee shall deliver to Lessor detailed statements for the preceding
(33) calendar quarter, showing separately the respective quantity and
(34) average analysis of Product produced from the Premises during such
(35) quarter and showing any and all details with respect to net smelter
(36) returns on Product delivered to smelter from the Premises, together
(37) with detailed reports of shipments of Product and calculation of

(38) royalty.

(39) C. Reports on Termination

(40) Upon termination of this lease as to any part of the Premises
(41) pursuant to this lease, Lessee shall furnish to the Lessor a report
(42) of all exploration conducted by Lessee on or in that part of the
(43) Premises as to which this lease is being terminated since the last
(44) annual report furnished pursuant to subsection (A) above. This report
(45) shall show the location of all work of exploration (geological,
(46) geophysical, geochemical) and the results thereof, the character
(47) of any ore or rock encountered in drilling, and the analyses that
(48) the Lessee has made of such ore, including results of any research
(49) work conducted; it is provided, however, that in its above reports
(50) upon termination, Lessee shall not be required to disclose informa-
(51) tion concerning, or which might tend to reveal, processes, techniques
(52) or equipment developed by or for Lessee, or with which it may be
(53) experimenting, or any processes, techniques, or equipment which it
(54) is under obligation to any other person or company not to reveal.

(55) D. Inspection

(56) Lessor and its authorized agents, at Lessor's risk and expense, at
(57) all reasonable times, may enter upon the Premises to inspect the
(58) same, and to measure the quantity and quality of ore mined therefrom
(59) or remaining therein, provided that Lessor shall not unreasonably
(60) or unnecessarily hinder or interrupt Lessee's operations. Lessor
(61) shall indemnify and save harmless Lessee, its successors and assigns
(62) from and against all liability, claims, and causes of action for
(63) injury to or death of persons, or damage to property, including,
(64) without limitation, the person or property of Lessor and its agents,
(65) and third parties, in any manner resulting, wholly or in part, from

(66) the exercise of the foregoing rights by Lessor or its authorized
(67) agents, unless the death or injury or property loss arises as a
(68) result of negligence of the Lessee.

(69) E. Audit

(70) Lessor, or its authorized agents, shall have the right to audit and
(71) inspect Lessee's accounts and records used in calculating production
(72) royalty paid to Lessor hereunder, which right may be exercised as
(73) to each quarterly payment of production royalty, at any reasonable
(74) time during a period of three (3) years from and after the date on
(75) which the quarterly payment of production royalty was paid by Lessee.

SECTION 15: LESSOR'S LIEN

Discussion

Another provision designed to insure lessee's compliance with the lease is the granting of a lien to the lessor. A lien is an enforceable legal interest in the property of lessee on the minerals from the ground. Once a lien is established, lessor could conceivably start a legal action to foreclose on a specific piece of property, sell it, and thus recover his losses. Obviously, this clause is used as a resort after all reasonable negotiations and communications have broken off. While it does give additional protection to the landowner, one ought not rely on it. See Chapter 289, Wisconsin Statutes (1973) especially 289.35-40.

Example

Section 15: Lessor's Lien

(1) Lessor shall at all times have, possess, and hold a lien upon all
(2) ore and Product mined from the Premises and shipped therefrom and
(3) all movable machinery, equipment and other property of Lessee, but
(4) not sold to a bona fide purchaser, and upon all improvements placed
(5) upon the Premises by Lessee, as security for any unpaid balance of
(6) money due hereunder and as security for the performance by the
(7) Lessee of each and all of Lessee's covenants hereunder. This lien
(8) may be enforced against any such property in like manner as liens

(9) conferred by chattel mortgages, or any other lien security may be
(10) enforced under the laws of the State of Wisconsin. Nothing herein
(11) contained, however, is intended or shall be construed to prevent
(12) the sale, shipment, and removal of ore or Product in the usual course
(13) of business, nor to prevent the removal of tools, machinery, equip-
(14) ment, or other property at any time when Lessee is not in default.
(15) Lessor, shall however give 15 days notice prior to the removal of
(16) any tools, machinery, etc. when lessee is in default. This lien
(17) shall not apply to ore or Product sold to third parties.

SECTION 16: INSURANCE; INDEMNITY

Discussion

It is reasonable for a mining lease to require the company to obtain insurance. Furthermore, any such provision usually should indemnify the property owner from damage done by the mining company either on or off the premises to any party. For more information about indemnity please refer to Metals Prospecting Agreement, Sections 6 and 7.

Example

Section 16: Insurance, Indemnity

(1) Prior to commencement of operations hereunder, Lessee shall obtain
(2) all workmen's compensation insurance, liability insurance, and
(3) policies of insurance against fire and other risks for which
(4) insurance is customarily obtained in similar mining operations.
(5) All such insurance shall be maintained by Lessee at its own expense
(6) throughout the duration of this lease, and whenever Lessor reason-
(7) ably so requests, Lessee shall furnish to Lessor evidence that such
(8) insurance is being maintained.
(9) Lessee covenants and agrees to indemnify and save harmless Lessor
(10) from and against any and all liability, claims, and causes of action
(11) for injury to, or death of, persons, and damage to, or loss or

(12) destruction of, property, resulting from its use or occupancy of the
(13) Premises or its operations hereunder excepting, however, any
(14) liability, claims or causes of action resulting from, or attribut-
(15) able, wholly or in part, to the exercise of rights reserved
(16) hereunder to Lessors, their agents, or those claiming under them,
(17) on or about the Premises, it being the intent of this agreement
(18) that Lessee shall have no additional risk of liability by reason
(19) of the exercise of such reserved rights.

SECTION 17: TITLE TO THE PROPERTY; LIENS AND ENCUMBRANCES

Discussion

In most cases, the lessor has clear and good title. Therefore, when he leases the premises, no issue will arise as to his ability to lease said land. However, in some instances, a lien or mortgage can exist which would cloud the landowner's authority to lease the land. Therefore, many leases will contain a provision dealing with the eventuality that some doubt as to clear title may arise. In the sample presented below, the mining company may obtain an abstract, that document which shows exactly where title lies, and cure any defects of title. It may deduct these costs from its royalty payments. However, Lessor would be wise to set some type of maximum costs allowed. This type of clause is for the protection of the mining company against being attached and legally burdened by creditors of the Lessor.

Example

Section 17: Title to the Property; Liens and Encumbrances

(1) Anything herein contained to the contrary notwithstanding, it is
(2) understood and agreed that this lease is subject to liens and en-
(3) cumbrances of record, conditions, covenants, restrictions, and
(4) easements of record, is subject to all prior conveyances of the
(5) surface estate of records, and to the rights of the grantee or
(6) licensee under any easement or license heretofore granted by the
(7) Lessor or its predecessors in title of record, and that the rights
(8) and interests granted by this lease include no more or less than
(9) all the land and mineral interests owned or reserved by or remaining

(10) in the Lessor by virtue of or in connection with any such prior
(11) conveyance, license, or easement. At any time during the term
(12) hereof, upon written request by Lessee, and at Lessee's cost,
(13) Lessor forthwith shall obtain and deliver to Lessee abstracts of
(14) title to the property or title insurance prepared by licensed or
(15) otherwise qualified abstractors acceptable to Lessee. The abstracts
(16) shall be based upon the official county records for each county in
(17) any of the property lies, and shall be certified by the abstractor
(18) to a date not more than thirty (30) days prior to the date on which
(19) the abstracts are delivered to Lessee.

(20) If title to the premises or any part thereof, in the opinion of
(21) Lessee's counsel, is defective, and the defect is a lien or
(22) encumbrance of a definite or ascertainable amount, the Lessee may
(23) at its option cure such defect and deduct the cost hereof from
(24) subsequent rental or royalty payments, but if the defect is not a
(25) definite or ascertainable amount and cannot be so cured, then
(26) Lessee, at its option, may terminate this lease with respect to the
(27) Premises affected by the defect as provided in this agreement.

(28) Lessor agrees to execute all documents and do any and all things
(29) that may be necessary or desirable to assist in eliminating the
(30) defect in title.

(31) Lessee shall have the right to pay any liens or charges incurred
(32) by Lessor or persons claiming by or under Lessor, against the
(33) Premises, and any taxes and assessments on the Premises or property
(34) situated thereon not herein specifically required to be paid by
(35) Lessee, and to deduct all sums so paid from payments to be made
(36) by Lessee to Lessor hereunder.

(37) Lessee shall keep the title to the Premises and all ores mined
(38) therefrom free and clear from any and all liens and other encum-
(39) brances arising in any manner whatsoever from Lessee's operations
(40) hereunder.

Note that lines (28) to (30) would require the landowner to bear all the legal and surveying costs of any future challenge to his ownership of the land, even though the company has a strong interest in the matter.

As added protection for lessee, a paragraph warranting title could be included in this section. It could be phrased as follows.

(41) Lessor represents and warrants to Lessee that, unless otherwise
(42) expressly specified in writing in this Lease, it is the sole owner
(43) of a good and merchantable title in fee simple to the lands and
(44) property described above, free and clear of all liens, claims,
(45) encumbrances, royalties, overriding royalties, and payments out
(46) of production, that Lessor has the full and exclusive right and
(47) power to lease the above described lands and property to Lessee
(48) as set forth herein and to grant the rights granted to Lessee
(49) hereunder, and that the lands and property are not subject to any
(50) agreements contrary to the provisions of this Lease.

Of course, this type of title protection can and should run both ways. Lessor also needs protection against liens arising from the mining company's operation. Below is a model for such protection.

(51) While this Lease shall remain in force, Lessee will protect the
(52) Premises, all of Lessee's improvements thereon, and ores mined
(53) therefrom or concentrates prepared from such ores not sold and
(54) disposed of in due course of business or shipped therefrom, from
(55) all liens, including mechanics' and laborers' liens arising from
(56) Lessee's operations, and will keep the title to the same free and
(57) clear from all clouds or encumbrances on account of, or in any
(58) manner arising from, the mining operations conducted hereunder

- (59) or the use and occupancy hereunder of Lessee or its agents,
(60) servants or employees.

Finally, it is wise to record this lease for added title protection to both parties.

SECTION 18: TERMINATION; REMOVAL OF PROPERTY

Example

Section 18: Termination; Removal Of Property

- (1) A. Termination by Lessor
- (2) In the event of any default by Lessee in the performance of its
(3) obligations hereunder, Lessor shall give to Lessee written notice
(4) specifying the default. If the default is not cured within
(5) _____ days after Lessee has received the notice, or if Lessee
(6) has not within that time begun action to cure the default and
(7) does not thereafter diligently prosecute such action to completion,
(8) Lessor may terminate this agreement by delivering to Lessee
(9) written notice of such termination, subject to Lessee's right to
(10) remove its property and equipment from the Premises, as herein-
(11) after provided. Lessor shall have no right to terminate this
(12) agreement except as set forth in this paragraph.
- (13) B. Termination by Lessee
- (14) Lessee shall have the right to terminate this agreement at any time
(15) upon _____ days' written notice delivered to Lessor. Upon
(16) such termination, all right, title, and interest of Lessee under
(17) this agreement shall terminate, subject to subsection 18(c), and
(18) Lessee shall not be required to make any further payments,
(19) or to perform any further obligations hereunder, concerning the
(20) Premises, except payments or obligations which have been accrued
(21) hereunder pursuant to the express provisions of this agreement,

(22) and which have not been paid or performed.

(23) C. Removal of Property

(24) Upon any termination of this agreement, whether by expiration of the
(25) term hereof or by act of either party, Lessee shall have a period
(26) of _____ days from and after the effective date
(27) of termination in which to remove from the Premises all of its
(28) machinery, buildings, structures, facilities, equipment, and other
(29) property of every nature and description erected, placed, or
(30) situated thereon except supports placed in shafts, drifts, or
(31) openings in the Premises. Any property of Lessee not so removed
(32) which removal is not required of Lessee, at the end of said
(33) _____ days' period shall become the property of
(34) Lessor. In the event of force majeure, as hereinafter set forth
(35) the terms and conditions of this paragraph shall be appropriately
(36) extended.

(37) Upon expiration of said removal period, Lessee shall place the
(38) Premises in a safe and orderly condition with all shafts, caves,
(39) and openings fenced or protected as may be required by law or by
(40) regulation of any duly constituted governmental authority having
(41) jurisdiction in the Premises.

(42) It is agreed that none of the said property may be removed by the
(43) Lessee pursuant to this subsection (C) so long as there remains any
(44) unpaid balance of money due Lessor hereunder nor until all the
(45) Lessee's covenants hereunder have been fully performed, and
(46) Lessor's lien rights set forth in this agreement shall be preserved
(47) and survive the termination of this agreement.

SECTION 19: RELEASE OF PREMISES

Discussion

In order to allow lessee the right to release a fraction of the land, a release clause is necessary. Below is one example of this type of section. Note rental payments for the released portion are calculated on an implied pro rata basis. Also see Section 9 of Metals Prospecting Agreement.

Example

Section 19: Release Of Premises

- (1) Lessee may, at any time or from time to time, either during the
- (2) initial term of this lease or any extension thereof, notify the
- (3) Lessor that it will, at the end of _____ days therefrom,
- (4) execute and deliver to Lessor or deliver to the office of the County
- (5) Clerk of the county in which the Premises are situated for recording
- (6) a release, releasing to Lessor all or any part of the leased
- (7) Premises and after the expiration of said notice period and immedi-
- (8) ately upon delivery of such release, this lease shall terminate
- (9) with respect to such part or all, as the case may be, of the
- (10) Premises, and Lessee shall be relived of all obligations, liability,
- (11) or responsibility of every character whatsoever to accrue with
- (12) respect to that part or all, as the case may be, of the Premises
- (13) so released except the obligation of the Lessee to pay any taxes
- (14) payable by it which cannot be paid until after the date of termination,
- (15) provided all of Lessee's obligations, liability, or responsibility
- (16) to date have been met and provisions for protection of natural
- (17) resources, pollution abatement, restoration, rehabilitation, and
- (18) reclamation as set forth in Section 3 above have been complied with.
- (19) Rental payments shall cease for the released Premises _____
- (20) days after notice of intent to release is given. In no event
- (21) shall Lessee be permitted to terminate as to less than all of

(22) Lessor's interest in a full mining unit or government section.

SECTION 20: FORCE MAJEURE

Discussion

For the reasons expressed in Section 18, Metals Prospecting Agreement, a force majeure (calamity) section is recommended for all mining leases.

Example

Section 20: Force Majeure

- (1) Lessee shall not be liable for failure to perform any of its obliga-
- (2) tions hereunder during periods in which performance is prevented by
- (3) any cause reasonably beyond Lessee's control, which causes herein-
- (4) after are called "force majeure." For purposes of this agreement,
- (5) the term "force majeure" shall include, but shall not be limited
- (6) to, fires, floods, windstorms, and other damage from the elements,
- (7) strikes, riots, unavailability of transportation of necessary
- (8) equipment, action of governmental authority, litigation, and
- (9) acts of the public enemy. The duration of this lease shall be
- (10) extended for a period equal to the period for which performance is
- (11) suspended by reason of force majeure. All periods of force majeure
- (12) shall be deemed to begin at the time Lessee stops performance
- (13) hereunder by reason of force majeure. Lessee shall notify Lessor
- (14) of the beginning and ending date of each such period.

It is quite possible for the parties to negotiate a maximum time limit that the lease definition "force majeure" may last, and to exclude events listed here and include others.

SECTION 21: ASSIGNMENT

Discussion

To insure lessee's right to assign or subcontract its agreement to mine minerals, an assignment clause should be inserted. Note that this assignment remains in effect with the land; a change in ownership does not effect this right. However, it is certainly possible to agree that member parties may assign or transfer their interests. For more discussion, refer to Section 21, Metals Prospecting Agreement.

Example

Section 21: Assignment

- (1) A. By Lessee
- (2) Lessee shall have the right at any time (after _____ years) to assign
- (3) its rights hereunder, to contract with others to mine and to treat
- (4) ore, products, and materials from the premises, and to sublet the
- (5) same for all purposes of this lease, with the same rights and priv-
- (6) ileges as are granted herein to Lessee; it is provided, however, that
- (7) any such assignment, contract, or sublease shall not operate as a
- (8) release or discharge of Lessee from the performance of its obligations
- (9) hereunder until and unless Lessor has consented thereto in writing.
- (10) B. Binding Effect
- (11) All of the covenants, conditions, and provisions of this lease,
- (12) including the obligation to pay roaylty as required hereunder, shall
- (13) run with the land, and shall inure to the benefit of, and be binding
- (14) upon, the parties hereto, and their respective successors and
- (15) assigns.
- (16) C. By Lessor
- (17) Lessor to have first refusal on sales to others than family.
- (18) Lesor has right of successors and assigns.

SECTION 22: ARBITRATION - DISPUTES

Discussion

A lease, such as this one, is a very complex document. Room for interpretation exists and so it is possible for a dispute to arise. In order to keep operations running an arbitration clause may be included. Below is an example of a typical arbitration clause. See also, Section 17, Metals Prospecting Agreement.

Example

Section 22: Arbitration - Disputes

- (1) A. Right to arbitration

(2) Any and all matters of dispute of difference that may arise between
(3) the Lessee and the Lessor with respect to any act or thing done or
(4) to be done pursuant to the provisions of this lease, including the
(5) determination of the amounts of rents and/or royalties payable
(6) hereunder, excepting the payment of royalty taxes and assessments
(7) as aforesaid, shall be arbitrated in the following manner.

(8) B. Procedure

(9) If and whenever the Lessee desires, it shall serve a written notice
(10) upon Lessor, stating in substance the matter or question in dispute and
(11) which it desires to submit to arbitration, naming a competent person
(12) to act as an arbitrator. If and whenever the Lessor desires an
(13) arbitration, it shall serve upon the Lessee written notice stating
(14) in substance the matter or question in dispute and which they desire
(15) to submit to arbitration, naming a competent person to act as an
(16) arbitrator. Within twenty (20) days after the mailing of such notice,
(17) the party to whom such notice is mailed shall appoint a competent
(18) person to act as arbitrator. In case either the Lessee or the
(19) Lessor fails to appoint an arbitrator and to serve written notice
(20) thereof upon the other party within said twenty (20) day period,
(21) or in case the arbitrators appointed by the parties fail to agree
(22) upon a third arbitrator within an additional period of ten (10)
(23) days, such arbitrator or arbitrators may be appointed by any person
(24) holding the office of County Judge for the County in which the
(25) majority of the Premises are situated, upon application made by
(26) the Lessee or the Lessor after ten (10) days' written notice to the
(27) Lessor or Lessee, as the case may be. Each of the persons appointed
(28) to act as an arbitrator shall be a person qualified by experience
(29) to hear and determine the questions to be arbitrated, and if the

(30) nature of any such question shall so require, they shall be geologists
(31) or mining engineers experienced in the mining of ore in the state in
(32) which the Premises are situated or in similar geologic areas. Said
(33) arbitrators, as soon as possible after their appointment, shall
(34) meet at a time and place convenient for the parties, after giving
(35) to each of the parties not less than ten (10) days' written notice
(36) thereof. After hearing the parties hereto, or such of them as
(37) desire to be heard, in regard to the matter in dispute, taking such
(38) evidence and making such other investigations as justice requires
(39) and the arbitrators may deem necessary, they shall decide the
(40) question or questions submitted to them, making their decision in
(41) writing, and serve a copy thereof upon each party. The decisions of
(42) the arbitrators, or a majority of them, shall be final and binding
(43) upon the parties hereto, and they shall immediately conform to and
(44) in all respects render full and prompt compliance with such
(45) decision. The expenses and charges of the arbitrators shall be
(46) paid by such party, or apportioned between the parties, as the
(47) arbitrators shall determine.

(48) Subject to the above right of Lessor to terminate this agreement,
(49) and in the absence of actual or threatened substantial damages to
(50) the Lessor or his property disputes or differences between the
(51) parties hereto shall not interrupt performance of this agreement or
(52) the continuation of operation hereunder. In the event of any dispute
(53) or difference, operations may be continued, and settlements and
(54) payments may be made hereunder, in the same manner as prior to such
(55) disputes or differences, until the matters in dispute have been
(56) finally determined between the parties, and thereupon such payments
(57) or restitutions shall be made as may be required under the terms of
(58) the settlement or final determination of the dispute.

SECTION 23: CONSTRUCTION OF LEASE

Discussion

To further aid in the interpretation of any legal dispute, the parties may stipulate the applicable law. In many contracts where two or more states may be involved this type of stipulation is commonly used.

Example

Section 23: Construction of Lease

- (1) This lease, and the rights and obligations of the parties hereunder,
- (2) shall be governed by the law of the State of Wisconsin.
- (3) Section headings in this agreement are for convenience only, and
- (4) shall not be considered a part of this agreement, or used in its
- (5) interpretation.

SECTION 24: NOTICES

Discussion

Because there is a great deal of communication between parties, it is helpful to include exact addresses for the appropriate parties. Refer to Section 14, Metals Prospecting Agreement.

Example

Section 24: Notices

- (1) Any notice required or permitted to be given hereunder shall be
- (2) deemed properly given upon delivering the same to the party to be
- (3) notified, or upon mailing the notice, by registered or certified
- (4) mail, return receipt requested, to the party to be notified, at the
- (5) address hereinafter set forth, respectively, or such other address
- (6) within the United States of America as the party to be notified
- (7) may have designated prior thereto by written notice to the other.
- (8) Lessor:
- (9) _____
- (10) _____

(11) Lessee:

(12) _____

(13) _____

(14) Royalty payments, reports and statements hereunder may be sent by
(15) regular mail addressed as above. If, after the proper mailing
(16) thereof, any of such reports and statements are not received when
(17) due, the addressee will notify Lessee which shall have a reasonable
(18) time to secure the delivery of the statement or report, or a
(19) duplicate thereof, without being in default hereunder.

SECTION 25: RECORDING

Discussion

Throughout this bulletin, recording of the agreement has been suggested. By recording this document at the county register of deeds office, the mining company protects itself from other companies trying to negotiate a lease for the same premises; while the property owner obtains permanent record of this transaction. The lease can require this action by a recording section such as the one below.

Example

Section 25: Recording

(1) If requested by Lessee, the parties hereto shall execute a memorandum
(2) or short recording counterpart of this lease, which counterpart shall
(3) be in a form sufficient to constitute notice of this lease to third
(4) parties under the law of the state in which the Premises are located,
(5) but which counterpart shall not contain the amounts or rates or
(6) royalty hereunder, or other terms of this lease which Lessee may
(7) elect not to disclose or record. The execution and recording of
(8) the above recording counterpart shall not limit, decrease or
(9) increase, or in any manner affect, any of the terms of this lease,
(10) or any rights, interests or obligations of the parties hereto.

OTHER SECTIONS

Discussion

When the county is the landholder, other provisions might be included. For instance, a preferential hiring clause and an overall mining scheme may be included in a lease agreement.

Examples

Section :

- (1) Lessee agrees that it will give preferential treatment in the hiring
- (2) of personnel to employ citizens of _____ County in its opera-
- (3) tions hereunder, provided that such preferential treatment does not
- (4) violate any State or Federal laws.

Section :

- (1) County may continue to use the Premises for forestry and recreational
- (2) purposes as long as it does not interfere with operations and subject
- (3) to the right of the state to impose reasonable safety regulations.

Section :

- (1) Lessee agrees that it will obey any and all applicable federal, state,
- (2) county, municipal and other laws, rules, and regulations, and that
- (3) it shall be the responsibility of the Lessee to apply for and pay
- (4) the cost of any and all permits and licenses.

CLOSING, SIGNATURE AND DATE

The lease having been agreed upon it now must be signed. It is wise to have the signature notarized and to be certain that all parties have proper authority to sign. See the final section in Metals Prospecting Agreement for more information concerning this area.

CONCLUSION

In sum, a mining lease should do three things. First, it should identify the parties and the terms of the contract, such as royalties, term of the lease, and identification of the premises. Secondly, the lease should wherever possible outline the conduct of the parties, such as to cross mining, reporting, disposal of wastes, commingling, and dispute settlement. Finally, the lease should provide for and insure restoration and reclamation of the land after the ore is extracted, guaranteeing that the landowner still owns land that is useful.

Again, at the risk of being redundant, these examples should be viewed as a guideline. Certainly, the provisions herein cannot be used in every situation. Similarly, other clauses should be inserted that are designed to cover other contingencies. The property owner will do well to seek competent advice.

The next chapter deals with nonmetal prospecting and mining. In Wisconsin, a substantial portion of mining is for the materials of construction. Therefore, if the property owner is fortunate enough to have the desired rock or sand and gravel deposits on his property, he should examine the next chapter.

NONMETAL MINERAL PROSPECTING AND MINING TRANSACTIONS

Introduction

Generally mining leases are concerned with provision of the raw natural materials so important to our everyday living. Most of these materials are in the form of nonmetallic minerals, especially the minerals of construction, but they also include the brick, tile, porcelain, glass and drywall of our homes. Though the car we drive to work is more metallic than nonmetallic, the windows, lights, protective coating, and spark plugs are made of non-metals. The average consumer takes these products for granted and seldom considers that the same processes that furnish the iron and gold of the world are also used to produce these and many other important items, including the minerals used in agriculture.

Mining of nonmetallic minerals accounts for over 80 percent of the total value of all minerals produced in Wisconsin. Among them are sand and gravel, stone (dolomite, granite, quartzite, basalt, rhyolite, shale, sandstone), silica sand, clay and peat. In 1971 Wisconsin ranked sixth nationally among states in the production of sand and gravel and sixteenth in production of crushed stone. This provides some perspective on why there are so many mines and quarries producing nonmetallic minerals in Wisconsin; and why there is a need for more information on nonmetallic leasing and mining agreements and procedures.

Some of the most commonly sought materials are the minerals of construction: sand, gravel, and crushed stone for our streets and highways, trackbeds, homes, factories, and buildings, airfields, dams, bridges, power plants, and parking lots. A great part of this demand is financed by government funds, and very often the projects themselves are regulated by one or more state agencies. Competitive bids for state projects are submitted by contractors who assume the risk of meeting the state specifications for all the materials used in construction. Each type is sampled and tested by inspectors and engineers to determine the chemical and physical characteristics that affect gradation, wear, soundness, absorption, plasticity, and presence of foreign materials in the aggregate. But while the state may set the standards, the contractor or mining company must locate the materials and extract them from the ground. Most often they do this on land belong to another.

Many of the issues and policies found in a nonmetal agreement are similar to those discussed in the metal section. In this section, reference should be made to some of the provisions previously examined, where those sections are appropriate or useful in a nonmetallic mineral agreement.

The nonmetallic minerals found in Wisconsin are generally easier to prospect for than the metallic minerals. The time, equipment, evaluation, and costs required to confirm a deposit are considerably less than for metals. Consequently the transactions are generally less complicated and it is usually easier and more convenient for both the property owner and the mineral producer to negotiate a single agreement to cover both prospecting and mining. Note that combining agreements has the same practical effect as inserting an option to mine in a prospecting agreement.

The following paragraphs and example clauses describe provisions and issues that should be considered for inclusion in any nonmetallic mineral prospecting and mining agreement. However these are only designed to serve as a guide. For advice the owner should consult an attorney, a geological engineer or an appropriate state agency such as the Geological and Natural History Survey, or the Department of Natural Resources.

Initially both the landowner and the mineral producer are often in similar competitive positions. There are many situations, however, where the landowner can assess his own opportunities without any need for a prospecting agreement which may principally serve the producer's interest. For example, it may be apparent that the land is underlain by the same rocks or has the same topographic features and appearance as neighboring lands which have been developed as a source of minerals.

On the other hand, the physical and chemical characteristics of the materials under the land may be unknown. To find out just what is under the surface may require prospecting: drilling, test pitting, or other methods are generally used and most landowners have neither the resources or the knowledge to prospect their own land. Thus, prospecting is usually done by the mineral producer, be it a contractor or a large industrial corporation. In this case, the would-be producer is likely to desire an exclusive lease to protect his investment of time, money and effort in confirming a deposit.

The landowner may desire to have a lease for several reasons: to insure a fair return for the minerals extracted from his land, to provide proper management of the resource, and to guarantee reclamation of the land when the deposit is exhausted.

Similarly, there are additional reasons why a producer may desire a lease relationship. These include cash savings in purchase costs, tax advantages, protection of reserves, protection of investment, and economic savings in equipment and development. For example, by the use of a lease, not only is working capital saved from being tied up in the purchase of property which may only be mined during certain time intervals as determined by sporadic demand, but also, both parties may take advantage of the depletion allowances on natural resources set forth and administered by the federal government.

Quarry sites, as well as pits for sand and gravel, are usually controlled by zoning regulations and require a permit in nearly all areas of the state. In accordance with many of these regulations, the company, at its own expense, must provide the capital necessary for exploration, testing, and laboratory analysis. Information developed by exploration in combination with land surveys and engineering and geological appraisals is necessary to prepare the maps indicating restoration plans. In addition, zoning and permit applications usually require bonding. Add the cost of the actual development, and unless a single contract is large enough to warrant all these expenditures, a lease becomes necessary to protect the right of mining for future realization of investment. In the case of local township and county aggregate supplies used to surface and maintain farm to market roads, the initial expense of pit or quarry development may not be written off for several years.

One also finds large portable operations where separate crews with specialized equipment may be rotated from one location to another to perform the work of either stripping, drilling, and/or blasting in advance of actual need so that moving and operational costs are reduced per unit of produce by not being restricted to each individual period of operation. Thus, a lease protects the operator's investment until final processing.

There are other reasons besides the actual mining operation that justify the drawing of a lease. A lease can assign prime responsibility to a single party for restoration as well as for property maintenance to the long-term benefit of the owner. Where several operators use a single gravel or sand pit, the best material, or that cheapest to produce, may be mined out without any attempts to blend or average it with lower quality but nonetheless useful material. This results in poor management of a resource in that it does not provide for maximum utilization. This may be prevented without a lease if the deposit is uniform or the owner gives direction.

A lease may also be used to set a fixed price for a short or a long term. Theoretically, a fixed price should favor neither party, since the economy can go up as well as down. However, experience favors the operator in the long term. There are advantage for both the property owner and mining company to enter into a lease agreement, but these may impose limitations, primarily on the owner's control of his land.

It is difficult to write a single lease form that would be adequate to cover the diversity of the nonmetallic industry. A lease for a long-term commercial operation should include many of the provisions of a long-term metallic lease, while a short-term construction materials lease might require only the conditions of time, compensation, and a stated bottom elevation for the excavated area. The former might apply to a fifty-year operation of a commercial quarry whereas the latter might apply to a thirty-day agreement for removal of the "borrow" material to build a highway.

The following comments are intended to assist landowners approached by a contractor for a lease on their property to prospect and mine for nonmetallic minerals.

General Concerns

Each mining site is unique, and individual concerns arise from all of them. It is best to include these concerns within the agreement. For instance, the deposition of stripping may be determined in the lease. Or, the landowner may wish to restrict interference with other surface operations and put this type of limitation on the lease. Therefore, if either party can foresee a special concern, it is best resolved within the lease rather than later in a costly dispute.

There are special provisions that should be avoided. One such provision states that "title to all minerals on the premises shall be vested in Lessee." This offers no advantage whatever to a Wisconsin landowner. All that is accomplished is that the owner has given away all of his mineral rights, not just those of a particular type with a particular value.

Clauses that state "owner does hereby irrevocably grant unto lessee the right of First Refusal to Purchase any of these lands for an amount equal to a bonafide offer to purchase tendered by any third party" should be avoided. Technically it could prevent a son or family member from holding their homestead. This clause is considered unilateral since the "heirs and assigns" clause usually found in the small printed lettering protects the development interests of the lessee.

Again, a landowner should try to tie a lengthy lease to production. The taking of a lease is too often mistaken by the owner as an intent to use. It is difficult to judge the intent of a company in competition. Leases have been taken simply to create a local monopoly--to block out or move back competition--or to wait for better economic conditions. Thus, the landowner has his property tied up with very little revenue coming to him. It is important that longer term leases, once negotiated, be recorded at the register of deeds. Any owner desiring information about other leases in his area can refer to records on file at the county court house.

By its very restrictive nature, an exclusive lease limits the owner from selling the desired resource to any other interested parties. It restricts what he can do with the leased lands, and if an "heirs and assigns" clause is pinned to the lease, it may restrict the wishes of all others during the term of lease. If a farmer applies for an improvement or equipment loan, a mortgage, or even a loan for seed and fertilizer where the value of the leased land is used as security, he may find his credit worth lessened. If he desires to sell the land, he may find the title encumbered by the lease to his disadvantage. However, the reverse may occur in which a profitable mining operation increases the value beyond that of agricultural use. He may even desire to sell other lands and keep the active portion for retirement income.

Nonmetal Prospecting and Mining Agreement - Long Form

An exclusive or common lease conveys to the lessee the right to take possession, to occupy, and to operate in an agreed manner on the premises described. The lessee has these sole rights over a definite term in exchange for compensation paid the landowner. During this time the lessee and lessor are bound by all the provisions written into the lease.

All parties listed on a deed, or all listed on a land contract, must sign a valid lease. The respective officers of the lessee's firm or his duly appointed representative must also sign. Each signature should be notarized at the time of signing. It is best to provide outside witnesses whenever possible.

When a mortgage or land contract precedes a lease on lands, the holder has a prior claim. If that claim is made with respect to the uncertainty of the excavation reducing the value of the property he may demand part or all of the royalty made payable to him as satisfaction to offset the "lessened" value, or he may simply refuse to approve the agreement. In other words, where a third party has a legal interest in the premises, that party must be considered in the total scope of the lease.

SECTION 1: INTRODUCTION

Discussion

In order to commence prospecting and/or mining a company must first obtain permission. A typical prospecting and mining lease will begin with an introductory section that identifies the parties involved, the land involved, and other relevant data. Such an introduction may read as follows:

Example

Section 1: Introduction

(1) This PROSPECTING (AND MINING) AGREEMENT made this _____ day
(2) of _____ 19____, by and between _____,
(3) with a mailing address of _____,
(4) hereinafter referred to as "Grantor" and _____,
(5) whose mailing address is _____,
(6) hereinafter referred to as "Grantee".

(7) WITNESSETH:

(8) WHEREAS, Grantee desires to investigate any or all of the Grantor's
(9) mineral interests in, on, and under the lands herein described as
(10) "Premises", in order to determine whether _____
(11) is present, and if Grantee so elects, to eventually lease all or a
(12) portion of said lands for the purpose of extracting and selling such
(13) minerals; and

(14) WHEREAS, the Grantor desires to have Grantee conduct said investi-
(15) gation upon the terms and conditions hereinafter set forth which will
(16) bring benefit to the parties hereto;

(17) NOW, THEREFORE, In consideration of the sum of _____ dollars
(18) (_____) to the Grantor in hand paid by Grantee the receipt
(19) whereof is hereby acknowledged, and in further consideration of the
(20) covenants herein contained, the parties hereto understand and agree
(21) as follows:

- (22) During the time hereinafter provided, the lessee shall have the
(23) exclusive right to enter upon the premises hereinafter described
(24) with appropriate machinery and equipment and there explore, mine,
(25) process and remove () for sale to others, under the
(26) following terms and conditions, to-wit:

SECTION 2: TERM OF LEASE

Discussion

The term of the lease should be explicit, with the beginning date and the ending date presented as well as the length of lease. It is possible that the date of agreement may not be the same as the start of the lease term, particularly in case of renewals, change of ownership where dissenting parties are involved, termination of other leases, and others.

Example

Section 2: Term of Lease

- (1) A. Term: This lease shall be effective for a period of _____ years
(2) beginning on _____ and extending until noon on
(3) _____, unless this agreement is sooner terminated in the manner hereinafter specified or by mutual agreement.

The metallic mineral prospecting lease provided for a relatively short period of time in which prospecting was to take place. The purpose of this was to encourage the mining concern to conduct the prospecting at an early time in order that the land might be released from the lease if no deposit was found. Because it often takes much less effort and time to find deposits of nonmetallic minerals, it is not as crucial that this incentive to proceed be included in the nonmetallic agreement. A reasonable minimum would be on the order of two months, depending on such factors as the time of year and the mineral which is to be the object of the search. Some time is needed to do the field work and for any laboratory tests that may be needed to determine if the deposit is suitable for the needs.

SECTION 3: EXTENSION OF THE AGREEMENT

Discussion

When desired, extension or renewals of a lease may be provided for within the lease. The property owner should be aware of automatic renewal clauses incorporating "identical terms." Often appearing at the bottom of a lease, the clause may require the owner to serve legal notice to prevent automatic renewal, at terms which may be unreasonable under projected economic conditions. Many

short term leases, written to appease an owner's dislike for a longer term, contain the additional printed phrase expressing that the lease could be perpetuated for "like term under like provisions at the discretion of the Lessee." This provision is obviously to the company's advantage.

As discussed in the Metallic Mineral Lease section, it is wise to tie an extension of the lease to continued production in order to prevent the property owner's land from being tied up. An alternative to extension is for the parties to agree at the end of the term to renew the lease. Below is an example of this type of agreement. Please remember that because the non-metallic industry usually does not require as much capital, this type of arrangement is more feasible for this aspect of mining. Usually, initial terms and extension are of shorter duration in nonmetallic leases.

Example

Section 3: Extension of the Agreement

- (1) It is agreed that the written lease between lessor and lessee which
- (2) was dated _____ and which ended _____,
- (3) shall be extended upon the same terms and conditions except:
- (4) 1. The extension shall be effective until noon, _____, _____.
- (5) 2. The price under Section _____ shall be increased from \$ _____
- (6) minimum to \$ _____ minimum. The Lessors acknowledging
- (7) receipt of the first \$ _____ advance paid to them on _____
- (8) _____ to cover the first year to _____.
- (9) A copy of the former lease is attached for convenience. The parties
- (10) agree to sign a separate memorandum of lease for recording purposes
- (11) which is being executed simultaneously.
- (12) Dated: _____
- (13) Lessor _____
- (14) Lessee _____

Note that any additional changes to the lease may be added within this extension agreement.

SECTION 4: DESCRIPTION OF LEASED LANDS: PREMISES

Discussion

A detailed description of the lands to be leased should be included in a lease to clearly identify the lands involved and avoid any possible confusion.

This should be a complete legal description, with forty, section, township and range all included. If the description is less than a forty, a not uncommon situation, it is often a good idea to list it by survey or by boundary description.

In most cases the economically useful limits of a deposit are not fully known until exploration, testing, and analysis has been completed. The landowner may wish to reserve certain lands from the lease if, for example, it is known these lands are devoid of valuable minerals or if it is known that his lands contain enough of a deposit to warrant one leased development and still have some lands available for possible future offers. A convenient method is to state a description outlining exploration limits but with a clause under the special provisions of the agreement granting exclusive rights to conduct operations on a defined acreage to be selected after the evaluation of the entire tract.

Example

Section 4: Description of Leased Lands: Premises

- (1) B. Premises: The premises on which said exploration rights may be
- (2) exercised are described as follows: (give complete legal description).
- (3) _____
- (4) _____
- (5) _____
- (6) _____
- (7) Mining rights may be exercised on no more than _____ acres within
- (8) the premises.

SECTION 5: RELEASE OF LANDS

Discussion

As with a metallic mineral agreement, when the initial explorations or the laboratory results indicate that a commercially valuable deposit is not present, the agreement should terminate so that the landowner's use of the land is not restricted and there is not a cloud on the property title. Clauses can be included in the lease providing that the agreement will terminate if production does not commence within a given period of time, and providing that parts of the premises may be released from the agreement if prospecting indicates little value in mining or quarrying the land. The sample clauses in the metallic mineral agreement can be adapted for use here.

SECTION 6: RENT, COMPENSATION AND CONSIDERATIONS

Discussion

Various arrangements have been used to provide the return the landowner receives for the mineral resources taken from his land. He can be paid in cash or in kind. For example, the landowner may want to establish a pond or have a hilltop lowered. He may feel fully compensated if this is done during the extraction of the mineral and he is left with the pond or the lower hill. If some special, additional work is required to get the land suitable for the landowner's desired ultimate use of the land, the mining concern or contractor may agree to do that work as part of its compensation to the landowner.

Or the landowner may simply wish to be directly financially compensated. Since most nonmetallic minerals are relatively low-cost and high-bulk items the distance from source to point of use becomes a critical consideration in determining just how much royalty an owner might demand. Both price and distance of haul affect the competitive position of the bidder. The owner normally will receive both rent and royalties.

An annual payment, often referred to as "rent" at least takes away the old practice of a minimum legal fee (historically one dollar) for which an owner gave away all the rights to his minerals for a period of time. This period was often as long as twenty-five years with no promise of return, development, or even testing. The accumulation of unused "rent" when declared as "prepaid royalty" may act as a spur to development. In no case should unclaimed prepayments be paid back. They were the guarantees given in exchange for exclusive rights.

Land values, before and after mining should be the base for the determination of royalties, but other factors often prevail, such as the reserves or availability of like resources; and the individual owner's needs and timing requirements or desires. When landowners have no knowledge of existing royalty rates in their area, they may refer questions to the town chairman, the county commissioners, or in cases where applicable, to the materials engineer at the district office of the State Highway Commission. Also, they may seek the advice of competent geological and legal counsel.

Until recent years, royalty for nonmetallic materials was usually stated and paid by the cubic yard. More often now, it is specified by the ton where this unit of measure conforms to that in current use for payment by civil agencies. This is a highly negotiable area. Common figures at the time of this writing range from 5 cents to 10 cents per ton for dolomite and 10 cents to 25 cents per ton for sand and gravel. The amount of royalty is dependent on many variables including distance from market, quality of deposit, and road restrictions. On state-administered lands certified scales are placed near the source. Occasionally the need arises to convert between weight and mass. The best method is to provide for occasional weighing of a measured volume--easiest to do in a measured truck box. For general use, a cubic yard of limestone crushed into road gravel and loaded into a truck weighs roughly 2750 pounds. A cubic yard of sand and gravel in the same case may weigh roughly 3000 pounds. Other factors should be considered, however, including the moisture content, the mineral variations and their densities, the proportion of particle sizes, and the method of loading.

Royalties may or may not be subtracted from a periodic guarantee regardless of the time interval between payments, and regardless if this sum is called rent, compensation for exclusive right, or for mining rights. This and forfeiture where intended, either at the end of each interval or at the end of the lease term, should be definitely and clearly expressed within the special provisions.

Where a tax concern exists, royalties may be placed in a legal trust to defer taxes. Mineral rights have been given as gifts. Private contracts have been made whereby a tract of land is sold with value placed in its mineral reserves, mined, and then returned to original ownership at a nominal figure, although this is frowned upon by revenue authorities. Leases have been written where a set sum per acre allowed the operator to remove all possible materials regardless of actual volume or weight. This type of provision is similar to stumpage rights per acre for clear cutting timber.

Example

Section 6: Rent, Compensation, and Considerations

- (1) A. Price: For each cubic yard of sand and/or gravel removed from
- (2) the described premises, or placed in stockpile on these lands,
- (3) Lessee shall pay the owners _____ cents as royalty. Royalties shall
- (4) be computed on an annual basis of twelve calendar months commencing
- (5) _____, _____. For each calendar year, commencing with
- (6) _____, _____, a minimum payment of _____ dollars
- (7) (\$_____) shall be paid in advance with the first payment due
- (8) and payable on or before _____, _____. Such advance
- (9) minimum payments for each year shall (shall not) be credited against
- (10) royalties earned only during the year for which the minimum prepayment
- (11) is made. Such minimum payments shall be made whether any material is
- (12) removed or not.

Both parties will want to know exactly when the royalty payments are due. They can be paid at any reasonable interval, such as monthly, quarterly, or annually, or, if the operation is only occasional, after each period of extracting minerals.

- (13) B. Payment of Royalties: Royalty payments shall be made to the
- (14) owners not later than the _____ day of _____ in each
- (15) year for all material removed during the preceding royalty year.

Both parties will also want to include in the agreement a provision for determining the quantity of the minerals extracted during each royalty period.

- (16) C. Determination of Quantities: Lessee shall report to owner on
(17) the _____ of each year the amount of saleable material
(18) removed from the premises or placed in stockpile on these lands.
(19) Should there be any dispute between the parties concerning the
(20) quantity of saleable material involved, the Owners may have veri-
(21) fication cross-sectioning by a Wisconsin Licensed Professional
(22) Engineer of their own choosing. If the parties shall still differ
(23) over amounts, the two engineers so chosen shall select a third
(24) engineer and the differences between the parties over quantity
(25) removed shall be arbitrated by the three engineers and the decision
(26) of two of such engineers shall be final. In the event of such
(27) arbitration, each of the parties shall bear one-half the cost
(28) thereof.
(29) Alternative to Subsection C. A notarized copy of appropriate State
(30) or Federal agency records giving exact information based on certi-
(31) fied scales and conversion factors of volume and weight can be used.
(32) D. Records: Lessee shall maintain true and accurate records of all
(33) material removed from the premises. Said records shall be open and
(34) available for inspection at any reasonable time by the owners or
(35) any agent or employee appointed by them for that purpose.

SECTION 7: USE OF LAND

Discussion

The use of the land should be set forth within the lease and may be supplemented by special provisions. No right is automatically given the lessee to place stockpiles upon the leased lands, or to park equipment in other than the immediate site of material removal or processing. These conditions as well as other potential land use conflicts should be covered under the agreement. See the Metallic Mineral Agreement clauses.

SECTION 8: RESTORATION AND RECLAMATION

Discussion

One of the main reasons the landowner will desire a written agreement covering prospecting and mining of nonmetallic minerals on his land is to insure that when mining is completed the responsibility for restoring the land rests with the mining company or contractor.

Today restoration and reclamation of mining lands is a growing concern. State agencies are more actively involved in obtaining and supervising desired reclamation. It is recommended that exact reclamation provisions be delineated in the lease. Even though reclamation is now required by law in many jurisdictions, it is best to set forth the terms in writing. When a state agency or county owns the land, reclamation for the future public becomes even more important. To accomplish this goal, maps are usually required for drastic surface changes. Data should be presented according to the scales and detail required by the governing body. Bonding may be required to guarantee the desired result. See the metallic mineral agreement; the clauses used there are applicable here with minor changes.

SECTION 9: OTHER CLAUSES

Discussion

Consideration should also be given to other issues including taxes, termination, assignment, notices, recording and arbitration. The policies behind each of these items are similar to the identical issues discussed in the metallic section. For further information on these topics, please refer above to the appropriate sections in the Metallic Prospecting and Mining Agreements.

Remember that all the provisions of the sample clauses presented here are negotiable. These are not model clauses, but only sample clauses.

Example

Section 9: Other Clauses

- (1) A. Stripping: Lessee shall keep the pit stripped back at least
- (2) ten feet from the working area at all times. Overburden stripped
- (3) shall be deposited on nearby lands unless other provisions are
- (4) stated. Lessee will maintain the stripping deposit properly
- (5) sloped with a stable angle of repose to minimize erosion and in
- (6) such condition as will result in the least damage to neighboring
- (7) areas and the local environment.

(8) B. Minimum Interference with Farming Operations: Lessee will
(9) conduct all operations on the premises in such a manner as to result
(10) in minimum interference with farming operations and will cooperate
(11) with the owners so as to interfere only when necessary with the till-
(12) able land and pasture comprising the balance of the farm;
(13) C. Agent for Owner: For the purpose of receiving payments and
(14) notices and for the purpose of consultation and adjustment of matters
(15) of difference, if any, under this instrument the Owners hereby
(16) designate _____ their agent; whose address is
(17) _____.
(18) D. Taxes: In addition to the amounts specified above to be paid
(19) under this agreement the Lessee shall also, at the time he makes his
(20) annual payment, pay to the owners any excise, sales, use or other
(21) taxes which may be imposed or due and payable by reason of the
(22) purchase of said material from the owners, provided, however, that
(23) personal property taxes or income taxes due, or to become due against
(24) the owners by reason of any profits they may make, on said sales
(25) or royalties shall not be included in this tax classification;
(26) E. Careful Use of the Premises: Lessee will use the premises in a
(27) manner consistent with good and reasonable practice commonly used in
(28) the sand and gravel business in Wisconsin, and will not commit
(29) unnecessary waste on the premises or damage the same.
(30) F. Termination by Lessee: Lessee may terminate this agreement prior
(31) to its agreed termination date at the end of any royalty year by
(32) serving a notice in writing on the Owners within sixty days prior
(33) to the expiration of such year;

(34) G. Termination by or for the Owners: Should the Lessee fail to make
(35) when due any advance payment of \$ _____ required on or before
(36) _____ of each year, then, upon such failure, the Lessee's
(37) rights shall terminate and stand forfeited. As to all other provi-
(38) sions of the agreement, the Owners may terminate this agreement at
(39) anytime prior to its agreed termination date by serving upon the
(40) Lessee a sixty (60) day note in writing of such termination, if:
(41) The Lessee violates any such other provision
(42) of this agreement; however, if the Lessee
(43) has within the sixty day notice period com-
(44) pletely remedied the breach for which the
(45) notice was given, and no damage has resulted
(46) to the Owners, then the notice of cancellation
(47) shall be deemed to have been withdrawn as to
(48) the particular breach for which it was given;
(49) H. Removal of Equipment: At the termination of this agreement,
(50) whether at the normal termination or sooner by notice, the Lessee
(51) shall promptly remove any and all buildings, structures, facilities,
(52) equipment, tools, machinery, shall leave all roads and transportation
(53) rights of way and tracks, if any, and sand, gravel and material in
(54) place and leave the pit and waste areas leveled and/or sloped and
(55) in good condition;
(56) I. Assignment: The rights under this instrument shall not be
(57) assigned by the Lessee without written consent by the Owners but
(58) such consent shall not be unreasonably withheld;
(59) J. Service of Notice: Any notice on the Owners may be served by
(60) certified mail addressed to each of them or addressed to _____
(61) as their agent, _____, Wisconsin; any notice on the
(62) Lessee may be served by certified mail addressed to it as _____,
(63) Wisconsin;

SECTION 10: ACCESS

Discussion

Right of access is extremely important. It is best to establish the right of ingress and egress within the lease. Also, upon Lessee's cessation of operation, it is wise to provide for disposal of the roads used in the mining operation if this is desired. Options can include leaving roads as they are or requiring Lessee to restore and seed the old roadbed before or after removing the surface.

Example

Section 10: Access

- (1) Location of Roads: Lessee may establish, prepare, lay, maintain,
- (2) and use such roads as may be needed in his operations, but will
- (3) locate such roads with mutual agreement of the Owners;
- (4) Closing of Roads: Upon termination of this agreement, Lessee
- (5) shall close and seed all roads established while conducting opera-
- (6) tions under this lease, except those roads which Lessor indicates,
- (7) in writing, should be left open.

SECTION 11: LIABILITY AND RESPONSIBILITY

Discussion

Liability and responsibility should be explicitly spelled out in the lease. The property owner may wish to require proof of insurance with specified limits in force.

Again, to attempt to cover every contingency within the single form of a lease serving a multitude of purposes is not practical--even though it may be legally advisable. A well-drafted clause can provide for and give protection to the owner against the claims of personal and property loss, including those of neighbors in such matters as blasted rocks, erosion of land, disposal of waste, and changes of drainage. Early state statutes set forth legal protection in these matters. More recently sophisticated measures such as setback and offset regulations, shoreland and navigable water ordinances, together with enforceable laws protecting the environment against air and water pollution have been enacted. A phrase placing responsibility on the lessee for all his activities while on the premises fulfills the wide range of intent. The proof of insurance requirements can safeguard against joint as well as single liability.

Along with indemnity provisions, both parties should consider the question of damage to the land itself. In the metallic agreements, a great deal of attention was placed on reimbursement for destroyed trees according to their stumpage value. Similar provisions should be included in a nonmetallic lease as well.

Section 11: Liability and Responsibility

- ## SECTION 12: CONCLUSION

- All of the clauses in a legal instrument such as a lease are subject to negotiation. A lease or agreement can be a "tailor made" document conferring benefit to both the mining company and landholder. Within the framework of the following examples the landowner who is approached for a legal right to mine on his land should find a guide to the arrangement best suited to his or her particular needs.

Final form of a lease should reflect the requirements of each side; rarely can it be expected that two situations and sets of requirements will be identical and, thus, transactions can be expected to vary. Therefore, it is strongly recommended that individual citizens, counties and state agencies examine the example, seek competent legal, geological, and engineering advice, and then enter their own individualized leasing arrangement.

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used. It includes, in a less complicated fashion, most of the elements of the longer form. Any of the more detailed subjects discussed with the long form may be incorporated under the special provisions.

(1) This lease is completed this _____ day of _____
(2) by & between owner, or owners, known as _____
(3) _____ whose address is _____
(4) and whose Social Security Nos. are _____
(5) _____ and the lessee, known as _____
(6) of _____, for the purpose of testing,
(7) mining and processing those natural resources specifically
(8) stated herein.

(9) The owner, in consideration of _____ dollars
(10) and/or other good and valuable considerations enumerated
(11) below, hereby leases to lessee, its successors and assigns,
(12) for a term of _____ () years, commencing
(13) _____ and ending _____, the
(14) following premises consisting of approximately _____ ()
(15) acres, located in _____ Township, _____
(16) County, Wisconsin, described as:

(17)
(18)
(19)

(20) For consideration paid, lessee has the right of trespass for a
(21) period not to exceed _____ () days on these premises for the
(22) purposes of exploration and testing by conventional methods.
(23) Within sixty (60) days after the exploration period the lessee must
(24) serve notice of his intent to continue this lease under the following
(25) conditions. Notice may be given either personally by an authorized
(26) representative or by registered or certified mail. Failure to

(27) serve notice will void and nullify this lease.

(28) Exclusive right to develop and process the stated natural resources

(29) on these premises is given by the owner to the lessee in return for

(30) the sum of _____ () dollars, paid each year on or before

(31) _____. Such rent paid for these exclusive rights

(32) shall be considered as an advanced payment of royalties at the rate

(33) stated herein; any unused portion of said rent not to be forfeited

(34) within a given year but to accumulate as prepaid royalty. However,

(35) if lessee fails to operate on these lands to the extent of royalty

(36) paid within the stated term of lease, any and all sums become the

(37) property of the owner. Lessee shall keep records of the cubic yards

(38) or tons of the stated minerals stockpiled or removed from the premises.

(39) Verification on state and federal projects shall by by official

(40) records. Upon the basis of these records, lessee agrees to pay the

(41) owner the following royalty for mineral extracted.

(42) _____ cents (¢) per _____ of _____

(43) _____ cents (¢) per _____ of _____

(44) _____ cents (¢) per _____ of _____

(45) Exception is made as to receivership of such payments if legal

(46) claim is made by the holder of a mortgage or land contract on these

(47) premises. Unless excepted, all payments shall be to the party or

(48) parties listed herein, at their address. Such payments to be made

(49) within sixty (60) days following each month's operation, unless other

(50) arrangements are mutually acceptable.

(51) Lessee agrees to pay all taxes levied against his personal property

(52) on the premises, including stockpiled minerals. Owner agrees to pay

(53) all taxes and assessments against the premises.

(54) Lessee is granted the right to remove the stated natural resources,
(55) and to engage in the activities incidental thereto, at such times
(56) and in such quantities as he may determine, but the owner reserves
(57) the right to use for normal agricultural purposes that portion of
(58) the premises not being actively used by the lessee. Operations of
(59) the lessee shall be done in a good and workmanlike manner and in
(60) accordance with the general methods of operation used by the industry.
(61) No minerals shall be removed within _____ feet of any existing
(62) structure without prior written approval of owner.

(63) Lessee is granted access to the described premises by the owner
(64) at no additional charge unless separate trespass of lands under other
(65) ownership is provided by the lessee. However, this lease shall not
(66) be construed as giving the right of trespass for the removal of
(67) materials from adjoining lands owned by others. Location of access
(68) shall be determined by mutual consent for mutual advantage unless
(69) otherwise specified.

(70) Owner agrees to cooperate with the lessee in obtaining any permits
(71) or licenses required by law, regulations, or ordinance.

(72) All requirements of setback and offset to protect adjoining pri-
(73) vate and public lands shall be the responsibility of the lessee.

(74) Lessee shall be held responsible for any and all damage caused
(75) by men and machines employed by him while on these lands. Owner is
(76) to be held harmless of all claims resulting from operations of the
(77) lessee, whether such operations are involved in the exploration,
(78) development or production stages on these premises.

(79) Unless agreement exists to the contrary, these environmental con-
(80) ditions are guaranteed by the lessee: Topsoil disturbed in any
(81) phase of operation on these lands shall be segregated and replaced

(82) upon a gently sloping surface wherever practical, but to be completed
(83) no later than one year following cessation of operations or lease.
(84) Unless otherwise stipulated in the special provisions, or by local
(85) or state zoning ordinances in regard to slope regulations, lessee is
(86) hereby given notice that the minimum grade on restored lands shall
(87) be 1%, and the maximum 30%. No areas of blocked drainage shall
(88) exist at the conclusion of operations except with the approval of
(89) the appropriate local and state agencies. If operations are con-
(90) ducted at intervals during the term specified all slopes of open pit
(91) (not quarry) operations shall be modified to remove a dangerous con-
(92) dition at the termination of each period of operation. Owner grants
(93) lessee the right to deposit overburden and waste onto lands adjacent
(94) to quarries or pits. Lessee agrees to conform and to be held
(95) responsible for all restoration guarantees required by the proper
(96) agencies having jurisdiction in such matters, or those conditions
(97) made a part of the lease under these special provisions:

(98) Special Provisions: _____ () in number

(99)

(100)

(101)

(102)

(103)

(104)

(105)

(106) In witness whereof, the parties hereto set their hands and seals

(107) this _____ day of _____, _____.

(108) Witness of Owner

Owner-Husband

(109) _____

(110) _____
 (111) _____
 (112) _____
 (113) State of Wisconsin
 (114) _____ County
 (115) The above named _____, known by me to be
 (116) the persons who signed and acknowledged this lease before me on
 (117) this _____ day of _____, _____.
 (118) _____, Seal
 (119) Notary Public, _____ County, WI
 (120) Expiration of Date of Commission
 (121) Witness: As to Lessee _____
 (122) _____
 (123) _____
 (124) State of Wisconsin
 (125) _____ County
 (126) The above named _____, known by me to be
 (127) the persons who signed and acknowledged this lease before me on
 (128) this _____ day of _____, _____.
 (129) _____, Seal
 (130) Notary Public, _____ County, WI
 (131) Expiration Date of Commission
 (132) _____

Price Agreement

A price agreement conveys to the contractor the right to remove specific materials, such as stone, sand, and gravel, for a definite time period at a fixed unit price. It is often used in cases where there is sporadic demand for construction-type material. Such an agreement guarantees the contractor a firm time and price quotation which he can use for estimating and bidding.

It should grant the right of trespass to the second party for testing and the right of access if development follows. Special considerations may be added just as in a mining lease. The main difference is that this agreement is not exclusive to one company. This condition should be explicitly stated in the agreement or at least added in the special provisions. A word of caution to the owner, however, if he accepts what is called an advanced sum for a definite amount of raw material. The owner may find that the contractor will try to claim priority by legal threat before any other material can be removed. Thus, in the time it takes to complete a building project, a potential site could be removed from competition for a sum that would represent only a small portion of the total royalties that could have been realized.

As in a lease, title to processed materials should be established by virtue of payments for mined materials to the owner of the property. Under the state of Wisconsin ad valorem approach to taxation, items such as stock-piles may be taxed by local government.

Because of prior commitments, such as financial arrangements, agricultural leases, etc., an agreement does not always take effect on the date of initial signing. Therefore, to be concise, the starting and ending dates should be expressed.

The following is a sample price agreement. Again, this is intended solely to serve as a guide and should not be implemented without competent advice.

EXAMPLE OF A NONMETALLIC MINING PRICE AGREEMENT

- (1) This agreement, made this _____ day of _____, 19____
- (2) by and between _____, whose address is
- (3) _____, hereafter known as
- (4) Owner; and _____, whose address is
- (5) _____, known as the
- (6) Contractor for the following purposes _____
- (7) _____ to be conducted on lands described as:
- (8) _____
- (9) _____
- (10) If more than one person executes this agreement as owner of the rights
- (11) conveyed and taken herein, singular terms shall be read as if written
- (12) in plural.
- (13) In consideration of compensation herein set forth, it is understood
- (14) and agreed:

(15) That Owner is the legal owner of the rights involved on this property.

(16) That Contractor is granted the right of trespass to explore these

(17) premises for the following materials _____.

(18) Should these materials be removed from these lands or processed into

(19) an economic condition, the Contractor to pay the Owner the following

(20) royalties for said materials.

(21) _____ cents (¢) per _____ of _____

(22) _____ cents (¢) per _____ of _____

(23) _____ cents (¢) per _____ of _____

(24) Royalties to be paid within _____ days following each

(25) _____ days of operation accompanied by dated records of

(26) production. Owner hereby grants an easement to the Contractor for

(27) access to and from the areas of operation. Should a new road be

(28) required Owner reserves the right to state and direct its location.

(29) Topsoil, overburden and waste shall be placed as follows:

(30) _____

(31) _____

(32) This agreement to exist for a term of _____,

(33) beginning _____ and ending _____

(34) _____. Owner signs this agreement with his rights

(35) reserved to make similar agreements with third parties.

(36) In witness thereof, the following parties place their signatures

(37) on this agreement as of this day, the _____ of _____

(38) 19____.

Contractor

Owner

Witness

Witness

(It may be advisable in the case of large sums to have signatures notarized.)