

6125.8400 NEGOTIATED LEASES.

Subpart 1. **Scope.** Leases to prospect for, mine, and remove industrial minerals will primarily be issued through negotiations. The commissioner reserves the right to reject any and all applications for negotiated leases. The commissioner may offer industrial minerals for leasing through public sale as provided in part 6125.8500.

Subp. 2. **Lease application.** Those parties interested in obtaining an industrial minerals lease through negotiation may submit an application to the commissioner. Application shall be submitted on a form available from the commissioner and shall require information as the commissioner may prescribe. The application must include the:

- A. identification of the applicant;
- B. legal description of the lands requested for leasing. The lands covered by an application are limited to a contiguous tract of 640 acres, except an area not exceeding 800 acres consisting of one government section according to the government survey thereof may be included in one lease; and
- C. identification of the industrial minerals the applicant wants to lease.

The applicant shall submit with the application evidence that it is qualified to hold a mineral lease as specified in part 6125.8300. Each application must be accompanied by a certified check, cashier's check, or bank money order, payable to the Department of Natural Resources, in the amount of \$100, which is the application fee. The application fee will not be refunded under any circumstances.

Applications may be submitted in person or by mail to the offices of the Division of Minerals, Department of Natural Resources, 500 Lafayette Road, Saint Paul, Minnesota 55155-4045. Applications will only be accepted during the hours of 8:30 a.m. through 4:00 p.m. on regularly scheduled business days. Applications received at any other time will not be officially accepted until the next regularly scheduled business day, and the commissioner assumes no responsibility for applications submitted in person at any time other than the time specified above. Applications will not be accepted by facsimile transmission.

Subp. 3. **Commissioner's review of application.**

A. Within ten days after receipt of an application, the commissioner will send written acknowledgment that the application was received. The commissioner will review the application to determine if:

- (1) the application was completed and signed;
- (2) the application fee was submitted; and
- (3) evidence of qualification to hold a state lease, as specified in part 6125.8300, was submitted.

The applicant will also be advised if additional evidence is required by the commissioner to determine if the applicant is qualified to hold a state lease as specified in part 6125.8300.

B. Within 45 days after receipt of application, the commissioner will notify the applicant if the following information is required:

(1) If the state's mineral ownership interest in the lands requested is an undivided fractional interest totaling less than 50 percent, evidence that the applicant holds under control a majority of the remaining undivided fractional interest in the mineral ownership interest of the lands requested.

(2) If the commissioner's land records do not show state mineral ownership of the lands requested, a chain of title or other title search information showing state ownership.

Subp. 4. Rejection of application.

A. Applications for negotiated leases will be rejected by the commissioner under the following circumstances:

(1) the application was not completed or signed;

(2) the application fee was not submitted;

(3) the applicant failed to submit evidence of qualification to hold a state lease as specified in part 6125.8300; or the applicant failed to submit additional evidence, within 45 days of receipt of the commissioner's request, as to qualification to hold a state lease as specified in part 6125.8300;

(4) when the state's mineral ownership interest in the lands requested is an undivided fractional interest less than 50 percent, the applicant failed to submit additional evidence, within 45 days of receipt of the commissioner's request, as to holding a majority of the remaining undivided fractional interest in the mineral ownership interest of the lands requested;

(5) when the commissioner's land records do not show state mineral ownership of the lands requested, the applicant failed to submit additional evidence, within 45 days of receipt of the commissioner's request, as to the chain of title or other title search information showing state ownership;

(6) there were simultaneous filings of applications for negotiated leases on the same lands or portion thereof and more than one of the applicants meets the requirements of part 6125.8300. For the purpose of this part, simultaneous filings are those that arrive in the mail or in person on the same day;

(7) an application for a negotiated lease was filed on a prior day for the same lands or portions thereof covering the same industrial minerals and the commissioner has determined that the prior applicant meets the requirements of part 6125.8300 and the prior application is not rejected pursuant to this part;

(8) a state mineral lease covering the same industrial minerals is currently in effect for the lands requested;

(9) state laws or rules prohibit the state from leasing the lands requested. For example, the lands are located within the Boundary Waters Canoe Area Wilderness;

(10) leasing the lands would conflict with identified environmental or land use concerns. For example, the lands are located within the Boundary Waters Canoe Area Wilderness Minerals Management Corridor or the lands are located within an active airport;

(11) mining of the industrial minerals requested would unreasonably interfere with the mining activities authorized under an existing state mineral lease covering other minerals; or negotiations or a public lease sale offering have been previously commenced for a state mineral lease covering other minerals and mining of the industrial minerals requested would unreasonably interfere with mining activities authorized under the other state mineral lease;

(12) the requested lands had been previously offered at a public lease sale within two years of the application being filed, the applicant was the high bidder at that sale for the requested lands, and the applicant had withdrawn its bid prior to the awarding of a lease; or

(13) information submitted in response to the public notice, as required under subpart 6, determines that any of the above circumstances exist.

Prior to filing an application for a negotiated lease, any party may contact the commissioner for information as to whether the circumstances described in this part exist as to the lands the party is interested in for a negotiated lease. Prior to filing an application for a negotiated lease, any party may contact the commissioner for a review of the party's qualification to hold a mineral lease as specified in part 6125.8300.

B. The right is reserved to the state, through the commissioner of natural resources, to reject any or all applications for negotiated industrial minerals leases. However, if the commissioner rejects the application based on item A, subitem (6), then no negotiated lease may be issued for the property until after it has first been offered at public lease sale.

Subp. 5. **Negotiations with applicant.** If the application is not rejected pursuant to subpart 4, the applicant and the commissioner will enter into negotiations as to the terms of the lease. Due to the variable nature of mining, selling, and processing different industrial minerals, several of the lease terms will need to be negotiated on a case-by-case basis.

The model form for a negotiated lease for exploring for, mining, and removing industrial minerals belonging to the state is contained in part 6125.8700. The negotiated lease may contain insertions, changes, or additions as may be necessary to incorporate other particulars applicable to each industrial mineral, subject to the following:

A. The primary term of the lease may not exceed ten years plus the unexpired portion of the calendar year in which the lease is issued.

B. The rental rates may not be less than \$1.50 per acre per year for the unexpired portion of the calendar year in which the lease is issued and the next succeeding two calendar years; \$5 per acre per year for the next succeeding three years; and \$25 per acre per year thereafter during the term of the lease.

C. The royalty rates for the following commodities may not be less than:

(1) three percent of the gross market value for dimension stone and 1-1/2 percent of the gross market value for any stone produced from waste stone and sold as a by-product;

(2) five percent of the gross market value for kaolin clay, silica sand, and diamonds and other gemstones; and

(3) three percent of the gross market value for all other industrial mineral commodities.

If the applicant and the commissioner cannot reach agreement on the negotiated terms within 180 days, the commissioner has the right to reject the negotiated lease application. The 180 day period shall commence upon the commissioner sending written notification to the applicant that it has met the requirements of subpart 3 and the request is not rejected pursuant to subpart 4.

Subp. 6. Public notice of plans to issue negotiated lease. The commissioner shall give public notice of plans to issue a negotiated lease by publication in the State Register, the EQB Monitor, and a qualified newspaper that has its known office of issue in the county seat in which the proposed lands to be leased are located. If no qualified newspaper has its known office of issue in the county seat of a particular county, then notice must be published in the qualified newspaper designated as the publisher of the official proceedings of the county board of that county. The party applying for the negotiated lease shall reimburse the commissioner for the costs of publication of these notices.

The notice shall be published at least once in the above publications. The publication shall be at least 30 days before the issuance of the lease and no more than 180 days before the issuance of the lease. Each notice shall contain the legal description of the proposed lands to be leased and such other information as the commissioner may direct.

Subp. 7. **Approval by state Executive Council.** All negotiated leases approved for issuance by the commissioner of natural resources that cover 160 or more acres of land must also be approved by the state Executive Council.

Statutory Authority: *MS s 93.25*

History: *19 SR 2433*

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