

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



In the Matter of
PROPOSED AMENDMENT TO
20.6.2. NMAC (Copper Rule)

WQCC No. 12-01(R)

WRITTEN RESPONSE TO PETITION FOR RULEMAKING

Freeport-McMoRan Chino Mines Company, Freeport-McMoRan Tyrone Inc. and Freeport-McMoRan Cobre Mining Company (collectively referred to as "Freeport-McMoRan"), through their undersigned attorneys, submit this written response to the Petition to Adopt 20.6.7 and 20.6.8 NMAC and Request for Hearing ("Petition") filed by the Environment Department in this matter. This response is submitted in accordance with the *Guidelines for Water Quality Control Commission Regulation Hearings* ("Guidelines"), section 301.C and the *Revised Schedule for Development of Copper Regulations* approved by the Commission on September 11, 2012 ("Schedule").

Freeport-McMoRan supports the Department's request to set a hearing on the Petition to commence on January 8, 2013. This is the hearing date set forth in the Schedule. Also, under the Guidelines, "[t]he Commission shall designate a Hearing Officer for each hearing who shall exercise all powers and duties prescribed or delegated under these guidelines." After formally establishing the hearing start date, Freeport-McMoRan recommends that the Commission immediately designate a hearing officer to hold a pre-hearing conference, and to establish a pre-hearing schedule for the filing of written direct testimony and supporting exhibits, consistent with section 104.B of the Guidelines.

Although motion practice is not addressed in the Guidelines, at least one motion has already been filed in this matter. Freeport-McMoRan suggests that it would be appropriate for the Hearing Officer to include in a scheduling order a process and timeframe for the filing of motions and

responses, and to consider motions and responses in the first instance, and then make a recommendation to the Commission for action on any motions.

From Freeport-McMoRan's perspective, it is inappropriate and premature to address the merits of the Petition before the first day of the hearing. In the past, the Commission has been advised to defer the receipt of testimony, questioning of witnesses or the parties, or otherwise taking evidence in support of or opposition to a proposed rule until a hearing has been set, public notice has been given, and all parties have an opportunity to present evidence in accordance with the procedures established by the Guidelines and the Commission's orders.

Freeport-McMoRan appreciates the Commission's consideration of the Petition and looks forward to participating in the hearing process.

Respectfully Submitted,

GALLAGHER & KENNEDY, P.A.



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was mailed to the following parties this November 9, 2012:

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