

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**



**IN THE MATTER OF PROPOSED AMENDMENTS
TO 20.6.2 NMAC, THE COPPER MINE RULE**

WQCC 12-01 (R)

**New Mexico Environment Department,
Petitioner.**

FREEPORT-McMoRaN'S WRITTEN CLOSING ARGUMENT

In opening arguments, Freeport-McMoRan outlined the case it would present and asked the Commission to adopt the Copper Mine Rule in the form proposed by the Environment Department, subject to a few minor changes. Having presented its case, and having read and listened to the evidence presented by the other parties, Freeport-McMoRan now asks the Commission to adopt the Copper Mine Rule in the form proposed as the Final Proposed Rule submitted by the Department.

At the conclusion of the case, the Hearing Officer invited the parties to submit written closing arguments and proposed statements of reasons for the Commission's adoption of the Copper Mine Rule. Throughout the rulemaking process, the Hearing Officer recommended that, for the Commission's convenience and efficiency of review, parties with similar positions present evidence in manner that is not duplicative and consider joining in pleadings where parties are in agreement, and all parties have certainly engaged in this process throughout the rulemaking proceeding. In addition, Commissioners asked the parties to consolidate proposals to be presented for their review during deliberations. Consequently, Freeport-McMoRan has taken the Hearing Officer's advice, reviewed the Department's positions for the proposed Statement of Reasons to the Commission, and asked the Department to consider Freeport's positions and, to the extent the Department agrees with those positions, include them in its Statement of Reasons

in order to simplify the number and volume of proposals before the Commission, facilitate agreement and prevent duplicative pleadings.

The Department's Proposed Statement of Reasons requests that the Commission adopt the Copper Mine Rule in the form of the Proposed Final Rule attached thereto. The Proposed Final Rule addresses some, but not all, of the changes to the proposed rule requested and supported through the testimony of Freeport-McMoRan's witnesses during the hearing. To the extent that the Proposed Final Rule does not address changes requested by Freeport-McMoRan, Freeport-McMoRan withdraws those proposed changes, reserving the right to request those changes or other changes to the Copper Mine Rule through future proposed amendments to the Copper Mine Rule in the event that the Commission considers such amendments.

Accordingly, Freeport-McMoRan joins in the Department's Proposed Statement of Reasons filed this date and does not submit a separate proposed Statement of Reasons for consideration by the Commission. Freeport-McMoRan will reference the Department's Proposed Statement of Reasons in this Closing Argument. In the remainder of this Closing Argument, Freeport-McMoRan will address some of the primary issues raised during the hearing of this matter.

I. The Commission Has Clear Authority to Adopt the Copper Mine Rule Proposed by NMED

There is no serious question that the Commission has the legal authority, and indeed the duty, to consider and adopt the Copper Mine Rule. Before the hearing on this matter, the Commission received briefs and heard legal argument on this issue and denied motions to dismiss the Petition or to remand it back to the Department. The Commission properly denied the motions and continued to hear the evidence in this matter.

At the outset of this hearing, as set forth in Section 102 of the Procedural Order [Pleadings #10], the parties were invited to submit legal briefs on the Commission's authority to adopt the Copper Mine Rule as set forth in the Petition [Pleadings #4]. Freeport-McMoRan filed a brief presenting legal arguments why the Commission has the authority to adopt the Petition. [Pleadings #17] NMED filed a similar brief [Pleadings #15]. In accordance with the Hearing Officer's direction to present similar positions in an efficient manner, GRIP, Turner Ranch Properties, and Amigos Bravos filed a joint motion to dismiss the Petition [Pleadings #13], and the Attorney General filed a motion to remand the matter back to the Department [Pleadings #16]. Freeport-McMoRan filed a consolidated response [Pleadings #19] as did the New Mexico Mining Association [Pleadings #22] and NMED [Pleadings #23]. Freeport-McMoRan incorporates by reference its initial legal brief [Pleadings #17] and its consolidated response [Pleadings #23] into this closing argument.

During the hearing, the Commission received evidence of the Department's compliance with the Water Quality Act requirements regarding development of the Copper Mine Rule, including the establishment and work of the Advisory Committee and technical sub-committee, holding a public meeting and acceptance of public comments, and stakeholder meetings. Consequently, the Water Quality Act requirements for public participation and rule development were satisfied and the Commission properly accepted the Petition, accepted evidence during the hearing, and may now consider and adopt the Copper Mine Rule.

II. The Water Quality Act Does Not Require That Copper Mines Be Permitted by Variance

All parties agree that copper mining is important to supply copper for human use, that it provides needed jobs and supports the economy, and that it should be allowed to continue in New Mexico. The Attorney General, GRIP, TRP, Amigos Bravos and William Olson all agree

that open pit copper mining should not be prohibited, even though it will unavoidably result in some water quality impacts.

The parties agree that containing water contaminants by installing liners will not always be feasible for portions of copper mining operations, and that permits can be issued under the Water Quality Act for such operations. The primary difference in the positions of the Department and Freeport-McMoRan, versus the other parties, is whether the Water Quality Act allows the Commission to adopt rules that provide for open pit copper mining and may permit facilities to be unlined under certain circumstance, or whether the Water Quality Act requires a variance for such activities. This difference is a matter of process, not substance, and it is not matter of compliance with the Water Quality Act. The decision on the appropriate process should be left to the Commission.

The Water Quality Act authorizes the Commission to grant variances from the Commission's regulations, not from the Water Quality Act itself. If the Water Quality Act, particularly Section 74-6-5(E) NMSA 1978, were to prohibit the Department from granting permits for any copper mine facility that would cause an exceedance of the standards of 20.6.2.3103 NMAC within the operational unit as the other side argues, then certainly it is logical to conclude that the Commission could not grant a variance for that same activity. Yet, the parties opposing the Commission's adoption of portions of the Copper Mine Rule concede that permits can be granted for these facilities without violating the Water Quality Act if variances are obtained. So, if permitting these facilities through a variance complies with the Act, what is the basis for these parties' assertion that the Commission cannot authorize their permitting through a rule? There simply is none.

Because the Act authorizes a variance only from the Commission's rules, the starting point to determine whether the Commission must grant a variance to allow the Department to issue a permit under the Water Quality Act is the requirements of the rules themselves. Consequently, it will be the Copper Mine Rules themselves that will define when a variance is required, not the requirements of the Water Quality Act. Importantly, Section 74-6-5(E) of the Water Quality Act applies to the Department's issuance of a particular permit. It does not apply to the Commission, nor does it limit the Commission's rulemaking authority.

The Attorney General, GRIP, TRP, Amigos Bravos and Mr. Olson contend that the variance process must be followed so that a hearing will be held. Under the Copper Mine Rule, any person wishing to oppose a discharge permit for a copper mine will have multiple opportunities to raise issues in opposition to a permit regardless of whether a variance hearing is held. Under 20.6.2.3108 of the Commission's existing regulations, as supplemented by section 20.6.7.10 of the proposed rules, at least two public notices will be issued when a permit is sought: one when the application is filed and another when the Department proposes either a draft permit to be issued or denial of a permit. Any person may submit comments to the Department on the application and on the draft permit. When the draft permit is issued, persons may request a hearing before the Department to be held before the final permit is issued. The final permit can be appealed to the Commission, and the Commission's decision is then appealable to the courts. If the Commission requires that copper mines be permitted through a variance, then the Commission itself must hold a hearing before the Department can issue the final permit. Consequently, the issue of whether the Commission must hold a variance hearing before the Department can issue a permit is an issue of process—indeed, the sequence of the

process—and not of substance. This process issue should be left to the Commission to decide within the realm of its rulemaking authority.

The Department and Freeport-McMoRan provided ample reasons why the Commission's rules should not require variance hearings as a matter of course to issue discharge permits for copper mines. Variance proceedings demand considerable resources from Department staff, taking time away from their regular tasks of processing permits. Allowing the issuance of permits in accordance with Commission rules, without the need for a variance proceeding, is much more efficient. Freeport-McMoRan's witnesses explained that requiring a variance to issue permits results in regulatory uncertainty and discourages investment, whereas a clear set of rules incorporating feasible and practicable technologies to prevent water pollution results in greater regulatory stability and encourages investment, thereby improving the business climate in New Mexico. Furthermore, as discussed above, the Copper Mine Rule maintains the provisions for public notice of permit actions, the opportunity for the public to seek hearings to contest permits, and permit appeals to the Commission and the courts.

The Copper Mine Rules are strict and vigorous. Where feasible liner technologies exist and when they are necessary to contain water contaminants, they are required to be implemented. For example, new impoundments to contain process waters that are located outside of the open pit surface drainage area must be contained using a dual-synthetic liner system with leak collection. New leach stockpiles must contain leach solutions using a robust liner system demonstrated elsewhere along with collection and transport of leach solutions using engineered, lined process water impoundments or engineered pipeline and tank systems. These requirements are more stringent than the requirements of the Commission's existing regulations, under which less robust liner systems have been permitted and under which unlined leach stockpiles have

been permitted even outside of open pit surface drainage areas. With regard to waste rock stockpiles and tailings impoundments, as discussed in more detail below, ample evidence was presented that liner systems are rarely, if ever, used for these types of facilities, and that lining these types of facilities can pose stability or other risks that outweigh any liner benefit, such that no liner requirement could or should be mandated. All parties agreed that lining open pits is entirely infeasible.

Moreover, the Copper Mine Rule requires many other measures, including material characterization and handling plans, water management plans, leachate and seepage collection systems and, when necessary, ground water interceptor systems demonstrated to be effective at the site. Less robust measures have been required by the Department under existing discharge permits for unlined facilities, and the Department has previously found and testified that less stringent requirements were protective of ground water quality and in compliance with the Water Quality Act.

Variances under the Water Quality Act still will be allowed, and perhaps will be needed in some instances, where site-specific circumstances warrant a variance from the specific requirements of the Copper Mine Rules. This is the role contemplated for variances under the Water Quality Act, rather than a permit system that relies upon variances for permitting in the first instance.

As indicated in the proposed Statement of Reasons, the measures required by the Copper Mine Rules to contain water contaminants with respect to process water impoundments, impacted stormwater impoundments, leach stockpiles, tank and pipeline systems, and equipment washing facilities are largely undisputed, except for the relaxation of requirements for such facilities located inside the open pit surface drainage area. The disputed portions of the Copper

Mine Rule center largely on whether liners should be required as standard practice for waste rock stockpiles and tailings impoundments, and whether there should be relaxed requirements, and limited exclusions for compliance with the standards of 20.6.2.3103 NMAC, for open pit areas where water contaminants are hydraulically contained. These issues are discussed in more detail below.

III. The Copper Mine Rule Requires Containment of Water Contaminants to Prevent Water Pollution

The Department presented an expert witness, Mr. Brown, who explained that the strategy employed in the Copper Mine Rules to prevent water pollution is the effective containment of water contaminants within permitted units. This containment can be accomplished in a number of ways. Liner systems can be an effective method of containment when feasible, and liner systems are employed as the standard measure for containment for process water impoundments and impacted stormwater impoundments located outside the open pit surface drainage area and for leach stockpiles. As demonstrated by the unrebutted testimony of Mr. Brown, however, all liner systems will leak to varying degrees, so they do not provide perfect containment. Consequently, lined facilities must be monitored and corrective actions can be required to address failures. Robust monitoring and corrective action requirements are spelled out in the Copper Mine Rules. Simply put, liner systems are not the “end all, be all” solution for dealing with mining facilities.

As further explained by Mr. Brown, the Copper Mine Rule does not utilize liner systems for containment of water contaminants for all mine units. Waste rock stockpiles and tailings impoundments are subject to a number of measures to prevent water pollution, but liners are not required as standard practice, although they can be required by the Department if the other

measures will not provide effective containment. These facilities are discussed in more detail below.

Mr. Brown further explained that the Copper Mine Rule utilizes the hydraulic containment provided by an open pit to contain water pollutants that may be generated by the open pit itself and for discharging facilities located within the open pit surface drainage area. Freeport-McMoRan, primarily through Mr. Blandford's testimony and exhibits, explained in detail how effective hydraulic containment is provided by an open pit. Because of the full containment provided within an open pit surface drainage area, the Copper Mine Rule allows for some of the standard containment requirements, such as double-lined impoundments with leak collection systems, to be relaxed within the open pit surface drainage area. The Copper Mine Rule also allows the Department some discretion to relax other requirements, such as fully-lined leach stockpiles located within the open pit surface drainage area. The Water Quality Act allows the Commission to impose varying measures to prevent water pollution considering site-specific differences. *See* Section 74-6-5.K NMSA 1978. Consequently, this approach in the Copper Mine Rule is expressly allowed under the Water Quality Act.

For existing facilities authorized by existing discharge permits, the Copper Mine Rule relies largely upon the requirements of the existing permits issued under the Commission's existing regulations and the Water Quality Act to provide containment of water contaminants. As was discussed during the hearing, some existing permitted facilities have caused water pollution and, therefore, are subject to corrective action requirements and abatement plans under the Commission's abatement regulations. The Copper Mine Rule does not eliminate any of the existing corrective action and abatement requirements. Existing facilities, however, will be subject to continued monitoring, corrective action requirements, and closure requirements under

the Copper Mine Rule. Corrective action requirements include the repair and, in some instances, replacement of failed facilities. Existing facilities remain subject to abatement plan requirements when invoked by the Department to address any future water pollution.

IV. The Evidence Supports Adoption of the Proposed Measures for Waste Rock Stockpiles

As explained by Mr. Brown, the Copper Mine Rule does not require installation of liner systems as the standard practice for new waste rock stockpiles. Mr. Brown described how he assessed the varying risks of water pollution posed by different types of copper mine units in determining whether liners should be required. For waste rock stockpiles, proper materials characterization is required to evaluate whether a particular new waste rock stockpile may generate leachate that exceeds the standards of 20.6.2.3103 NMAC. If not, then no further measures are required, as such a stockpile would be effectively exempt from discharge permit requirements under 20.6.2.3105.A and/or H. A material handling plan also may be used to place waste rock in such a way that a stockpile will not generate leachate that exceeds the standards.

If material characterization indicates that the waste rock stockpile may generate leachate that exceeds the standards that cannot be eliminated by a material handling plan, then the Copper Mine Rule requires implementation of various engineering measures, including management of precipitation, collection of seepage and, if necessary, a ground water interception system. In addition to the testimony of Mr. Brown, Freeport-McMoRan's expert witnesses Michael Grass and Jim Finley explained how the various measures required by the Copper Mine Rule have been effectively utilized at copper mines to prevent water pollution, and Mr. Grass testified that ground water interceptor systems are rarely needed for waste rock stockpiles.

If the measures described above will not provide effective containment, then the Department can require a liner system as an "additional condition." Mr. Brown testified,

however, that liner systems can be difficult to install for a waste rock stockpile and likely will leak, and a liner can reduce stability of a stockpile when placed on steep slopes. Mr. Grass also explained the reasons why liners for waste rock stockpiles are not used as standard industry practice and why their use can be infeasible and impracticable. On the other hand, witnesses for the other parties did not provide an explanation for their position that liner systems are feasible and practicable and provided no examples of lined waste rock stockpiles that have been successfully constructed and utilized for prevention of water pollution at any copper mine. Based on the weight of the evidence, there are convincing reasons for the Commission not to require waste rock stockpiles to be lined as the standard measure to prevent water pollution under the Copper Mine Rule.

V. The Evidence Supports Adoption of the Proposed Measures for Tailings Impoundments

Mr. Brown also explained that the Department does not propose liner systems as the standard measure for prevention of water pollution from tailings impoundments but requires seepage capture systems and ground water interceptor systems for containment of water contaminants. Tailings impoundments pose a more limited risk with respect to water pollution. Importantly, as explained by Mr. Brown and by Freeport-McMoRan witnesses James Scott and Tom Shelley, maintaining stability is paramount to preventing water pollution as a result of a tailing dam failure, and tailings impoundments must be designed and constructed in accordance with strict dam safety requirements imposed by the Office of the State Engineer (OSE). Maintaining free drainage of fluids is necessary to maintain the stability of a tailings impoundment and to comply with the OSE requirements.

Mr. Scott testified that no lined tailings impoundments exist at copper mines in the western United States. He explained that a liner system, by design, prevents the free drainage of

fluids from the base of a tailings impoundment. Consequently, if a liner system was to be utilized, an extensive drainage system would have to be constructed and operated to provide free drainage of fluids from the tailings. Mr. Scott was aware of no examples of such a synthetic drainage system having been installed and maintained, particularly for the large tailings impoundments utilized at copper mines. He testified that risks of plugging and other failures of a drainage system could render it ineffective or affect stability.

Mr. Scott testified regarding the successful use of a ground water interceptor system to prevent water pollution from the Chino active unlined tailings impoundment that was permitted by both the OSE and by the Department under DP-484. Mr. Blandford explained how ground water interceptor systems can be demonstrated to be effective and how they successfully operate from a hydrologic perspective. Mr. Brown and Mr. Blandford explained how ground water monitoring is utilized to demonstrate the effective operation of a ground water interceptor system, and how the Copper Mine Rule specifies the requirements for an effective interceptor system and monitoring. Similar to the requirements for waste rock stockpiles, if a permit applicant cannot demonstrate that an interceptor system will be effective, then the Department can require additional controls, including a liner system.

The witnesses for the Attorney General, GRIP, TRP and Mr. Olson have never designed a tailings impoundment and provided no examples of a successful liner system utilized for a tailings impoundment at a copper mine. They provided no testimony that the prescriptive liner design specified in their proposed rule language has ever been employed at a copper mine tailings impoundment or any testimony regarding the engineering basis for the prescriptive design. Based on the weight of the evidence, there are convincing reasons for the Commission

not to require tailings impoundments to be lined as the standard measure to prevent water pollution under the Copper Mine Rule and to adopt the rule as proposed by the Department.

VI. The Evidence Supports Adoption of the Proposed Measures for Open Pits

As explained by Mr. Brown, the approach utilized for containment of water contaminants from an open pit is the effective hydraulic containment provided by the open pit itself. According to Mr. Brown, and as explained in detail by Freeport-McMoRan witness Mr. Blandford, an open pit effectively contains all ground water within the area of open pit hydrologic containment, as defined by the proposed rule. No ground water can escape from the area of open pit hydrologic containment, and the Copper Mine Rule requires a ground water monitoring system to define this area. Because no ground water contaminants can escape from this area, water contaminants contained within the open pit will not impair the use of ground water outside of this area for domestic or agricultural water use.

As Ms. Lande and Mr. Finley described, most open pit copper mines will generate water contaminants at levels exceeding the standards of 20.6.2.3103 NMAC due to the contact of precipitation with the pit walls. No party disputes, and Mr. Kuipers acknowledged, that this impact is unavoidable, as there is no technology available to prevent this from occurring. As discussed above, however, the hydraulic containment provided by the open pit itself contains these water contaminants inside the pit where they pose no threat to other water supplies. Moreover, the impacted water is utilized by the mine itself, reducing the need for the mine to import water supplies for mine operations. Consequently, the Copper Mine Rule properly exempts the open pit hydrologic containment area from the standards of 20.6.2.3103 NMAC.

As described by Mr. Brown and Mr. Shelley, at closure, continued ground water monitoring is required to verify containment under the Copper Mine Rule. For a “flow-through

pit,” pumping will be necessary to maintain hydraulic containment. If there is no use for the water at the mine, water treatment will be required to treat the pumped water to meet applicable standards for other use or for discharge of the water. Over time, the closure measures required by the Copper Mine Rule are expected to result in improved water quality, but continued monitoring and pumping to maintain hydraulic containment is required as long as applicable standards are exceeded.

VII. Permits Issued Under the Copper Mine Rule Will Not Result in the Exceedance of Applicable Standards at a Place of Withdrawal of Water for Present or Reasonably Foreseeable Future Use

Mr. Brown explained how the containment strategy required by the Copper Mine Rule will contain water contaminants to prevent water pollution and to prevent applicable water quality standards from being exceeded at any place of withdrawal of water for present or reasonably foreseeable future use. During mine operations, water contaminants will be contained within the permitted mine units, including the leach stockpiles, waste rock stockpiles, tailings impoundments, process water and impacted stormwater impoundments, tank and pipeline systems, equipment washing units and the open pits. These units are under the full control of the mine operator and are regulated by the permits. The water contained within these units is used in mine operations, although in the rare instance that it may be discharged or used outside the mine and treatment would be required to meet applicable standards before such use or discharge. Ground water monitoring is required to verify effective containment, and corrective action and potentially an abatement plan is required if monitoring detects that water quality is declining or exceeds standards. Based upon this system, during mine operations under the Copper Mine Rule, the use of groundwater is protected for domestic and agricultural use

outside of the mine units. Freeport-McMoRan's witnesses Mr. Blandford and Mr. Shelley (particularly Mr. Shelley's rebuttal testimony) further explain and support this approach.

The Copper Mine Rules requires cover systems and other reclamation measures as part of mine closure, as explained by Mr. Brown, such requirements will substantially reduce the seepage of leachate from mine units to ground water following closure. Post-closure monitoring and maintenance of any operating systems are required under the Copper Mine Rule to demonstrate the effectiveness of the closure measures. According to Mr. Brown's testimony, these measures are intended to improve ground water quality over time so that, ultimately, ground water quality may meet the standards of 20.6.2.3103 NMAC, and even the ground water under the units may be suitable for withdrawal of water for domestic and agricultural use. The monitoring and post-closure maintenance must continue, however, until standards are met. For the existing copper mines in particular, abatement plans and potentially consideration of alternative abatement standards may need to be utilized in the event that ground water quality cannot be restored. Through this system, permits issued in compliance with the Copper Mine Rules will not violate the Water Quality Act or the prohibition against the issuance of a permit that would cause an exceedance of standards at a place of withdrawal of water for present or reasonably foreseeable future use, as specified by section 74-6-5(E) NMSA.

VIII. Neither the Tyrone Decision and Order on Remand Nor the Tyrone Settlement Mandate that the Commission Adopt Particular Rules

Considerable evidence was presented during the hearing regarding the long history of hearings and appeals regarding Tyrone's closure permit, DP-1341. Indeed, an appeal of the Commission's 2009 Decision and Order in that matter remains pending in the Court of Appeals. Under the Tyrone Settlement, the Copper Mine Rule is contemplated as part of a resolution of

that appeal through its dismissal, which is required if all of the conditions of the Tyrone Settlement are satisfied.

The Tyrone matter involves an adjudication of a particular dispute regarding the Commission's existing regulations. From Freeport-McMoRan's perspective, that adjudication identified a number of shortcomings of the Commission's existing regulations. Some of those shortcomings also were behind the Legislature's 2009 amendments to the Water Quality Act that requires the Commission to adopt the Copper Mine Rules.

The Commission's 2009 Decision and Order was an attempt to help resolve the adjudication of the Tyrone closure permit and apply specifically to that permit. The 2009 Decision and Order, however, did not by itself accomplish a successful resolution of even that one dispute, as evidenced by Tyrone's pending appeal of the Decision and Order and also the terms of the Tyrone Settlement, under which the Department and Tyrone agreed to a different approach to settlement from the approach that the Commission specified in the 2009 Decision and Order.

The Attorney General, GRIP, TRP, and Mr. Olson argue that the Commission should follow some or all the 2009 Decision and Order in its adoption of the Copper Mine Rule. To the extent that there is any conflict between the 2009 Decision and Order and these Copper Mine Rules, the Commission is free to depart from the 2009 Decision and Order in the adoption of these Copper Mine Rules. These Copper Mines Rules are expressly authorized—indeed mandated—by the Water Quality Act, and the Commission is expressly delegated broad authority to adopt rules under the Water Quality Act.

An administrative agency may have the ability to make new law prospectively through the exercise of its rulemaking powers and also may set precedent through a decision in an

adjudication. Even in an adjudication, an agency may change previous policy or a long-standing interpretation of laws as long as it explains the reason for doing so. *See Japan Air Lines v. Dole*, 801 F. 2d 483, 490 (D.C. Cir. 1986)(“We emphasize that an agency is not forbidden from changing policy when such changes are supported by adequate reasons”). Moreover, “. . . an agency enjoys substantial discretion to proceed with such changes either by rule or by adjudication.” *Id.*

The 2006 Court of Decision in the Tyrone case identified a particular shortcoming of the Commission’s existing regulations, the lack of guidance or criteria to determine what locations constitute a “place of withdrawal of water for present or reasonably foreseeable future use,” which led the Court to overturn the Commissions’ 2004 decision on the Tyrone permit. Importantly, the entire Tyrone case turned on that one phrase regarding the “place of withdrawal.” The Court advised the Commission that it could conduct a rulemaking to address that shortcoming, or it could proceed by further adjudication. Because the Department at that time chose not to propose a rule but to proceed with the adjudication, and because the Commission at that time accepted the path of adjudication, the result was the 2009 Decision and Order, now on appeal, and with its own shortcomings as described above.

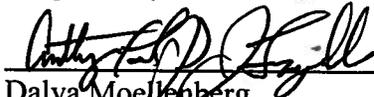
This Copper Mine Rule presents the Commission with a new opportunity to address the shortcomings of the Commission’s existing regulations, which the Legislature recognized when it required the Department to develop these rules and the Commission to consider and adopt them. The Copper Mine Rule is an opportunity to comprehensively consider and address how copper mines should be regulated based upon a comprehensive record regarding all facets of copper mining, rather than in the narrow context of an adjudication of contested closure permit conditions. The Commission has received an extensive record, including evidence regarding not

only the Tyrone Mine, but other copper mines, and from experts regarding industry practices utilized in New Mexico and elsewhere to prevent water pollution throughout the mine cycle. The Commission has heard from the Department's expert who has presented a clear explanation of how the Copper Mine Rule adheres to the requirements of the Water Quality Act throughout the life cycle of a copper mine, using proven technologies specifically applied at copper mines. Based on the extensive new record before the Commission, and consistent with the Commission's discretion to depart from past policies and decisions based on an explanation of why it is doing so, there is no legal obstacle to the Commission's adoption of the Copper Mine Rule.

IX. Conclusion

The Proposed Statement of Reasons offered by the Department identifies all of the criteria specified in the Water Quality Act for the Commission's adoption of the Copper Mine Rule. It lays out the testimony in support of the Commission's adoption of each and every provision proposed by the Department. For these reasons, Freeport-McMoRan urges the Commission to adopt the Copper Mine Rule as set forth in the Proposed Final Rule.

Respectfully submitted,



Dalva Moellenberg

Anthony J. Trujillo
Gallagher and Kennedy P.A.
1233 Paseo de Peralta
Santa Fe, NM 87501-2758
Phone: 505-982-9523
E-mail: d1m@gknet.com
E-mail: ajt@gknet.com
Attorneys for Freeport-McMoRan Chino
Mines Company, Freeport-McMoRan
Tyrone, Inc., and Freeport-McMoRan Cobre
Mining Company

CERTIFICATE OF SERVICE:

I certify that a true and correct copy of this pleading was served by e-mail on the following this 22nd day of August, 2013:

Andrew P. Knight
Kathryn S. Becker
Assistants General Counsels
Office of General Counsel
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Telephone: (505) 222-9540
E-mail: kathryn.becker@state.nm.us
E-mail: andrew.knight@state.nm.us
Attorneys for the New Mexico Environment Department

Tannis L. Fox, Assistant Attorney General
Water, Environmental and Utilities Division
Office of the New Mexico Attorney General
P.O. Box 1508
Santa Fe, New Mexico 87504
Phone: (505) 827-6695
E-mail: tfox@nmag.gov
Attorney for the New Mexico Attorney General

Bruce Frederick, Staff Attorney
N.M. Environmental Law Center
1405 Luisa St. #5
Santa Fe, NM 87505-4074
Phone: (505) 989-9022
E-mail: bfrederick@nmelc.org
Attorney for the Gila Resources Information Project and Turner Ranch Properties

Tracy Hughes
High Desert Energy + Environmental Law Partners, L.L.C.
P.O. Box 8201
Santa Fe, New Mexico 87504
Phone: (505) 819-1710
E-mail: hughes@energyenvironmentlaw.com
Attorney for Amigos Bravos

Louis W. Rose
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, NM 87504-2307
Phone: (505) 986-2506
E-mail: lrose@montand.com
Attorney for the New Mexico Mining Association

Jon Indall
Comeau, Maldegen, Templeman & Indall LLP
P.O. Box 669
Santa Fe, New Mexico 87504-0669
Phone: (505) 982-4611
E-mail: jindall@cmtisantafe.com
Attorney for the New Mexico Mining Association

William C. Olson
14 Cosmic Way
Lamy, New Mexico 87540
Phone: (505) 466-2969
E-mail: billjeanie.olson@gmail.com

Sean Cunniff, Assistant Attorney General
Civil Division
Office of the New Mexico Attorney General
P.O. Box 1508
Santa Fe, New Mexico 87504
Phone: (505) 827-6469
E:mail: scunniff@nmag.gov
Attorney for the Commission



Dalva L. Mollenberg
Anthony (T.J.) J. Trujillo