

NEW MEXICO MINING ACT NETWORK



Gila Resources Information Project



Proposed Water Quality Rules for Copper Mine Facilities

The New Mexico Environment Department (NMED) will go before the New Mexico Water Quality Control Commission (WQCC) beginning April 9 to present its proposed water quality rules for the copper mining industry.

After an 8-month stakeholder process to develop a draft rule that would be protective of groundwater at copper mine sites and provide regulatory certainty to industry, **NMED upper-level managers ignored the recommendations of their technical staff and NMED Advisory Committee and rewrote the proposed rule.**

The proposed rule:

- Would give the mining industry the right to pollute.
- Is in direct conflict with the State Water Quality Act which requires polluters to prevent groundwater contamination during their operations.
- **Would give the mining industry the right to pollute future drinking water supplies and impact the health of people and communities.**
- Could pave the way for other polluters to demand similar rollbacks in water quality safeguards. This would lower the cost of doing business for the polluter while transferring the cost of clean up and the cost to address public health outcomes to New Mexico taxpayers.

NMED's petition to re-write the rule represents a "gift" to the copper mining industry from the Martinez Administration. If it is allowed, companies such as Freeport-McMoRan, the largest publicly traded copper company in the world, will use New Mexico's groundwater as a dumping ground for mine waste.

Gila Resources Information Project and Turner Enterprises represented by New Mexico Environmental Law Center, and Amigos Bravos represented by High Desert Energy + Environment Law Partners **are opposed to this rulemaking on grounds that the proposed rule is illegal under the Water Quality Act.**

The NM Attorney General is also opposed to NMED's petition to the WQCC on the same grounds.

JOE HEMPFLING
Joseph-Hempfling@mac.com

Background:

The adoption of water quality rules specific to copper mining and dairies is mandated by statute under amendments to the Water Quality Act made during the 2009 legislative session and put forth by the mining and dairy industries.

In 2012, NMED established the Copper Rule Advisory Committee comprised of industry and environmental organizations charged with providing advice to the Department on the proposed rules.

After an 8-month stakeholder process including 20 Advisory Committee meetings and numerous Technical Committee conference calls to develop a draft rule that would be protective of groundwater at copper mines while also providing regulatory certainty to industry, NMED upper-level managers ignored the recommendations of their technical staff and Advisory Committee and rewrote the proposed rule to allow copper mines to pollute groundwater rather than prevent groundwater contamination. Nearly all of the rewrites of the proposed rule track back to Freeport-McMoRan recommended changes.

NMED's proposed rule is in violation of the State Water Quality Act and should be remanded back to the Department for revision.

NMED's proposed rule allows the following:

- Mining companies would be allowed to pollute groundwater above water quality standards within areas of hydrologic containment referred to as "sacrifice zones" without a variance.
- The rule would also limit groundwater protection outside of the "sacrifice zone" to "points of compliance," which are designated monitoring wells located some distance down gradient from major (often permanent) sources of pollution such as acid and metal generating pits and stockpiles. As long as pollution goes undetected in these discrete points of compliance, regardless of where it occurs, mining companies would have no obligation to prevent or abate it under NMED's proposed rule.
- There are numerous other safeguards that were either watered down or removed from the August 2012 NMED staff draft including the following: liners for new tailings impoundments, provisions for public notice and participation, monitoring and reporting requirements, and the elimination of compliance schedules.

What are the potential consequences if this proposed rule is approved?

- Copper mines will be allowed to further pollute the state's groundwater resources. Existing plumes of groundwater contamination under Freeport-McMoRan's Grant County mines extend more than 20,000 acres and it is highly unlikely that this injury to groundwater will decrease markedly over time.
- More than 90% of New Mexico's population relies on groundwater for their drinking water and allowing mining companies to contaminate groundwater threatens public health.
- Contamination of groundwater with mine waste would require expensive water treatment before it can be used for irrigation or drinking water. The cost of treatment would be shifted away from the polluter and onto the taxpayer.
- Other polluters would demand similar rollbacks in water quality protections resulting in further contamination of New Mexico's water resources and endangerment of public health.

Hearing Dates and Public Participation

The hearing will begin at 9:00am on April 9, 2013 in Room 307 at the NM State Capitol in Santa Fe. Hearing dates are: April 9-11, April 16-18, April 23-25, April 30-May 2.

Public testimony will be taken from 5:00-7:00pm on the evenings of April 10 & 11 in Apodaca Hall, Old PERA Building, 1120 Paseo de Peralta in Santa Fe – and in Silver City on May 3 from 4:00pm-7:00pm at the Global Resource Center, Western NM University, 817 West 12th Street.

Written public comments can be submitted up to the last day of the hearing. Comments should be sent to: Felicia Orth, Hearing Officer New Mexico Environment Department 1190 S. St. Francis Drive, N2168, P.O. Box 5469 Santa Fe, New Mexico USA 87502 - E-mail: Felicia.Orth@state.nm.us

More information:

WQCC filings for hearing on WQCC 12-01 (R) can be found at: <http://www.nmenv.state.nm.us/wqcc/>

New Mexico Office of the Natural Resources Trustee Final Groundwater Restoration Plan for Chino, Cobre and Tyrone Mine Facilities:

http://www.onrt.state.nm.us/documents/Final.Groundwater.Restoration.Plan.Chino.Cobre.Tyrone_1.4.2012.pdf

Aerial Photos from Chino and Tyrone Mines, Grant County, NM:

<http://gilaresources.info/wp/blog/2013/01/04/a-birds-eye-view-of-pls-ponds-at-the-chino-and-tyrone-mines/>

Contact:

Brian Shields, Executive Director

Amigos Bravos

575-758-3874

bshields@amigosbravos.org

Allyson Siwik, Executive Director

Gila Resources Information Project

575.538.8078

grip@gilaresources.info

Tracy Hughes

High Desert Energy + Environment Law Partners, LLC

505-819-1710

hughes@energyenvironmentlaw.com

Douglas Meiklejohn, Executive Director

New Mexico Environmental Law Center

505-989-9022, ext. 24

dmeiklejohn@nmelc.org