

permit history for these copper mines, Mr. Eastep was aware of only two recent variance petitions, both of which were for unlined leach stockpiles located within open pit areas. The first of these variance petitions was filed in 2007 and the second in 2011. Both of these variance petitions required several months of negotiations with the Department to substantiate the technical basis for variances and design requirements acceptable to the Department. Based on the very limited history of variance petitions for copper mines, the Commission does not "routinely" grant variance petitions. The "unreasonable burden" standard that must be met to convince the Commission to grant a variance is vague and subjective, and it would be difficult to convince the Commission to grant a variance over the Department's objection. To further illustrate this point, despite the Department's support for the 2007 variance petition filed by the China Mine for its proposed Lee Hill leach stockpile, the Commission's only voted 6-5 in favor of granting the variance. Moreover, although the two variance petitions discussed above presented site specific information, the Commission's rule requirements for variance petitions are not specific on the required site specific information required. The only site specific information required is a description of the facility or activity for which a variance is sought, the address of the facility, and a description of the water body or watercourse affected by the discharge. 20.6.2.1210 NMAC, and the nNeither the statute nor the rule language indicates that the Commission must find a site specific reason to conclude that the regulation imposes an "unreasonable burden" as required by the Water Quality Act, Section 74-6-4.G NMSA 1978. See Eastep Rebuttal at 6-7.

153-1147. Mr. Eastep also refuted Ms. Travers's recommendation of using an alternative approach to the Proposed Rule, including requiring variances for any exceedance of ground water quality standards at a place of withdrawal of water for present or reasonably

foreseeable future use. Ms. Travers asserts that her approach would not impose overly burdensome restrictions on industry. Mr. Eastep testified that the copper mining industry needs reasonable certainty regarding permitting requirements to justify the high level of investment in exploration and mine development costs. Investments in mine exploration, development and expansion ~~run into~~ can cost in the hundreds of millions of dollars. That is why permitting requirements should be transparent, readily ascertainable by the engineers responsible for designs, and not be subject to changing regulatory requirements or individual preferences. Ground water impacts from copper mining are virtually unavoidable, so variances likely would be required for any future copper mines. Consequently, the approach proposed by Ms. Travers would discourage exploration for minerals and the development of future copper mines in New Mexico. Moreover, while Ms. Travers' proposed approach likely would require variances for virtually all new and existing copper mines, this has not been the practice under the existing regulatory program, under which variances have rarely been required, even for permitting of unlined copper mine facilities. Indeed, requiring variances in virtually all circumstances would defeat the purpose of adopting rules with very detailed and specific requirements, as the variance process would eliminate the relative certainty provided by those rules, ~~and, n~~ Numerous variance proceedings also would drain the Department's resources ~~negotiating variance conditions and preparing for and participating in hearings~~. This proposed variance approach merely adds new process burdens while not affecting the ground water protection requirements that would be imposed under the ~~Proposed~~ Petitioned Rule without the need for variances. Furthermore, ~~nothing in Ms. Travers' testimony indicates that she did not~~ investigated industry practices or considered the feasibility of requiring liner systems for waste rock stockpiles and tailings impoundments or

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requiring compliance with ground water quality standards inside an open pit in recommending changes to the ~~Proposed~~Petition Rule. *See* Eastep Rebuttal at 10-11.

~~1-154-1148.~~ Mr. Grass also refuteds Ms. Travers's testimony that the Proposed Rule does not require that site specific conditions be considered in determining a variance, and that site specific review provides additional ground water protections. The ~~Proposed~~Petitioned Rule requires consideration of site specific conditions in a number of locations, including by an engineer designing the facility, in determining monitoring well locations, and in designing seepage collection and interceptor well systems, as if required. The ~~Proposed~~Petitioned Rule specifically states that site specific conditions must be evaluated as part of any design. No design can be strictly prescriptive as site conditions change even within a single mining facility. *See* Grass Rebuttal at 6-7.

~~1-155-1149.~~ Mr. Scott rebutteds Ms. Travers's testimony regarding ~~the~~ ~~Proposed~~Petitioned Rule's consideration of site-specific conditions as needed to provide additional ground water protections. Mr. Scott testified that the Proposed Rules required consideration of site-specific conditions by an engineer designing the facility, ~~in~~-evaluating and selecting monitoring well locations, and ~~in~~-designing seepage collection and interceptor well systems as required. Mr. Scott testifies Site-specific evaluations are best left to the design engineer, who must also comply with NMOSE regulations when designing tailing impoundments. *See* Scott Rebuttal at 4.

~~1-156-1150.~~ The Commission finds that the Water Quality Act authorizes the Commission to grant a variance from the Commission's regulations following a public hearing. The Act does not allow the Commission to grant a variance from the Act. Variances sought in the past have been from the Commission's existing regulations. Following the adoption of the

~~1159-1152.~~ The Commission finds that the variance approach advocated by the parties other than NMED ~~the Department~~ and Freeport would obviate the central purpose of the Copper Mine ~~Petitioned~~ Rules by requiring variances for a large portion of copper mine ~~the rules~~. ~~V~~variance proceedings demand substantial resources from NMED ~~the Department~~ and permit applicants, and the testimony as a whole does not identify the likelihood of a different outcome if a variance process is used versus application of the Copper Mine ~~Petitioned~~ Rules. As Mr. Brown testified, this is a distinction without a difference, and the Commission concludes that this issue appears to be one of process, not substance.

~~1160-1153.~~ The Commission finds that the Tyrone Settlement, while contemplating variances under the existing regulations, also contemplated the adoption of the Copper Mine ~~Petitioned~~ Rule. The parties to the Settlement Agreement could not have contemplated exactly how the Copper Mine ~~Petitioned~~ Rules would be adopted and how they would operate. The only parties to the settlement, NMED ~~the Department~~ and Tyrone, both support the Copper Mine ~~Petitioned~~ Rules. Consequently, the Commission finds that the terms of the Tyrone Settlement do not preclude adoption of the Copper Mine ~~Petitioned~~ Rules without the variance provision.

~~1161-1154.~~ The Commission finds that it has the authority to adopt the Copper Mine ~~Petitioned~~ Rules as proposed by NMED with provisions clarifying how the standards of 20.6.2.3103 apply with respect to copper mine facilities, and that the Commission is not precluded from adopting these rules as argued by the Attorney General, GRIP/TRP, Amigos Bravos, and Mr. Olson.

~~1162-1155.~~ NMED ~~makes~~made no changes to 20.6.7.31 NMAC in the Proposed Final Rule.

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~~Copper Mine Petitioned Rule, to the extent that the Copper Mine Rule supersedes the existing regulations. most variances for copper mines would be from~~ are expected to seek relief from the requirements of these ~~#Rules, not~~ and to a lesser extent from the existing regulations. These ~~Copper Mine Petitioned~~ Rules establish clearer guidance, compared to the existing regulations, regarding the application of and measurement of compliance with the standards of 20.6.2.3103 NMAC. The ~~Copper Mine Petitioned~~ Rules also contemplate the possibility of variances, but would utilize the existing regulations, 20.6.2.1210, NMAC for variance petitions.

1157. ~~The Commission finds that the past practices of NMED the Department under the Water Quality Act and the Commission's existing regulations have not been consistent. While NMED the Department recently has supported, and the Commission has granted, two variances, NMED the Department also has issued discharge permits for unlined facilities that contemplate that ground water will exceed the standards of 20.6.2.3103 NMAC without requiring variances. DP 484 is one example.~~

1158. ~~1151.~~ The Commission finds that the Copper Mine ~~Petitioned~~ Rules allow for a public process regarding permits issued under these ~~#Rules~~. Under 20.6.7.10 and 20.6.7.3108, the public will receive at least two public notices regarding permit applications and draft permits. The public can comment on the applications and draft permits, can request a hearing, and can present evidence. The public can appeal a permit to the Commission. As discussed above with regard to 20.6.7.10.J, the Copper Mines Rules acknowledge the prohibition in section 74-6-5(E), and a contention that a permit has been issued in violation of this prohibition could be raised in comments, at a hearing, and in an appeal to this Commission. Consequently, the Commission finds that the opportunity for the public to be heard will not be sacrificed if the Commission does not adopt the proposed variance section.

~~1163-1156.~~ Based on the weight of the evidence, the Commission hereby declines to adopt the variance provisions proposed by ~~the~~ Mr. Olson and the Attorney General and, instead, adopts 20.6.7.31 as reserved ~~which~~that is proposed by NMED in the Proposed Final Rule.

**20.6.7.32 – Reserved [Variance Hearings]:**

~~1164-1157.~~ NMED proposed~~s~~ to reserve 20.6.7.32 for future rulemaking changes.

*See* Petition, Attachment 1 at 34; ~~and~~ Amended Petition, Attachment 2 at 37.

~~1165-1158.~~ Mr. Olson ~~objected~~ ~~object~~objected to reserving 20.6.7.32 and, instead, proposed~~s~~ an entire new subsection dealing with variance hearings. *See* WCO Exhibit 3 at 50-

~~1166-1159.~~ The Attorney General ~~proposed~~ ~~proposes~~proposed the same new subsection dealing with variance hearings. *See* NMAGAG Exhibit 2 at 38.

~~1167-1160.~~ For the reasons set forth above ~~in dealing with~~regarding 20.6.7.31, the Commission finds that 20.6.7.32 is unnecessary.

~~1168-1161.~~ Based on the weight of the evidence, the Commission hereby declines to adopt the provisions on variance hearings proposed by ~~the~~ Mr. Olson and the Attorney General and, instead, adopt 20.6.7.32 as reserved ~~which~~that is proposed by NMED in the Petitioned Rule, Amended Rule, and Proposed Final Rule.

**20.6.7.33 – Closure Requirements for All Copper Mine Facilities:**

*Section Overview*

~~1169-1162.~~ Under the Copper Mine Rule, all leached rock, waste rock, and tailings stockpiles will be closed consistent with requirements for slope stability, surface re-grading, cover systems, closure water management and treatment, and closure monitoring and maintenance. *See* Brown Direct at 39-40.

~~1170.1163.~~ Seepage control is at the heart of the Petitioned Copper Mine Rule's post-closure groundwaterground water protection system. ~~by~~ ~~limiting~~s discharge from the closed mine facilities to rates that protect groundwaterground water of the state for potential future use as domestic and agriculture water supply and surface water recharge. See Brown Direct at 32.

~~1171.1164.~~ Store-and-release cover systems achieve seepage control by storing infiltrating precipitation water and releasing the stored water over time to the atmosphere by evaporation and plant evapotranspiration. See Brown Direct at 32.

~~1172.1165.~~ At closure, water management in open pits will minimize the potential to cause an exceedance of applicable water quality standards using the following methods: (1) under 20.6.7.33(D)(1), if the pit will form an evaporative sink after closure, the groundwaterground water quality standards of 26.6.2.3103-NMAC do not apply within the areas of open pit hydrologic containment; and (2) under 20.6.7.33(D)(2), if water within the pit is predicted to flow from the open pit into groundwaterground water and the discharge from an open pit may cause an exceedance of applicable standards at monitoring well locations, then the open pit shall be considered a flow-through pit and the open pit water quality must meet groundwaterground water standards or the open pit must be pumped in order to create an area of open pit hydrologic containment. See Brown Direct at 43.

~~1173.1166.~~ Post-closure protection of groundwaterground water is achieved by making the closed open pit a groundwaterground water sink, either by evaporation or by pumping. This protection will be effective. See Brown Direct at 43.

~~1174.1167.~~ The Petitioned Copper Mine Rule requires the following design for all store-and-release covers: (1) the material for the cover must be earthen, sustain plant growth, and be erosion resistant pursuant to 20.6.7.33(F)(1); (2) the thickness of the cover must be a

minimum of 36 inches pursuant to 20.6.7.33(F)(1); and (3) the cover must store water within the fine fraction within certain percentages of precipitation during certain periods. See Brown Direct at 33.

~~1175-1168.~~ Approximately 21 inches of material no coarser than silty sand and gravel is needed to provide the required water storage for typical New Mexico copper mine covers. The cover also requires some admixture of coarser material to ensure erosion protection. The combined material is consistent with the Rule's minimum requirement for 36 inches minimum of total cover thickness. See Brown Direct at 33-34.

~~1176-1169.~~ Store-and-release covers applied to the top and sides of waste rock stockpiles provide good protection against infiltration in arid and semi-arid environments. When constructed in New Mexico in accordance with Rule, store-and-release covers will limit flow through waste rock piles to less than 0.2 inches per year. See Brown Direct at 34-38.

~~1177-1170.~~ Under 20.6.7.33(K), all other copper mine units except leach stockpiles, waste rock stockpiles, tailings piles, and open pits will be closed by site cleanup and cover, if applicable. Closure of the remaining copper mine units by removal or covering of materials containing materials with the potential to cause ~~groundwater~~ground water exceedances of standards will be protective of ~~groundwater~~ground water. See Brown Direct at 43.

**20.6.7.33 – Closure Requirements for All Copper Mine Facilities:**

*Undisputed Subsections A, E, G, H, K, L, and M*

~~1178-1171.~~ NMED proposes 20.6.7.33.A, E, G, H, K, L, and M in the Petitioned Rule which ~~deals with~~sets forth closure requirements for copper mine facilities. See Petition, Attachment I at 34-37.

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~~1179-1172.~~ NMED presented evidence to support 20.6.7.33 through the testimony of ~~Adrian~~ Mr. Brown, wherein he discussed the effectiveness of post-operational ground water protection. See Brown Direct at 32-44.

~~1180-1173.~~ Freeport supported 20.6.7.33.A, E, G, H, K, L, and M in the Petitioned Rule through testimony from Thomas Shelley. See Shelley Direct at 11-37.

~~1181-1174.~~ NMED made no changes to 20.6.7.33.E, G, K, L, and M in the Amended Rule. See Amended Petition, Attachment 2 at 38-40.

~~1182-1175.~~ NMED made changes to 20.6.7.33.A and H in the Amended Rule. See Amended Petition, Attachment 2 at 37-39.

~~1183-1176.~~ The Commission finds that 20.6.7.33.A, E, G, H, K, L, and M in the Petitioned Rule and Amended Rule are undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not propose alternative rule language. See Freeport NOI; AG NMAGAG Exhibit 2 at ~~52-57~~ 38-41; AB Exhibit 1 at ~~38-41~~ 52-57; Kuipers Attachment 2 at 38-42; WCO Exhibit 3 at 50-54.

~~1184-1177.~~ In the Proposed Final Rule, NMED ~~makes~~ made changes to 20.6.7.33.A, -E, -F, -G, and -H to change the terminology regarding facilities and units and to correct typographical errors.

~~1185-1178.~~ Based on the weight of the evidence, the Commission hereby adopts 20.6.7.33.A, E, G, H, K, L, and M as set forth in the Proposed Final Rule.

*Subsection B*

~~1186-1179.~~ NMED proposed 20.6.7.33.B in the Petitioned Rule which ~~deals~~ with closure requirements for slope stability. See Petition, Attachment 1 at 34.

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**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

**EXHIBIT G**

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requirements under the Clean Water Act. Existing regulations do not mandate specified engineering design requirements. *See Eastep Direct* at 40-41.

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813-808. The Commission finds that 20.6.7.23.A(2) is undisputed because none of the Parties provide alternative rule language for NMED's proposal.

814-809. NMED makes no changes 20.6.7.23.A in the Amended Rule. See Amended Petition, Attachment 2 at 24-25. *See Brown Rebuttal* at 1-13.

815-810. NMED makes no changes to 20.6.7.23.A in the Proposed Final Rule.

816-811. Based on the weight of the evidence, the Commission declines to adopt the changes to the provisions of 20.6.7.23.A and A(1) and, instead, adopts 20.6.7.23.A, A(1), A(1)(a), and (b) and (c), A(2), and A(2)(a) through (e) as set forth in the Proposed Final Rule. The Commission further adopts 20.6.7.23.A(1)(e) as proposed by Freeport as set forth in the Final Proposed Rule.

***Subsection B – Construction***

817-812. 20.6.7.23.B in the Petitioned Rule provides for construction requirements for new and existing pipeline and tank facilities. *See Petition*, Attachment I at 23-24.

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818-813. Freeport's supports 20.6.7.23.B through the testimony of Tim Eastep, whereby Mr. Eastep asserts that existing pipelines are not subject to Section 23 if they are working. These existing pipelines and tanks are subject to inspection every ten years in accordance with the Steel Tank Institute standards and guidelines. Current practice does not specify inspection requirements and thus this represents increased protections. *See Eastep Direct* at 41-42.

819-814. The Attorney General, GRIP, TRP, and Amigos Bravos basically propose similar amendments to 20.6.7.23.B(2), whereby the phrase "located outside of the open pit surface

drainage area” is deleted. *See* NMAG Exhibit 2 at 25; Kuipers, Attachment 2 at 27; and AB Exhibit 1 at 37. None of the parties provide specific evidence as to why this provision should be changed.

~~820-815.~~ The Commission declines to adopt these changes based on its acceptance of the open pit surface drainage area as discussed elsewhere. ~~Cross-reference~~

~~824-816.~~ NMED makes no changes 20.6.7.23.B in the Amended Rule. *See* Amended Petition, Attachment 2 at 25.

~~822-817.~~ In the Proposed Final Rule, NMED changes the terminology regarding facilities and units and, in 20.6.7.23.B(2), adds language allowing the conditions of existing discharge permits to be retained without being considered “additional conditions.” based upon language proposed by Mr. Olson. *See* Proposed Final Rule at 25.

~~823-818.~~ Based on the weight of the evidence, the Commission adopts 20.6.7.23.B, ~~B(1), and B(2)~~ in its entirety as set forth by NMED in the Proposed Final Rule.

#### *Subsection C – Operational Requirements*

~~824-819.~~ 20.6.7.23.C in the Petitioned Rule provides for operational requirements for a pipeline or tank system. *See* Petition, Attachment 1 at 24.

~~825-820.~~ Freeport supports 20.6.7.23.C with limited additions. The testimony addresses operational requirements for pipelines and tank systems and establishes the minimum performance criteria for inspection and reporting. Historically, pipelines and tanks are handled differently, and this section provides consistency and specificity. *See* Eastep Direct at pp. 42-43)

~~826-821.~~ GRIP, TRP, and Amigos Bravos propose the same amendments to 20.6.7.23.C(4) and (5), whereby they completely delete the phrase “outside of permitted secondary

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containment systems or outside an area permitted for discharge” in 20.6.7.23.C(4) and completely delete 20.6.7.23.C(5) dealing with semiannual reports of certain leaks and spills from a pipeline or tank system. *See Kuipers, Attachment 2 at 27; AB Exhibit 1 at 37.*

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827:822. Freeport requests that 20.6.7.23.C(6) be amended by changing the word “tested” to “evaluated” in the first sentence and “testing” to “evaluating” in the second sentence. Freeport maintains that such changes are appropriate because integrity testing implies pressure testing and there are other methods used to evaluate pipeline integrity. Thus an operator would have flexibility to utilize all methodologies. See Eastep Direct at pp. 42-43.

828:823. NMED makes one substantive change to 20.6.7.23 in its Amended Petition, whereby 20.6.7.23.C(4) is amended to require reporting and correction under Subsection H of 20.6.7.30 NMAC for certain leaks or spills from a pipeline or tank system in certain areas.

*See Amended Petition, Attachment 2 at 25.*

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829:824. NMED’s change to 20.6.7.23.C(4) set forth in its Amended Petition related to the proposed changes from GRIP and Amigos Bravos dealing with 20.6.7.23.C(4) set forth in the Petitioned Rule. ~~Need to figure out whether GRIP or Amigos Bravos commented on NMED’s amendments to 20.6.7.23.C(4) in their rebuttal testimony or hearing transcripts. Also need to determine a reason for NMED’s change in the Amended Petition for this Rule provision.]~~

830:825. NMED made limited changes to 20.6.7.23.A.C(4) striking “and” , “to the department” and the reference to 20.6.2.1203 NMAC. Additionally, they inserted “and corrected” and referenced a different section 20.6.7.30. The corrections were viewed as non-substantive and none of the participating parties objected to the changes. *See Amended Petition, Attachment 2 at 25.*

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~~831-826.~~ In the Proposed Final Rule, NMED accepts the change from “testing” to “evaluation” recommended by Mr. Eastep. And makes other non-substantive changes to 20.6.7.23.C

~~832-827.~~ Based on the weight of the evidence, the Commission hereby adopts 20.6.7.23.C in its entirety as set forth by NMED in its Proposed Final Rule, and ~~C(1), (2), (3), (5), (6), (7), (8), and (9) as proposed by NMED in the Amended Rule and Proposed Final Rule.~~ The Commission further adopts ~~20.6.7.23.C(6) as proposed by Freeport and set forth in the Proposed Final Rule.~~

**20.6.7.24 – Requirements for Open Pits:**

*Section Overview*

~~833-828.~~ This section addresses the requirements for open pits. As discussed hereinabove, the parties do not dispute that open pit copper mining should be allowed under the Copper Mine Rule. ~~[CITE]~~

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~~834-829.~~ ~~John~~Mr. Brack and ~~Lynn~~Ms. Lande describe open pit copper mining operations. See Brack Direct at 1-31 and Lande Direct at 2-10. Ms. Lande and Mr. Brown describe how water contaminants are produced in open pits, and how open pits hydraulically contain contaminants in their direct testimony. ~~See [CITE] Lande Direct at 6-10 and Brown Direct at 11-12.~~

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~~835-830.~~ ~~Neil~~Mr. Blandford describes the hydrology of open pits in detail in his direct testimony. See Blandford Direct at 10-11 and 19-25. ~~[CITE]~~

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*Subsection A—Operational Requirements*

~~836-831.~~ Section 20.6.7.24.A in the Petitioned Rule sets forth the operational requirements for open pits, as applicable. *See* Petition, Attachment 1 at 24.

837-832. \_\_\_\_\_ NMED presents evidence in support of 20.6.7.24 through Mr. Brown, who testifies that the walls of the open pit and materials located within the open pit surface drainage area typically have the potential to cause groundwater pollution. In order to deal with the potential pollution, the Copper Mine Rule provides a system of controls that allows flows of water to the open pit where there is generally no gravitational escape. In addition, the Copper Mine Rule requires collection and appropriate management of the water influent to the open pit, pursuant to a NMED-approved water management plan, which does not allow discharge of water in excess of standards at locations of present or potential future use. Accordingly, Mr. Brown testifies that the requirements of 20.6.7.24.A meet technical requirements for groundwater protection. *See* Brown Direct at 11-12.

838-833. \_\_\_\_\_ Freeport supports 20.6.7.24.A(2) through the testimony of Lynn Lande, wherein she states that when practicable, water shall be diverted away from the open pit to reduce impacts. *See* Lande Direct at 8.

839-834. \_\_\_\_\_ Freeport supports 20.6.7.24.A(3) through the testimony of Lynn Lande, wherein she states that impacted water must be managed in accordance with a water management plan to prevent migration. *See* Lande Direct at 8-9.

840-835. \_\_\_\_\_ Freeport support 20.6.7.24.A(4) through the testimony of Lynn Lande. *See* Lande Direct at 10. In addition, Freeport supports 20.6.7.24.A(4) through testimony from Neil Blandford, wherein he states that during operation of an open pit, the standards of 3103 should not apply, which is logical since that water is hydrologically contained and managed, thus impacted water does not migrate. *See* Blandford Direct at 19-25.

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~~841-836.~~ GRIP and TRP suggest inserting the language “open pits shall be designed and managed to prevent pollution of ground water above applicable standards” into section 20.6.7.24.A. *See* Kuipers, Attachment 2 at 28.

~~842-837.~~ The Commission finds that this proposed language by GRIP and TRP for 20.6.7.24.A is ~~not~~ inappropriate because Mr. Kuipers does not identify any available technology, and adoption of this language could prohibit open pit mining, considering the testimony of Mr. Brown and Ms. Lande.

~~843-838.~~ GRIP and TRP suggest deleting the language “to the extent practicable” from 20.6.7.24.A(2) in the Petitioned Rule. *See* Kuipers, Attachment 2 at 28. Amigos Bravos proposes the same change. *See* AB Exhibit 1 at 38. Neither provides any specific technical testimony as to why this change is necessary.

~~844-839.~~ The Attorney General, GRIP, TRP, and Amigos Bravos propose that 20.6.7.24.A(4) be deleted, which is the provision stating that during operation of an open pit, the standards of 20.6.2.3103 NMAC do not apply within the area of hydrologic containment. *See* NMAG Exhibit 2 at 26; Kuipers, Attachment 2 at 28; and AB Exhibit 1 at 38.

~~845-840.~~ With respect to 20.6.7.24.A(4), Mr. Olson proposes that the reference to “areas of hydrologic containment” be changed to “open pit surface drainage area.” Mr. Olson maintains that the area of hydrologic containment creates new areas outside an open pit within which a copper mine facility would be allowed to intentionally cause water pollution. *See* WCO Exhibit 3 at 37.

~~846-841.~~ Ms. Travers proposed to not include the “area of hydrologic containment,” found in the Department’s proposed rule because the proposed amendments would require that

ground water standards apply at all locations at a mine site, unless a variance is approved by the Commission on a case-by-case basis *See Travers Direct* at 22-23.

847-842. ~~Neil~~Mr. Blandford testified that the area of hydrologic containment approach should be retained. The area of hydrologic containment approach is based on sound science and is a reasonable and appropriate alternative to a cumbersome, expensive and time-consuming case-by-case variance approach which has no certainty of outcome for mining companies. The area of hydrologic containment concept has already been incorporated into existing discharge permits, such as Discharge Permit 166 at Tyrone which requires that the Main Pit be pumped down to contain impacted ground water. *See Blandford Rebuttal* at 27.

~~{address cross-examination in transcript}~~

848-843. NMED amended the Petitioned Rule at 20.6.7.24.A(4) in the Amended Rule to add "open pit" before "hydrologic containment." *See Amended Petition, Attachment 2* at 26.

849-844. NMED added a new provision at 20.6.7.24.A(5) to the Amended Rule to require that the design and location of leach stockpiles, waste rock piles, and other regulated mine facilities in and surrounding an open pit surface drainage area to be located to facilitate the drainage of water away from the open pit surface drainage areas to the extent practicable. *See Amended Petition, Attachment 2* at 26.

850-845. Freeport objects to the addition of 20.6.7.24.A(5) in the Amended Rule and provides several reasons as to why this new provision is problematic including, but not limited to, the fact that the new language has unintended consequences. *See Freeport Rebuttal NOI* at 4. CITE

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851-846. In the Proposed Final Rule, NMED changes the language of 20.6.7.24.A(5) to respond to Freeport's comments. *See Proposed Final Rule* at 26.

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~~852-847.~~ 852-847. Relying primarily on the testimony of Mr. Brown, Ms. Lande and Mr. Blandford,  
and based on the weight of the evidence, the Commission hereby adopts 20.6.7.25.A and  
A(1) through A(5) as proposed by NMED in the Proposed Final Rule.

**20.6.7.25 – Requirements for Underground Copper Mine Facilities:**

~~853-848.~~ 853-848. NMED proposes requirements for underground copper mine facilities at 20.2.7.25  
in the Petitioned Rule. *See* Petition, Attachment 1 at 24.

~~854-849.~~ 854-849. NMED makes changes to 20.2.7.25.A in the Amended Rule. *See* Amended  
Petition, Attachment 2 at 26.

~~855-850.~~ 855-850. NMED presents testimony through Mr. Brown indicating that 20.2.7.25.A  
regulates the operation of underground mines to be protective of groundwater. *See* Brown  
Direct at 12.

~~856-851.~~ 856-851. NMED presents testimony through Mr. Brown indicating that 20.2.7.25.B  
restricts the deposition of material in an underground copper mine. *See* Brown Direct at 12.

~~857-852.~~ 857-852. NMED presents testimony through Mr. Brown indicating that underground mines  
are likely to be below the water table, and when developed will act as a sink for local  
groundwater. This water will come under the ambit of the Water Management Plan, which  
prohibits discharge of water in excess of the standards of Section 20.6.2.3103 NMAC at  
locations of present or potential future use. Accordingly, Mr. Brown believes that the Water  
Management Plan is protective with respect to water entering the underground mines.  
Further, groundwater flowing into conventional mine workings is exempt from a discharge  
permit requirement under 20.6.2.3105(K) NMAC. *See* Brown Direct at 12.

~~858-853.~~ 858-853. NMED presents testimony through Mr. Brown indicating that allowance of  
deposition of potentially acid-generating tailings or waste rock in an underground mine

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providing it does not generate leachate after placement is important for minimization of impact of such wastes on groundwater. If oxidation of the sulfides in the deposited material can be prevented when placed, this method of disposal minimizes release of contaminants from the waste and is preferred over all other methods of disposal. *See Brown Direct* at 12.

~~854.~~ The Commission finds that 20.6.7.25 is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not provide alternative rule proposals. *See* Freeport NOI; AG Exhibit 2 at 26; AB Exhibit 1 at 38; Kuipers Attachment 2 at 28; WCO Exhibit 3 at 37.

~~859-855.~~ The Commission finds that NMED makes a non-substantive change to 20.6.7.25 in the Proposed Final Rule for consistency and clarity.

~~860-856.~~ Based on the weight of the evidence, the Commission hereby adopts 20.6.7.25 in its entirety as set forth by NMED in the Amended Rule and Proposed Final Rule.

**20.6.7.26 – Requirements for Truck and Equipment Washing Facilities:**

*Subsection A*

~~861-857.~~ Section 20.6.7.26.A in the Petitioned Rule sets forth the minimum requirements for engineering designs for new truck and equipment washing facilities and allows the applicant or permittee to utilize alternative designs if they can demonstrate that an alternate design will provide an equal or greater level of containment. *See* Petition, Attachment 1 at 25.

~~862-858.~~ NMED makes no changes to 20.6.7.26.A in the Amended Rule. *See* Amended Petition, Attachment 2 at 26.

~~863-859.~~ Freeport supports 20.6.7.26.A through the testimony of Timothy Eastep, wherein he states the requirements are reasonable and protective of ground water quality. Moreover,

~~Mr. Eastep notes that previous discharge permits barely touched upon requirements for truck and equipment washing. See Eastep Direct at 44-46.~~

~~864-860.~~ Mr. Olson proposes no changes to 20.6.7.26.A. See WCO Exhibit 3 at 38.

~~865-861.~~ The Attorney General suggests amending 20.6.7.26.A in the Petitioned Rule to add additional language requiring engineering design changes to comply with the standards of 20.6.2.3103 NMAC. See AG Exhibit 2 at 27.

~~866-862.~~ Similarly, GRIP and TRP suggests amending 20.6.7.26.A in the Petitioned Rule to add language which states: "Truck and equipment facilities shall be managed to prevent pollution of ground water above applicable standards". See Kuipers, Attachment 2 at 28.

~~867-863.~~ GRIP and TRP propose to replace "containment" with "ground water protection" in 20.6.7.26.A, based on testimony that the Water Quality Act requires prevention and abatement, not containment. See Kuipers Attachment 2 at 28.

~~868-864.~~ Amigo Bravos sought to strike the language allowing alternative designs in 20.6.7.26.A based solely on the fact that this language was included in the August 17 Discussion Draft. See AB Exhibit 1 at 38.

~~869.~~ The Commission finds that the changes to 20.6.7.26.A proposed by the Attorney General, GRIP, and TRP dealing with applicable standards are vague and uncertain because they do not address where compliance is required. The Copper Mine Rule addresses this issue more specifically elsewhere, including in section 28. The proposed changes also suggest the need to seek a variance, and for the reasons set forth herein, their variance proposals are unacceptable. See *infra* at \_\_\_\_\_.

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870-865. The Commission finds that the changes proposed by Amigos Bravos to 20.6.7.26.A based solely on the August 17 Discussion Draft to not provide sufficient justification for amendment of the rule provision, or to overcome the testimony in support.

871-866. The Commission finds that the proposal by GRIP and TRP to replace “containment” with “ground water protection” deviates from the structure of the rule which focuses on containment approaches, as discussed in Mr. Brown’s testimony.

872-867. In the Proposed Final Rule, NMED changes the terminology regarding facilities and units in the heading and in subsection A, consistent with its other similar changes. See Proposed Final Rule at 26.

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873-868. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.26.A as set forth by NMED in the ~~Petitioned Rule, Amended Rule, and Proposed Final Rule.~~

#### *Subsection B*

874-869. 20.6.7.26.B in the Petitioned sets forth the construction performance requirements. See Petition, Attachment 1 at 25.

875-870. NMED makes no changes to 20.6.7.26.B in the Amended Rule. See Amended Petition, Attachment 2 at 26-27.

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876-871. Freeport supports 20.6.7.26.B through the testimony of Timothy Eastep. See Eastep Direct at 44-46.

877-872. Freeport suggests changing the language in 20.6.7.26.B(1) from “New truck or equipment wash facilities” to “New wash facilities for trucks and equipment”. See Eastep Direct at 44-46.

~~878-873.~~ Freeport suggests changing the language in section 20.6.7.26.B(2) from “Existing truck or equipment wash facilities” to “Existing wash facilities for trucks and equipment”.

*See* Eastep Direct at 44-46.

~~879-874.~~ The Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language. *See* AG Exhibit 2 at 27; AB Exhibit 1 at 39; Kuipers Attachment 2 at 28; WCO Exhibit 3 at 38.

~~880-875.~~ In the Proposed Final Rule, NMED makes changes to the terminology regarding facilities and units, consistent with its other similar changes. *See* Proposed Final Rule at 26.

~~881-876.~~ Based on the weight of the evidence, the Commission hereby adopts 20.6.7.26.B as set forth in the Proposed Final Rule.

#### *Subsection C*

~~882-877.~~ 20.6.7.26.C in the Petitioned sets forth the construction performance requirements. *See* Petition, Attachment 1 at 25.

~~883-878.~~ Freeport supports 20.6.7.26.C through the testimony of Timothy Eastep. *See* Eastep Direct at 44-46.

~~884-879.~~ NMED makes changes to 20.6.7.26.C in the Amended Rule, adding language requiring water to be contained until treated to meet standards and a cross-reference to 20.6.7.30. *See* Amended Petition, Attachment 2 at 26-27.

~~885-880.~~ The Commission finds that 20.6.7.26.C is undisputed because the Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language either to the Petitioned Rule or Amended Rule for 20.6.7.26.C. *See* Freeport NOI; AG Exhibit 2 at 27; AB Exhibit 1 at 39; Kuipers Attachment 2 at 28-29; WCO Exhibit 3 at 38.

~~886-881.~~ In the Proposed Final Rule, NMED makes changes to the terminology regarding facilities and units, consistent with its other similar changes. See Proposed Final Rule at 26-27.

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~~887-882.~~ Based on the weight of the evidence, the Commission hereby adopts 20.6.7.26.C as set forth in the Proposed Final Rule.

**20.6.7.27 – Reserved:**

~~888-883.~~ NMED proposes to reserve 20.6.7.27 for future rule amendments in the Petitioned Rule. See Petition, Attachment 1 at 9.

~~889-884.~~ NMED does not make changes to 20.6.7.27 in the Amended Rule. See Amended Petition, Attachment 2 at 9.

~~890-885.~~ The Commission finds that there are no objections from the other Parties to reserving 20.6.7.27 for future rule amendments.

~~891.~~ Based on the weight of the evidence, the Commission hereby adopts 20.6.7.27 as proposed by NMED in the Petitioned Rule, Amended Rule, and Proposed Final Rule.

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**20.6.7.28 – Water Quality Monitoring Requirements for All Copper Mine Facilities:**

*Section Overview*

892. ~~The Department will know that the Rule required containment systems, as described above, are working after they have been implemented because t~~The Rule requires detailed unit-by-unit ~~ground water~~ground water monitoring of the performance of the containment systems using monitor wells around the perimeter of each unit, located as close as possible to the unit. *See* TRV 3, at 561, l. 1-23.

893. The purpose of monitoring wells is to ensure that the protections that are built in to each unit of the copper mine facility are effective, and if they are not, then to signal the need for implementation of contingency and abatement actions as needed to restore the protections required. *See* TRV 3 at 557, l. 12-20.

894. NMED, through the testimony of Mr. Brown, explains and ~~supports~~supported section 28. *See* Brown Direct at 8-9.

895. Freeport, through the testimony of Mr. Blandford, also ~~supports~~supported section 28 generally. *See* Blandford Direct at 3-5; Blandford Rebuttal at 8-10.

*Subsection A*

896. NMED ~~proposes~~proposed 20.6.7.28.A in the Petitioned Rule which sets forth requirements for location proposals for monitoring wells. *See* Petition, Attachment 1 at 25.

897. NMED ~~makes~~made no changes to 20.6.7.28.A in the Amended Rule. *See* Amended Petition, Attachment 2 at 27.

898. Mr. Brown testifies that the requirement that NMED must approve the monitoring well locations for each copper mine unit, and the fact that NMED may require additional wells to ensure that the monitoring system is comprehensive, provide a high level of assurance that all

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discharge pathways are monitored. These location requirements are the most intensive and localized monitoring system that is required ~~in~~by any state. See Brown Direct at 9.

899. Freeport ~~presents~~presented evidence in support of 20.6.7.28.A. See Blandford Direct at 5-6.

900. The Commission finds that 20.6.7.28.A is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language. See ~~AG NMA~~GAG Exhibit 2 at 27; AB Exhibit 1 at 40; Kuipers Attachment 2 at 29; WCO Exhibit 3 at 38.

901. NMED ~~makes~~made no changes to 20.6.7.28.A in the Proposed Final Rule. See Proposed Final Rule at 27.

902. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.A as proposed by NMED in the Proposed Final Rule.

#### **Subsection B**

903. NMED ~~proposes~~proposed 20.6.7.28.B in the Petitioned Rule which sets forth requirements for location proposals for monitoring wells. See Petition, Attachment 1 at 25.

904. NMED ~~presents~~presented evidence to support 20.6.7.28.B through the testimony of ~~Adrian~~Mr. Brown. Mr. Brown states that the purpose of the groundwater monitoring requirements at 20.6.7.28~~(B)~~.B is to detect an exceedance or a trend towards exceedance of groundwater standards at the earliest possible occurrence, so that investigation of the extent of contamination and actions to address the source of contamination may be implemented as soon as possible. See Brown Direct at 6.

905. Mr. Brown testifies that the location of monitoring wells is comprehensive. The requirement (generally) of a minimum of two downgradient wells, supported by upgradient and

perimeter wells where the flow direction is unclear, provides for complete protection of the surrounding ~~groundwater~~ground water environment immediately adjacent to each copper mine unit. *See* Brown Direct at 9.

906. Freeport ~~presents~~presented evidence to support 20.6.7.28.B through the testimony of ~~Neil~~Mr. Blandford. *See* Blandford Direct at 27.

907. The Attorney General and Amigos Bravos propose amendments to 20.6.7.28.B as set forth in the Petition. *See* ~~NMAGAG~~ Exhibit 2 at 27; AB Exhibit 1 at 40.

908. The Attorney General ~~proposes~~proposed amendments to 20.6.7.28.B, which sets forth several changes to the required locations for monitoring wells. *See* ~~NMAGAG~~ Exhibit 2 at 27. The Attorney General maintains that this language is necessary to ensure that monitoring wells are located “as close as practicable” to new and existing leach stockpiles, waste rock piles, tailings, and open pits to provide for the earliest possible detection of ground water contamination. *See* Travers Direct at 23.

909. Amigos Bravos ~~proposes~~proposed to add the phrase “[a]t a minimum” to the beginning of 20.6.7.28.B. *See* AB Exhibit 1 at 40.

910. NMED ~~makes~~made changes to 20.6.7.28.B in its Amended Petition by deleting the phrase “and downgradient” and moving it behind the term “perimeter.” *See* Amended Petition at 26.

911. The Commission finds that the proposed language by Amigos Bravos to 20.6.7.28.B is unnecessary, as the rule provision as proposed explicitly contemplates the possibility of additional monitoring wells.

912. NMED ~~makes~~made changes to 20.6.7.28.B in the Proposed Final Rule, adding language addressing the Attorney General’s request to add “as close as practicable” and

changing "ground water standards" to "applicable standards" consistent with terminology used elsewhere in the ~~p~~Proposed ~~F~~Final ~~R~~Rule. *See, e.g.*, Proposed Final Rule at 27.

913. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.B as proposed by NMED in the Proposed Final Rule.

914. NMED ~~prop~~oses~~pro~~posed 20.6.7.28.B(1) through (6) which sets forth requirements dealing with: (1) use of existing monitoring wells; (2) ground water monitoring for leach stockpiles, waste rock stockpiles, and tailings impoundments; (3) ground water monitoring for process water and impacted stormwater impoundments; (4) ground water monitoring for open pits; (5) ground water monitoring upgradient of each potential contaminant source; and (6) ground water monitoring upgradient of the copper mine facility. *See* Petition, Attachment 1 at 26-27.

915. NMED ~~pres~~ents~~pres~~ented evidence to support 20.6.7.28.B(1) through (6) through the testimony of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9.

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916. Freeport ~~pres~~ents~~pres~~ented evidence to support 20.6.7.28.B(1) through (6) through the testimony of ~~Neil~~Mr. Blandford. *See* Blandford Direct at 7-12.

917. The Attorney General ~~prop~~oses~~pro~~posed alternative rule language for 20.6.7.28.B(2), B(2)(b), and B(3) in the Petitioned Rule. In summary, this alternative rule language attempts to: (1) make the ground water monitoring requirements applicable to both new and existing (as opposed to just new) leach stockpiles, waste rock stockpiles, and tailings impounds; and (2) remove references to the open pit surface drainage areas so that certain facilities or units are not treated differently when located within such areas. *See* ~~AG~~NMAGAG Exhibit 2 at 28-29.

918. GRIP and TRP propose alternative rule language for 20.6.7.28.B(1)(d), B(2), and B(3) in the Petitioned Rule. In summary, this alternative rule language for 20.6.7.28.B(1)(d) adds the phrase "request authorization from the department," and GRIP maintains that this is necessary because NMED should approve any reduction in monitoring. The changes to 20.6.7.28.B(2) and B(3) basically remove the reference to open pit surface drainage area so that certain facilities are not treated differently when located within this areas. See Kuipers, Attachment 2 at 29-30.

919. Amigos Bravos ~~propeses~~proposed alternative rule language for 20.6.7.28.B(2), B(3), B(3)(b), and B(6). These changes were based solely on the August 17 Discussion Draft with no presentation of technical evidence to support such changes. See AB Exhibit 1 at 40-42.

920. Somewhat similar to GRIP's proposed alternative language for 20.6.7.28.B(2), Mr. Olson ~~propeses~~proposed deleting the phrase "including its leachate and solution capture and containment system" from certain portions of this provision. See Kuipers, Attachment 2 at 29; WCO Exhibit 3 at 39. Mr. Olson argues that this language is inappropriate because it creates a point of compliance concept. See WCO Exhibit 3 at 39.

921. ~~[INCLUDE REBUTTAL TESTIMONY TO ADDRESS ABOVE]~~ Freeport presents~~presented~~ evidence that the August 17 Discussion Draft did not reflect or account for Freeport's positions and technical recommendations, which support the language in 20.6.7.28.B. See Eastep Rebuttal at 14-15; Grass Rebuttal, at 3-4.

922. The Commission finds that the Attorney General's proposed alternative rule language for 20.6.7.28.B(2), B(2)(b), and B(3) is not consistent with the Commission's acceptance and adoption of the open pit surface drainage area approach as discussed elsewhere ~~[cross reference]~~(see, e.g., 20.6.7.21.B(2)), monitoring for existing mines is addressed elsewhere

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~~for cross-reference~~(see, e.g., 20.6.7.22.C), and the rule language already is clear that NMED must review and approve a monitoring well plan as described in 20.6.7.28.A.

923. The Commission finds that the alternative rule language for 20.6.7.28.B(1)(d), B(2), and B(3) as proposed by GRIP and TRP is unnecessary for the same reasons discussed above regarding the Attorney General's proposed changes.

924. The Commission finds that the alternative rule language for 20.6.7.28.B(2), B(3), B(3)(b), and B(6) proposed by Amigos Bravos is not supported by evidence to justify ~~why changing~~ the language and is not necessary ~~and~~ for the reasons discussed in the preceding paragraphs.

925. The Commission finds that Mr. Olson's proposed alternative language for 20.6.7.28.B(2) is unwarranted because of the Commission's acceptance and recognition that capture systems are needed for some facilities, particularly tailings impoundments and possibly waste rock stockpiles, and that these systems must be carefully monitored for ground water quality and ground water levels downgradient of, but as close as practicable to, the systems. The Commission further finds that this approach is consistent with permit conditions issued by NMED for existing facilities under the existing regulations and the Act.

926. NMED ~~proposes~~proposed amendments to 20.6.7.28.B(1)(d), B(2), B(2)(a), B(3), B(3)(a), B(3)(b), B(4), B(4)(a), B(5), B(5)(a), B(5)(b), and B(6)(b) in the Amended Rule. *See* Amended Petition at 27-29.

927. NMED provides evidence for the changes to 20.6.7.28.B (1) through (6) in the Amended Rule through the testimony of ~~Adrian~~Mr. Brown. *See* Brown Rebuttal at 12-13.

928. NMED ~~makes~~made additional changes to 20.6.7.28.B(2), (3) and (6) in the Proposed Final Rule. The change in paragraph (2) reorganizes the first sentence for clarify. The

change to paragraph (3) requires a minimum of one downgradient well rather than two, since additional wells can be required if needed. The change to paragraph (6) corrects a typographical error. See Proposed Final Rule at 27-28.

929. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.B(1) through (6) as set forth in the Amended Rule and Proposed Final Rule.

*Subsection C*

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930. NMED ~~proposes~~proposed 20.6.7.28.C in the Petitioned Rule which deals with identification tags for monitoring wells. See See Petition, Attachment 1 at 27.

931. Freeport provides evidence to support 20.6.7.28.C in the Petitioned Rule through the testimony of ~~Ne~~Mr. Blandford. See Blandford Direct at 12-13.

932. NMED ~~makes~~made changes to 20.6.7.28.C in the Amended Rule. See Amended Petition at 27-29.

933. NMED provides evidence for the changes to 20.6.7.28.C in the Amended Rule through the testimony of ~~Adrian~~Mr. Brown. See Brown Rebuttal at 12-13.

934. The Commission finds that 20.6.7.28.C in the Amended Rule is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language. See Freeport NOI; ~~AG NMAGAG~~ Exhibit 2 at 29; AB Exhibit 1 at 42; Kuipers Attachment 2 at 30; WCO Exhibit 3 at 40.

935. NMED ~~makes~~made no changes to 20.6.7.28.C in the Proposed Final Rule. See Proposed Final Rule at 28.

936. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.C as set forth by NMED in the Proposed Final Rule.

*Subsection D*

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937. NMED ~~proposes~~proposed 20.6.7.28.D in the Petitioned Rule which ~~deals with~~  
~~identification tags~~outlines construction and completion requirements for monitoring wells. *See*  
Petition, Attachment 1 at 27.

938. NMED ~~supports~~supported 20.6.7.28 through evidence from ~~Adrian~~Mr. Brown.  
Mr. Brown testifies that the Copper Mine Rule provides prescriptive direction for construction of  
monitoring wells, which is necessary because monitoring wells provide the primary information  
on the protection of ~~groundwater~~ ground ~~against~~water against releases from each copper mine  
facility. The performance of the quality and reliability of the water level measurements and the  
water quality data collected from wells is strongly dependent on the method of construction of  
the wells. Mr. Brown further testifies that the well installation requirements meets or exceeds all  
relevant standards. *See* Brown Direct at 8.

939. Freeport provides evidence to support 20.6.7.28.D in the Petitioned Rule through  
the testimony of ~~Neil~~Mr. Blandford. *See* Blandford Direct at 12-13.

940. Amigos Bravos ~~proposes~~proposed alternative rule language for 20.6.7.28.D in the  
Petitioned Rule based on the August 17 Discussion Draft and provides not technical evidence as  
to why such a change is necessary. *See* AB Exhibit 1 at 42.

941. The Commission finds that Amigos Bravos' proposed alternative language to  
20.6.7.28.D in the Petitioned Rule is ~~insufficient because it is not supported by~~ any technical  
evidence and does not overcome the evidence presented in support of this provision.

942. NMED ~~proposes~~proposed changes to 20.6.7.28.D(4), D(7)(b), D(11), D(12), and  
D(13) in the Amended Rule. *See* Amended Petition at 29-30.

943. NMED provides evidence for the changes to 20.6.7.28 in the Amended Rule  
through the testimony of ~~Adrian~~Mr. Brown. *See* Brown Rebuttal at 12-13.

944. The Commission finds NMED's changes to 20.6.7.28.D(4), D(7)(b), D(11), D(12), and D(13) in the Amended Rule are undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not propose alternative rule language in rebuttal testimony. See Freeport NOI; ~~AG NMAGAG~~ Exhibit 2 at 29-30; Kuipers Attachment 2 at 30-31; WCO Exhibit 3 at 40-41.

945. NMED ~~makes~~made no changes to 20.6.7.28.D in the Proposed Final Rule. See Proposed Final Rule at 28-30.

946. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.D and D(1) through (13) as proposed by NMED in the Proposed Final Rule.

*Subsection E*

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947. NMED ~~proposes~~proposed 20.6.7.28.E in the Petitioned Rule which ~~deals with monitoring wells in relation to~~ requires a permittee to obtain applicable well permits from the Office of the State Engineer ~~requirements~~prior to well drilling. See Petition, Attachment 1 at 28.

948. Freeport provides evidence to support 20.6.7.28.D in the Petitioned Rule through the testimony of ~~Neil~~Mr. Blandford. See Blandford Direct at 12-13.

949. NMED ~~makes~~made no changes to 20.6.7.28.E in the Amended Rule. See Amended Petition at 30.

950. The Commission finds that 20.6.7.28 is undisputed because ~~because~~Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not propose alternative rule language. See Freeport NOI; ~~AG NMAGAG~~ Exhibit 2 at 30; AB Exhibit 1 at 44; Kuipers Attachment 2 at 32; WCO Exhibit 3 at 41.

951. NMED ~~makes~~made no changes to 20.6.7.28.E in the Proposed Final Rule. See Proposed Final Rule at 30.

952. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.E as set forth in the Petitioned Rule, Amended Rule, and Proposed Final Rule.

*Subsection F*

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953. NMED ~~proposes~~proposed 20.6.7.28.F in the Petitioned Rule which ~~deals with~~sets forth ground water sample collection procedures. See Petition, Attachment 1 at 28-29.

954. Amigos Bravos ~~proposes~~proposed to change 20.6.7.28.F(2)(b) in the Petitioned Rule with language from the August 17 Discussion Draft; however, Amigos Bravos provides no technical evidence to support such a change. See AB Exhibit 1 at 44.

955. NMED ~~makes~~made changes to 20.6.7.28.F(1), (2)(a), and (2)(b) in the Amended Rule. See Amended Petition at 30.

956. NMED provides evidence for the changes to 20.6.7.28.F in the Amended Rule through the testimony of ~~Adrian~~Mr. Brown. See Brown Rebuttal at 12-13.

957. The Commission finds that the Amigos Bravos' reliance on the August 17 Discussion Draft for changes to 20.6.7.28.F(2)(b) without providing technical evidence explaining the reason for ~~the~~its proposed change is insufficient to support the alternative rule language.

958. NMED ~~makes~~made no changes to 20.6.7.28.F in the Proposed Final Rule. See Proposed Final Rule at 30.

959. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.F and F(1) through (5) as proposed by NMED in the Proposed Final Rule.

*Subsection G*

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960. NMED ~~proposes~~proposed 20.6.7.28.G in the Petitioned Rule which ~~deals with~~requires routine ground water sampling and reporting. See Petition, Attachment 1 at 29.

961. Freeport generally ~~supports~~supported 20.6.7.28.G, but ~~proposes~~proposed some alternative rule language for 20.6.7.28.G. *See* Freeport NOI at 5. This alternative rule language is supported by testimony from Mr. Blandford. *See* Blandford Direct at 13-16.

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962. The Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language for 20.6.7.28.G *See* ~~AG NMAGAG~~ Exhibit 2 at 31; AB Exhibit 1 at 44-45; Kuipers Attachment 2 at 32; WCO Exhibit 3 at 42.

963. NMED ~~makes~~made changes to 20.6.7.28.G in the Amended Rule. *See* Amended Petition at 30-31. These changes address the changes recommended by Mr. Blandford. *See* Blandford Direct at 13-14.

964. NMED provides evidence for the changes to 20.6.7.28 in the Amended Rule through the testimony of ~~Adrian~~Mr. Brown. *See* Brown Rebuttal at 12-13.

965. NMED ~~makes~~made minor changes to 20.6.7.28.G in the Proposed Final Rule consistent with its terminology changes described above and to correct a typographical error.

966. Based on the weight of the evidence, the Commission adopts 20.6.7.28.G as set forth in the Proposed Final Rule.

#### *Subsection H*

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967. NMED ~~proposes~~proposed 20.6.7.28.H in the Petitioned Rule which ~~deals~~with permits a routine reduction of sampling analytes for ground water sampling and reporting. *See* Petition, Attachment 1 at 29.

968. Freeport provides evidence to support 20.6.7.28.H in the Petitioned Rule through the testimony of ~~Neil~~Mr. Blandford. *See* Blandford Direct at 16-17.

969. The Commission finds that the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not object to 20.6.7.28.H in the Petitioned Rule.

970. NMED ~~makes~~made changes to 20.6.7.28.H in the Amended Rule. *See* Amended Petition at 31.

971. NMED provides evidence for the changes to 20.6.7.28 in the Amended Rule through the testimony of ~~Adrian~~Mr. Brown. *See* Brown Rebuttal at 12-13.

972. Freeport ~~objects~~objected to the changes in 20.6.7.28.H in the Amended Rule and ~~presents~~presented evidence in support of this objection through ~~Lynne~~Ms. Lande. *See* Freeport Rebuttal; NOI at 4; ~~and~~ Lande Rebuttal at 3.

973. In the Proposed Final Rule, NMED adds language to 20.6.7.28.H to address the testimony of Ms. Lande. *See* Proposed Final Rule at 30.

974. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.H as set forth in the Proposed Final Rule.

*Subsection I*

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975. NMED ~~proposes~~proposed 20.6.7.28.I in the Petitioned Rule which ~~deals~~with requires ground water sampling ~~for~~from new monitoring wells. *See* Petition, Attachment 1 at 29.

976. The Commission finds that Freeport, Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not object to 20.6.7.28.I in the Petitioned Rule because they proposed no alternative rule language. *See* ~~AG~~NMAGAG Exhibit 2 at 31; AB Exhibit 1 at 45; Kuipers Attachment 2 at ~~30~~34; WCO Exhibit 3 at 42.

977. NMED ~~makes~~made changes to 20.6.7.28.I in the Amended Rule. *See* Amended Petition at ~~29-30~~34.

978. NMED provides evidence for the changes to 20.6.7.28 in the Amended Rule through the testimony of ~~Adrian~~Mr. Brown. *See* Brown Rebuttal at 12-13.

979. Freeport ~~objects~~objected to the changes in 20.6.7.28.I in the Amended Rule and ~~presents~~presented evidence in support of this objection through ~~Lynn~~Ms. Lande. See Freeport Rebuttal NOI at 5; ~~and Lande~~ Rebuttal at 3-4.

980. NMED ~~makes~~made a changes to 20.6.7.28.I in the Proposed Final Rule to change “facility” to “unit.” See Proposed Final Rule at 30.

981. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.I as set forth in the Proposed Final Rule.

*Subsection J*

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982. NMED ~~proposes~~proposed 20.6.7.28.J in the Petitioned Rule which ~~deals~~addresses monitoring well survey and ground water flow determination. See Petition, Attachment 1 at 29.

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983. NMED ~~makes~~made changes to 20.6.7.28.J in the Amended Rule. See Amended Petition at ~~30~~31.

984. The Commission finds that 20.6.7.28.J is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not propose alternative rule language. See Freeport NOI; ~~AG NMA GAG~~ Exhibit 2 at 31; AB Exhibit 1 at 45; Kuipers Attachment 2 at 33; WCO Exhibit 3 at 42.

985. NMED ~~makes~~made no changes to 20.6.7.28.J in the Proposed Final Rule. See Proposed Final Rule at 31.

986. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.J as set forth in the Proposed Final Rule.

*Subsection K*

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987. NMED ~~proposes~~proposed 20.6.7.28.K. in the Petitioned Rule which deals with requires a monitoring well survey and ground water flow determination completion report.  
*See* Petition, Attachment 1 at 29-30.

988. NMED ~~makes~~made changes to 20.6.7.28.K in the Amended Rule. *See* Amended Petition at ~~30-31~~32.

989. The Commission finds that 20.6.7.28.K is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not propose alternative rule language. *See* Freeport NOI; ~~AG NMAGAG~~ Exhibit 2 at 31-32; AB Exhibit 1 at 45-46; Kuipers Attachment 2 at 33; WCO Exhibit 3 at 42-43.

990. NMED ~~makes~~made no changes to 20.6.7.28.K in the Proposed Final Rule. *See* Proposed Final Rule at 31.

991. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.K as set forth in the Proposed Final Rule.

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#### *Subsection L*

992. NMED ~~proposes~~proposed 20.6.7.28.L- in the Petitioned Rule which deals with monitoring well survey and ground water flow determination requires ground water elevation contour maps. *See* Petition, Attachment 1 at 30.

993. NMED ~~makes~~made changes to 20.6.7.28.L in the Amended Rule. *See* Amended Petition at 32.

994. The Commission finds that 20.6.7.28.L is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not proposed alternative rule language. *See* Freeport NOI; ~~AG NMAGAG~~ Exhibit 2 at 32; AB Exhibit 1 at 46; Kuipers Attachment 2 at 33; WCO Exhibit 3 at 43.

995. NMED ~~makes~~made no changes to 20.6.7.28.L in the Proposed Final Rule. *See* Proposed Final Rule at 31.

996. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.L as set forth in the Proposed Final Rule.

*Subsection M Proposed By GRIP and TRP*

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997. GRIP and TRP propose a new 20.6.7.28.M dealing with monitoring well replacement, and they propose this change because the provision is moved from another section to keep requirements regarding monitoring wells in the same section. *See* Kuipers, Attachment 2 at 33.

998. The Commission finds that the proposed change to 20.6.7.28.M is not substantive in nature and that it is unnecessary; therefore, the Commission declines to adopt it.

*Subsection M*

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999. 20.6.7.28.M as proposed by NMED in the Petitioned Rule sets forth requirements for routine perennial stream sampling and monitoring. *See* Petition, Attachment 1 at 30.

1000. Amigos Bravos ~~objects~~objected to 20.6.7.29.M and ~~proposes~~proposed alternative rule language based on the August 17 Discussion Draft. *See* AB Exhibit I at 46.

1001. The Commission finds that Amigos Bravos' reliance solely on the August 17 Discussion Draft, without more, is insufficient to justify the alternative rule language.

1002. Mr. Olson ~~objects~~objected to 20.6.7.28.M and ~~proposes~~proposed to delete the phrase "as necessary to monitor ground water inflow to the perennial surface water." Mr. Olson argues that phrase should be deleted because it limits the applicability of stream monitoring and does not conform ~~with~~to the Commission's rules for approval of discharge permits, namely,

20.6.2.3109.H(2) NMAC, wherein the Secretary shall not approve a discharge permit that will cause any stream standard to be violated.

1003. The Commission finds that Mr. Olson's proposed deletion for 20.6.7.28.M is unwarranted because 20.6.2.3109(H) NMAC, which applies to permits issued under the Commission's regulations, must be read in the context of 20.6.2.3104 NMAC, which requires a discharge permit for discharges to ground water and does not apply to direct discharges to surface water. Also, 20.6.2.3109.E specifies compliance with stream standards "due to the discharge." As discussed elsewhere, direct discharges to surface water are permitted under the NPDES discharge permit program. ~~[cross-ref. and CITE to Fastep]~~ See Easter Direct at 9: 33

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1004. NMED ~~makes~~made changes to 20.6.7.28.M in the Amended Rule. *See* Amended Petition at ~~3032~~.

1005. NMED provides evidence for the changes to 20.6.7.28 in the Amended Rule through the testimony of ~~Adrian~~Mr. Brown. *See* Brown Rebuttal at 12-13.

1006. The Commission finds that 20.6.7.28.M in the Amended Rule is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not propose alternative rule language in rebuttal testimony. *See* Freeport NOI; ~~AG NMAGAG~~ Exhibit 2 at 32; AB Exhibit 1 at 46; Kuipers Attachment 2 at 33; WCO Exhibit 3 at 43.

1007. NMED ~~makes~~made no changes to 20.6.7.28.M in the Proposed Final Rule. *See* Proposed Final Rule at 31.

1008. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.M as set forth by NMED in the Proposed Final Rule.

*New Subsection N*

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1009. NMED does not propose 20.6.7.28.N in the Petitioned Rule. *See* Petition, Attachment 1 at 30.

1010. NMED proposed a new 20.6.7.28.N in the Amended Rule which ~~deals~~ with requires process water, tailings slurry, impacted stormwater, seep, and spring sampling and reporting. *See* Amended Petition at 32.

1011. NMED provides evidence for the changes to 20.6.7.28 in the Amended Rule through the testimony of ~~Adrian~~ Mr. Brown. *See* Brown Rebuttal at 12-13.

1012. The Commission finds that 20.6.7.28.N in the Amended Rule is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson did not object to this subsection or propose alternative rule language ~~in~~ during the hearing. *See* Freeport NOI: NMAGAG Exhibit 2 at 32; AB Exhibit 1 at 46; Kuipers Attachment 2 at 34; WCO Exhibit 3 at 43.

1013. NMED ~~makes~~ made no changes to 20.6.7.28.N in the Proposed Final Rule. *See* Proposed Final Rule at 31.

1014. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.28.N as set forth by NMED in the Proposed Final Rule.

**20.6.7.29 – General Monitoring Requirements for All Copper Mine Facilities:**

***Undisputed Subsections A, B, C, D, E, F, and G***

1015. NMED ~~proposes~~ proposed 20.6.7.29.A, B, C, D, E, and F in the Amended Rule which deals with: the schedule of submittal for monitoring reports; sampling and analysis methods; process water, leach solutions, tailings, and liner solution collection system volume measurement and reporting; impacted stormwater sampling and reporting; flow meter accuracy; and meteorological data. *See* Petition, Attachment 1 at 30-31.

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1016. Amigos Bravos ~~objects~~objected to 20.6.7.29.D in the Petitioned Rule and ~~proposes~~proposed alternative rule language based solely on the August 17 Discussion Draft. *See* AB Exhibit 1 at 47.

1017. NMED subsequently ~~proposes~~proposed the following changes to 20.6.7.29 in the Amended Rule: (1) add a new 20.6.7.29.B dealing with general requirements for monitoring reports; (2) add a new 20.6.7.29.C dealing with analytical requirements for monitoring reports; (3) change 20.6.7.29.B in the Petitioned Rule to 20.6.7.29.D in the Amended Rule; (4) change 20.6.7.29.C in the Petitioned Rule to 20.6.7.29.E in the Amended Rule with additional changes to the language therein; (5) delete 20.6.7.29.D in the Petitioned Rule; (6) change 20.6.7.29.E in the Petitioned Rule to 20.6.7.29.F in the Amended Rule with additional changes to the language therein; and (6) change 20.6.7.29.F in the Petitioned Rule to 20.6.7.29.G in the Amended Rule.

*See* Amended Rule, Attachment 2 at 32-~~24~~34.

1018. NMED provides testimony on these changes through the rebuttal testimony of Mr. Brown, (although the testimony which is erroneously labeled as section 28). *See* Brown Rebuttal at 12-13.

1019. The Commission finds that Amigos Bravos objection to 20.6.7.29.D in the Petitioned Rule is resolved by elimination of the provision in the Amended Rule. Moreover, the Commission finds that to the extent the issues remain with respect to Amigos Bravos' objection to 20.6.7.29.D in the Petitioned Rule, sole reliance on the August 17 Discussion Draft is insufficient to justify at the revision ~~to the provision~~.

1020. The Commission finds that 20.6.7.29.A, B, C, D, E, F, and G in the Amended Rule are undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language to these subsections during the hearing.

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1021. In the Proposed Final Rule, NMED ~~makes~~made a changes to 20.6.7.29.B(4) and (5) to change the terminology from “facilities” to “units” and “facility” to “copper mine facility,” and ~~makes~~made no other changes to these subsections. *See* Proposed Final Rule at 31-32.

1022. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.29.A, B, C, D, E, F, and G as set forth by NMED in the Proposed Final Rule.

*Subsection H*

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1023. NMED ~~proposes~~proposed 20.6.7.29.G in the Petitioned Rule which ~~deals with~~requires an interceptor well system monitoring and evaluation report. *See* Petition, Attachment 1 at 31.

1024. GRIP and TRP propose to delete 20.6.7.29.G in its entirety ~~which is the provision dealing with interceptor well system monitoring and evaluation~~. *See* Kuipers, Attachment 2 at 3435.

1025. NMED changes 20.6.7.29.G in the Petitioned Rule to 20.6.7.29.H in the Amended Rule and ~~makes~~made changes to the title, the body of 20.6.7.29.H, and language of 20.6.7.29.H(1), (2), (3), and (7)(a).

1026. NMED ~~supports~~supported the changes through the rebuttal testimony of ~~Mr. Adrian~~Mr. Brown. *See* Brown Rebuttal at 12-13.

1027. The Commission finds that the proposal by GRIP and TRP is inappropriate because the Commission accepts the use of interceptor systems in other parts of the Copper Mine Rule and monitoring of these systems is important.

1028. NMED ~~makes~~made no changes to 20.6.7.29.H in the Proposed Final Rule.

1029. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.29.H in its entirety as proposed by NMED in the Proposed Final Rule.

**20.6.7.30 – Contingency Requirements for Copper Mine Facilities:**

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*Section Overview*

1030. NMED ~~presents~~presented evidence to support 20.6.7.30 in the Petitioned Rule through ~~Adrian~~Mr. Brown. Mr. Brown testifies that ~~the~~20.6.7.30 includes contingencies for each requirement in the event that it fails. Contingency requirements are triggered when performance of the unit is observed to fail or approaches failure of the requirements of the ~~Copper Mine~~Petitioned Rule. Mr. Brown notes that contingencies in each case comprise some or all of the following actions: notify, confirm, repair, correct, and abate. *See* Brown Direct at 9.

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1031. Mr. Brown testifies that the contingencies in the ~~Copper Mine~~Petitioned Rule cover the full range of failures and compliance exceedances of the mandated ~~groundwater~~groundwater protections. The range of options for contingency response and actions are comprehensive with response times commensurate with the severity of the potential impacts to groundwater. Abatement is included in the contingency actions for those failures and exceedances where remedial damage results, and the selection of abatement opportunities is appropriate and comprehensive. *See* Brown Direct at 10.

1032. ~~Mr. Brown testifies that, if~~ a containment system for a unit is not working, the Copper Rule includes contingency requirements in the event that the containment system fails or is indicating incipient failure, and Further, if water with the potential to cause an exceedance escapes the containment system of any unit, Mr. Brown testifies that the ~~proposed~~Petitioned Rule allows the Department to mandate abatement procedures. TRV 3 at 565, l. 8-19.

1033. Mr. Brown testified~~s~~ that, in his personal experience, mining companies self-report spills and other upsets and rectify the problem before any impact is identified by the monitoring wells. TRV 4 at 736, l. 15-23.

*Subsection A*

1034. NMED ~~proposes~~proposed 20.6.7.30.A in the Petitioned Rule which deals with contingency requirements of ground water standards for all monitoring wells except impoundment monitoring wells. *See* Petition, Attachment 1 at 31.

1035. NMED ~~makes~~made no changes to 20.6.7.30.A in the Amended Rule. *See* Amended Petition, Attachment 2 at 34.

1036. NMED ~~supports~~supported 20.6.7.30.A through evidence and testimony ~~from~~of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9-10.

1037. The Attorney General ~~objects~~objected to 20.6.7.30.A and A(2) and ~~proposes~~proposed alternative rule language. With respect to 20.6.7.30.A, the Attorney General strikes the language excluding monitoring wells for impoundments from subsection A, which NMED addresses in subsection B. The effect of the Attorney General's proposal is to combine subsection A with subsection B. With respect to 20.6.7.30.A(2), the Attorney General ~~ties~~proposesproposed tying this provision to Section 20.6.2.4103 NMAC. *See* NMAGAG Exhibit 2 at 33.

1038. GRIP and TRP object to 20.6.7.30.A and propose that 20.6.7.20.H be moved to the front as 20.6.7.30.A. GRIP and TRP argue that this sequential change in ~~the order of the~~ subsections is necessary to assure that the permittee is alerted to the reporting requirements regarding unauthorized discharges. *See* Kuipers, Attachment 2 at 35.

1039. The Commission finds that a change in the order of 20.6.7.30.A is unnecessary, as the permittee will need to be aware of and comply with all provisions of the Copper Mine Rule.

1040. With respect to 20.6.7.30.A (labeled as 20.6.7.30.C by GRIP and TRP), GRIP and TRP also suggest combining subsection A with subsection B and adding several other language changes. See Kuipers, Attachment 2 at 35.

1041. Amigos Bravos ~~proposes~~proposed new language for 20.6.7.30.A based solely on the August 17 Discussion Draft. See AB Exhibit 1 at 48.

1042. Freeport rebuts the testimony by the Attorney General and Mr. Kuipers through the testimony of Mr. Blandford. See Blandford Rebuttal at 16-17. ~~CH: [check whether Brown rebuttal on p. 12-13 is responsive]~~

1043. The Commission finds that the changes to 20.6.7.30.A proposed by Amigos Bravos based solely on the August 17 Discussion Draft are insufficient to justify changing the Copper Mine Rule because no technical evidence is presented to support such changes.

1044. The Commission finds that Freeport and Mr. Olson do not object to 20.6.7.30.A because they proposed not alternative rule language.

1045. In the Proposed Final Rule, NMED combines subsection A with subsection B in response to the Attorney General and GRIP/TRP recommendations, which simplifies and clarifies the ~~proposed rule~~Petitioned Rule.

1046. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.A as set forth by NMED in the Proposed Final Rule.

#### *Subsection B*

1047. NMED ~~proposes~~proposed 20.6.7.30.B in the Petitioned Rule which ~~deals~~with addresses contingency requirements for exceedances of ground water standards for impoundment monitoring wells. See Petition, Attachment 1 at 32.

1048. NMED ~~makes~~made no changes to 20.6.7.30.B in the Amended Rule. *See* Amended Petition, Attachment 2 at ~~34~~35.

1049. NMED ~~supports~~supported 20.6.7.30.B through evidence and testimony ~~from~~of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9-10.

1050. The Attorney General ~~objects~~objected to 20.6.7.30.B and ~~proposes~~proposed to delete the entire subsection, thereby making exceedances of ground water standards for impoundment monitoring wells subject to the contingency requirements set forth in 20.6.7.30.A. *See* ~~NMAGAG~~NMAGAG Exhibit 2 at 34.

1051. GRIP and TRP object to 20.6.7.30.B and argue that this ~~rule provision~~subsection should only contain contingency requirements for abatement plans or other ~~corrective~~re actions ~~which~~that are located in other provisions of 20.6.7.30. *See* Kuipers, Attachment 2 at 35.

1052. With respect to 20.6.7.30.B (as labeled by NMED), GRIP and TRP propose to delete and change several provisions and have it labeled as 20.6.7.30.C. *See* Kuipers, Attachment 2 at 36.

1053. Amigos Bravos ~~proposes~~proposed new language for 20.6.7.30.B and B(1) based solely on the August 17 Discussion Draft. *See* AB Exhibit 1 at 49.

1054. The Commission finds that the changes to 20.6.7.30.B and B(1) proposed by Amigos Bravos based solely on the August 17 Discussion Draft are insufficient to justify changing the ~~Copper Mine~~Petitioned Rule because no technical evidence ~~is presented to~~supportssupported such changes.

1055. The Commission finds that Freeport and Mr. Olson do not object to 20.6.7.30.B because they did not propose alternative rule language.

1056. Based on the weight of the evidence, the Commission does not adopt a separate 20.6.7.30.B, ~~but~~instead, it adopts 20.6.7.30.A, the combined subsection, as discussed above.

*Subsection C*

1057. NMED ~~proposes~~proposed 20.6.7.30.C in the Petitioned Rule which ~~deals~~withoutlines contingency requirements for monitoring well replacement. See Petition, Attachment 1 at 32.

1058. NMED ~~makes~~made no changes to 20.6.7.30.C in the Amended Rule. See Amended Petition, Attachment 2 at ~~35~~33.

1059. NMED ~~supports~~supported 20.6.7.30.C through evidence and testimony ~~from~~of ~~Adrian~~Mr. Brown. See Brown Direct at 9-10.

1060. GRIP and TRP propose to delete 20.6.7.30.C and move it to another section of the Copper Mine Rule. See Kuipers, Attachment 2 at ~~35~~36. They have no substantive objections to the subsection.

1061. The Commission finds ~~that the~~GRIP's and TRP's proposal to move 20.6.7.30.C is unnecessary.

1062. Amigos Bravos ~~proposes~~proposed new language for 20.6.7.30.C based solely on the August 17 Discussion Draft. See AB Exhibit 1 at ~~49~~50.

1063. The Commission finds that the changes to 20.6.7.30.C proposed by Amigos Bravos based solely on the August 17 Discussion Draft are insufficient to justify changing the ~~Copper Mine~~Petitioned Rule, because no technical evidence is presented to support ~~such~~the proposed changes.

1064. The Commission finds that Freeport, the Attorney General, and Mr. Olson do not object to 20.6.7.30.C, because they did not propose alternative rule language.

1065. NMED ~~makes~~made no changes to 20.6.7.30.C in the Proposed Final Rule except for renumbering it as Subsection B.

1066. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.C, renumbered as 20.6.7.30.B, as set forth by NMED in the Proposed Final Rule.

*Subsection D*

1067. NMED ~~proposes~~proposed 20.6.7.30.D in the Petitioned Rule which ~~deals~~addresses with contingency requirements for exceedances of permitted maximum daily discharge volumes. *See* Petition, Attachment 1 at 32.

1068. NMED ~~makes~~made no changes to 20.6.7.30.D in the Amended Rule. *See* Amended Petition, Attachment 2 at 35.

1069. NMED ~~supports~~supported 20.6.7.30.D through evidence and testimony ~~from~~of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9-10.

1070. The Commission finds that 20.6.7.30.D is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language. *See* AG ~~NMAGAG~~ Exhibit 2 at 34<sub>;</sub> AB Exhibit 1 at 50<sub>;</sub> Kuipers Attachment 2 at 37<sub>;</sub> WCO Exhibit 3 at 46.

1071. NMED ~~makes~~made no changes to 20.6.7.30.D in the Proposed Final Rule, except to renumber it as 20.6.7.30.C.

1072. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.D, renumbered as 20.6.7.30.C, as set forth by NMED in the Proposed Final Rule.

*Subsection E*

1073. NMED ~~proposes~~proposed 20.6.7.30.E in the Petitioned Rule which deals ~~with~~details contingency requirements for insufficient impoundment capacity. *See* Petition, Attachment 1 at 32-33.

1074. NMED ~~makes~~made no changes to 20.6.7.30.E in the Amended Rule. *See* Amended Petition, Attachment 2 at 35-36.

1075. NMED ~~supports~~supported 20.6.7.30.E through evidence and testimony ~~from~~of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9-10.

1076. The Commission finds that 20.6.7.30.E is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language. *See* Freeport NOI; ~~AG NMAGAG~~ Exhibit 2 at 34-35; AB Exhibit 1 at 50; Kuipers Attachment 2 at 37; WCO Exhibit 3 at 46.

1077. NMED ~~makes~~made no changes to 20.6.7.30.E in the Proposed Final Rule except to renumber it as 20.6.7.30.D.

1078. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.E, renumbered as 20.6.7.30.D, as set forth by NMED in the Petitioned Rule, Amended Rule, and Proposed Final Rule.

*Subsection F*

1079. NMED ~~proposes~~proposed 20.6.7.30.F in the Petitioned Rule which deals ~~with~~outlines contingency requirements for inability to preserve required freeboard. *See* Petition, Attachment 1 at 33.

1080. NMED ~~makes~~made no changes to 20.6.7.30.F in the Amended Rule. *See* Amended Petition, Attachment 2 at 36.

1081. NMED ~~supports~~supported 20.6.7.30.F through evidence and testimony ~~from~~of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9-10.

1082. The Commission finds that 20.6.7.30.F is undisputed because Freeport, the Attorney General, GRIP, TRP, Amigos Bravos, and Mr. Olson do not propose alternative rule language. *See* Freeport NOI; ~~AG-NMAGAG~~AG-NMAGAG Exhibit 2 at 35; AB Exhibit 1 at 50-51; Kuipers Attachment 2 at 37; WCO Exhibit 3 at 46.

1083. NMED ~~makes~~made no changes to 20.6.7.30.F in the Proposed Final Rule, except to renumber it as 20.6.7.30.E.

1084. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.F, renumbered as 20.6.7.30.E, as set forth by NMED in the Proposed Final Rule.

*Subsection G*

1085. NMED ~~proposes~~proposed 20.6.7.30.G in the Petitioned Rule which ~~deals~~withaddresses contingency requirements for impounds with structural integrity compromised. *See* Petition, Attachment 1 at 33.

1086. NMED ~~makes~~made no changes to 20.6.7.30.G in the Amended Rule. *See* Amended Petition, Attachment 2 at 36.

1087. NMED ~~supports~~supported 20.6.7.30.G through evidence and testimony ~~from~~of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9-10.

1088. Amigos Bravos ~~proposes~~proposed new language for 20.6.7.30.G based solely on the August 17 Discussion Draft. *See* AB Exhibit 1 at 4951.

1089. The Commission finds that the changes to 20.6.7.30.G proposed by Amigos Bravos based solely on the August 17 Discussion Draft are insufficient to justify changing the

~~Copper Mine~~ Petitioned Rule because no technical evidence is presented to support ~~such~~ these changes.

1090. The Commission finds that Freeport, the Attorney General, GRIP, TRP, and Mr. Olson do not object to 20.6.7.30.G, because they do not propose alternative rule language. *See* Freeport NOI; ~~AG-NMAGAG~~ Exhibit 2 at 35; Kuipers Attachment 2 at 37; WCO Exhibit 3 at 46.

1091. NMED ~~makes~~ made no changes to 20.6.7.30.G in the Proposed Final Rule, except to renumber it as 20.6.7.30.F.

1092. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.G, renumbered as 20.6.7.30.F, as set forth by NMED in the Proposed Final Rule.

#### *Subsection H*

1093. NMED ~~proposes~~ proposed 20.6.7.30.H in the Petitioned Rule which ~~deals with~~ sets forth contingency requirements for reporting and correction of unauthorized discharges. *See* Petition, Attachment 1 at 33.

1094. NMED ~~makes~~ made no changes to 20.6.7.30.H in the Amended Rule. *See* Amended Petition, Attachment 2 at 36.

1095. NMED ~~supports~~ supported 20.6.7.30.H through evidence and testimony ~~from~~ of ~~Adrian~~ Mr. Brown. *See* Brown Direct at 9-10.

1096. GRIP and TRP have not substantive objections to 20.6.7.30.H as labeled by NMED, but they do propose to move it to the ~~front~~ front as 20.6.7.30.A.

1097. For the reasons set forth above, the Commission finds that the proposal to move 20.6.7.30.H as proposed by GRIP and TRP is unnecessary.

1098. The Commission finds that Freeport, the Attorney General, Amigos Bravos, and Mr. Olson ~~does~~ not object to 20.6.7.30.H, because they do not propose alternative rule language. *See* Freeport NOI; ~~AG-NMAGAG~~ Exhibit 2 at 35; AB Exhibit 1 at 51; ~~and~~ WCO Exhibit 3 at 46.

1099. NMED ~~makes~~made no changes to 20.6.7.30.H in the Proposed Final Rule, except to renumber it as 20.6.7.30.G.

1100. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.H, renumbered as 20.6.7.30.G, as set forth by NMED in the Proposed Final Rule.

*Subsection I*

1101. NMED ~~proposes~~proposed 20.6.7.30.I in the Petitioned Rule which ~~deals~~ withaddresses contingency requirements for impounds with unstable slopes for leach stockpiles, tailings impoundments, or waste rock stockpiles. *See* Petition, Attachment 1 at 33.

1102. NMED ~~makes~~made no changes to 20.6.7.30.I in the Amended Rule. *See* Amended Petition, Attachment 2 at ~~36~~34.

1103. NMED ~~supports~~supported 20.6.7.30.I through evidence and testimony ~~from~~ AdrianMr. Brown. *See* Brown Direct at 9-10.

1104. Amigos Bravos ~~proposes~~proposed new language for 20.6.7.30.I based solely on the August 17 Discussion Draft. *See* AB Exhibit 1 at ~~49~~51.

1105. The Commission finds that the changes to 20.6.7.30.I proposed by Amigos Bravos based solely on the August 17 Discussion Draft are insufficient to justify changing the Copper MinePetitioned Rule because no technical evidence is presented to support ~~such~~these changes.

1106. The Commission finds that Freeport, the Attorney General, GRIP, TRP, and Mr. Olson do not object to 20.6.7.30.I, because they do not propose alternative rule language. *See* Freeport NOI; AgG Exhibit 2 at 35-36; Kuipers Attachment 2 at 38; WCO Exhibit 3 at 46-47.

1107. NMED ~~makes~~made no changes to 20.6.7.30.I in the Proposed Final Rule, except to renumber it as 20.6.7.30.H.

1108. Based on the weight of the evidence, the Commission hereby adopts 20.6.7.30.I, renumbered as 20.6.7.30.H, as set forth by NMED in the Petitioned Rule, Amended Rule, and Proposed Final Rule.

*Subsection J*

1109. NMED ~~proposes~~proposed 20.6.7.30.J in the Petitioned Rule which ~~deals~~ withoutlines contingency requirements for erosion of cover systems or compromised stormwater conveyance structures, ponding of stormwater, or other conditions. *See* Petition, Attachment 1 at 33-34.

1110. NMED ~~supports~~supported 20.6.7.30.J through evidence and testimony ~~from~~ of ~~Adrian~~Mr. Brown. *See* Brown Direct at 9-10.

1111. Freeport ~~objects~~objected to 20.6.7.30.J in the Petitioned Rule and ~~proposes~~proposed alternative language. *See* Freeport NOI at 5-6.

1112. Freeport ~~presents~~presented evidence through Thomas Shelley to support its alternative language. Mr. Shelley maintains that the last two sentence of 20.6.7.30.J in the Petitioned Rule should be deleted because, in summary, they are not appropriate or even possible for some corrective actions and may conflict with the approved schedule that is required for every corrective action plan. *See* Shelley Direct at 48-49.

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:

Misty Braswell  
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EXHIBIT G