

NEW MEXICO MINING ACT NETWORK



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Proposed Water Quality Rules for Copper Mine Facilities Violate the NM Water Quality Act

The New Mexico Water Quality Control Commission (WQCC) will hold hearings on proposed groundwater quality rules for the copper industry beginning April 9th in Santa Fe.

After an eight-month stakeholder process to develop a draft rule that would be protective of groundwater at copper mine sites and provide regulatory certainty to industry, **NMED upper-level managers ignored the recommendations of NMED technical staff and many stakeholders from its own Copper Rule Advisory Committee, and instead adopted the mining industry's draft rules. The proposed rules will reduce water quality protections that have been in place in New Mexico for over 35 years.**

NMED's proposed rules:

- Would give the mining industry the right to pollute thousands of acre-feet of groundwater underneath copper mining sites, and would risk groundwater contamination of public water supplies surrounding mining sites for decades and even centuries to come.
- Are in direct conflict with the State Water Quality Act, which requires polluters to prevent groundwater contamination under their sites during operations.
- Could pave the way for other polluters to demand similar rollbacks in water quality safeguards and allow the federal labs, dairies, wastewater treatment plants, and other industries to pollute under their sites and further risk groundwater pollution of public water supplies. This would lower the cost of doing business for the polluter while transferring the costs of clean up and any other public health outcomes directly to the New Mexico taxpayer.

NMED's petition to roll back 35 years of groundwater protection in New Mexico represents a "gift" to the copper mining industry from the Martinez Administration. If allowed, companies such as Freeport-McMoRan, the largest publicly traded copper company in the world, will use New Mexico's groundwater as a dumping ground for mine waste.

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

The NM Attorney General is equally opposed to NMED's proposed rules to the WQCC because they are in direct conflict with the Water Quality Act, and do not adequately protect the state's ground water, which the Attorney General agrees is the public's resource in New Mexico, not industry's.

Background:

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

In 2012, NMED established the “Copper Rule Advisory Committee” comprised of industry, environmental organizations and other stakeholders, authorized by statute to provide advice to the Department on the proposed rules.

After an eight-month stakeholder process, that included twenty Advisory Committee meetings and numerous Technical Committee conference calls, NMED upper-level managers ignored the recommendations of their own technical staff and Advisory Committee, and rewrote the proposed rule to allow copper mines to pollute groundwater rather than prevent groundwater contamination. Nearly all of NMED’s rewrites of the proposed rules are found verbatim in the last round of comments submitted by Freeport-McMoRan.

The State Water Quality Act is quite clear that all groundwater must be protected in the State of New Mexico. In contrast, NMED’s proposed rules would violate the State Water Quality Act and therefore should be remanded back to the Department for revision.

NMED’s proposed rules allow the following:

- Mining companies would be allowed to pollute groundwater above water quality standards within areas of “hydrologic containment,” without the existing requirement of obtaining a variance.
- The rule would also limit groundwater protection outside of the hydrologic containment area to “points of compliance,” which are designated monitoring wells located some unspecified distance down-gradient from major (and often permanent) sources of pollution, such as acid and metal generating pits and stockpiles. As long as pollution goes undetected at these monitoring wells, regardless of when or where it occurs, mining companies would have no obligation to prevent or abate it under NMED’s proposed rules.
- There are numerous other safeguards that have been either watered down or eliminated entirely from the Advisory Committee and NMED staff’s proposals, including liners for new tailings impoundments and waste rock piles, provisions for public notice and participation, monitoring and reporting requirements, and the elimination of compliance schedules.

What are the potential consequences if the proposed rules are approved?

- Copper mines will be allowed to further pollute the state’s groundwater resources. According to the Office of Natural Resources Trustee, existing plumes of groundwater contamination under Freeport-McMoRan’s Grant County mines already extend more than 20,000 acres and are unlikely to decrease over time.
- More than 90% of New Mexico’s population relies on groundwater for their drinking water. Therefore, allowing mining companies to contaminate groundwater directly threatens public health.
- Contamination of groundwater with mine waste would require expensive water treatment before it could ever be used for irrigation or drinking water. The cost of treatment would be shifted away from the polluter and directly onto the taxpayer.
- NMED’s proposed rules also set a dangerous precedent. Other polluters in the state will likely demand similar rollbacks in water quality protections resulting in further contamination of New Mexico’s water resources and increased endangerment of public health and safety.

Hearing Dates and Public Participation

The hearing starts after the Water Quality Control Commission's regular meeting, which begins at 9:00 a.m. on April 9th, 2013, in Room 307 at the NM State Capitol in Santa Fe. Hearing dates are on Tuesdays through Thursdays, April 9-11th, April 16-18th, April 23-25th, and April 30th-May 2nd.

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

Written public comments can also be submitted up to the last day of the hearing (May 2nd). Comments should be sent to: Pam Castañeda, Commission Administrator, New Mexico Environment Department, 1190 S. St. Francis Drive N2168, P.O. Box 5469, Santa Fe, New Mexico USA 87502
E-mail: Pam.Castaneda@state.nm.us

More information:

WQCC legal filings related to the hearing on these proposed copper rules (reference WQCC 12-01 (R))can be found at: <http://www.nmenv.state.nm.us/wqcc/>

New Mexico Office of the Natural Resources Trustee Final Groundwater Restoration Plan for Chino, Cobre and Tyrone Mine Facilities:
http://www.onrt.state.nm.us/documents/Final.Groundwater.Restoration.Plan.Chino.Cobre.Tyrone_1.4.2012.pdf

Aerial Photos from Chino and Tyrone Mines, Grant County, NM:
<http://gilaresources.info/wp/blog/2013/01/04/a-birds-eye-view-of-pls-ponds-at-the-chino-and-tyrone-mines/>