

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



In the matter of:)
)
PROPOSED AMENDMENT TO)
PART 20.6.2 NMAC (Copper Rule))
_____)

No. WQCC 12-01(R)

**STATEMENT OF REASONS IN SUPPORT OF
AMIGOS BRAVOS' AMENDMENTS TO NMED'S PROPOSED COPPER RULE**

Pursuant to the Water Quality Control Commission's ("Commission") *Guidelines for Water Quality Control Commission Regulation Hearings* and the Hearing Officer's Procedural Order Section 405, Amigos Bravos respectfully submits this Statement of Reasons in Support of Amigos Bravos' Amendments to the New Mexico Environment Department's ("NMED") proposed copper rule. Amigos Bravos joins the Closing Argument in Opposition to the Copper Rule as Proposed by NMED filed herewith. We urge the Commission to reject NMED's Rule and remand it back to the Advisory Committee to develop a Rule that complies with law. Alternatively, the Amigos Bravos asks the Commission to adopt the Joint Proposed Copper Rule submitted by the New Mexico Attorney General. If the Commission adopts the Joint Proposal from the New Mexico Attorney General, Gila Resources Information Project, Turner Ranch Properties, Inc., Amigos Bravos and William C. Olson, then Amigos Bravos requests the Commission to also consider the proposed amendments, attached hereto as "AB Exhibit 9" and supported in this Statement of Reasons. Gila Resources Information Project and Turner Ranch Properties, Inc. concur with Amigos Bravos' Amendments to NMED's Proposed Copper Rule, and the New Mexico Attorney General and William C. Olson do not object. Throughout Amigos Bravos' Statement of Reasons, NMED's Amended Proposed Copper Rule, filed February 18, 2013, Document Number ("Doc. No.") 45, is referred to as or "NMED's proposed Rule."

I. STATEMENT OF REASONS.

1. On October 30, 2012, NMED filed a Petition for the Commission to adopt 20.6.7 NMAC and requested hearing. Doc. No. 4.

2. On February 18, 2013, NMED filed an Amended Petition that revised the proposed 20.6.7 NMAC that included numerous changes to NMED's original proposed Rule filed October 30, 2012. Doc. No. 44.

3. The Commission held a hearing on NMED's proposed Rule from April 9, 2013 through May 3, 2013, which included ten days of technical testimony and three days of public testimony. Transcript Volumes 1 – 10.

4. The NMED's proposed Rule is intended to regulate the operations and closure of copper mine facilities in order to protect ground water in New Mexico pursuant to the Water Quality Act ("Act"), NMSA 1978, §§ 74-6-1 to 17.

5. The Act is the primary state law that protects water quality in the state. NMSA 1978, §§ 74-6-1 – 17.

6. Brian Shields, Executive Director of Amigos Bravos, testified in support of green infrastructures and low impact development technologies, clear public notice and submission of information the statutory bad actor provisions. Shields, p. 2500-2501.

7. Green infrastructures and low impact development technologies focus on slowing stormwater runoff to minimize sediment and pollution carried downstream. Shields, p. 2501.

8. Green infrastructures and low impact development technologies include controlling stormwater close the source, instead of directing all stormwater to one large impoundment. Shields, p. 2502.

9. Green infrastructures and low impact development mimics natural process such as

utilizing ponds and wetlands to actively treat stormwater contaminants. Shields, p. 2502.

10. Encouraging green infrastructures and low impact development technologies are in-line with the national trend. Shields, p. 2502.

11. The US Environmental Protection Agency considers green infrastructures and low impact development technologies to be the best available technology for controlling stormwater runoff. Shields, p. 2501.

12. The bad actor provisions are contained in the Water Quality Act at NMSA 1978, Section 74-6-5.E and are required to be enforced by the Department. Shields, p. 2504.

13. Bad actor disclosure requirements are standard in state environmental laws. Shields, p. 2504.

14. The information required to determine whether an applicant is a bad actor is not currently submitted to NMED by an applicant. Shields, p. 2505.

15. Having all relevant information about an applicant, including past compliance history, before issuing a permit will save the state money and reduce staff time investigating the applicant's compliance with Section 74-6-5.E. Shields, p. 2505; AB Ex. 4 (2010 Fiscal Impact Report).

II. CONCLUSION

For the foregoing reasons, if the Commission attempts to fix NMED's unlawful proposed Rule by adopting the Joint Proposal from the New Mexico Attorney General, Gila Resources Information Project, Turner Ranch Properties, Inc., Amigos Bravos and William C. Olson, then Amigos Bravos respectfully requests the Commission to adopt voluntary measures for green infrastructures and low impact development and to adopt requirements that information required to implement the bad actor statute be submitted with the discharge application.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2013, I sent Statement of Reasons in Support of Amigos Bravos' Amendments to NMED's Proposed Rule by email to the following:

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PROPOSAL FROM AMIGOS BRAVOS TO

NEW MEXICO ENVIRONMENT DEPARTMENT

PROPOSED COPPER RULE

(FEBRUARY 18, 2013)

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 6 WATER QUALITY
PART 7 GROUND WATER PROTECTION - SUPPLEMENTAL PERMITTING
REQUIREMENTS FOR COPPER MINE FACILITIES

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20.6.7.7 DEFINITIONS:

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B. A term defined in this part shall have the following meaning.

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(28) "Green Infrastructure" means a system that mimics natural processes in order to infiltrate, evaporate or reuse stormwater. Green infrastructure uses soils, topography, and vegetation in a way that minimizes the impacts of anthropogenic disturbance and maintains pre-development hydrology and water quality.

....

(35) "Low Impact Development" means an approach to land development or re-development and management that works with nature to manage stormwater as close to its source as possible.

....

**20.6.7.11 APPLICATION REQUIREMENTS FOR DISCHARGE PERMITS FOR A
COPPER MINE FACILITY:**

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X. Environmental Compliance History. The application shall include the following information for the period ten years immediately preceding the date of submission of the permit application:

(1) **List of all environmental permits;**

(2) **List of all convictions for felonies or other crimes of moral turpitude, including a description of the felonies or crimes;**

(3) **List of all felony convictions for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud, including a description of the crime;**

(4) **Copies of all orders, notices of violation, letters or other documents from state or federal agencies that describe, allege, find, conclude that the applicant has violated an environmental law; and**

(5) **List of all revoked or permanently suspended environmental permits, including a description of the circumstances leading up to the revocation or suspension.**

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20.6.7.18 GENERAL OPERATIONAL REQUIREMENTS:

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B. **Construction requirements.** A permittee shall meet the following requirements for construction of a liner system for the containment of water contaminants, including repair or relining of a liner system.

....

(4) consideration of low impact development and green infrastructure development approaches.

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20.6.7.34 IMPLEMENTATION OF CLOSURE

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F. **Final design.** The permittee shall submit a final design and CQA/CQC plan to the department for approval at least 60 days prior to construction, including commencement of surface shaping activities, of any area subject to a closure plan pursuant to the copper mine rule including, but not limited to, tailing impoundments, waste rock piles, leach stockpiles, and any other area where cover is required under the approved closure plan. The CQA/CQC plan must include detailed engineering designs for storm water management structures and associated conveyance systems, cover design specifications, a cover material suitability assessment, a borrow source location, a rip rap suitability assessment, a rip rap source location, a post reclamation storm water management plan, and a schedule for completion. In addition, the final design and CQA/CQC plan shall include best management practices that will be employed during reclamation to address erosion and storm water management in a manner that meets the requirements of the Water Quality Act and commission regulations **and shall, where possible, consider low impact development and or green infrastructure development components.** The final design and CQA/CQC plan shall bear the signature and seal of a licensed professional engineer in accordance with Subsection A of 20.6.7.17 NMAC.

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