

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



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

No. WQCC 12-01(R)

**NOTICE OF INTENT TO PRESENT TECHNICAL REBUTTAL TESTIMONY ON
BEHALF OF FREEPORT-MCMORAN TYRONE INC., FREEPORT-MCMORAN CHINO
MINES COMPANY, AND FREEPORT-MCMORAN
COBRE MINING COMPANY**

Freeport-McMoRan Tyrone Inc., Freeport-McMoRan Chino Mines Company, and Freeport-McMoRan Cobre Mining Company (collectively, "Freeport") hereby submit this Notice of Intent to Present Technical Rebuttal Testimony on behalf Freeport pursuant to the Hearing Officer's Procedural Order dated November 21, 2012.

1. **Identify the person or entity for whom the witness(es) will testify.**
The witnesses identified below will testify for Freeport.
2. **Identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background.**
 - A. T. Neil Blandford is a technical witness who has testimony in rebuttal to the direct written testimony of Ms. Connie Travers, Dr. Bruce Thomson, Mr. Jim Kuipers, and Mr. William Olson. His qualifications, educational background, and work history were included with his direct written testimony, which was filed on February 22, 2013. His written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.
 - B. Timothy E. Eastep is a Freeport employee and technical witness who has rebuttal testimony in response to the Department's Amended Petition and the testimony of Ms. Sally Smith, Ms. Connie Travers, Dr. Bruce Thomson, Mr. Jim Kuipers, Mr. Briand Shields and Mr. William Olson. His qualifications, educational background, and work history were included with his direct written testimony, which was filed on

February 22, 2013. His written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.

- C. Jim B. Finley Jr. is a technical witness who has rebuttal testimony to the testimony of Mr. Adrian Brown, Ms. Connie Travers and Mr. Jim Kuipers. His qualifications, educational background, and work history were included with his direct written testimony, which was filed on February 22, 2013. His written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.
- D. Michael Grass is a technical witness who has rebuttal testimony to the Department's Amended Petition and to the testimony of Ms. Connie Travers and Mr. Jim Kuipers. His qualifications, educational background, and work history were included with his direct written testimony, which was filed on February 22, 2013. His written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.
- E. Lynn Lande is a Freeport employee and technical witness who has rebuttal testimony to the Departments' Amended Petition, the testimony of Ms. Connie Travers, and the testimony of Mr. Jim Kuipers. Her qualifications, educational background, and work history were included with her direct written testimony, which was filed on February 22, 2013. Her written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.
- F. Lewis Munk is a technical witness who has rebuttal testimony to the testimony of Mr. Brian Shields. His qualifications, educational background, and work history were included with his direct written testimony, which was filed on February 22, 2013. His written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.
- G. James C. Scott is a technical witness who has rebuttal testimony to the testimony of Mr. Adrian Brown, Ms. Connie Travers, Mr. Jim Kuipers and Mr. William Olson. His qualifications, educational background, and work history were included with his direct written testimony, which was filed on February 22, 2013. His written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.

H. Thomas L. Shelley is a Freeport employee and technical witness who has rebuttal testimony to the testimony of Ms. Connie Travers, Dr. Bruce Thomson, Mr. Jim Kuipers and Mr. William Olson. His qualifications, educational background, and work history were included with his direct written testimony, which was filed on February 22, 2013. His written rebuttal testimony addressing direct written testimony filed by other parties in this matter is attached.

3. Attach the full rebuttal testimony of each technical witness, which shall include an express basis for all expert opinions offered.

Copies of each technical witness' full rebuttal testimony is attached. Each technical witness may provide additional rebuttal testimony at the hearing in response to direct testimony presented by any other party or as rebuttal testimony.

4. Include the text of any recommended modifications to the proposed regulatory change.

Proposed modifications to the proposed Copper Rule and Amended Petition filed by the New Mexico Environment Department on February 18, 2013 are included in the direct and rebuttal testimony of each technical witness and are summarized below:

Department's Amended Petition, Section 20.6.7.7(51), based upon the rebuttal testimony of Mr. Grass at pages 1-2:

(51) "Seepage" means leachate that is discharged from a waste rock stockpile or tailing impoundment and emerges as a ~~seep~~ water flow above or at the ground surface or that is present in the vadose zone and may be captured prior to entering ground water.

Department's Amended Petition, Section 20.6.7.20.A(1)(c)(v), based upon the rebuttal testimony of Mr. Grass at page 2:

(v) The liner's ability to remain functional for five years after the operational life ~~implementation of closure~~ of the leach stockpile.

Department's Amended Petition, Section 20.6.7.20.C(1)(c), based upon the rebuttal testimony of Mr. Grass at page 2:

(c) Any evidence of instability in the stockpile that could potentially result in a slope failure or an unauthorized discharge shall be reported to the department as soon as possible, but not later than 24 hours after discovery ~~and corrected pursuant to Subsection I of Section 20.6.7.30 NMAC.~~

Department's Amended Petition, Section 20.6.7.21.B(1)(d), based upon the rebuttal testimony of Mr. Shelley at pages 1-24:

(d) The applicant shall submit design plans signed and sealed by a qualified licensed New Mexico engineer along with a design report that includes the following:

Department's Amended Petition, Section 20.6.7.21.B(1)(d)(vii), based upon the rebuttal testimony of Mr. Grass at page 3-4:

(vii) if the aquifer evaluation shows that ground water quality standards are likely to be exceeded at monitoring well locations specified by 20.6.7.28 NMAC, a design report for a proposed interceptor system for containment and capture of ground water impacted by the waste rock stockpile. . . .

Department's Amended Petition, Section 20.6.7.10.F, based upon the rebuttal testimony of Mr. Eastep at pages 3-4:

F. Within ~~60~~ 90 days of the department notifying the applicant in writing that the application is deemed administratively complete pursuant to Subsection A of 20.6.2.3108 NMAC, the department shall review the application for technical completeness and shall issue a written notice by certified mail to the applicant indicating whether the application is technically complete or is deemed to be deficient. An application must include the information required by Subsection B of this section to be deemed technically complete.

Department's Amended Petition, Section 20.6.7.10.H, based upon the rebuttal testimony of Mr. Eastep at pages 3-4:

H. Within ~~60~~ 90 days after an application is deemed technically complete or all information has been submitted to the department pursuant to a technical deficiency notification, the department shall make available a proposed approval of a discharge permit and a draft discharge permit or a notice of denial of a discharge permit application pursuant to Subsection H of 20.6.2.3108 NMAC and provide a copy to the mining and minerals division. The draft discharge permit shall contain applicable conditions specified in the copper mine rule, any conditions based on a variance issued for the copper mine facility, and any additional conditions imposed under Subsection I of this section. Requests for a hearing on the proposed approval of a discharge permit or denial of a discharge permit shall be submitted to the department pursuant to Subsection K of 20.6.2.3108 NMAC.

Department's Amended Petition, Section 20.6.7.24.A(5), based upon the rebuttal testimony of Ms. Lande at pages 1-2.

~~(5) — The design and location of leach stockpiles, waste rock piles, and other regulated mine facilities in and surrounding an open pit surface drainage area shall be located to facilitate the drainage of water away from the open pit surface drainage areas to the extent practicable.~~

Department's Amended Petition, Section 20.6.7.28.H, based upon the rebuttal testimony of Ms. Lande at page 3 and Mr. Blandford at page :

H. **Ground water sampling—reduction of sampling analytes.** A permittee may request approval from the department to reduce the sampling frequency of individual water quality analytes. The basis for consideration of reduction of sampling frequency may include a demonstration that the analyte is not present in the impoundment or mine unit being monitored, or could not be generated from the materials present through degradation, oxidation, decay or any other expected process. A permittee also may request approval from the department to reduce the sampling frequency of an individual analyte if it has not been detected in a particularly monitoring well, is consistently below the applicable standard, or is stable and predictable for eight consecutive quarters. Ground water sampling analyte lists and the frequency of sampling shall be reevaluated upon permit renewal.

Department's Amended Petition, Section 20.6.7.28.I, based upon the rebuttal testimony of Ms. Lande at pages 3-4:

I. Ground water sampling – new monitoring wells. A permittee shall submit to the department for approval a proposal for quarterly ground water sampling from each newly installed monitoring well required pursuant to this section. Sampling analytes lists shall be based on the geochemical characteristics of the solution or material contained in the impoundment or mine unit intended to be monitored, including constituents that can be generated from the materials present through degradation, oxidation, decay or any other expected process. Proposed analytes shall include field parameters as required in Subsection F of this Section, alkalinity-bicarbonate, alkalinity-carbonate, metals, and other analytes from Section 20.6.2.3103 as applicable. The proposed list shall be sufficiently complete to identify changes in water quality through time through representative analytes, but need not include every possible analyte. After a period of at least eight quarters of monitoring following operation of the facility being monitored, a permittee may request a reduction in the analyte list or the frequency of monitoring of an individual analyte for the reasons stated in subsection H of this section

Department's Amended Petition, Section 20.6.7.33.D(2), based upon the testimony of Mr. Blandford at page 3:

(2) After closure, if water within an open pit is predicted to flow from the open pit into ground water and the discharge from an open pit may cause an exceedance of applicable standards at monitoring well locations specified by 20.6.7.28 NMAC, then the open pit shall be considered a flow-through pit and the open pit water must meet ground water standards of 20.6.2.3103 NMAC or be managed to mitigate exceedances of applicable standards outside the area of hydrologic containment or the open pit must be pumped in order to maintain an area of open pit hydrologic containment.

5. Identify and attach all exhibits to be offered by the person at the hearing.

EXHIBIT	DESCRIPTION
REBUTTAL EXHIBIT BLANDFORD - 1	Image of Monitor Wells Near Toe of No. 1X Tailing Storm Water Ponds at the Tyrone Mine
REBUTTAL EXHIBIT BLANDFORD - 2	Image of Monitor Wells Near Toe of No. 3A Leach Stockpile at the Tyrone Mine
REBUTTAL EXHIBIT BLANDFORD - 3	Image of Monitor Wells Near Toe of Pond 7 Tailing and Interceptor System at the Chino Mine
REBUTTAL EXHIBIT BLANDFORD - 4	Balleau (2010): Report on Recharge at Silver City Well Fields
REBUTTAL EXHIBIT BLANDFORD - 5	PowerPoint Presentation Provided to Town of Silver City (October 30, 2012) by DBS&A/Tyrone
REBUTTAL EXHIBIT BLANDFORD - 6	Balleau (2006): Report on Groundwater Availability from Silver City Wells
REBUTTAL EXHIBIT BLANDFORD - 7	BOR (2010): Supply and Demand Correlation Report Completed as Part of Arizona Water Settlement Act

6. Identify the position on proposed changes to the Petition proposed by other parties.

Freeport opposes the changes to the Petition proposed by the other parties that filed direct written testimony in this matter, other than the Department's Amended Petition, with the exception of the changes to the Amended Petition noted above. The basis for Freeport's opposition is set forth in the attached technical rebuttal testimony, as well as the direct testimony submitted by Freeport.

WHEREFORE, Freeport respectfully requests that the Water Quality Control Commission accept this Notice of Intent to Present Technical Rebuttal Testimony on behalf of Freeport.

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 e-mailed or hand-delivered to the following parties on March 15, 2013:

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