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**Sent:** Friday, January 20, 2012 11:56 AM  
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**Subject:** Copper Regulation Advisory Committee Guidelines and draft agenda  
**Attachments:** Advisory Committee Agenda 1-25-12.docx; Copper Regulations Advisory committee guidelines.pdf

Dear Advisory Committee Members,

Attached is a draft agenda for the Copper Regulation Advisory Committee kickoff meeting scheduled for January 25 from 9 am to 1 pm. Please let me know if you have any comments/proposed additions to the agenda. I've also attached the Advisory Committee guidelines for Copper Regulation Development. Please let me know if you have any questions or need additional information regarding the meeting.

Thank you,  
Mary Ann Menetrey

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**Copper Regulation Advisory Committee  
to  
New Mexico Environment Department  
Ground Water Quality Bureau**

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**I. Background of the Copper Regulation Advisory Committee**

The Water Quality Act at NMSA 1978, Section 74-6-4.K (2009) directs the Water Quality Control Commission to adopt regulations for the copper industry and requires that the New Mexico Environment Department (“NMED”) “establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency [NMED] on appropriate regulations to be proposed for adoption by the commission.”

The authority to create advisory committees is derived from the Executive Reorganization Act (Sections 9-1-1 through 9-1-13 NMSA 1978) and the Department of Environment Act (Sections 9-7A-1 through 9-7A-15 NMSA 1978):

- Section 9-1-9 NMSA 1978:
  - “Advisory committees may be created. Advisory shall mean furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements, and shall not extend to administering a program or function or setting policy unless specified by law.”
  - “The governor or a department secretary, with approval of the governor, may create advisory committees.”
  - “The creating authority shall prescribe the composition and functions of each advisory committee created; appoint its members, who shall serve at the pleasure of the creating authority; and specify a date when the existence of each advisory committee ends.”
- Section 9-7A-10 NMSA 1978:
  - “Advisory committees may be created. Advisory means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private

funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act.”

## **II. Purpose of the Copper Regulation Advisory Committee**

According to the Water Quality Act at NMSA 1978, Section 74-6-4.K (2009), the purpose of the Copper Regulation Advisory Committee (“CRAC”) is “to advise (emphasis added) the constituent agency [NMED] on appropriate regulations to be proposed for adoption by the commission.” Consistent with state statutes, it is not the role or responsibility of the CRAC to set agency policy, or in this case to draft the proposed regulations that the NMED must submit to the Water Quality Control Commission. Rather, the CRAC should discuss and debate regulatory concepts and water quality protection and monitoring measures for the copper mining industry. The debate among the diverse perspectives of the members on the CRAC will inform NMED’s proposal and drafting of copper mining discharge regulations.

## **III. Composition of the Copper Regulation Advisory Committee**

NMED has developed a CRAC that is composed of principal copper mining stakeholder interests related to water quality protection:

- Mine owners/operators (2 representatives):
  - Freeport McMoRan
  - New Mexico Copper Corporation
- New Mexico Energy, Minerals and Natural Resources Department – Mining and Minerals Division (1 representative)
- Environmental groups (2 representatives): Public stakeholders with interests in environmental and public health protection
  - Gila Resources Information Project (GRIP)
  - Amigos Bravos
- New Mexico Institute of Mining and Technology (1 representative)

## **IV. Advisory Committee Technical Group**

A Technical Group, which shall serve as a subgroup to the Advisory Committee, will be established by NMED that is composed of a broad and diverse range of stakeholder interests and technical expertise. The purpose of the Technical Group will be to vet the technical issues and regulatory concepts of the draft Copper Regulations prior to presentation to and discussion by the Advisory Committee. NMED will solicit input from the Technical Group for use in preparing regulation drafts. The Technical Group

will provide NMED with information and documentation relevant to the development of copper mining discharge regulations. Membership of the Technical Group will include:

- Technical Specialists: Consultants or others selected by NMED, industry and environmental groups with technical skills relevant to water quality protection during operation and closure of copper mines, including prevention and control of acid rock drainage.
- State/Federal Agencies: Agency stakeholders having involvement with environmental regulation of copper mines including MMD, the Bureau of Land Management, and the Forest Service.
- Academics: Academics affiliated with universities having expertise relevant to water quality protection at copper mines.
- Mine owner/operators
- Environmental group representatives

#### **V. Scope of the Copper Regulation Advisory Committee Activities**

NMED requests that the CRAC perform the following activities:

- Provide well-reasoned advice and recommendations to NMED on the scope and content of proposed regulations for protection of water quality at copper mining and processing facilities.
- Utilize proposals and concepts developed by the Technical Group as discussion points towards NMED's development of the copper mining discharge regulations.
- Solicit recommendations and advice from other stakeholders and convey this information to NMED.

#### **VI. Objectives of the Copper Regulation Advisory Committee and Technical Group Activities**

NMED expects that the establishment of the CRAC and associated Technical Group will achieve the following objectives:

- A multitude of perspectives and recommendations relevant to copper mining discharge regulations will be provided to, and thoroughly evaluated by, NMED.
- Proposed regulations will be developed that incorporate or consider recommendations and advice representing a broad range of stakeholder perspectives.
- Proposed regulations will be developed through a process that invites critical evaluation and input by stakeholders of proposed regulatory requirements.
- A greater understanding of the diversity of perspectives regarding the appropriate scope and content of copper mining discharge regulations will be achieved by NMED staff.

## **VII. Meeting logistics and rules of conduct**

NMED will host six CRAC meetings to discuss and debate regulatory concepts and drafts of the proposed Copper Regulations. NMED shall additionally host six Technical Group meetings which will be held on a day consecutive to the CRAC meetings. These meetings will be held in Albuquerque at the NMED District 1 office, or, if warranted, an alternative location determined by NMED, and will run from 9 AM to 4 PM. If deemed necessary by NMED, additional meetings of the CRAC will be scheduled.

In accordance with state statutes, advisory committee members may receive compensation for travel and per diem expenses associated with meeting attendance within budgeted amounts and in accordance with the provisions of the Per Diem and Mileage Act.

The CRAC and Technical Group meetings will be chaired by NMED. A trained meeting facilitator may be provided by NMED to conduct the CRAC or the Technical Group meetings. As the CRAC is not a policy-making body, the CRAC shall not elect individuals to leadership positions, make motions, or vote on motions. Rather, all members of the CRAC are encouraged to express their individual perspectives, provide advice, and make recommendations to NMED on the scope and content of copper discharge regulations. Consensus of CRAC members is not required or expected. Perspectives, advice, and recommendations may be conveyed to NMED in multiple ways, including verbal input provided at CRAC meetings and written input provided through e-mail submittals or postal mail. Discussion and debate of contrasting perspectives is encouraged, however such discussion and debate must be conducted in a respectful manner and individuals should provide information and evidence to support their positions.

Members of the public who are not CRAC members may attend the advisory committee and Technical Group meetings; such individuals may observe the proceedings but may not actively participate in the meetings between NMED personnel and CRAC or Technical Group members.

## **VIII. Term of existence**

NMED intends to maintain the CRAC and the associated Technical Group until copper mining discharge regulations are adopted by the Water Quality Control Commission, which is anticipated to occur in December 2012. The Secretary may extend the term of the CRAC.