

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

**IN THE MATTER OF PROPOSED AMENDMENTS  
TO 20.6.2 NMAC, THE COPPER MINE RULE**

**No. WQCC 12-01(R)**

New Mexico Environment Department,  
Petitioner.

**WRITTEN REBUTTAL TESTIMONY OF TOM SKIBITSKI**

In an effort to clarify the copper rule advisory committee (CRAC) process and respond to criticism, it is my understanding that the foundation and development of the Proposed Copper Rule was largely a collaborative process. Staff from the Ground Water Quality Bureau actively participated, reviewed, and provided comments to the drafts prepared by Mr. Bill Olson including the August 17, 2012 draft. The advisory committee Guidelines, provided in my direct testimony as Exhibit 5, identified from the beginning that it was not the role of the CRAC to draft the rule that the Department would submit in its petition. In hindsight it is apparent that this point may not have been emphasized enough during the CRAC process.

When Secretary Martin was appointed to lead the Department in 2011, he provided to all employees what he saw as the mission, goals and objectives of the Department. The first goal of the Department is to protect the environment and public health by relying on science and responsible regulation while balancing economic development and employment growth. As objectives, the Department strives to “minimize the prospects of litigation,” “improve efficiency in the permitting process,” and “maintain the highest possible ethical standards.” **NMED Exhibit 20**, NMED Mission, Goals, and Objectives. The Proposed Copper Rule is consistent with those objectives. The Proposed Copper Rule reflects the varied membership of the CRAC,

balances the interests of those members, and offers regulatory certainty and process efficiency over litigation. Responding to Ms. Smith's direct testimony, it is my understanding that Mr. Olson, working with Department staff and using input from the CRAC, drafted much of the language in the Rule. Mr. Flynn states in his letter of March 1<sup>st</sup> to Ms. Smith that the proposed rule was not developed by any one person in the Department. **NMED Exhibit 21**, Flynn letter of March 1, 2013. The proposed copper rule reflects the experience and thoughtful input of many people.

In addition, and contrary to the position of Amigos Bravos, as advocated by Brian Shields, the Proposed Rule does not determine the "place of withdrawal," rather it establishes the concept of individual mine units, outside of which all groundwater is protected. Furthermore, following operation at a given unit, the operator must properly close the unit and abate any ground water impacts in order to meet standards. The Department, through its technical expert witness, has sought to make clear that it will regulate in a unit by unit framework. The proposed rule has a focus on efficiency of management. Regulatory agencies and the rules they enforce should be transparent and predictable. The applicant for a permit should be able to read and interpret the regulations; prepare a permit application or other submittal; and anticipate with reasonable certainty what the Department response will be. That regulatory certainty, that predictability of approval, denial, and enforcement creates a transparent and balanced business environment within which to operate.

Responding to Ms. Travers testimony, while it is true that discharge permits issued for Chino and Tyrone required all groundwater to meet standards, compliance was not required to be measured directly underneath a leach stockpile or tailings impoundment. Achieving water quality standards may not be practical in groundwater beneath an open pit and alternate

abatement standards may ultimately be necessary and subject to commission approval. This Rule provides regulatory certainty in that it does not require a petition for a variance or a petition for alternative abatement standards so long as hydrologic containment is maintained. The Department has, in the past, supported variance petitions that were granted by the Commission with the knowledge that groundwater standards would be exceeded beneath certain mine units. Despite Ms. Travers' assertions that clean-up is not contemplated in the Rule, the abatement provisions of Part 4100 to 4115 of 20.6.2 apply to all existing and any new discharge permits. Under Section 30.A(2) or Section 30.B(3) of the Rule, the Department can either require the permittee to abate under an abatement plan or the Department can require the permittee to abate under a discharge plan and only under certain site-specific circumstances can an alternate abatement standards petition be supported by the department.

The fact that the Legislature ordered the WQCC to adopt copper mining rules implies a determination by the Legislature that copper mining is important to our state. Recognizing the fact that mining in general is disruptive to the local environment, the Department's intent was to develop a proposed rule that acknowledges certain conditions will result from mining activities and that the rule be constructed in such a way to be protective of groundwater in the long term while allowing mining to occur. Everything that is a result of human activity is ultimately a result of something either being grown or mined, and the state of New Mexico is fortunate to count abundant natural resources among its many assets.

The Department recognizes that mining is an important part of New Mexico's history and economy, and that regulation of that activity is necessary, especially as it relates to its environmental impact. The rule attempts to balance the reality of environmental disturbance, and economic benefit derived past, present, and future. Particularly important is use and value of

water for domestic use, propagation of fish and wildlife, recreational purposes, agricultural, industrial and other purposes. The proposed rule attempts to apply the lessons learned from decades of regulatory activities at mines in a manner that is both transparent and predictable.

In response to Mr. Shield's testimony seeking to add a Bad Actor provision to the Rule, this is not necessary. The Rule is not a stand-alone rule and must be read in the context of Part 2 of the Ground Water Regulations and the Water Quality Act. The Water Quality Act contains both criminal and civil penalties for violations of the Act. NMSA 1978, Section 74-6-10.1 and 10.2. In addition, the Act requires that the agency deny any application for which an applicant has within the ten years immediately preceding the date of submission of the permit knowingly misrepresented a material fact, refused to provide information, been convicted of a felony, exhibited a history of willful disregard for environmental laws or had an environmental permit revoked anywhere in the U.S. NMSA 1978, Section 74-6-5.E. Read together, the Department is authorized and able to take action against bad actors.