

NEW MEXICO MINING ACT NETWORK



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Water Quality Rule for Copper Mine Facilities Violates the New Mexico Water Quality Act

Approved by the Water Quality Control Commission in 2013, the Copper Rule threatens critical groundwater supplies by reducing water quality protections that have been in place in New Mexico for over 35 years. The NM Supreme Court is now reviewing the Copper Rule.

The industry-written Copper Rule:

- Gives the mining industry the right to pollute thousands of acre-feet of groundwater underneath copper mining sites, allowing groundwater contamination of public water supplies surrounding mining sites for decades and even centuries to come.
- Is 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, 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.

The Martinez Administration's Copper Rule is a "gift" to the copper mining industry, rolling back more than 35 years of groundwater protection in New Mexico. Companies such as Freeport-McMoRan, the largest publicly traded copper company in the world, can now use New Mexico's groundwater as a dumping ground for mine waste.

The Martinez Administration asserts that the Copper Rule was adopted after a lengthy stakeholder process. It is true that a diverse group of stakeholders worked for eight months to craft a draft rule that would be protective of groundwater at copper mine sites and provide regulatory certainty to industry. However, at the end of that process, New Mexico Environment Department (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 rule.

Gila Resources Information Project, Amigos Bravos, and Turner Enterprises represented by New Mexico Environmental Law Center **are opposed to this rulemaking on grounds that the rule violates the protections afforded under the state's Water Quality Act.**

Equally opposed to NMED's Copper Rule, the NM Attorney General holds that the rule is in direct conflict with the Water Quality Act and does not adequately protect the state's ground water, which the Attorney General agrees is a public resource that should be protected. .

The Copper Rule was appealed by water quality advocates and the NM Attorney General to the state Supreme Court in 2015. The state's highest court agreed to hear the petition for review. A decision is expected sometime in 2016.

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 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 rule 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 Copper Rule violates the State Water Quality Act and therefore should be set aside by the NM Supreme Court.

The Copper Rule allows the following:

- **Mining companies are allowed to pollute groundwater above water quality standards** within areas of “hydrologic containment,” without the existing requirement of obtaining a variance.
- The rule also limits 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 have no obligation to prevent or abate it under NMED’s Copper Rule.**
- There are numerous other **safeguards that were 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 Copper Rule is allowed to stand?

- **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 extend more than 20,000 acres and are unlikely to decrease over time. In fact, in 2011, the Trustee settled with Freeport-McMoRan for \$13 million for the same kind of groundwater contamination that is now legal under the Martinez Administration Copper Rule.
- **The Copper Rule allows copper mines to pollute groundwater with the same kinds of toxic heavy metals released from the Gold King mine that contaminated the Animas River.**
- 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.
- **The Copper Rule also sets 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.

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