

STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION



**IN THE MATTER OF THE PETITION  
FOR A VARIANCE TO APPROVE ALTERNATIVE  
ABATEMENT STANDARDS FOR THE PECOS  
(V)  
MINE OPERABLE UNIT**

**No. WQCC 18-03**

**Cyprus Amax Mineral Company,**

**Petitioner.**

**SCHEDULING ORDER PURSUANT TO 20.1.3.17(B)**

**AND 20.1.3.16(B)(2) NMAC**

On April 27, 2018, Cyprus Amax Minerals Company filed a “Petition for a Variance to Approve Alternative Abatement Standards for the Pecos Mine Operable Unit, located near Terrero, in San Miguel County, New Mexico” (“Petition”) with the Administrator for the Water Quality Control Commission (“Commission”). During its regularly scheduled meeting on May 8, 2018, the Commission determined that a public hearing shall be held on the Petition and authorized the Chair to appoint a Hearing Officer for the public hearing before the Commission. The Chair appointed Erin O. Anderson, Administrative Law Judge for the New Mexico Environment Department, to serve as Hearing Officer. The New Mexico Environment Department (“Department”) submitted its Response to Petition for Alternative Abatement Standards on June 27, 2018. After a scheduling teleconference with the hearing officer, the parties agreed to hold the hearing on September 11, 2018, during the regularly scheduled WQCC meeting.

20.6.2.4103(F)(3) NMAC provides that the Commission reviews petitions for alternative abatement standards in accordance with the procedures for review of a variance petition provided in the Commission’s adjudicatory procedures found in 20.1.3 NMAC. Accordingly, the Hearing

Officer hereby issues the following Scheduling Order pursuant to 20.1.3.18(C)(2) and 20.1.3.16(B)(2) NMAC.

1. The alternative abatement standards hearing will be held during the Commission's regularly scheduled meeting on **Tuesday, September 11, 2018 at 9:00 a.m.** in Room 307 of the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501.
2. The alternative abatement standards hearing will be conducted in accordance with the Water Quality Act, NMSA 1978, Section 74-6-5, the Water Quality Control Commission Adjudicatory Procedures found in 20.1.3 NMAC, and all other applicable law.
3. Any person who wishes to present technical evidence at the hearing shall file a statement of intent with the Commission Administrator on or before **Friday, August 31, 2018 at 5:00 p.m.** The hearing officer is setting an earlier deadline than the 10-day deadline contemplated in 20.1.3.17 (E) NMAC.
4. Any motions procedural or dispositive should be filed no later than **Friday, August 31, 2018 at 5:00 p.m.**
5. Any person who has not timely filed either an entry of appearance or a statement of intent to present technical evidence may present a general non-technical statement as provided in 20.1.3.17(F) NMAC.
6. The petitioner has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to justify the relief sought in the petition pursuant to 20.1.3.17(H) NMAC. Following the establishment of a prima facie case by the petitioner, any person opposed to the relief sought in the petition has the burden of going forward with any evidence and showing why the relief should not be granted.

7. The petitioner shall, at its own expense, have the hearing stenographically recorded and transcribed by a certified court reporter pursuant to 20.1.3.18(E) NMAC. Please contact Pam Castaneda, Commission Administrator, at 505-827-2425 or pam.castaneda@state.nm.us, to schedule the appearance of a certified court reporter.
8. The Hearing Officer will conduct the hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition, in accordance with 20.1.3.20(B)(1) NMAC.
9. 20.1.3.20 NMAC outlines the general hearing procedures. The alternative abatement standards hearing will begin with an opening statement from the Hearing Officer followed by the option for brief opening statements by the parties. The petitioner will present its evidence first, followed by the Department, and then any other party. All witnesses shall be examined under oath and all exhibits shall be considered in accordance with the applicable rule.
10. Pursuant to 20.1.3.21(B) NMAC, unless otherwise ordered by the Commission, any party may submit proposed findings of fact, conclusions of law, and closing argument within thirty (30) days after the conclusion of the hearing, or within such time as may be fixed by the Hearing Officer. The Commission, in its discretion, may decide to deliberate and reach a decision on the Petition immediately after the conclusion of the hearing.
11. The Commission may request that the Hearing Officer issue a recommended decision. If the Commission so requests, the Hearing Officer shall issue the recommended decision within thirty (30) days after the deadline for the filing of proposed findings of fact and conclusions of law in accordance with 20.1.3.21(C) NMAC.

12. The Commission shall reach a final decision at a public meeting, which may be the same meeting at which the hearing is conducted. If the Commission requests a recommended decision, the Commission may adopt, modify, or set aside the Hearing Officer's recommended decision and shall set forth in the final order the reasons for its actions pursuant to 20.1.3.21(D) NMAC.



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Erin O. Anderson, Administrative Law Judge  
New Mexico Environment Department  
Hearing Officer for WQCC 18-03 (V)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the **Scheduling Order Pursuant to 20.1.3.17 (B) and 20.1.3.16(B)(2) NMAC** was sent via the stated methods below to the following parties on August 2, 2018:

*Via hand delivery and email:*

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Pam Castaneda, Commission Administrator