

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

GREGORY C. and CAROL A. SHINSKY,

Appellant,

v.

**DEPARTMENT OF ENVIRONMENTAL
QUALITY,**

Respondent.

CASE NO. _____

NOTICE OF APPEAL

1. The appellant files this Notice of Appeal with the Department of Environmental Quality according to A.R.S. § 49-323.
2. Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you.
3. The name, address, and telephone number of the appellant is:

Name: Gregory C. and Carol A. Shinsky
Address: [REDACTED]
Telephone: [REDACTED]

The name, address, telephone number, and Arizona Bar number of appellant's attorney is:

Name: G. Van Velsor Wolf Jr.
Address: Snell & Wilmer LLP
Phoenix, Arizona 85004-2202
Telephone: (602) 382-6201 Bar No. 07530

4. The following is a list of names, mailing addresses, and telephone numbers of all the following interested:
 - a. The permittee:
Name: Rosemont Copper Company (permittee)

Address: P.O. Box 35130
Tucson, Arizona 85740
Telephone: (520) 343-1730

b. The Department of Environmental Quality
Name: Richard Mendolia
Address: ADEQ Water Quality Division – Groundwater Section
1110 West Washington Street (Mail Code 5415B-3)
Phoenix, Arizona 85007
Telephone: (602) 771-4374

5. The specific action of the Department of Environmental Quality which is the basis of this appeal is the following:

a. Notice of ADEQ Decision to Grant an Aquifer Protection Permit (APP) for Rosemont Copper Project

Inventory Number: 106100 LTF ID: 49639
USAS Number: 509976-00 Place ID: 135845

6. The date of the action complained of in the previous paragraph (5) is April 2, 2012.

7. The date the appellant received notice of the action complained of in the previous paragraph (5) is April 10, 2012.

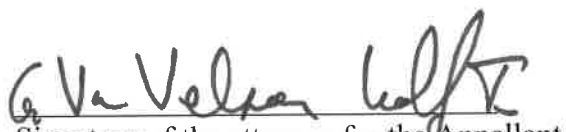
8. I request the relief below for the following reasons:
See Attachment A.

I reserve the right to amend the list of issues on appeal. ADEQ did not permit access to its files in this matter until April 30, 2012, so I have not been able to make a full evaluation of all potential issues.

9. I request that a hearing be held in the matter.

10. I request that Board Member Laurie A. Woodall recuse herself because she has appeared on behalf of the permittee in a related proceeding. Furthermore, because of the complexity of the issues in this matter, I request that it be assigned to an Administrative Law Judge.

DATED May 9, 2012


Signature of the attorney for the Appellant

**Attachment A
To Notice of Appeal**

**ADEQ DECISION TO ISSUE ROSEMONT APP
INVENTORY NO. 106100**

- 1. ADEQ made an invalid technical judgment by not establishing Alert Levels (ALs) and Aquifer Quality Limits (AQLs) in the 4/3/12 draft APP and deferring establishment of such levels nearly two and a half years after the commencement of operations and the initiation of monitoring at the Point of Compliance (POC) wells, plus three months after the completion of such two-year monitoring program to submit the data to ADEQ, plus an indeterminate time period for ADEQ to review the results and negotiate appropriate ALs and AQLs.**
- 2. ADEQ made an invalid technical judgment in its reliance on Rosemont's leaching and modeling data as a demonstration that infiltration, leaching, and seepage from the tailings facility and waste rock facility will not contaminate the aquifer.**
- 3. ADEQ made an invalid legal and technical judgment when it did not properly or adequately calculate closure and post-closure costs.**
- 4. ADEQ made an invalid technical judgment when it proposed to issue the APP, which governs specific "discharging facilities" under specific conditions, BEFORE the Forest Service's issuance of its NEPA Record of Decision regarding the Mining Plan of Operations, which may significantly alter the operations described in Rosemont's APP application and which may require significant alterations in the operational conditions described in the APP. This is also a problem in issuing the APP before final issuance of the Corps of Engineers 404 permit.**
- 5. ADEQ made an invalid technical judgment by failing to prove that the "passive BADCT" for the mine pit, authorized under A.R.S. § 49-243(G), does not violate the standards in either A.R.S. § 49-243(B)(2) or (3), either of which applies.**
- 6. ADEQ made an invalid technical judgment when it failed to describe fully and more appropriately and promptly contingency plans for foreseeable weather events and emergency responses, particularly applicable to local conditions rather than modeling. ADEQ also made an invalid technical judgment when it failed to establish placeholders for closure and post-closure planning based upon Rosemont's technical reports, rather than simply deferring any details until a closure notice is given.**
- 7. ADEQ made an invalid technical judgment by failing to articulate properly the design and other standards for the POC wells, as well as by failing to provide sufficient POC wells.**

- 8. ADEQ made an invalid technical judgment when it failed to analyze fully the potential leakage problems for liners and adjust its mandatory conditions accordingly.**
- 9. ADEQ made an invalid technical judgment by (a) failing to require Leak Collection and Recovery Systems for (i) the Temporary Storage section of the Process Water Storage Pond and for (ii) the Heap Leach Pad, and (b) failing to fully explain and impose sufficient design and testing requirements for the Leak Collection and Recovery Systems for (i) the Raffinate Pond and (ii) the Pregnant Leach Solution Pond.**
- 10. ADEQ made an invalid technical judgment by failing to impose discharge limits at the point of discharge from the discharging facilities and failing to require monitoring at the point of discharge because once contaminants are discharged into the aquifer, the 4/3/12 draft APP does not require cleanup if the discharges result in exceedances of the ALs and AQLs at the distant POC wells. Thus, such a discharge will permanently contaminate and degrade the aquifer.**
- 11. ADEQ made an invalid technical judgment by failing to respond to all technical comments submitted during the comment period and by inaccurately summarizing and paraphrasing other comments.**
- 12. ADEQ made an invalid technical judgment by failing to make an independent evaluation of the data supplied by Rosemont in support of its APP application. There are no documents in the final public file, as of 5/4/12, proving such independent evaluation.**
- 13. ADEQ made an invalid technical judgment in approving the location of a storm water drain that will mingle storm water and acid leach going to a dam that is not subject to BADCT.**
- 14. ADEQ made an invalid technical judgment when it did not consider the impact of groundwater discharges on surface waters and surface water quality because groundwater discharges will surface in springs and become surface discharges that will adversely affect surface water quality.**
- 15. ADEQ made an invalid technical judgment when it declined to anticipate the likelihood of damage and degradation to existing groundwater quality within the two-year monitoring period after ground-disturbance operations begin.**
- 16. ADEQ made an invalid technical judgment when it assumed that the mine pit would forever remain a “sink” with no outflow of contaminants (because it was below groundwater level).**

- 17. ADEQ made an invalid technical judgment when it declined to exercise discretion in recognizing that the statutory emergency standard of 100-year, 24-hour rain event was no longer valid for actual conditions. This is particularly problematic because failure as a result of an extreme event, without controls, will result in damage to listed Outstanding Waters (Cienaga Creek and Davidson Canyon).**
- 18. ADEQ made an invalid technical judgment when it failed to apply more restrictive limits to the seepage discharge from the Heap Leach Facility.**
- 19. ADEQ made an invalid technical judgment when it relied upon Rosemont's analysis of a dry stack tailings facility in Chile to prove BADCT worked at the Rosemont mine.**