

Bryan Hurlbutt (ISB # 8501)
Andrew Hursh (ISB # 12644)
Advocates for the West
P.O. Box 1612
Boise, ID 83701
208.342.7024
bhurlbutt@advocateswest.org
ahursh@advocateswest.org

Julia Thrower (ISB # 10251)
Mountain Top Law PLLC
614 Thompson Ave.
McCall, ID 83638
208.271.6503
jthrower@mtntoplaw.com

*Attorneys for Idaho Conservation League
and Save the South Fork Salmon*

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA**

IDAHO CONSERVATION LEAGUE, a
non-profit corporation, and SAVE THE
SOUTH FORK SALMON, a non-profit
corporation,

Petitioners,

v.

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY, and
IDAHO BOARD OF
ENVIRONMENTAL QUALITY,

Respondents.

Case No. _____

Agency Case No. 0101-22-01

OAH Case No. 23-245-014

**PETITION FOR JUDICIAL REVIEW
OF AIR QUALITY PERMIT TO
CONSTRUCT P-2019.0047**

TO: THE ABOVE-NAMED RESPONDENTS, THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL QUALITY, AND THE RESPONDENTS' ATTORNEY, HANNAH YOUNG, DEPUTY ATTORNEY GENERAL OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, AND THE CLERK OF THE AGENCY

NOTICE IS HEREBY GIVEN:

The above-named Petitioners, Idaho Conservation League and Save the South Fork Salmon (collectively, "Petitioners"), seek judicial review regarding the Idaho Department of Environmental Quality's ("DEQ") decision to issue the Air Quality Permit to Construct P-2019.0047 (the "PTC") to Perpetua Resources Idaho, Inc. ("Perpetua"), dated June 17, 2022, for the Stibnite Gold Project, and as affirmed by the Idaho Board of Environmental Quality's (the "Board") Final Order, dated May 29, 2024, the Board's Final Order, dated May 27, 2025, and the Board's Order on Save the South Fork Salmon's Motion for Reconsideration Based on New Evidence, dated June 27, 2025.

I

PARTIES

1. PETITIONER IDAHO CONSERVATION LEAGUE ("ICL") is an Idaho non-profit conservation organization. Its main office is located in Boise, Idaho, and it has three field offices in Sandpoint, Ketchum, and McCall. ICL represents approximately 50,000 supporters dedicated to protecting and conserving Idaho's clean water, air, public lands, and wildlife. ICL supporters, staff, and board members regularly visit the Stibnite Gold Project area and/or nearby areas for professional, recreational, aesthetic, and other purposes and will be harmed by particulate matter and arsenic air emissions from the Stibnite Gold Project as

approved by DEQ and the Board.

2. PETITIONER SAVE THE SOUTH FORK SALMON (“SSFS”) is a community-based, non-profit conservation organization headquartered in McCall, Idaho. SSFS represents members and supporters dedicated to preserving the South Fork Salmon River watershed and ecosystem. SSFS members, supporters, and members of the Board of Directors regularly visit the South Fork Salmon River watershed and the SGP site, where the emission of excessive air pollutants due to DEQ’s issuance of the PTC would impact professional, economic, recreational, aesthetic, environmental, and human health interests.

3. RESPONDENT IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY is an executive department and administrative agency organized under the laws of the State of Idaho, pursuant to the Idaho Constitution (Article IV, Section 20) and Idaho Code section 39-104(1). Its principal offices are located at 1410 N. Hilton, Boise, Idaho 83706. DEQ, through its Director, and subject to Board oversight, is responsible for issuing air quality PTCs under the Air Rules, IDAPA 58.01.01. DEQ issued the PTC for the Stibnite Gold Project.

4. RESPONDENT IDAHO BOARD OF ENVIRONMENTAL QUALITY is a rulemaking and advisory body within DEQ and created by the Environmental and Health Act, Idaho Code section 39-107. The Board consists of seven members appointed by the Governor. The Board affirmed the PTC issued by DEQ for the Stibnite Gold Project.

II

JURISDICTIONAL AND VENUE STATEMENT

5. Petitioners have the right to seek judicial review regarding the decisions of DEQ and the Board, which became the final Order in the matter before DEQ as contained in Agency

Case No. 0101-22-01 and OAH Case No. 23-245-014. Petitioners Petition for Judicial Review are brought pursuant to the applicable Idaho Statutes (“I.C.”), Idaho Rules of Civil Procedure (“I.R.C.P.”), and Idaho Administrative Procedures Act, including, but not limited to I.C. § 67-5270, *et. seq.*, I.C. § 39-107, I.R.C.P. 84, and IDAPA 62.01.01.627.

6. This Petition for Judicial Review was timely filed on July 22, 2025, within the 28 days from the date of the Board’s June 27, 2025 Order on Save the South Fork Salmon’s Motion for Reconsideration Based on New Evidence. I.C. § 67-5273.

7. Proper venue lies in Ada County, Idaho, because that is where the hearing was held, the final agency action was taken, and Petitioner ICL resides. I.C. § 67-5272.

III

STATEMENT AS TO HEARING OR ORAL PRESENTATION

8. The contested case before the Board proceeded to several contested hearings on the merits, as listed below:

- a. Summary Judgment Hearing before Hearing Officer Dylan Lawrence, Office of Administrative Hearings, on September 21, 2023;
- b. Oral Argument before the Board of Environmental Quality on March 14, 2024;
- c. Evidentiary hearing before Hearing Officer Dylan Lawrence, Office of Administrative Hearings, on October 17 and 18, 2024 ; and
- d. Oral Argument before the Board of Environmental Quality on April 2, 2025.

9. It is understood that these hearings were recorded and are in the possession of the Agency Clerk, Diane Cutler, located at 1410 N. Hilton Street, Boise, Idaho 83706.

IV

FACTUAL ALLEGATIONS

10. Under the federal Clean Air Act, the U.S. Environmental Protection Agency (“EPA”) has delegated to DEQ authority to issue air quality permits in Idaho pursuant to the Rules for the Control of Air Pollution in Idaho (“Air Rules”), IDAPA 58.01.01. Prior to construction of a facility, the owner or operator must first obtain a permit to construct from DEQ which satisfies the applicable requirements of the Air Rules. Air Rules Section 201.

11. Perpetua (previously Midas Gold) submitted a PTC application for the Stibnite Gold Project to DEQ on August 20, 2019. After releasing three draft PTCs for public comment, DEQ issued the final PTC on June 17, 2022.

The Stibnite Gold Project

12. Perpetua proposes to construct and operate a conventional open-pit mine with ore preparation and gold extraction facilities approximately 10 miles east of the town of Yellow Pine, in Valley County, Idaho. The Project is located on a combination of public National Forest and private lands.

13. The Project includes 3 years of development and construction activities, followed by approximately 12 years of mining. The Project would require “construction of significant infrastructure,” including a power transmission line, a primary mine site access road, onsite haul roads, an ore processing facility, onsite workspaces, employee housing and recreation, water storage and distribution facilities, and sewage disposal facilities. Conventional open-pit mining methods including drilling, blasting, excavating, and hauling will be used to extract ore and waste rock (termed development rock) from three open pits. *Id.* Over the life of the mine,

approximately 340 million tons of waste rock would be handled and 100 million tons of ore will be mined from the three pits. A fleet of large trucks will haul ore and waste rock using a network of over 55 miles of unpaved haul roads at the mine site.

14. While the Stibnite Gold Project will emit numerous air pollutants, particulate matter (“PM”) and arsenic are the air pollutants of greatest concern and are the pollutants at issue in this Petition for Review.

PM₁₀ Emissions from the Project

15. Particulate matter (“PM”) is a “criteria air pollutant.” Under CAA Sections 108 and 109, EPA is required to establish national ambient air quality standards (“NAAQS”) for each criteria pollutant to protect the nation’s public health and welfare. The NAAQS specify a maximum amount of PM to be present in the outdoor air. *See* 40 C.F.R. §§ 50.6, 50.7. EPA established primary and secondary NAAQS for coarse particulate matter, or “PM₁₀,” and for fine particulate matter, or “PM_{2.5}”. 40 C.F.R. § 50.6–50.7. PM₁₀ consists of inhalable particles with diameters that are generally ten micrometers and smaller; whereas, PM_{2.5} consists of inhalable particles that are 2.5 micrometers and smaller. *Id.*

16. DEQ found that the Project has the potential to emit 986 tons per year of PM₁₀ from a variety of controlled fugitive sources, plus 55.7 additional tons per year of PM₁₀ from a variety of controlled point sources. The generation of dust from ore haul trucks traveling along haul roads is the most significant source, representing approximately 72% of all fugitive PM₁₀ emissions, and 68% of all modeled PM₁₀ emissions. The next most significant sources of PM₁₀ are from drilling and blasting activities, which together account for an estimated 21% of all fugitive PM₁₀ emissions (20% of all emissions).

17. To evaluate whether the Project would comply with the PM₁₀ NAAQS, DEQ modeled receptors at various locations along the Project's ambient air boundary and found the Project would exceed the 24-hour PM₁₀ NAAQS at one receptor, when using a single-value for PM₁₀ background at the site. DEQ then used seasonal and monthly background PM₁₀ values to find that the maximum 24-hour PM₁₀ pollution from the Project would be 123.5 micrograms per meter cubed ("ug/m³"), which is 82.3% of the NAAQS.

18. Among other factors, these modeled PM₁₀ emissions are based on PTC Condition 3.5 limiting Perpetua's production to no more than 180,000 tons per day, and no more than an average of 135,000 tons per day on a rolling five-year basis. They also depend on Perpetua achieving a 93.3% rate of control of fugitive dust. Achieving these and other PTC conditions, and assumptions used in the modeling, also depend on future plans called for in the PTC, including a Fugitive Dust Control Plan ("FDCP"), Operations and Maintenance Plan ("O&M Plan"), and Haul Road Capping Plan ("HRCP").

19. During public comment, Petitioners, EPA, and other commenters warned that DEQ unreasonably assumed PM₁₀ emissions would be this low. Specifically, Petitioners and EPA commented that DEQ unreasonably assumed Perpetua would be able to control 93.3% of dust it would otherwise emit on haul roads, and pointed out that DEQ's assumptions relied on the yet-to-be determined details of numerous future plans that have not yet been developed by Perpetua, submitted to DEQ, or included as conditions of the PTC.

20. In its comments, EPA underscored that achieving 93.3% control for excavation and haul roads, and 90% control for drilling, "are critical to ensuring no violation of the NAAQS and Title V HAP limits." EPA warned that the PTC lacks conditions necessary to assure Perpetua

achieves these efficiencies and that record fails to show those efficiencies are achievable based on site-specific conditions. EPA also noted that DEQ failed to provide evidence to support its claim that a 90% control using magnesium chloride could be improved by also using water sprays to achieve a 93.3% control.

Arsenic Emissions from the Project

21. Arsenic is a naturally occurring element in soils and minerals. When soil or rock containing arsenic is disturbed, arsenic may enter the air, water, and land from wind-blown dust and from run-off and leaching. The EPA classifies inorganic arsenic as a “human carcinogen,” based on evidence in human studies of links to lung, bladder, kidney, skin, and liver cancers.

22. Arsenic is also a Toxic Air Pollutant (“TAP”) regulated by DEQ. Air Rules Section 586. DEQ determined arsenic is the largest projected TAP emission from the Project. DEQ found that the Project could emit 0.544 lbs/hr at the maximum mine production rate of 180,000 tons per day. Arsenic is a component of rocks, soils, and dust at the Project site, so arsenic emissions are essentially a percentage of the Project’s PM₁₀ emissions, and like with PM₁₀, the largest source of Project arsenic emissions are haul roads, estimated at 0.464 lbs/hr.

23. No PTC can be granted unless DEQ determines the applicant showed “the emissions of toxic air pollutants from the . . . source . . . would not injure or unreasonably affect human health or animal life or vegetation as required by Section 161.” Air Rules Section 203.03. Section 161 states, “[a]ny contaminant which is by its nature toxic to human or animal life or vegetation shall not be emitted in such quantities or concentrations as to alone, or in combination with other contaminants, injure or unreasonably affect human or animal life or vegetation.” Air Rules Section 161. For each carcinogenic TAP, including arsenic, the Air Rules set Acceptable

Ambient Concentrations of Carcinogens (“AACC”), where each AACC is an annual average in ug/m³. Air Rules Section 586. To demonstrate compliance with these TAPs requirements, ambient impacts must be less than the AACC. Air Rule Section 203.

24. Because of the Project’s high arsenic emissions, Perpetua used what DEQ described in the Statement of Basis for the PTC (the “SOB”) as “a highly refined TAPs analysis approach to demonstrate compliance with applicable TAP increments.” As one part of this approach, DEQ approved Perpetua’s “T-RACT demonstration” to allow a 10-times increase in the arsenic AACC. As the Air Rules provide, a permittee can analyze reasonable available control technologies (“RACT”) that could be applied to a source of TAPs. *See* Air Rules Section 210.14. If using RACT does not sufficiently reduce toxic emissions to below the AACC, then the permittee is allowed a 10-fold increase in the AACC and can employ production limitations to ensure compliance with the now increased AACC. *See* Air Rules Section 210.12.b.

25. As another part of this “highly refined” approach, DEQ allowed what it called an “AACC adjustment for the Operational Life of the Mine.” Under this approach, instead of comparing the highest annual average ambient arsenic concentration during the Project lifetimes to the T-RACT adjusted AACC (which is also an annual average), DEQ stretched out and diluted the arsenic concentrations from the 16-year Project lifetime over a longer 70-year human life. Multiplying the modeled highest annual arsenic concentration by 16 and dividing by 70, as DEQ did here, dilutes the arsenic concentration to only 23% of its actual value. During permitting, DEQ staff noted that this approach had not been used before, and raised concerns about whether it was permissible under the Air Rules.

26. During public comment, Petitioners questioned DEQ’s novel tactic for diluting

the apparent arsenic exposure from the 16-year Project by spreading it over 70 years, and warned that without this the Project would exceed the arsenic AACC, even with the T-RACT adjustment.

27. In the end, DEQ approved Perpetua's T-RACT demonstration and, thus, granted a 10-fold increase in allowable arsenic pollution combined with using the creative new "adjustment" to dilute the apparent arsenic exposure to just 16/70 (or 23%) of its modeled maximum annual value so that DEQ could determine the Project would comply with the AACC.

Ambient Air Boundary and the Stibnite Access Route

28. The CAA and Air Rules require Perpetua to meet various air standards, including the NAAQS and TAPs AACCs, in "ambient air." *See, e.g.*, Air Rules Sections 006.11 (NAAQS), 006.125 (TAPs). EPA's CAA regulations define "ambient air" as "that portion of the atmosphere, external to buildings, to which the general public has access." 40 C.F.R. § 50.1(e). The Air Rules define "ambient air" as "[t]hat portion of the atmosphere, external to building, to which the general public has access." IDAPA 58.01.01.005.09.

29. To exclude areas from consideration as ambient air, the following conditions must be met: (1) the permittee must have the legal authority to exclude the general public from the area; (2) the boundary to ambient air must be clearly discernible to the general public; (3) the general public must be effectively precluded from assessing the facility; and (4) the general public is not considered employees of the facility; those having official business with the facility; guests of the facility, including participants in facility routes and those seeking access for a specific purpose.

30. The Stibnite Road Access Route ("Route") is a road that passes through what Perpetua and DEQ have defined as the mine's operations boundary and the ambient air boundary,

and the inside of that boundary is the active industrial site where Project mining activities and heavy equipment operation will occur. Perpetua has indicated that it will not cut off public access along the Stibnite Road Access Route during mine operations, and as explained by DEQ, Perpetua “will manage an access route to provide the general public with limited access through the [Project] site between Stibnite Road at Sugar Creek and Thunder Mountain Road at Meadow Creek.”

31. In public comments, Petitioners urged DEQ to count the Stibnite Road Access Route as ambient air where air quality standards would have to be met, since Perpetua plans to allow public access on the Route. But DEQ excluded everything within the mine operations boundary from ambient air—including the Stibnite Road Access Route.

32. In its comments, EPA urged: “Given the unique situation with a public access road traversing the mine site, the key assumptions, parameters, and methodologies used to preclude public access from the mine site must be fully disclosed in the permit record and the necessary requirements be included in the permit and available for public review and comment.” But instead of following EPA’s advice, DEQ is instead allowing Perpetua to develop an Access Management Plan (“AMP”) to address these issues later without public review.

Contested Case Background

33. On July 22, 2022, Petitioners timely filed the original Petition to Initiate Contested Case. Perpetua intervened in the contested case. On December 6, 2022, Petitioners filed their First Amended Petition to Initiate Contested Case.

34. After discovery, summary judgment briefing, and a hearing, the Hearing Officer issued a Preliminary Order on October 31, 2023, and an Amended Preliminary Order, on

December 5, 2023, ruling in favor of DEQ and against Petitioners. Petitioners filed a Petition for Review of those orders with the Board, alleging the following errors: (1) that DEQ erred in finding Perpetua has legal control of the Stibnite Road Access Route such that the Route need not comply with ambient air quality standards; (2) that DEQ erred in finding Perpetua will be able to practically and physically preclude the general public from accessing locations within the ambient air boundary; (3) that DEQ violated the Air Rules by allowing Perpetua to submit plans with project details after the PTC was issued and without allowing for public comment on the plans; (4) that the PTC does not include enforceable conditions that will achieve 93.3% dust control; and (5) that DEQ violated the Air Rules when calculating the ambient arsenic concentrations attributable to the SGP by diluting them by 16/70.

35. After briefing and oral argument, the Board issued a series of orders, ruling against Petitioners on four issues and ruling in Petitioners' favor on the arsenic issues. The Board remanded to the Hearing Officer for factual development on the arsenic issues.

36. On remand, after a hearing and briefing, the Hearing Officer issued a Preliminary Order January 7, 2025, finding in favor of DEQ on the arsenic issues.

37. On January 21, 2025, Petitioners filed a Petition for Review of that order with the Board on the arsenic issues. After briefing and oral argument, the Board ruled in favor of DEQ in its Final Order, dated May 27, 2025, and its Order on Save the South Fork Salmon's Motion for Reconsideration Based on New Evidence, dated June 27, 2025.

V

STATEMENT OF ISSUES

I. Whether DEQ's and the Board's determination that the Stibnite Road is not ambient air

entitled to air quality protections violated the Idaho APA (I.C. § 67-5279) because it was in violation of the Clean Air Act and Air Rules, not supported by substantial evidence in the record, or arbitrary, capricious, or an abuse of discretion.

II. Whether DEQ's and the Board's determination that the PTC and Project will comply with the NAAQS for PM₁₀ violated the Idaho APA (I.C. § 67-5279) because it was in violation of the Clean Air Act and Air Rules, not supported by substantial evidence in the record, or arbitrary, capricious, or an abuse of discretion.

III. Whether DEQ's and the Board's decision to allow Perpetua to submit various plans in the future, after issuance of the PTC, violated the Idaho APA (I.C. § 67-5279) because it was in violation of the Clean Air Act and Air Rules, not supported by substantial evidence in the record, made upon unlawful procedure, or arbitrary, capricious, or an abuse of discretion.

IV. Whether DEQ's and the Board's determination that the PTC and Project will comply with the T-RACT adjusted AACC for arsenic violated the Idaho APA (I.C. § 67-5279) because it was in violation of the Air Rules, not supported by substantial evidence in the record, or arbitrary, capricious, or an abuse of discretion.

VI

RELIEF REQUESTED

WHEREFORE, Petitioners respectfully ask the Court to declare unlawful, set aside, and remand the PTC under I.C. § 67-5279 as being in violation of the Clean Air Act and its implementing regulations, the Air Rules, and the Idaho APA, and to direct the DEQ to correct all errors prior to issuing any new or revised PTC, and order further relief as the Court deems just and proper.

Petitioners also request costs and attorney's fees pursuant to Idaho Code § 112-117, I.R.C.P. 54, and any other applicable fee provision.

VII

DESIGNATION OF TRANSCRIPT AND CLERK'S RECORD

There is no order sealing any portion of the transcript or the Clerk's Record. All transcripts from the hearings before the Board and the Office of Administrative Hearings (listed above) were made and are contained in the Clerk's record. Petitioners have requested the full and complete record, including transcripts, of any and all filings in this matter.

VIII

CERTIFICATION OF SERVICE OF PETITION

I, the undersigned counsel for Petitioners, hereby certify that:

1. A copy of this Petition for Judicial Review was served upon DEQ and the Board as they were the State agencies rendering the decision.
2. The Clerk of the Agency has been paid the estimated fee in the amount of \$294.64 as a deposit for the preparation of an electronic copy of the agency record and transcripts.

Petitioners reserve the right to supplement and/or amend the foregoing.

DATED this 23rd day of July 2025.

ADVOCATES FOR THE WEST

By /s/ Bryan Hurlbutt
Bryan Hurlbutt (ISB # 8501)
Andrew Hursh (ISB # 12644)
P.O. Box 1612
Boise, ID 83701
208.342.7024
bhurlbutt@advocateswest.org

ahursh@advocateswest.org

MOUNTAIN TOP LAW PLLC

By /s/ Julia Thrower

Julia Thrower (ISB # 10251)

Mountain Top Law PLLC

614 Thompson Ave.

McCall, ID 83638

208.271.6503

jthrower@mtntoplaw.com

*Attorneys for Idaho Conservation League
and Save the South Fork Salmon*

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of July 2025, served a true and correct copy of the foregoing PETITION FOR JUDICIAL REVIEW upon all parties of record in this proceeding by delivering a copy by e-mail, or as otherwise indicated, to the following:

Clerk of the Court
Ada County District Court
200 W. Front Street
Boise, ID 83702

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ iCourt
☐ E-mail

Jess Byrne
Director
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
jess.byrne@deq.idaho.gov

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ iCourt
☒ E-mail

Diane Cutler, Hearing Coordinator
Rules and Planning Analyst
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
diane.cutler@deq.idaho.gov

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ iCourt
☒ E-mail

Ann Yribar
Deputy Attorney General
Energy and Natural Resources Division
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010
ann.yribar@ag.idaho.gov

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ iCourt
☒ E-mail

Michael A. Short
Hannah M.C. Young
Deputy Attorney General
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
michael.short@deq.idaho.gov
hannah.young@deq.idaho.gov

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ iCourt
☒ E-mail

Krista K. McIntyre
W. Christopher Pooser
Wade C. Foster
Nicole Hancock
Stoel Rives LLP
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702
krista.mcintyre@stoel.com
christopher.pooser@stoel.com
wade.foster@stoel.com
nicole.hancock@stoel.com

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☒ E-mail

s/Julia Thrower
Julia S. Thrower