

Bradley S. Richardson, ISB No. 7008  
Justin K. Widner, ISB No. 8957  
Brenton S. Anderson, ISB No. 11112  
GARRETT RICHARDSON, PLLC  
738 S. Bridgeway Place, Suite 100  
Eagle, Idaho 83616  
Telephone: (208) 938-2255  
Facsimile: (208) 938-2277  
[brad@garrettrichardson.com](mailto:brad@garrettrichardson.com)  
[justin@garrettrichardson.com](mailto:justin@garrettrichardson.com)  
[brenton@garrettrichardson.com](mailto:brenton@garrettrichardson.com)

Attorneys for The L & R Group, LLC

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

THE L & R GROUP, LLC, an Idaho  
Limited Liability Company

Appellant/Petitioner

vs.

IDAHO DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Appellee/Respondent

Case No. \_\_\_\_\_

Agency Case No. 0106-23-01

OAH Case No. 23-245-02

**PETITION FOR JUDICIAL  
REVIEW/NOTICE OF APPEAL AND  
PETITION FOR DECLARATORY  
JUDGMENT**

TO: THE ABOVE-NAMED APPELLEE/RESPONDENT, IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY, AND THE APPELLEE/RESPONDENT'S ATTORNEY, HANNAH YOUNG, DEPUTY ATTORNEY GENERAL OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, AND THE AGENCY REPORTER, AND THE CLERK OF THE AGENCY

NOTICE IS HEREBY GIVEN:

## I.

### **DESIGNATION OF THE APPEAL**

The above-named Appellant/Petitioner, the L&R Group, LLC (hereinafter “L&R”) appeals and seeks judicial review and a declaratory judgment regarding actions and decisions as contained in the Hearing Officer’s Order Re: Petitioner’s Motion for Declaratory Ruling dated May 17, 2023, and Order Re: Respondent’s Renewed Motion to Dismiss dated July 28, 2023. Specifically, L&R filed a Petition and an Amended Petition against the Idaho Department of Environmental Quality (sometimes referred to herein as “DEQ”), which Petitions have been inappropriately dismissed.

Due to the overlap and relationship between the facts and the statutory provisions contained in I.C. § 67-5270, *et seq.*, and for the purposes of judicial economy, L&R brings this Petition for Judicial Review and Petition for Declaratory Judgment in the same document. These Petitions, however, can be separated if helpful to the Court.

## II.

### **JURISDICTIONAL STATEMENT**

L&R has the right to seek judicial review and a declaratory judgment regarding the decisions of the Hearing Officer which became the final Order in the matter before the DEQ as contained in Agency Case No. 0106-23-01 and OAH Case No. 23-245-02. L&R’s Petition for Judicial Review and Petition for Declaratory Judgment are brought pursuant to the applicable Idaho Statutes, Idaho Rules of Civil Procedure, and Idaho Administrative Procedures Act, including, but not limited to, I.R.C.P. 84, I.C. § 67-5270, *et seq.*, I.C. § 10-1208, and I.R.C.P. 57.

### III.

#### **STATEMENT AS TO HEARING OR ORAL PRESENTATION**

While this case was not allowed to proceed to a contested hearing on the merits, the Hearing Officer held status conferences, heard statements and admissions and made some rulings on February 8, 2023, and April 18, 2023. It is understood that these status conferences were recorded by the Hearing Officer, Leslie M. Hayes, located at 816 W. Bannock, Street, Suite 203, Boise, Idaho, 83702, and/or are in the possession of the agency Clerk, Paula Wilson, located at 1410 N. Hilton Street, Boise, Idaho 83706.

### IV.

#### **PRELIMINARY STATEMENT OF ISSUES FOR JUDICIAL REVIEW AND/OR FOR DECLARATORY JUDGMENT**

1. Whether L&R's Operating Plan as submitted on June 7, 2022, was approved by application of IDAPA 58.01.06.032.03(c)(ii).
2. Whether the Hearing Officer erred in dismissing L & R's Amended Petition by mischaracterizing the issue raised by L & R's Petition as an appeal of the DEQ's August 16, 2022, Conditional Approval Letter rather than an appeal for a declaration or determination that the Operating Plan submitted on June 7, 2022, was automatically deemed approved unconditionally pursuant to IDAPA 58.01.06.032.03(c)(ii).
3. Whether the Hearing Officer erred, misunderstood and/or misapplied I.C. § 67-5280(2)(a) in denying L&R's Petition for Declaratory Judgment where L & R expressly requested a declaratory finding in its Petition.
4. Whether the Hearing Officer erred in denying the Petition for Declaratory Judgment pursuant to I.C. § 67-5280(2)(b) after the DEQ expressly acknowledged and/or acquiesced to the

jurisdiction or authority of the Office of Administrative Hearings (“OAH”) to decide all issues pertaining to L&R’s June 7, 2022, Operating Plan.

5. Whether the Court in this matter should enter a declaratory judgment pursuant to I.C. § 67-5278, I.C. § 10-1208, I.C. § 67-5280; and I.R.C.P. 57 and/or other applicable law that L&R’s Operating Plan was approved unconditionally pursuant to IDAPA 58.01.06.032.03(c)(ii).

6. For a declaratory judgment that L&R was not required to move affirmatively or appeal for court or administrative action once the Operating Plan was approved unconditionally by application of IDAPA 58.01.06.032.03(c)(ii).

7. Whether the Hearing Officer erred in granting the DEQ’s Renewed Motion to Dismiss by improper legal standards including but not limited to:

- Failing to apply the proper legal standards of I.R.C.P. 12 where the DEQ admitted this Rule applied.
- Failing to provide any standard of review or criteria in addressing the Renewed Motion to Dismiss.
- Failing to recognize that there is a question of fact or law as to whether the relevant “Order” was L & R’s Operating Plan without conditions, as submitted on June 7, 2022, or L & R’s Operating Plan with the conditions set forth in the August 16, 2022, letter.
- Failing to construe all facts and give all reasonable inferences in favor of L&R.
- Failing to consider all evidence submitted by L&R and/or sworn allegations and Exhibits in L & R’s Amended Petition while providing undue weight to DEQ’s statements of fact unsupported by any admitted evidence.

- Failing to recognize there were no gaps of more than 35 days between the repeated action or inaction by the DEQ and L&R.
- Failing to apply waiver, unclean hands, or equitable tolling for the delay, misrepresentation and/or continued negotiations by the DEQ.

8. For a declaratory judgment that the DEQ has no authority under the Consent Order or Amended Consent Order to impose conditions on approval.

9. Whether the Hearing Officer erred in holding that the DEQ gave proper notice to L&R of its “Order” in August of 2022, where the purported Order does not set out the items required by I.C. § 67-5248 or otherwise provide any other notice that its August 16, 2022, letter was an Order or provide timeframes for reconsideration, appeal, or other administrative remedies.

10. Whether the Hearing Officer erred in holding that the period to appeal the DEQ’s Order was not tolled during, or that the DEQ is estopped from asserting the expiration of the appeal period based on, the continued negotiation and/or exhaustion of administrative remedies.

11. For a declaratory judgment under I.C. § 67-5278, and/or any other applicable law, that L & R is a Tier II facility and that the DEQ’s attempts or threats to apply rules or impose requirements for a higher-tiered facility were improper.

12. For a declaratory judgment that the conditions of approval must relate to human health and the environment as set forth in and required by the Solid Waste Management Rules. (IDAPA 58.01.06).

13. For a declaratory judgment that the DEQ lacks authority to impose a “kill-switch” whereby the DEQ possesses the unilateral authority to withdraw or suspend L & R’s Operating Plan or operations based on any perceived violation of its conditions.

14. For a declaratory judgment that the DEQ cannot unilaterally withdraw or suspend L & R's Operating Plan or operations for asserting its Constitutionally protected rights against unreasonable searches under the 4<sup>th</sup> Amendment and I.C. § 39-108(2).

15. For a declaratory judgment that the DEQ cannot unilaterally withdraw or suspend L & R's Operating Plan or operations for a perceived "major DEQ-confirmed odor event." DEQ has not defined this term and has no criteria for determining what constitutes a major odor event.

16. L&R reserves the right to raise other issues as discovered.

## V.

### **DESIGNATION OF TRANSCRIPT AND CLERK'S RECORD**

There is no order sealing any portion of the transcript or Clerk's Record. L&R has requested a transcript from the DEQ of all scheduling conferences and/or statement made in connection therewith, and has requested the full and complete record of any and all filings in this matter. This includes, but is not limited to:

1. Status Conference on February 8, 2023;
2. Status Conference on April 18, 2023;
3. Petition to Initiate Contested Case: Approval of June 7, 2022 Modification Application, Operation Plan, and Closure Plan;
4. Notice of Assignment of Contested Case to Office of Administrative Hearings;
5. Notice of Appointment of Hearing Officer;
6. Notice of Telephonic Scheduling Conference;
7. Respondent Department of Environmental Quality's Motion to Dismiss;
8. Memorandum in Support of Respondent Department of Environmental Quality's Motion to Dismiss;

9. Order;
10. Affidavit of Ian Frost in Response to Respondent Department of Environmental Quality's Motion to Dismiss;
11. Amended Notice of Status Conference;
12. Petitioner's Motion for Declaratory Ruling;
13. Petitioner's Memorandum in Opposition to Respondent's Motion to Strike;
14. Petitioner's Motion to Amend Petition;
15. Second Amended Notice of Status Conference;
16. Affidavit of Valerie Greear in Support of Respondent's Opposition to Petitioner's Motion for Declaratory Judgment;
17. Respondent's Memorandum in Opposition to Petitioner's Motion to Amend Petition and Respondent's Motion to Strike;
18. Respondent's Memorandum in Opposition to Petitioner's Motion for Declaratory Ruling;
19. Petitioner's Reply in Support of Motion for Declaratory Ruling;
20. Petitioner's Reply in Support of Motion to Amend;
21. Order to File Redlined Proposed Amended Petition;
22. Affidavit of Counsel Re: Redline of First Amended Verified Petition;
23. Order Re: Respondent's Motion to Dismiss, Respondent's Motion to Strike, Petitioner's Motion to Amend, and Petitioner's Motion for Declaratory Ruling dated May 17, 2023;
24. First Amended Verified Petition to Initiate Contested Case: Approval on June 7, 2022 Modification Application, Operation Plan, and Closure Plan;

25. Respondent Department of Environmental Quality's Renewed Motion to Dismiss;
26. Memorandum in Support of Respondent Department of Environmental Quality's Renewed Motion to Dismiss;
27. Petitioner's Memorandum in Opposition to Respondent's Renewed Motion to Dismiss;
28. Reply in Support of Respondent Department of Environmental Quality's Renewed Motion to Dismiss;
29. Order Re: Respondent's Renewed Motion to Dismiss dated July 28, 2023; and
30. Any other documents or filings pertaining to this matter.

## VI.

### CERTIFICATION

I hereby certify:

1. That a copy of this Petition for Judicial Review/Notice of Appeal and Petition for Declaratory Judgment was served upon the DEQ as it was the state agency rendering the decision.
2. That the Clerk of the Agency has been paid the estimated fee for preparation of the transcript in the amount of \$95.20 as a deposit for the preparation of the transcript.
3. That the Clerk of the Agency has been paid the estimated fee for preparation of the record in the amount of \$15.44 as a deposit for the preparation of the record.

L&R reserves the right to supplement or amend the foregoing.

DATED this 25th day of August, 2023.

GARRETT RICHARDSON, PLLC

By Bradley S. Richardson  
Bradley S. Richardson, Of the Firm  
Attorneys for The L & R Group, LLC



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of August, 2023, I caused a true and correct copy of the foregoing **PETITION FOR JUDICIAL REVIEW/NOTICE OF APPEAL AND PETITION FOR DECLARATORY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Hannah Young  
Deputy Attorney General  
Department of Environmental Quality  
1410 N. Hilston  
Boise, ID 83706  
Email: Hannah.young@deq.idaho.gov  
Attorney for Respondent DEQ

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile  
 Email

Paula Wilson and/or Authorized  
Representative or Clerk of Division of  
Environmental Quality  
Energy and Resources Division  
Office of the Attorney General  
1410 N. Hilton Street  
Boise, ID 83706  
Email: paula.wilson@deq.idaho.gov

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile  
 Email

Office of Administrative Hearings  
816 W. Bannock Street, Suite 203  
Boise, ID 83702  
Email: filings@oah.idaho.gov

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile  
 Email

Leslie Hays  
Hearing Officer  
Office of Administrative Hearings  
P.O. Box 83720  
Boise, ID 83720-0104  
Email: Leslie.hays@oah.idaho.gov

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile  
 Email

/s/ Bradley S. Richardson  
Bradley S. Richardson