

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
STATE OF IDAHO

IN THE MATTER OF AIR QUALITY
PERMIT TO CONSTRUCT P-2019.0047

Case Docket No. 010-22-01
OAH Case No. 23-245-01

NEZ PERCE TRIBE, IDAHO
CONSERVATION LEAGUE, and SAVE THE
SOUTH FORK SALMON,

Petitioners,

FINAL ORDER

v.

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondents,

and

PERPETUA RESOURCES IDAHO, INC.,

Intervenor-Respondent.

I. INTRODUCTION

On July 22, 2022, the Nez Perce Tribe, the Idaho Conservation League, and Save the South Fork Salmon (collectively “Petitioners”), filed a *Petition to Initiate Contested Case: Air Quality Permit to Construct P-2019.0047 (Jun. 17, 2022)*, seeking review of the Idaho Department of Environmental Quality’s (“DEQ”) issuance on June 17, 2022, of Air Quality Permit to Construct P-2019.0047 (“PTC”), to mining company Perpetua Resources Idaho, Inc.

(“Perpetua”) for its proposed Stibnite Gold Project (“SGP”). REC 0001–0028. Perpetua filed a Petition to Intervene in the matter on August 12, 2022. REC 0040–0043. A Hearing Officer was appointed and the parties participated in discovery and ultimately filed cross-motions for summary judgement. REC 319–322, REC 1204–1206, REC 1276–1278. On October 31, 2023, the Hearing Officer issued a *Preliminary Order*. REC 3280–3328. On November 14, 2023, the Petitioners filed a *Petition for Review* of the *Preliminary Order*. REC 3342–3356. On December 5, 2023, the Hearing Officer issued an *Amended Preliminary Order*. REC 3372–3425. In response, the Petitioners filed an *Amended Petition for Review* that requested review by the Board of Environmental Quality of both the October 31, 2023 *Preliminary Order* and the December 5, 2023, *Amended Preliminary Order*. REC 3426–3441.

The *Amended Petition for Review*, claimed the following errors with the PTC:

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 Rules¹ 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.
5. That DEQ violated the Air Rules when calculating the ambient arsenic concentrations attributable to the SGP by diluting them by 16/70.

REC 3427–3428. The DEQ Board received briefing and heard oral argument on the Petition.

REC 3448–C, REC 3694.

¹ The “Air Rules” are found at IDAPA 58.01.01.

On May 9, 2024, the Board issued a *Final Order* in this matter. REC 3695–3720. The Final Order found that sufficient evidence existed to support DEQ’s findings in four of the five issues brought for review and that DEQ acted reasonably in making those decisions. The Board found, however, with regard to the ambient arsenic air concentration analysis, that there was not sufficient evidence to support DEQ’s analysis and that further factual development was needed on that issue. Consequently, the Board remanded that issue to the Hearing Officer.

On May 23, 2024, Petitioners filed their *Petitioners' Motion for Clarification and/or Reconsideration*. REC 3721–3727. On May 23, 2024, DEQ and Perpetua filed a *Joint Motion for Reconsideration and/or Clarification of Final Order and Memorandum in Support of Joint Motion for Reconsideration and/or Clarification of Final Order*. REC 3728–3751. On June 3, 2024, Petitioners filed *Petitioners Response Opposing DEQ/Perpetua’s Motion for Reconsideration*. On June 4, 2024, DEQ and Perpetua filed a *Joint Motion to Strike Petitioners Response*. On June 12, 2024, the DEQ Board issued its *Order on Petitions for Reconsideration and/or Clarification of Final Order*. REC 3835–3843. The Order denied the Petitions for Reconsideration, but granted the motion for clarification holding that the *Final Order* was final as to the first four issues brought by the Petition for Review, but not final as to the final arsenic issue. REC 3840. The DEQ Board stayed issuance of the *Final Order* on all five issues until the remand before the Hearing Officer was complete and all statutory deadlines for review of the Hearing Officer’s order have run. REC 3840.

The matter was remanded to the Hearing Officer for development of a factual record on the arsenic issue. A hearing was held October 17–18, 2024. TR 0183–0851. The Hearing Officer issued a *Findings of Fact, Conclusions of Law, and Preliminary Order* on January 7, 2025 (“*Preliminary Order*”). REC 7091–7118. The Hearing Officer found that “(a) DEQ acted

reasonably in using a 5-year rolling average for T-RACT that was not supported by further permit conditions; (b) there was sufficient evidence to support DEQ’s T-RACT analysis regarding non-West End Pit production; and (c) DEQ acted reasonably and in accordance with law when it applied the 16/70 adjustment to the AACC for arsenic.” REC 7111. On January 21, 2025, Petitioners filed *Petitioners’ Petition for Review of January 7, 2025 Preliminary Order, Memorandum in Support, and Request for Hearing*. REC 7119–7145. Petitioners asserted the Hearing Officer erred based on the following:

1. The 16/70 adjustment for arsenic is unlawful, sets a dangerous new precedent, and is not supported by the evidence; and
2. Using a five-year rolling average is not reasonable to assess compliance with arsenic limits, and the Permit’s conditions are not sufficient to limit production from West End Pit and/or non-West End Pit sources to meet arsenic limited.

REC 7122.

The Board of Environmental Quality has the authority to review Preliminary Orders pursuant to I.C. § 67-5245(2) and IDAPA 58.01.23.730. The Parties presented briefs on the issues in this matter and participated in oral argument on April 2, 2025.

II. STANDARD OF REVIEW

In making its decision on the *Amended Petition for Review* the Board of Environmental Quality “shall exercise all the decision-making power that [it] would have had if the agency head had presided over the hearing.” I.C. § 67-5245(7). This means that the Board of Environmental Quality can take a “de novo” or completely new look at the facts and issues. The Board of Environmental Quality must determine whether DEQ “has acted reasonably and in accordance

with law” when issuing the Permit. See I.C. §§ 67-5248(a) and 67-5279; *In the Matter of Sunnyside Park Utilities’ Application for Sewage Disposal Permit*, Final Order on Petition for Review of Preliminary Order, at p. 10 (BEQ Dkt. 0103-07-02, April 7, 2009).

III. ANALYSIS

1. **There was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law in Using a Five-Year Rolling Average for T-RACT.**

Petitioners assert that there was insufficient evidence presented to the Hearing Officer to support DEQ’s use of the five-year rolling average for hauling ore. Condition 3.5 of the PTC states: “The permittee shall haul not more than 180,000 tons per day (T/day) of ore and DR” and “not more than 135,000 T/day of ore and DR, based on a 5-year rolling average.” REC 385. The five-year rolling average was a T-RACT used by DEQ per Section 210 to ensure compliance with the cancer risk levels allowed by the Idaho Air Rules. IDAPA 58.01.01.210.02.d.ii. Evidence presented at the hearing demonstrated that the 5-year rolling average allowed under Condition 3.5, along with the complement of other T-RACT conditions, would not allow arsenic concentrations to exceed the amount that is equivalent to ten (10) times the applicable acceptable ambient concentration listed in Section 586. IDAPA 58.01.01.210.12.b, Transcript 10/18/2024, 283:10–276:7, REC 3925–3926, REC 3885, REC 4138–4139, REC 4287–4288. The DEQ Board has reviewed the evidence in the record and agrees with the analysis set forth in the *Preliminary Order*. REC 7105–7108. Section 210 of the Idaho Air Rules gives DEQ the authority to use T-RACT to demonstrate compliance with the cancer risk levels in the rules. The DEQ Board finds that there was sufficient evidence presented to the Hearing Officer to justify the use of the 5-year rolling average and that DEQ’s use of the 5-year rolling average was reasonable and in accordance with law.

2. There was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law in Not Including Additional Permit Conditions Limiting the Non-West End Pit Production Limit.

Petitioners assert that the Hearing Officer erred in his conclusion that the permit conditions included in the PTC were sufficient to limit the non-West End Pit production. Permit Condition No. 3.6 states: “The permittee shall haul no more than 788.4 million tons (MT) of ore and DR from the West End deposit over the life of the mine.” REC 385. The West End pit limit was a T-RACT used by DEQ per Section 210 to ensure compliance with the cancer risk levels allowed by the Idaho Air Rules. IDAPA 58.01.01.210. The DEQ Board has reviewed the evidence in the record and agrees with the analysis set forth in the *Preliminary Order*. REC 7108–7111, Transcript 10/18/2024, 270:12–23, Transcript 10/18/2024, 280:2–281:24, Transcript 10/17/2024, 45:2–48:22, Transcript 10/17/2024, 116:15–23, REC 4139–4141, REC 3919, REC 3926–3928. Section 210 of the Idaho Air Rules gives DEQ the authority to use T-RACT to demonstrate compliance with the cancer risk levels in the rules. The DEQ Board finds that there was sufficient evidence presented to the Hearing Officer to demonstrate that DEQ was reasonable and acted in accordance with law when it decided not to include a specific condition in the PTC limiting the non-West End Pit production to 50% of the total mine haulage for the SGP.

3. There was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law When it Applied the 16/70 Calculation to the Ambient Air Concentration Analysis.

Petitioners assert that DEQ acted unreasonably when it applied the 16/70 factor in its calculations. The parties presented voluminous evidence at the hearing on this topic and also provided additional information during oral arguments before the DEQ Board. In its previous Final Order, the DEQ Board expressed concern whether there was sufficient evidence to justify

the 16/70 adjustment, whether the adjustment was lawful under the Idaho Air Rules, and whether public health and environment would be protected. IDAPA 58.01.01. However, review of the evidence presented to the Hearing Officer and the briefing and oral arguments presented in the matter have convinced the DEQ Board that the 16/70 adjustment was reasonable and was not in violation of the Air Rules.

a. Overview of the Air Rules Requirement for Determining Ambient Arsenic Concentrations.

The Air Rule requirements for toxic pollutants begin with IDAPA 58.01.01.161. Section 161 is the over-arching policy or qualitative standard that should be applied to the emission of toxic contaminants such as arsenic. It provides: “Any contaminant that is by its nature toxic to human or animal life or vegetation *must not be emitted in such quantities or concentrations as to alone, or in combination with other contaminants, injure or unreasonably affect human life or vegetation.*” (emphasis added). To obtain a permit to construct an applicant must demonstrate, to the satisfaction of the Department:

*Using the methods provided in Section 210, the emissions of toxic air pollutants from the stationary source or modification would not injure or unreasonably affect human or animal life or vegetation **as required by Section 161.** Compliance with all applicable toxic air pollutant carcinogenic increments and toxic air pollutant non-carcinogenic increments demonstrates preconstruction compliance with Section 161 **with regard to the pollutants listed in Section 585 and 586.***

IDAPA 58.01.01.203.03 (emphasis added). Thus, if a toxic air pollutant is listed in IDAPA 58.01.01.585 or 586 (“Section 586”) it must be evaluated under the methods provided in Section 210.

Arsenic is listed in Section 586 of the Air Rules which consists of a table that lists each carcinogenic² toxic air pollutant that is covered by the rules. Section 586 includes “the screening emissions levels (EL) and acceptable ambient concentrations (AACC)” for each toxic carcinogenic pollutant listed. The EL listed for arsenic is “1.5E-06 lb/hr” and the AACC for arsenic is “2.3E-04 µg/m³.” The AACC is the carcinogen concentration in air in which daily exposure would limit the risk of cancer to 1:1,000,000 over a lifetime, which is identified as 70 years. The AACCs listed in the table in Section 586 are based on “annual averages.” IDAPA 58.01.01.586.

Section 210.01 provides that the applicant must first identify what toxic air pollutants will be emitted by the project. IDAPA 58.01.01.210.01. Then the applicant must use “standard scientific and engineering principles and practices to estimate the emission rate” of the pollutant. IDAPA 58.01.01.210.02.a.³ If the EL exceeds the levels listed in Section 586, then the applicant must continue with further analysis under Section 210.

The Applicant must then use “the modeling methods provided in Subsection 202.02 to estimate the ambient concentrations at specific receptor sites for any toxic air pollutant emitted from the point(s) of emission.” IDAPA 58.01.01.210.03.a.⁴ The “point of compliance is the

² A carcinogen is an agent capable of inducing cancer. Cancer is a disease of heritable, somatic mutations affecting cell growth and differentiation, characterized by an abnormal, uncontrolled growth of cells.

³ The “uncontrolled emissions rate” is “calculated using the maximum capacity of the source . . . without the effect of any physical or operational limitations.” IDAPA 58.01.01.210.02.b.

The “controlled emissions rate” is “calculated using the maximum capacity of the source . . . with the effect of any physical or operational limitations that has been specifically described” by the applicant and submitted to DEQ. IDAPA 58.01.01.210.02.c.

The “T-RACT emissions rate” is “calculated using the maximum capacity of the source . . . with the effect of any physical or operational limitation other than control equipment that has been specifically described” by the applicant and “an emission standard that is T-RACT.” IDAPA 58.01.01.210.02.d.

⁴ Section 202.02 provides that modeling “must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Guideline on Air Quality Models). Where an air quality model specified in the ‘Guideline on Air Quality Models’ is inappropriate, the model may be modified or another

receptor site that is estimated to have the highest ambient concentration of the toxic air pollutant of all the receptor sites . . .” IDAPA 58.01.01.210.03.b. Preconstruction compliance for toxic pollutants can be demonstrated using any of the methods “described in Subsection 210.05 through 210.08 and may use any applicable specialized method described in Subsection 210.09 through 210.12.” IDAPA 58.01.01.210.04.⁵

Most applicable here are the compliance methods described in Section 210.12, which provides for the use of T-RACT to demonstrate preconstruction compliance for toxic pollutants listed in Section 586. T-RACT stands for “Toxic Air Pollutant Reasonably Available Control Technology” and “is an emission standard based on the lowest emission of toxic air pollutants that a particular source is capable of meeting by the application of control technology that is reasonably available, *as determined by the Department*, considering technological and economic feasibility.” IDAPA 58.01.01.210 (emphasis added). The applicant must comply with IDAPA 58.01.01.210.13 and 210.14 to first get the T-RACT approved by DEQ before it can be used in the modeling. If T-RACT is used it allows for a comparison of:

[T]he source’s . . . approved T-RACT ambient concentration at the point of compliance for the toxic air pollutant to the amount of the toxic air pollutant that would contribute an ambient air cancer risk probability of less than one to one hundred thousand (1:100,000) (which amount is equivalent to ten (10) times the applicable acceptable ambient concentration listed in Section 586).

IDAPA 58.01.01.210.12.b. Thus, if the source’s approved T-RACT ambient concentration meets the AACC listed in Section 586 times 10, then “no further procedures for demonstrating

model substituted, subject to written approval of the EPA Administrator and public comment pursuant to Subsection 209.01.c; provided that modifications and substitutions or models used for toxic air pollutants will be reviewed by the Department.”

⁵ Section 210.05 Uncontrolled Emissions; Section 210.06 Uncontrolled Ambient Concentration; Section 210.07 Controlled Emissions, Section 210.08 Controlled Ambient Emissions; Section 210.09 Net Emissions; Section 210.10 Net Ambient Concentration; Section 210.11 Toxic Air Pollutant Offset Ambient Concentration; Section 210.12 T-RACT Ambient Concentration for Carcinogens.

preconstruction compliance will be required for that toxic air pollutant as part of the application process.” IDAPA 58.01.01.210.12.c. DEQ must then include appropriate conditions in the permit to ensure that the T-RACT is implemented so that the 10-times ambient concentrations can be met. IDAPA 58.01.01.210.12.d. Thus, the Air Rules establish two acceptable cancer risk levels—1 in 1,000,000 (the AACC level) and 1 in 100,000 (the T-RACT level). As long as the estimated cancer risk of a project meets either acceptable cancer risk level, the health protection requirements of Section 161 are satisfied.

Section 210 provides one further analysis that has bearing in this case. Section 210.15 provides that “short term” projects “may utilize a short-term adjustment factor of ten (10). For a carcinogen, multiply either the applicable acceptable ambient concentration (AACC) or the screening emission rate, but not both, by ten (10), to demonstrate preconstruction compliance.” IDAPA 58.01.01.210.15. “Short Term Source” is defined as any new stationary source “with an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations.” IDAPA 58.01.01.007.08. Thus, short term sources are also allowed 10 times the AACC, which would represent a 1 in 100,000 cancer risk, as long as the operational source life is no greater than five (5) years.

b. There was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably When it Applied the 16/70 Adjustment.

DEQ performed its analysis of ambient arsenic levels by first determining that the levels of arsenic that would be generated by the project exceeded the EL levels found in Section 586. REC 1760. DEQ then “undertook the task of evaluating whether a more refined approach could be used to demonstrate compliance with TAP rules of Section 210.” REC 1242. The first step in the refinement was to apply the T-RACT analysis under Rule 210.12. It is permissible under Rule 210.12 to apply T-RACT limits in multiple iterations to demonstrate compliance with

IDAPA 58.01.01.203.03. REC 1242. DEQ developed a complement of T-RACT limits for the permit:

1. Permit Conditions 2.1–2.6: Requiring measures to prevent fugitive dust. REC 374–375.
2. Permit Condition 3.5: Limiting the mine production to 180,000 tons per day of ore and DR and no more than 135,000 tons per day, on a five-year rolling average. REC 385.
3. Permit Condition 3.6: Limiting the total lifetime, facility-wide production of the mine to 788.4 million tons. REC 385.
4. Permit Condition 3.6: Limiting the West-End Pit production to no more than 50% (394.2 million tons) of the total mine production over the life of the mine. REC 385.
5. Permit Condition 3.11: Requiring dust collection systems with a minimum control efficiency of 90% on all drilling rigs. REC 385.
6. Permit Condition 3.13: Requiring haul road capping. REC 385.

This complement of T-RACT conditions create enforceable limits on the operation of the mine that will ensure emissions fall within limits that are protective of human health and the environment. One of the numeric T-RACT limits placed on the mine was a 788.4 million tons lifetime facility-wide total mining limit. Permit Condition No. 3.6 states: “The permittee shall haul no more than 788.4 million tons (MT) of ore and DR [development rock] from all deposits over the life of the mine . . .” REC 385, Transcript 10/18/2024, 280:23–281:6, 282:19–21. Thus, under the PTC, no more than 788.4 million tons of ore may ever be extracted from the SGP. Taken in conjunction with the five-year rolling average stated in Condition 3.5,⁶ the fastest the mine could reach the 788.4 million tons of ore extraction would be 16 years. As explained at the hearing:

⁶ Condition 3.5 states: “The permittee shall haul not more than 180,000 tons per day (T/day) of ore and DR” and “not more than 135,000 T/day of ore and DR, based on a 5-year rolling average.” REC 385.

So in this case, the parameter is production, so there's —that production is split up between 135,000 tons per day and 788.4 million tons. The 16 years is calculated from those limits. So if we take —if you take, you know, 788.4 million tons and you divide into that 135,000 tons a day, you arrive at 16. So 16 years is calculated. 16 years would not make a good metric for putting in the permit. Years don't equal emissions. Production equals emissions. That's why it's permitted that way. This is how every agency does it.

Transcript 10/18/2024, 315:7–315:19; *see also* Transcript 10/17/2024, 197:23–198:5, 199:20–199:24. Thus, the T-RACT Condition limiting total life-of-mine production to 788.4 million tons limits the lifetime of the mine to, at a minimum, 16 years.⁷ This 16-year timeframe meant that the project was neither a short-term source of 5-years or less as defined by IDAPA 58.01.01.007.08, nor was it a source that would operate for a full 70-year lifetime.

Given this shortened operational timeframe, and as explained in the *Expert Declaration of Norka E. Paden, Ph.D*, DEQ decided to use “EPA’s methodology for adjusting exposure duration given the known exposure duration (lifetime of the mine.)” REC 3878, Transcript 10/17/2024, 166:24–167:4, 143:21–144:1; 144:17–145:2; 190:1–5; 191:1–193:5. The EPA methodology is consistent with the scientifically established relationship between dose and duration of dose. The Air Rules establish two acceptable cancer risk levels—1 in 1,000,000 (the AACC level) and 1 in 100,000 (the T-RACT level).⁸ IDAPA 58.01.01.210.12.b, 586. The DEQ Board finds there was sufficient evidence presented at the hearing that adjusting for exposure duration by applying the 16/70 calculation demonstrated an acceptable exposure risk and was

⁷ There was considerable testimony demonstrating that a PTC condition explicitly limiting the life of the mine to 16 years was not necessary because “the years don't make emissions. The production makes emissions.” Transcript 10/18/024, 316:7–316:9. If the mine was to operate at a lower production limit for a longer period of time, such as 50% production for 32-years “that would have a concurrent drop in the concentration, the exposure concentration [for arsenic]. And then that would happen for 32 years, at which point you would still end up with a cumulative dose that is the same [as for 16 years]. . . .Because if you're 50 percent production for the emissions, it's going to take you twice as long. But the end result is that you still have the same cumulative dose for your lifetime.” Transcript 10/17/2024, 206:5–206:18.

⁸ The Air Rules also provide a further acceptable level for short-term sources operating for less than five-years. IDAPA 58.01.01.007.08. As noted above, this also allows up to a 1:100,000 cancer risk.

reasonable. Transcript 10/17/2024, 167:5–168:11; Transcript 10/17/2024, 138:15–139:13, Transcript 10/17/2024, 195:22–203:17, REC 3876–3881, REC 701–707. Using the 16/70 calculation resulted in a 1:240,000 (4:1,000,000) cancer risk, which is less than the 1:100,000 allowed for by the Air Rules. REC 3878 The DEQ Board finds that this calculation was reasonable and complied with the directive in Rule 161 that arsenic “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.” IDAPA 58.01.01.161.

c. DEQ Acted in Accordance with Law When it Applied the 16/70 Calculation.

The DEQ Board further finds that the 16/70 calculation was not in violation of the Idaho Air Rules. The Air Rules clearly provide an AACC standard in Section 586. They then clearly provide an adjustment to that AACC standard when T-RACT can be used to control emissions.

IDAPA 58.01.01.210.12.b. When using T-RACT, the AACC may be adjusted to allow an ambient concentration at the point of compliance for the toxic air pollutant that would contribute an ambient air cancer risk probability of less than one to one hundred thousand (1:100,000).

IDAPA 58.01.01.210.12.b–c. As noted above, the daily limit of 135,000 tons (Condition 3.5) and the 788.4 million ton total limit for the life of the mine (Condition 3.6) were T-RACT conditions applied by DEQ under Rule 210. REC 385. As outlined above, the 16/70 adjustment was based on a recognized EPA-methodology for determining cancer risk for projects lasting less than a lifetime (70-years). There was extensive evidence presented demonstrating that the 16/70 calculation was derived by taking the 788.4 million total production limit and the 135,000 daily average to determine the life of the mine would be, at a minimum, 16-years.⁹ Applying the 16-year duration using the EPA-methodology resulted in a project cancer risk exposure of

⁹ Given Conditions 3.5 and 3.6, a longer life-of-mine duration would result in lower annual emissions and the project cancer risk would remain less than the maximum allowed cancer risk of 1:100,000. REC 3875. 3878–79.

1:240,000, which is less than the maximum cancer risk allowed by the Air Rules of 1:100,000. REC 3876-3881. It was within DEQ's discretion to use the EPA methodology to effectuate the T-RACT limits found in Condition 3.5 and 3.6. Thus, the DEQ Board finds that the 16/70 calculation was acceptable under the Idaho Air Rules and complied with the Rule 161's directive that toxic pollutants not be emitted in quantities that will "injure or unreasonably affect human or animal life or vegetation."

IV. CONCLUSION

Based on the foregoing, it is hereby ordered:

1. There was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law in Using a Five-Year Rolling Average for T-RACT.
2. There was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law in Not Including Additional Permit Conditions Limiting the Non-West End Pit Production Limit.
3. There was Sufficient Evidence to Demonstrate that DEQ Acted Reasonably and in Accordance with Law When it Applied the 16/70 Adjustment.

This Order is final as to all issues presented, as well as to all issues previously decided in the *Final Order* issued in this matter on May 9, 2024. REC 3695-3720.

Dated this 27th day of May, 2025



Dr. John R. MacMillan
Chairman, Idaho Board of Environmental Quality

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May 2025, I caused to be served a true and correct copy of the foregoing FINAL ORDER by transmitting a copy thereof in the manner listed below:

Hannah Young
Deputy Attorney General
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
hannah.young@deq.idaho.gov

Julia Thrower
Mountain Top Law PLLC
614 Thompson Ave.
McCall, ID 83638
jthrower@mtntoplw.com

Bryan Hurlbutt
Laird Lucas
Advocates for the West
P.O. Box 1621
Boise, ID 83701
bhurlbutt@advocateswest.org
llucas@advocateswest.org

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

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

Dylan Lawrence
Varin Thomas LLC
P.O. Box 1676
Boise, ID 83701
Hearing Officer
dylan@varinthomas.com

Office of Administrative Hearings
P.O. Box 83720
Boise, ID 83720-004
filings@oah.idaho.gov

/s/ Diane Cutler
Diane Cutler
Idaho Department of Environmental Quality
diane.cutler@deq.idaho.gov

**EXPLANATORY INFORMATION TO ACCOMPANY A
FINAL ORDER**

The accompanying order is a “Final Order” issued by the Board of Environmental Quality pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Board of Environmental Quality within this fourteen (14) day period.** The Board of Environmental Quality will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to Section 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the Board of Environmental Quality may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the orders resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying a petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.