

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

PATAGONIA AREA RESOURCE  
ALLIANCE,

Appellant,

v.

DEPARTMENT OF ENVIRONMENTAL  
QUALITY and SOUTH32 HERMOSA INC.,

Respondents.

CASE NO. 25-001-WQAB

**NOTICE OF HEARING**

**AND**

**PROCEDURAL ORDER UPDATING  
PRE-HEARING DEADLINES**

TO ALL PARTIES:

1. The Water Quality Appeals Board (“Board”) held a meeting November 5, 2024 during which the Board (1) discussed the legal and factual issues remaining for hearing and (2) re-setting the hearing date and establishing an additional pre-hearing filing deadline.
2. The hearing previously set for December 17, 2024 at 8:00 a.m. is hereby vacated.
3. **Notice of Hearing.** In accordance with the authority and jurisdiction conferred by A.R.S. §§ 49-323 through 49-324, and Arizona Administrative Code section R2-17-101 *et seq.*, the Water Quality Appeals Board hereby orders a hearing on the Appellant’s August 2, 2024 Notice of Appeal from the Arizona Department of Environmental Quality’s decision to grant Arizona Pollution Discharge Elimination System Permit No. AZ0026387 to South32 Hermosa, Inc. (the “2024 Permit”). The hearing will be part of the Board’s meeting commencing on **January 14, 2025** at 9:00 a.m. at the Arizona Department of Administration, 100 North 15th Avenue, Phoenix, Arizona 85007. If the hearing does not end on January 14, 2025, then a continuation day will be chosen during or after that hearing day.

The Board will exercise its discretion in managing the hearing, scheduling recesses, and apportioning time to the parties. The parties should also refer to procedural statutes and rules that may be applicable to this appeal, to the extent such statutes and rules do not conflict with the Board's statutes or rules, including A.R.S. §§ 41-1092.03 through 41-1092.12 and R2-19-101 through R2-19-122.

The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, Article 3.1 and implementing rules. The hearing will be held to take evidence regarding the following issues relating to the 2024 Permit:

- a. Whether under A.R.S. § 49-323.C., the Department's decision to issue the 2024 Permit was arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid because the Department determined the discharge to Outfall 001 into Upper Alum Gulch is an existing source instead of a "new source" under 40 C.F.R. § 122.29 and other applicable legal authorities?
- b. If the Outfall 001 discharge is from a "new source," then was the Department's decision to issue the 2024 Permit for discharges from Outfall 001 (1) unreasonable, unlawful or based upon a technical judgment that is clearly invalid because there is no TMDL for Middle Alum Gulch for lead or (2) otherwise unreasonable, unlawful or based upon a technical judgement that is clearly invalid?

All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties. The Board may issue subpoenas on behalf of any party.

Reasonable accommodation will be made for a person with a disability, if the accommodation is requested.

4. At the meeting on November 5, 2024, following additional input from the parties, the Board determined that:
  - a. PARA is no longer pursuing appeal of PARA's arguments regarding Outfall 002 and the status of Harshaw Creek as described in PARA' Response to

ADEQ's Answer/Motion to Dismiss filed with the Board on October 8, 2024. No issues remain for determination at the hearing regarding Outfall 002 2024 Permit conditions.

- b. The parties' arguments regarding the active or inactive status of the prior or existing discharge permit(s) pending issuance of the new 2024 Permit under appeal, are outside the scope of the Board's review of the 2024 Permit in this appeal.
5. On or before **December 20, 2024**, the parties will submit electronic copies of the following documents to the Chairman at [mvq@mvqlaw.com](mailto:mvq@mvqlaw.com) and to the Board's assistant at [connie.castillo@azdoa.gov](mailto:connie.castillo@azdoa.gov):
- a. Copies of all proposed exhibits to be offered into evidence by the party at the hearing.
  - b. Copies of supplemental pre-hearing legal arguments, if any, regarding the remaining issues to be resolved by the Board.

WATER QUALITY APPEALS BOARD



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Michele Van Quathem, Chair

A copy of the foregoing was sent by electronic mail  
This 8<sup>th</sup> day of November 2024

WATER QUALITY APPEALS BOARD:

Michele Van Quathem  
Fred E. Brinker, P.E.  
Keith Bowers

A copy was sent by electronic and U.S. mail this 8<sup>th</sup> day of November 2024 to:

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*Connie Castillo*

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By: Connie Castillo  
Clerk, Water Quality Appeals Board