

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

THE TOWN OF FLORENCE, a  
political subdivision of the State of  
Arizona; SWVP-GTIS MR, LLC, a  
Delaware limited liability company;  
and PULTE HOME  
CORPORTATION, a Michigan  
corporation,

Appellants,

vs.,

ARIZONA DEPARTMENT OF  
ENVIRONMENTAL QUALITY  
Respondents,

FLORENCE COPPER INC., a  
Delaware corporation,  
Intervenor,

CASE NO. 16-002-WQAB

**AMENDED NOTICE OF HEARING**

To clarify the parameters of the upcoming hearing in this matter, the Water Quality Appeals Board's hereby issues this Amended Notice of Hearing, which complies with A.C.C. R2-17-115.

In accordance with the authority and jurisdiction conferred by A.R.S. § 49-323, the Water Quality Appeals Board hereby orders a hearing on the Appellant's September 1, 2016 Notice of Appeal from the Arizona Department of Environmental Quality's decision to grant Aquifer Protection Permit No. P-106360. The hearing will be part of the Board's meeting commencing on **March 6, 2017 at 10:00 a.m.** at the **Arizona Department of Administration, 100 North 15<sup>th</sup> Avenue, Phoenix, Arizona 85007**. The Board will exercise its discretion in managing the hearing, scheduling recesses, and apportioning time to the parties. If the hearing is not concluded on March 6, it will continue on **March 7, 2017** ending no later than **5:00 p.m.**

**Background**

On or about March 6, 2012, Curis Resources (Arizona) Inc. ("Curis") filed an application for a Temporary Individual Aquifer Protection Permit ("APP") with the Arizona Department of Environmental Quality ("Department") for a production test facility at Florence, Arizona to develop data for an APP application for a full-scale in situ leach copper/in-situ copper recovery commercial mine. Following final review, on July 13, 2013,

the Department issued Temporary APP No. P-106360 Other Amendment (the “2013 Temporary APP”) for the facility. On or about August 2, 2013, the Town of Florence (the “Town”), SWVP-GTIS MR, LLC (“SWVP”), Johnson Utilities, LLC (“Johnson”) and Pulte Home Corporation (“Pulte”) filed an Amended Notice of Appeal (the “2013 Appeal”) with the Water Quality Appeals Board (the “Board”) to appeal the Department’s issuance of the 2013 Temporary APP to Curis. The Board referred the 2013 Appeal to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing. Curis subsequently became Florence Copper Inc. (“FCI”). OAH held 34 days of hearing in April and May 2014. On September 20, 2014, Administrative Law Judge (“ALJ”) Diane Mihalsky issued her Decision (the “2014 ALJ Decision”). The 2014 ALJ Decision upheld most of the Temporary APP, while overturning five items in the Temporary APP identified in the following Sections of the Conclusions of Law of the 2014 ALJ Decision:

- § 3.6 (BHP Report);
- § 3.7.3.2.1 (Monitoring);
- § 3.7.3.3 (Monitoring);
- § 3.8 (PMA and POCs); and
- § 3.9.4 (Closure Reporting).

On November 10, 2014, the Board considered the 2014 ALJ Decision. On November 14, 2014, the Board issued its Order (the “2014 Board Order”) adopting all 419 Findings of Fact of the 2014 ALJ Decision, and 72 of the 73 Conclusions of Law (“COL”) of the 2014 ALJ Decision, as its own, and remanding the matter to the Department for further proceedings.

On January 15, 2015, the Department instructed FCI to prepare and submit an Application for Significant Amendment to the Temporary APP. Following FCI’s submission of additional materials and a public comment process, the Department on August 3, 2016 issued a Significant Amendment to the Temporary APP (the “2016 Significant Amendment”). On September 1, 2016, the Town, SVWP and Pulte filed a Notice of Appeal (the “2016 Appeal”) of the Significant Amendment with the Board. FCI was subsequently granted intervention in the 2016 Appeal.

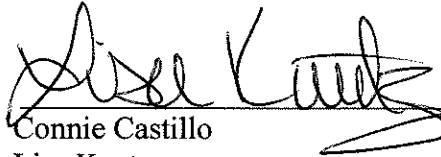
### **The Hearing**

In this full evidentiary hearing, the Board will review the grant, denial, modification or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 41-1092.03 through 41-1092.11. Specifically, the Board will review and entertain argument on the five Sections of the Conclusions of Law of the 2014 ALJ Decision enumerated above. The particular sections of the statutes and reules involved in the substantive appeal are A.R.S. § 49-323 and A.A.C. R2-17-101 *et seq.* The parties should also refer to procedural

statutes which may be applicable to this appeal, including A.R.S. §§ 41-10921.03 through 41-1092.11.

All parties may be represented by counsel, and may introduce evidence through witnesses and documents. The Board may issue subpoenas on behalf of any party. Pursuant to stipulation at the Board's December 14, 2016 meeting and memorialized in the Board's December 19, 2016 Procedural Order, each of the parties has waived the right to cross-examine experts providing affidavits on behalf of other parties.

DATED this 17<sup>th</sup> day of February 2017.



Handwritten signature of Lisa Kautz in black ink, written over a horizontal line.

Connie Castillo

Lisa Kautz

Clerk of the Water Quality Appeals Board

**A copy of the foregoing was mailed via U.S. Mail  
this 17<sup>th</sup> day of February, 2017**

**WATER QUALITY APPEALS BOARD:**

Scott S. Wakefield  
Gail M. Clement  
Fred E. Brinker

**A copy of the foregoing was mailed via Certified U.S. Mail  
this 17<sup>th</sup> day of February, 2017**

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By: Lisa Kautz  
Clerk, Water Quality Appeals Board