

# Wendy Islas

Arizona Department of Environmental Quality -

I am submitting my objection to the proposal from the Arizona Department of Environmental Quality (ADEQ) to renew the Arizona Pollutant Discharge Elimination Permit (AZPDES) No. AZ0026387 for South32's Hermosa Project mine. Of grave concern is the contamination of our surface waters in Harshaw Creek, Alum Gulch, and Sonoita Creek. These surface waters are an integral part of the Sky Islands and the entire ecosystem in Santa Cruz County. These surface waters are far-reaching in the health of the biodiversity, the ecosystem, and those who reside in Santa Cruz County, human and wildlife.

According to the ADEQ's website, "Water quality standards play a central role in the successful implementation of Arizona's surface water quality management programs as required by federal Clean Water Act (CWA) and Arizona's Surface Water Protection Program (SWPP) as described in the Arizona Administrative Code Title 18, Chapter 11."

"Water quality standards include:

Define water quality goals for surface waters in Arizona

Designate uses to be protected in Arizona's surface waters

Prescribe criteria to maintain and protect surface water quality for the designated uses

Provide the measure by which to assesses the water quality of Arizona's rivers, streams and lakes

Provide the regulatory basis for establishing load allocations in total maximum daily load (TMDL) analyzes

Provide the regulatory basis for establishing water quality-based discharge permits on point sources

Inform efforts to mitigate or eliminate non-point source pollution and measure effectiveness."

The Federal Clean Water Act and Arizona Revised Statutes provide governance to protect the surface waters noted above in Santa Cruz County, Arizona. The ADEQ is required to abide by these federal and state laws which mandate ADEQ's responsibility to maintain the health of these surface waters.

As reported by the Arizona Department of Water resources at the January 10, 2024, Santa Cruz County Active Management Meeting, Santa Cruz County has been designated as being in an extreme drought. This emphasizes the need to ensure our surface waters are healthy and protected. With South32 discharging over 6.2 million gallons per day, this places this "extreme drought" region in dire jeopardy.

Arizona Governor Hobbs, just this week made statements and the need to protect Arizona's waters and update Arizona's water laws. TRANSCRIPT: Governor Hobbs 2024 State of the State Address | Office of the Arizona Governor ([azgovernor.gov](http://azgovernor.gov)) Moreover, in 2023 she commissioned the Governor's Water Policy Council. This Council recently published recommendations regarding Arizona's waters on November 29, 2023. SDirector\_P23112914380 ([azgovernor.gov](http://azgovernor.gov)). These recommendations emphasize the need for you to pause this permit for South32, or at the very least, modify the permit.

I urge you to revise the draft permit to require monitoring for manganese and that you articulate

what standards you are using for manganese mining to ensure the protection of the health of humans and the watersheds in Santa Cruz County, Arizona. I urge you to revise the draft permit to include regular contaminant monitoring monthly rather than quarterly. I urge ADEQ to complete new, and in some cases, updated Total Maximum Daily Load Total (TMDL) studies for upper and lower Harshaw Creek, Alum Gulch, and Sonoita Creek to ensure the health and safety of these surface waters. I urge you to acknowledge and state that South32 is not just doing continuation of historical mining. New mining activity is happening on a historic site which requires the ADEQ to treat this as a new source of discharge. As a new source, this mine is required to abide by modern performance and standards and requirements of the Clean Water Act. South32 cannot use their described and practiced "next-generation mining technology" in a historic mine, but rather, it is new mining and new drilling. Their practices are not currently in use in any other mining in the United States. South32 itself purports this is a new type of mining, and since it is a new form of mining, it is subject to utmost scrutiny.

I am including in my objection the Patagonia Area Resource Alliance (PARA) objection to the proposal from the Arizona Department of Environmental Quality (ADEQ) to renew the Arizona Pollutant Discharge Elimination Permit (AZPDES) No. AZ0026387 for South32's Hermosa Project mine. I support the objection and comments contained therein.

I urge you to abide by the Federal Clean Water Act and the Arizona Revised Statutes which govern the ADEQ requirements.

Thank you for your time and consideration in this most crucial matter. The current and future health of Santa Cruz County, Arizona residents and watersheds is at stake.

Wendy L. Islas  
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**Summary of Proposed Comments to ADEQ On Proposed Renewal of AZPDES  
Discharge Permit No. AZ0026387 to South32 Hermosa, Inc.**

The Patagonia Area Resource Alliance (PARA) objects to the proposal from Arizona Department of Environmental Quality (ADEQ) to renew the Arizona Pollutant Discharge Elimination Permit (AZPDES) No. AZ0026387 for South32's Hermosa Project mine. A summary of PARA's primary objections to the Permit are listed below.

The proposed Permit would allow for dangerous discharges of mine water to Harshaw Creek, Alum Gulch, and Sonoita Creek, threatening the health of local residents and the environment in violation of the Federal Clean Water Act and Arizona's laws relating to surface water quality. The issuance of the Permit, as written, is also contrary to ADEQ's own statutory duties which require, among other things, that ADEQ "act to protect the environment", promote "the protection and enhancement of the quality of water resources", provide for the "prevention and abatement of all water and air pollution"; and "[e]nsure the preservation and enhancement of natural beauty" in our state. A.R.S. § 49-204(A)(1), (7), (9) and (10).

Instead of doing its job to enforce the discharge provisions of the Clean Water Act to protect human health and the environment as required by law, ADEQ appears to have instead spent a great deal of time and effort during permit drafting attempting to avoid these core obligations and responsibilities.

Under controlling law, the Permit cannot issue until, among other things, ADEQ updates or first prepares the Total Maximum Daily Load (TMDL) studies and necessary waste load allocations required by the Clean Water Act so that the impaired (contaminated) surface waters of Harshaw Creek, Alum Gulch, and Sonoita Creek can finally be returned to good health. Section 303(d) of the Clean Water Act requires states to identify waters that are impaired by pollution, even after application of pollution controls. For those waters, states must establish a TMDL of pollutants to ensure that water quality standards can be attained. A TMDL is both a quantitative assessment of pollution sources and pollutant reductions needed to restore and protect U.S. waters and a planning process for attaining water quality standards. The TMDL program is a core element of overall efforts to protect and restore water quality to surface waters across the United States and here in Arizona. ADEQ's concerted efforts to avoid or trivialize its TMDL obligations in the Permit is astounding.

#### HARSHAW CREEK

The AZPDES Permit would allow discharge of up to 6.48 million gallons of mine water per day into Upper Harshaw Creek. This water will be produced from deep and destructive mine dewatering wells, and it will include historic and new seepage from the mine's tailings piles, core cuttings, and potentially acid-generating (PAG) rock from mine shaft development. The waters of Upper Harshaw Creek are impaired (contaminated) with elevated levels of copper, and low pH (acidity) that can result in heavy metal contamination. Despite documented impairments in the receiving waters of Harshaw Creek, ADEQ takes the position that it need not prepare a TMDL analysis to regulate South32's discharges into these impaired surface waters so that water quality standards can be achieved. This violates the Clean Water Act.

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ADEQ has long been in possession of evidence and documentation that (1) the discharge location for Harshaw Creek (Outfall 002) is located in the impaired segment of Upper Harshaw Creek; and (2) the downstream segment of Lower Harshaw Creek is also impaired, including from acid mine drainage from historic mining in the area. Nevertheless, ADEQ fails to acknowledge that it cannot issue the proposed AZPDES to South32 without first updating its 20-year-old TMDL for Harshaw and performing a waste load allocation of South32's massive new discharge in order to bring Harshaw Creek's water quality into compliance. This threatens human health and the health of the environment.

Public records also show that ADEQ has already been allowing South32 to discharge mine water into Harshaw Creek (under its expired AZPDES permit) for the last few months – since at least August 2023. The Draft Permit and public fact sheet totally fail to acknowledge this fact, and ADEQ denies that discharge data is available in calculating critical numeric permit limits in the draft.

- **COMMENT:** ADEQ claims without basis that the discharge location (Outfall 002) is in Lower Harshaw Creek. However, PARA has provided ADEQ with extensive evidence and documentation showing that Outfall 002 is actually constructed in Upper Harshaw Creek which is listed as impaired for various pollutants under Arizona's Clean Water Act 303(d) list. Accordingly, ADEQ must revise its grossly outdated TMDL for Upper Harshaw Creek before issuing this renewed Permit.
- **COMMENT:** ADEQ must acknowledge the impairments in Lower Harshaw Creek and prepare a TMDL for Lower Harshaw before it can issue the proposed AZPDES permit.
- **COMMENT:** ADEQ must acknowledge the true extent of the ongoing discharge to Harshaw and revise this Permit accordingly to include this discharge data in calculating permit limits – before issuing this renewed permit.

#### ALUM GULCH

The AZPDES Permit would allow South32 to discharge up to 172,000 gallons of mine water per day into Alum Gulch. The waters of Alum Gulch are impaired (contaminated) with elevated levels of cadmium, copper, zinc, lead, and low pH (acidity) that can result in heavy metal contamination. ADEQ must prepare a new TMDL for lead (since no TMDL has ever been prepared for lead) and it must update its outdated TMDL for the other contaminants. This is required by the Clean Water Act to demonstrate that South32's discharges will not further contaminate or degrade these surface waters but rather, will support the future restoration of water quality in Alum Gulch.

ADEQ appears to have no plans to complete this work. Instead, ADEQ has written the Permit to simply avoid these requirements in violation of the Clean Water Act. This threatens human health and the health of the environment.

- **COMMENT:** The outdated TMDL must be updated and a new TMDL study must be completed on the new lead impairment in Alum Gulch – before ADEQ issues the renewed Permit.

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- **COMMENT:** ADEQ’s workaround proposal to only allow discharge from “historic tailings” into Alum Gulch is absurd. It ignores documented facts about how South32 has operated this mine site for years. It also disregards the well-known fact documented by both South32 and ADEQ that the tailings pile and mine seepage from this pile includes dangerous new sources of pollutants. Indeed, the tailings pile has, for years, been used by South32 to hold many tons of new waste rock, exploration rock, treatment plant waste, and potentially acid-generating material. ADEQ’s tortured analysis and conclusion that the only mine seepage that will be discharged to Alum Gulch from the tailings pile will come from historic tailings is wildly inaccurate and misleading to the public. ADEQ must revise this provision – before issuing this renewed Permit.

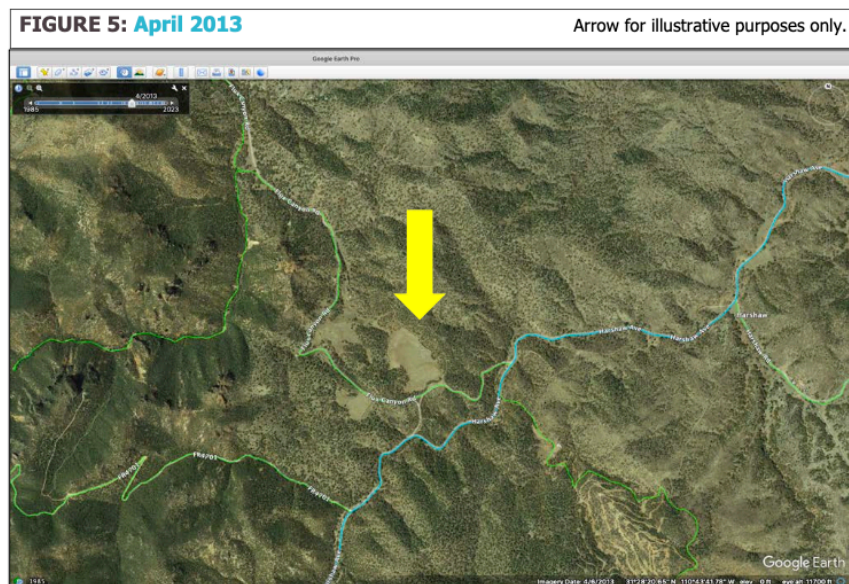
### SONOITA CREEK

Both Alum Gulch and Harshaw Creek are tributaries to Sonoita Creek. PARA’s hydrology experts have demonstrated that the significant discharges of mine water to these tributaries will reach the waters of Sonoita Creek. The waters of Sonoita Creek are impaired for zinc, however ADEQ has never completed the required TMDL study for this impairment. The Draft Permit and Fact Sheet never acknowledge this key fact.

- **COMMENT:** ADEQ must complete a TMDL for the zinc impairment in Sonoita Creek – before issuing this renewed Permit.
- **COMMENT:** ADEQ must perform a waste load allocation for the discharges to Sonoita Creek. This is required by the Clean Water Act so that South32’s discharges will not further contaminate or degrade these downstream surface waters but rather can support the future restoration of water quality in the Creek.

### THE HERMOSA PROJECT IS A BRAND-NEW MINE

The historic activities that took place many decades ago at the Trench Camp mine in no way resemble the large-scale industrial mine being developed by South32 today. When the mining company bought the abandoned mine through the ASARCO Custodial Trust in 2016, not a single building or structure remained, except for contaminated historic tailings and mine shafts that were managed for remediation purposes only.



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The deep mine shafts, two wastewater treatment plants, exploration shafts, dewatering wells, new expanded tailings facility containing both historic and new material, tailings drainage pond, and associated infrastructure at the Hermosa Project site were built within the last 10 years (or are currently being constructed) for the purpose of constructing this massive and destructive new mine. Despite these clear and obvious facts, ADEQ has failed to perform a “new source” analysis to determine if South32’s is subject to the modern requirements of the Clean Water Act, taking the position that this new mine project is nothing more than a continuation of an old historic mine. The fact that historic mining occurred previously at a small portion of the Hermosa Project site does not forever exempt any of South32’s new mine workings, shafts, structures, and facilities from being considered a “new source” under the Clean Water Act.



- **COMMENT:** ADEQ must determine these new facilities to be legal “new sources” of discharge – before issuing this renewed Permit.
- **COMMENT:** ADEQ must revise the Permit to acknowledge that this mine is expected to go into production during the life of this Permit.
- **COMMENT:** As a new source, the mine is subject to all modern performance standards and requirements of the Clean Water Act.

**MANGANESE AND SULFATE MUST BE MONITORED**

ADEQ has the discretion to revise the Draft Permit to include monitoring for a certain (secondary) category of contaminants which includes manganese and sulfate. Elevated levels of these contaminants can cause noticeable odors, tastes, and smells in the water. They also have the potential to harm human health and damage and corrode water pipes, fixtures, and other infrastructure, and have destroyed entire water systems leaving them unusable. As the Hermosa Project is a zinc, lead, silver, and manganese mine, these contaminants are likely to be present in the discharged wastewater.

- **COMMENT:** ADEQ must revise the Draft Permit to require monitoring for manganese and sulfate in order to protect human health and the drinking water

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systems and infrastructure of the Town of Patagonia and residents of the area – before issuing this renewed Permit.

**MONITORING MUST BE DONE MORE FREQUENTLY**

The Draft Permit contains several different monitoring requirements. Some of these are intended to serve as so-called “triggers” where detection of contaminants above certain levels can trigger additional testing. Some are for collecting information about the discharged wastewater. These detect things like toxicity, arsenic, cyanide, cadmium, lead, mercury, and uranium, and are important measurements. However, the Draft Permit only requires these measurements be taken once per quarter (Assessment Levels), twice per year (Discharge Characterization Testing), even only once per year (Whole Effluent Toxicity), which is far too infrequent.

As ADEQ is aware, the Town of Patagonia and many local residents only treat their water with chlorinating disinfectant prior to use. We are extremely concerned about the potential effects on human health from contaminants at elevated levels like arsenic, cyanide, cadmium, lead, mercury, uranium in our water, which may go undetected due to insufficient monitoring requirements.

- **COMMENT:** ADEQ must revise the Draft Permit to require this important monitoring be done at least monthly.