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7
8 **IN THE SUPERIOR COURT OF YAVAPAI COUNTY, STATE OF ARIZONA**
9

Jennifer Richards;

Plaintiff,

v. **SCOTT ELLIS, in his official capacity as
the City of Cottonwood Community
Development Director/Zoning Administrator,
LINDSAY MASTEN, Chairwoman of the
Planning and Zoning Commission,
RANDY GARRISON, Vice Chairman of the
Planning and Zoning Commission,
JAMES GLASCOTT, Commissioner,
GEORGE GEHLERT, Commissioner,
BOB ROTHROCK, Commissioner,
DANIEL COMELLA, Commissioner,
PLANNING AND ZONING COMMISSION
OF THE CITY OF COTTONWOOD,**

Respondents.

Case No. S1300CV202580044

FIRST AMENDED

**PETITION FOR WRIT OF MANDAMUS
AND VERIFIED COMPLAINT**

11 **INTRODUCTION**

12 Plaintiff, Jennifer Richards, files this First Amended Complaint and Petition for Writ of Mandamus as
13 a matter of right pursuant to Rule 15(a) of the Arizona Rules of Civil Procedure, as no responsive
14 pleading has been filed.

15 Defendants' Motion to Dismiss mischaracterizes the arguments set forth in the original petition. This
16 amendment clarifies the procedural obligations imposed by Section 302 of the City of Cottonwood
17 Zoning Ordinance and the relief sought.

18 Because this action seeks only mandamus relief, not damages, no Notice of Claim was required. See
19 State ex rel. Morrison v. Thomas, 80 Ariz. 327, 329 (1956) (holding that mandamus actions do not require
20 a Notice of Claim when no monetary damages are sought).

21 This Amended Petition **supersedes and replaces** the original Verified Complaint in its entirety.

22 A.R.S. § 12-2021 is being called upon to compel Respondents to fulfill their mandatory legal duties
23 under Section 302 of the City of Cottonwood Zoning Ordinance, to issue a notice of violation, and to hold
24 a public hearing to determine whether Conditional Use Permit (CUP) PCU 08-002 issued to MRI should
25 be revoked due to substantial and ongoing violations.

26 Despite clear mandates in the City of Cottonwood Zoning Ordinance, evidence of multiple material
27 violations, and multiple formal complaints, Respondents have unlawfully refused to act. Ignoring their
28 clear non-discretionary duty, mandatory procedural requirements, and ultimately failing to enforce the
29 City's own zoning ordinances. A Writ of Mandamus is necessary to compel compliance with the law.

30 All matters in this petition are based upon Petitioner's information and belief.

31 **1. JURISDICTION AND VENUE**

32 This Court has jurisdiction over this matter pursuant to A.R.S. § 12-2021 et seq.

33 Venue is proper in Yavapai County as Respondents are public officials acting within their jurisdiction
34 in Cottonwood, Arizona.

35 **3. PARTIES**

36 **Petitioner:** Jennifer Richards is a local business owner, commercial property owner, and affected
37 party who has submitted multiple formal complaints regarding material violations of MRI's CUP.

38 **Respondents:** Scott Ellis, the Planning and Zoning (P&Z) Commission and its members are
39 responsible for enforcing section 302 of the code and ensuring compliance with the CUP conditions.

40 **4. OFFICIAL NON-DICRETIONARY DUTIES**

41 **ARTICLE 1, Section 104(B) titled "Powers and Duties of the City Zoning Ordinance" of the**
42 **City Zoning Ordinance** states: "*It shall be the duty of the Commission... to hold public hearings where*
43 *necessary*"

44 **ARTICLE 3, Section 302 titled "Conditional Use Permits"**

45 **Section 302 (A) Purpose**, states section 302 is designed to "establish principles and procedures."

46 "*It is the intent of this Ordinance to permit Conditional Uses in appropriate zoning districts, but*
47 *only in specific locations within such districts that can be designed and developed in a manner which*
48 *assures maximum compatibility with adjoining uses, and where such uses will not be detrimental to the*
49 *health, safety or welfare of the public. It is the purpose of this Section to establish principles and*
50 *procedures essential to proper guidance and control of such uses.*"

51
52 **Section 302(G)(2)** imposes a **clear, non-discretionary legal duty** on the Zoning Administrator:

53 "*The Zoning Administrator **shall** notify the permittee of a potential violation of a Conditional Use*
54 *Permit by certified mail. If no attempt to bring the violation into conformance is made within fifteen (15)*
55 *days after notification, and no attempt has been made to contact the City department providing the*
56 *notification, a review of the Conditional Use Permit **shall** be scheduled with the Planning and Zoning*
57 *Commission at their next available meeting at which time the CUP **shall** be subject to possible*
58 *revocation.*"

59

60 **Section 302 (G)(4)** further establishes a non-discretionary duty and outlines explicitly what

61 constitutes a CUP violation inciting a revocation hearing:

62 *“Any Conditional Use Permit issued by the Planning and Zoning Commission **shall** be subject to*
63 *revocation procedures if the conditions of approval have not been... properly maintained thereafter. The*
64 *Planning and Zoning Commission **may** revoke the CUP if it makes any of the following findings:”*

65 *a. there is or has been a violation of or failure to observe the terms or conditions of approval for the CUP,*
66 *or the use has been conducted in violation of the provisions of this Ordinance;*

67 *b. That approval was obtained by means of fraud or misrepresentation of a material fact*

68 *e. That the use to which the permit applies has been conducted detrimental to the health, safety or general*
69 *welfare of the public, or so as to be considered an ongoing or habitual nuisance.”*

70

71 The specific use of the word “shall” in this provision removes discretion and mandates that
72 revocation procedures must be initiated when conditions of a CUP are not maintained. The phrase
73 "subject to revocation procedures" means that once a violation is established, the City must begin the
74 enforcement process. While the Commission retains **discretion** over the **final decision** to revoke a CUP
75 (**“may revoke”**), it has **no discretion** over the requirement to initiate revocation procedures when
76 violations occur (“shall be subject to revocation”).

77 The City’s obligation to begin revocation procedures has already been triggered because MRI has
78 violated **multiple** conditions of the standards inherent for all Conditional Use Permits, including:

79 • Material Misrepresentation in Obtaining the CUP (302(G)(4)(b))

80 • Violation of CUP Conditions and Zoning Ordinance (302(G)(4)(a)):

81 MRI failed to obtain and maintain required ADEQ permits for its operations, receiving an official
82 Notice of Violation (NOV) from ADEQ. TO this day, MRI does not have, nor has ever had an
83 approved, valid, appropriate ADEQ permit, as required, and they have been operating for over a
84 decade.

85 • Ongoing Public Nuisance and Health Hazard (302(G)(4)(e))

86 Because MRI’s violations directly satisfy the grounds for revocation under 302(G)(4), the
87 procedural requirement to initiate revocation has been triggered, and the City must issue a Notice of
88 Violation and schedule a hearing.

89 Because enforcement of Section 302 falls exclusively within the City’s jurisdiction, the City has
90 no legal authority to delay or abdicate its mandatory enforcement duties by deferring to any other
91 government agency or other external considerations or excuses.

92 Arizona courts have consistently held that while an agency may retain discretion in the **final**
93 **decision**, as implied with the use of the word “may” above in Section 302(G)(4), it must still follow **the**
94 **mandatory procedural requirements** set forth by law, as mandated in Section 302 (G)(2). See *Marbury*
95 *v. Madison*, 5 U.S. 137 (1803) (holding that courts may compel a government official to follow a legally
96 mandated procedure but may not control the final discretionary outcome)

97 In *In re NLRB*, 304 U.S. 486 (1938), the Supreme Court reaffirmed that while agencies retain
98 discretion in their decision-making authority, they must still follow the procedural requirements
99 established by law. This principle directly applies here: the City of Cottonwood retains discretion on
100 whether to revoke MRI’s CUP, but it has no discretion on whether to follow the mandated enforcement
101 procedures of issuing an NOV and scheduling a hearing as required by Section 302(G)(2).

102 A mandamus action may only be brought if the statutory duty imposed on the public official or
103 board is purely ‘ministerial.’ *El Paso Nat. Gas Co. v. State*, 123 Ariz. 219, 221, 599 P.2d 175, 177 (1979).
104 A ministerial duty is one that specifically describes the manner of performance and ‘leaves nothing to the
105 discretion’ of the public official or board. Section 302(G)(2) explicitly removes discretion by stating that
106 the Zoning Administrator ‘shall’ issue a notice of violation and ‘shall’ schedule a hearing, making
107 compliance mandatory.

108 Arizona courts have repeatedly interpreted the word ‘shall’ as imposing a mandatory duty. In
109 *Sherrill v. City of Peoria*, 189 Ariz. 537 (App. 1997), the Arizona Court of Appeals held that ‘shall’

110 establishes a non-discretionary duty that must be followed. Here, Section 302(G) states that the Zoning
111 Administrator ‘shall’ issue a notice of violation and ‘shall’ schedule a public hearing, leaving no room for
112 discretion. The City’s failure to comply violates its own zoning laws and constitutes grounds for
113 mandamus relief.

114 Finally, in Opinion Number I22-003 (R20-002) the Arizona Attorney General Arizona states that
115 “courts have generally interpreted the word “may” as permissive and “shall” as mandatory.” Section 302
116 (G)specifically uses the word “shall” thereby **removing discretion** and establishes specific **mandatory**
117 **steps**. Section 302(G)(4) uses the word “may” and makes the decision to revoke the permit at the hearing
118 **discretionary**.

119 **This document will demonstrate each of the conditions noted above in 302 (G)(4) have been**
120 **violated by MRI, directly satisfying the enumerated conditions, thereby initiating the procedural**
121 **requirement to issue a NOV from the City and ultimately a revocation hearing.**

122 Since **MRI’s violations (fully outlined in this document below) are incorrigible violations**, due to
123 their nature, the City **must** issue the Notice of Violation (NOV) and ultimately, promptly schedule a
124 review hearing as commanded in Section 302(G)(2)—but has refused to do so, violating its own laws.

125 The law does not require the impossible. When violations cannot be remedied, the City must proceed
126 directly to the next mandatory step—scheduling a revocation hearing. See *El Paso Natural Gas Co. v.*
127 *State*, 123 Ariz. 219, 221 (1979).

128 Here, MRI’s violations are incurable because (1) material misrepresentations in obtaining the CUP
129 cannot be undone, (2) ongoing health hazards from fugitive slag dust emissions are inherent to MRI’s
130 operations, and (3) an ongoing public nuisance cannot be ‘corrected’ unless operations cease. Because
131 correction is impossible, the City has no discretion to indefinitely delay or refuse **mandatory procedural**
132 **requirements** and must immediately issue an NOV and schedule a hearing.

133 Because the City refuses its non-discretionary duty, a **Writ of Mandamus is necessary** to compel
134 them to follow the prescribed procedures required by Section 302.

135 **5. FACTUAL BACKGROUND- BASED UPON INFORMATION AND BELIEF**

136 On **March 17, 2008**, the City of Cottonwood granted Conditional Use Permit **PCU 08-002** to
137 Minerals Research, Inc., allowing a slag processing operation in the heart of our children’s facilities (The
138 Recreations Center, the Library, Garrison Park, Cottonwood Kid’s Park and children’s housing) that
139 crushes and screens the copper slag into a dust particulate to be commercially sold.

140 After the Petitioners child began experiencing negative health impacts from exposure to the fugitive
141 copper slag dust at the Children’s Park, Petitioner began investigating MRI and through publicly available
142 information and FIOA requests, where she discovered substantial material violations of “Section 302” of
143 MRI’s Conditional Use Permit.

144 **On August 29, 2023**, Plaintiff submitted a formal complaint to P&Z officials, City Council, the City
145 Manager, the Mayor, and the City Attorney, detailing material violations of MRI’s CUP, public health
146 risks, and requests for a public hearing to review MRI’s noncompliance and misrepresentations. This
147 complaint, along with hundreds of pages of supporting evidence, was made publicly available at
148 ocschildsafety.com.

149 Among the key evidence submitted were multiple material misrepresentations made by MRI’s
150 representatives during city meetings leading up to their CUP approval:

- 151 • **January 24, 2008** (City Council Meeting): MRI’s representative Tom Hurkett falsely stated that
152 MRI had no complaints from property owners in Ajo, where they previously operated.
- 153 • **March 11, 2008** (City Council Meeting): MRI’s owner, Mike Vic, falsely claimed that copper slag
154 poses no health risks.

155 • **March 17, 2008** (P&Z Meeting Granting MRI's CUP): When asked about a news article reporting
156 that Ajo residents were "plagued" by MRI's slag dust, Hurkett materially misrepresented that
157 PDEQ regulated MRI in Ajo and that MRI had never received a citation from them.

158 **Contrary to these statements, public records revealed that:**

159 • By January 24, 2008, at least 14 formal complaints had been filed against MRI with PDEQ
160 regarding dust pollution in Ajo where residents complained the slag dust was negatively affecting
161 their health, their properties, and their pets and was a nuisance.

162 • MRI's Material Safety Data Sheet (MSDS) warns that slag dust exposure can exceed regulatory
163 levels for arsenic, lead, mercury, and other toxic heavy metals, recommending respirator
164 protection and citing cancer risks, birth defects, and reproductive harm.

165 • Multiple studies from the National Library of Medicine were also provided in the evidence that
166 show copper slag dust can permanently damage lungs on a single inhalation and can cause other
167 lung diseases and cancers.

168 • At the time MRI officials stated on record (AT THE MEETING they were granted their CUP by
169 the City) that they had never received a citation from PDEQ, Minerals Research had received at
170 least **nine PDEQ citations** in Ajo, leading to fines, consent orders, and were designated as a
171 "**high-priority violator**" within PDEQ.

172 These material misrepresentations were not minor discrepancies but fundamental falsehoods that
173 inherently tainted the Commission's decision to grant MRI's Conditional Use Permit. The Commission is
174 on record, after MRI made their false assertions, explicitly stating they had confidence in Minerals
175 Research and belief that fugitive dust would not be an issue, demonstrating that the false statements
176 influenced the approval process.

177 If MRI would have told the truth at that meeting, informing the Commission that slag dust was an
178 issue for neighbors in Ajo and they had received many compliant, that the slag does contain toxic heavy

179 metals and has the potential to harm human health, and that they received six citations from PDEQ, were
180 sued twice for unlawful dust emissions and lost, and ultimately were designated by PDEQ as a high
181 priority violator, what are the chances the Commission would have granted the CUP?

182 Given the magnitude of these misrepresentations, it is impossible for them not to have affected the
183 Commission's decision. Courts have consistently held that fraud or material misrepresentation in
184 obtaining a permit constitutes a fatal defect, necessitating review and potential revocation. *United States*
185 *v. Mendoza*, 464 U.S. 154, 162 (1984). Since these misrepresentations cannot be corrected or undone, the
186 City has no discretion to disregard them; it is legally obligated under Section 302(G)(2) to issue a Notice
187 of Violation and schedule the required revocation hearing.

188 **On 9/29/2023**, Plaintiff received a dismissive response from Scott Ellis, Community Development
189 Director, stating that:

- 190 1. "Staff" could not substantiate fraud or misrepresentation in MRI's CUP approval (despite
191 extensive documentation).
- 192 2. "Staff" was unable to determine whether MRI's operations posed a public health risk or an
193 ongoing nuisance.

194 **On October 5, 2023**, Ellis acknowledged that MRI had received an NOV from ADEQ for failure to
195 obtain a valid ADEQ permit prior to operations commencing, and the City "reopened" the complaint,
196 pending ADEQ's findings—effectively delaying enforcement.

197 **On October 30, 2023**, Plaintiff submitted a second complaint, presenting additional violations and
198 emphasizing that:

- 199 • Section 302 vests authority in the Planning and Zoning Commission—not in unnamed city
200 "staff"—to determine CUP revocation based on clear procedural guidelines.

- 201 • The City’s failure to provide medical, environmental, or legal expertise to counter the known
202 hazards of copper slag dust was indefensible.
- 203 • No Phase 2 Environmental Testing has ever been conducted by MRI and reported to the City,
204 despite **six** prior assurances and agreements between MRI and the Planning and Zoning
205 Commission that it was required to be conducted prior to operations commencing.
- 206 • MRI operated without the appropriate Air Quality Permit for over a decade, violating ADEQ
207 regulations and the explicit stipulations of MRI’s CUP.

208 **No response was received from any city officials to this secondary complaint.**

209 **On November 20, 2023**, Plaintiff and concerned citizens attended a P&Z meeting and read MRI’s
210 violations into the record. Commissioner Shannon Klinge later revealed that Scott Ellis had not provided
211 P&Z with any of Plaintiff’s complaints, despite them being directly addressed to the Commission. When
212 Klinge pressed Ellis on a revocation hearing he largely ignored her concerns and refused constructive
213 discussions, leading her to the decision to resign from her position on the Commission.

214 **On September 12th, 2024**, Petitioner sent an electronic correspondence to Scott Ellis providing him
215 with the results of ADEQ’s heavy metal testing in the soils around MRI and provided additional evidence
216 that the slag dust emitted into the community by MRI’s Operations has a strong potential harm to human
217 health and again requesting a section 302 hearing be held:

- 218 • According to the [Washington State Department of Health](#) study, “**Hazards of Short-Term**
219 **Exposure to Arsenic Contaminated Soil**”
- 220 ○ *“Best estimated soil concentrations of arsenic to protect the public from adverse health*
221 *effects due to short-term exposure were developed for **three** scenarios”*
 - 222 ○ *“child exposure to contaminated soil from accessible areas, resulting in **transient adverse***
223 ***health effects (37mg/kg of arsenic in soil)**” This is based off a single day’s exposure*
224 *considering the typical amount of soil a child normally consumes in a day.*

- 225 ○ *“Infrequent child exposure to deeply buried or relatively inaccessible, contaminated soil*
226 *resulting in **DEATH (162mg/kg of arsenic in soil)**” This is based off a single day’s*
227 *exposure considering the typical amount of soil a child normally consumes in a day.*
- 228 ○ *“adult resident or worker exposure to subsurface or relatively inaccessible soil resulting in*
229 *transient adverse health effects (175 milligrams of arsenic/kilogram soil)”*

230

- 231 • US EPA Regional Screening Levels for children who have more than one route of arsenic
232 exposure creating a health hazard is **3.5 mg/kg** of Arsenic in soil. Since Cottonwood’s water is
233 high in arsenic our children fall under this level of health hazard.

234 Soil testing was conducted by ADEQ around the MRI copper slag crushing facility revealed alarming
235 arsenic concentrations:

- 236 • **Cottonwood Kid's Park** (approximately 1,000 feet from the MRI facility) tested as high as **78**
237 **mg/kg of arsenic in the soil** (ADEQ test result 158). Far above 3.5mg/kg which poses a health
238 hazard in children.
- 239 • The area directly around MRI's slag crushing operations tested up to **537 mg/kg of arsenic in soil**
240 (ADEQ test results 91,92,93). This facility is just a few hundred yards from our Cottonwood
241 Kid’s Park and dust regularly blows from this area into the Kid’s Park.
- 242 • **Birch Street**, used by trucks transporting slag dust, showed levels as high as **1,339 mg/kg of**
243 **arsenic in soil** (ADEQ test result 113). This is an area children can easily access on their way to
244 the Rec Center and Library just a few hundred feet away. This is a public road.
- 245 • **Police and Fire Complex** tested as high at 204mg/kg of soil arsenic (ADEQ test result 307). This
246 complex is open to the public and across the street from the children’s Recreation Center and
247 children live in apartments next door to this facility.

248 Additionally, MRI’s MDSS indicates that their slag contains up to **190 mg/kg** of arsenic. This is far
249 over the child health hazard limit of 3.5mg/kg and above the child **fatality limit** for a single days

250 exposure of 162mg/kg of arsenic. This alone clearly demonstrates that the MRI operations **can** pose a
251 threat to human health, especially the children who live and play in the downwind slag dust fallout zone.
252 This is of immediate and extreme concern. This email sent on 9/12/24 was never responded to.

253 **6. HOW WE KNOW THAT FUGITIVE COPPER SLAG DUST IS PRODUCED BY THE**
254 **MRI OPERATIONS**

255 On **September 22, 2009**, MRI submitted an application to the Arizona Department of Environmental
256 Quality (ADEQ) for permits related to their slag crushing and screening operations. The application stated
257 that the primary crushing and screening plant alone would likely emit **71.11 tons per year** of copper slag
258 particulate matter (PM) into the atmosphere via uncontrolled emissions, and **22.24 tons per year** of PM10
259 copper slag particulate into the atmosphere, which is particularly dangerous due to its ability to cross the
260 blood-brain barrier. That's **186,700 pounds per year, 15,558 pounds per month, 511.5 pounds per day**
261 dispersing into our children's facilities and children's homes.

262 **7. COTTONWOOD POLICE DEPARTMENT'S INVESTIGATION**

263 Following the Community Development Director's refusal to initiate a CUP revocation hearing, on
264 August 12th, 2024, Petitioner lodged a formal complaint with the Cottonwood Police Department, alleging
265 that representatives of MRI committed offenses of unsworn falsification and fraud noted in lines 105-146.

266 Officer James Repp initiated an investigation under case number W24005464. However, due to the
267 expiration of the statute of limitations on criminal offenses, charges could not be pursued.

268 Recognizing the imperative of upholding justice and that there is no statute of limitations for section
269 302 relating to **active** CUP's, acting Chief of Police, Kevin Murie, convened a meeting with
270 Cottonwood's City Manager, City Prosecutor, and Community Development Director/Zoning
271 Administrator. During this meeting, the officers presented evidence of MRI's material misrepresentations
272 and strongly recommended that, in the interest of justice, a revocation hearing concerning the material
273 misrepresentations be conducted. As of yet, no hearing has been scheduled.

274 **8. PETITION**

275 A petition has been gathered with around 300 in person signatures and 1,301 online signatures stating
276 in part: *“The fugitive copper ore slag dust containing toxic heavy metals that is blanketing our community*
277 *coming from the slag crushing operation poses a clear health risk to the citizens and children of*
278 *Cottonwood based on all science available and doctor testimony... The constant emissions of toxic slag*
279 *dust are an ongoing nuisance to our community...MRI has never submitted to the City the required Phase*
280 *2 Environmental testing before commencing operations.... MRI has been operating in violation of section*
281 *302 relating to their conditional use permit... We request immediate action from our government.”* The
282 online petition can be accessed by clicking the link at the top of the page for ocschildssafety.com and goes
283 towards the merits of the need for a revocation hearing in consideration of section 302(G).

284 **9. PRECEDENCE**

285 The Community Development Director and the Planning and Zoning Commission have established a
286 precedent for enforcing Section 302 of the City of Cottonwood Zoning Ordinance.

287 On July 17th, 2023, the Commission revoked the Conditional Use Permit (CUP) of Foljol Brothers bar
288 and restaurant, citing a violation of Section 302 due to the establishment being closed for six months.
289 Notably, this action was apparently taken without any official complaints filed against the establishment
290 and with section 302 stating *“The Planning and Zoning Commission can grant an extension to the CUP*
291 *where the intent to continue the use in the same manner is demonstrated.”*

292 During the hearing, the owner explained that the closure was due to staffing challenges related to the
293 COVID-19 pandemic and requested an extension to address these issues. Despite his pleas, the
294 Commission denied the request and revoked the CUP for non-compliance with Section 302.

295 This strict enforcement contrasts sharply with the Commission's inaction regarding MRI, despite
296 documented and egregious violations of Section 302 that pose significant harm to the community. The

297 refusal of the Community Development Director to schedule a hearing on this matter constitutes an
298 unequal application of authority, violating constitutional principles.

299 The disparate treatment between Foljol Brothers and MRI represents clear “selective enforcement”
300 and as such is a violation of our constitutional guarantee. Such selective enforcement violates the Equal
301 Protection Clause of the **Fourteenth Amendment to the U.S. Constitution**. See Village of Willowbrook
302 v. Olech, 528 U.S. 562, 564 (2000) (holding that selective enforcement of zoning laws without a rational
303 basis can violate the Equal Protection Clause). **Article 2, Section 13 of the Arizona Constitution**, which
304 forbids granting privileges or immunities to any citizen, class of citizens, or corporation that do not
305 equally apply to others similarly situated.

306 **10. AN UNREASONABLE AMOUNT OF TIME HAS PASSED**

307 As of now, 16 months have elapsed without any subsequent correspondence from the City. This
308 prolonged inaction is unreasonable, especially considering the precedent set by P&Z, and the directives
309 outlined in Section **302(G)** of the City's Zoning Ordinance.

310 The delay is believed to be due to Scott Ellis’s claim on 10/5/2023 that he is waiting on more
311 information from ADEQ before deciding if he will hold a revocation hearing. Compliance with
312 Cottonwood’s Section 302 falls solely under the City’s jurisdiction, and Mr. Ellis cannot delegate this
313 responsibility to ADEQ. ADEQ's authority is limited to determining MRI's eligibility for an Air Quality
314 Permit. Per statutory limitations, ADEQ cannot consider factors such as:

- 315 • The presence of arsenic in the slag dust, as that heavy metal is not considered in the Clean Air Act.
- 316 • The deposition of slag dust particles into the City and their potential health impacts.
- 317 • Material misrepresentations made by MRI officials during P&Z Meetings.
- 318 • Assessing whether MRI's operations pose a threat to human health or constitute an ongoing
319 nuisance to the surrounding community.

320 • Determining if MRI violated the conditions of their CUP or the terms within Section 302.

321 Given these constraints, ADEQ lacks the appropriate authority to address the concerns raised in the
322 Petitioner's complaints. Therefore, the Community Development Director's reliance on pending
323 information from ADEQ as a basis for inaction is misguided and unfounded. The responsibility to address
324 these issues squarely falls within the purview of the City's Planning and Zoning Commission, as
325 delineated in the Zoning Ordinance.

326 At a community meeting held by ADEQ in Cottonwood, on Sept. 12, 2024, General Counsel for
327 ADEQ personally confirmed to the Petitioner that ADEQ lacks any jurisdiction or statutory standing to
328 make any determinations on the issues raised herein relating to section 302 violations.

329 **11. CONFLICT OF INTEREST**

330 Two potential conflicts of interest may explain the City's failure to act:

331 **1. Financial Ties Between the City and MRI**

332 The City of Cottonwood receives **\$0.50 per ton** of slag processed by MRI, documented as "royalty"
333 payments. Estimates suggest **up to 3 million tons** of slag, potentially generating **\$1.5 million** in revenue
334 as long as operations continue. The allocation of these funds remains obscure and unclear, but revoking
335 MRI's CUP would cut off this revenue stream.

336 **2. Familial Ties of Vice Chair Randy Garrison**

337 Garrison, Vice Chair of the Planning and Zoning Commission, has direct family connections to the
338 land and slag pile owner. Garrison's grandmother, Phillis Lindner, owned both the land and the rights to
339 the slag pile. She donated the land to what is now the Verde Valley Fair Association and bequeathed the
340 slag pile rights to her grandson, Curtis Lindner, who is Garrison's first cousin. Lindner profits from slag
341 sales to MRI, raising concerns about Garrison's impartiality. Whether Garrison personally benefits or will
342 benefit from the land once the slag is removed is uncertain, but the appearance of a conflict is undeniable.

343 These conflicts raise concerns under **A.R.S. § 38-503(A)**, which requires public officials to disclose
344 substantial interests and recuse themselves from related decisions.

345 Specifically, **A.R.S. § 38-503(A)** states:

346 *"Any public officer or employee of a public agency who has, or whose relative has, a*
347 *substantial interest in any contract, sale, purchase or service to such public agency shall make*
348 *known that interest in the official records of such public agency and shall refrain from voting upon*
349 *or otherwise participating in any manner as an officer or employee in such contract, sale or*
350 *purchase."*

351 Given these potential conflicts, if it's within this court's jurisdiction, it is respectfully requested that
352 the Court mandate the recusal of any officials with identified conflicts from the revocation hearing.

353 **12. CONCLUSION**

354 In light of the multiple documented violations of Section 302 by Minerals Research, Inc. and the
355 **mandatory procedural requirements**. outlined herein, it is imperative that the Planning and Zoning
356 Commission fulfill its clear legal duty to issue a notice of violation and promptly schedule a revocation
357 hearing.

358 The Petitioner has clearly demonstrated:

- 359 1. That the Respondents have a mandated, non-discretionary, legal duty in Section 302.
- 360 2. That MRI has violated Section 302(G) by making multiple material misrepresentations in
361 obtaining their CUP and that the MRI operations have been conducted detrimental to the
362 health, safety or general welfare of the public, and in such a way as to be considered an
363 ongoing or habitual nuisance, and MRI has failed to obtain the required ADEQ permits.
- 364 3. The Respondents have failed to follow the **mandatory procedural requirements** outlined
365 in the Zoning Ordinance.

366 Petitioner respectfully requests that this Court issue a Writ of Mandamus compelling the
367 Community Development Director and Commission to promptly adhere to the City's zoning ordinances,

368 past precedence set, and for the protection of public health and welfare. The Respondents **retain**
369 **discretion** over their final ruling in the hearing, but **they do not have discretion** to refuse the procedural
370 requirements of issuing a NOV or scheduling the resulting required hearing.

371 **LEGAL BASIS FOR MANDAMUS**

372 1. Pursuant to A.R.S. § 12-2021, the granting of a Writ of Mandamus is appropriate where a
373 government official has **a clear, non-discretionary duty** to act.

374 *“A writ of mandamus may be issued by the... superior court to any person, inferior tribunal,*
375 *corporation or board, though the governor or other state officer is a member thereof, on the*
376 *verified complaint of the party beneficially interested, to compel, when there is not a plain,*
377 *adequate and speedy remedy at law, performance of an act which the law specially imposes as a*
378 *duty resulting from an office, trust or station, or to compel the admission of a party to the use and*
379 *enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by*
380 *such inferior tribunal, corporation, board or person”*

381

382 2. A mandamus action may only be brought if the statutory duty imposed on the public official or
383 board is purely ‘ministerial.’ El Paso Nat. Gas Co. v. State, 123 Ariz. 219, 221, 599 P.2d 175, 177
384 (1979). A ministerial duty is one that specifically describes the manner of performance and ‘leaves
385 nothing to the discretion’ of the public official or board. Section 302(G)(2) explicitly removes
386 discretion by stating that the Zoning Administrator ‘shall’ issue a notice of violation and ‘shall’
387 schedule a hearing, making compliance mandatory.

388 3. By refusing to issue the required NOV and ultimately initiate the timely hearing as prescribed by
389 law, the Respondents have acted in gross negligence and **failed in their non-discretionary legal**
390 **duty**, depriving Petitioner and the public of due process and potentially opening the city and the
391 Respondents to personal liability by acting in gross negligence.

392 **13. RELIEF REQUESTED**

393 WHEREFORE, Petitioner respectfully requests this Court to:

- 394 1. Issue a **Writ of Mandamus** directing Respondents to promptly issue a NOV to MRI for all
395 violations of CUP PCU 08-002 as instructed under **Section 302(G)**. and promptly **schedule and**
396 **hold a public hearing**.
- 397 2. Award **fees and other expenses** as outlined in **A.R.S. § 12-2030**.
- 398 3. Mandate the recusal of officials with conflicts from participating in the revocation hearing.
- 399 4. Require each violation of Section 302 be individually addressed on its own merits and subjected to
400 separate deliberation and voting by the Planning and Zoning Commission, upholding the
401 principles of due process and facilitating a comprehensive record of the Commission's
402 determinations on each distinct violation.
- 403 5. Require Respondents exercise their required duty in Section 302 in a non-discriminatory manner.
- 404 6. Grant any further relief the Court deems just and proper.

405

406 Dated this 27th day of February, 2025.

407 Respectfully submitted,

408

409 Jennifer Richards