



# ASAOC Frequently Asked Questions

## **What is an Administrative Settlement Agreement and Order on Consent (ASAOC)?**

An ASAOC is a voluntary but legally binding and enforceable cleanup agreement entered between a private party and federal entities under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). These agreements will often outline work that needs to be conducted to address an environmental concern and will establish an agreed upon schedule for cleanup work, required financial assurances to ensure work is completed and establish potential penalties if the agreement is not followed.

## **Why did Midas Gold Pursue an Agreement Under an ASAOC?**

An ASAOC is necessary to allow a third-party, like Midas Gold (“Midas Gold” or “Company”), to voluntarily address environmental conditions at an abandoned mine site without inheriting the liability of the conditions left behind by past operators.

In order to provide investment and cleanup of legacy environmental hazards and waste left behind at Stibnite, both through near-term actions and via a more comprehensive approach should the Stibnite Gold Project (“Project”) be approved, Midas Gold needed an agreement with federal agencies under CERCLA to gain permission and define the work the company will conduct and to clarify protections for the company from inheriting the environmental liability of past actors who abandoned the site.

## **What is The Problem at Stibnite?**

The historical Stibnite mining district in central Idaho had seen mining activity for over 100 years and was a critical source of antimony and tungsten for the U.S. war efforts through WWII (“World War II”) and the Korean War. Today, legacy sources of water pollution largely stemming from War-era mining activity are impacting the East Fork of the South Fork of the Salmon River, Meadow Creek, and ground water sources in the region. However, from 2000 to 2012, three CERCLA settlements were signed between previous operators at Stibnite and U.S. agencies regarding conditions at the historical Stibnite mining district. These settlements provided some improvements to site conditions but effectively left Stibnite with no parties responsible for unaddressed environmental conditions. Unfortunately, water quality has continued to be impacted by the release of hazardous substances stemming from legacy features.

In the Company’s investigation of the site, Midas Gold identified and subsequently alerted regulatory agencies to water quality data indicating concerning levels of antimony and arsenic in groundwater at Stibnite. In some areas of the site near legacy features, recent data shows arsenic in ground water can peak at 700 times the drinking water standard. Midas Gold reached out to EPA in 2018 as to the water quality data it was observing. This started discussions that led to the ASAOC.

## **Who was Involved in the Agreement Process?**

The voluntary cleanup agreement was agreed to by Midas Gold, the Environmental Protection Agency (“EPA”) and the U.S. Forest Service (“USFS”) in concurrence with the U.S. Department of Justice (“DOJ”). It is the result of three years of discussion with the EPA, and which later included the U.S. Department of Justice, U.S. Forest Service, State of Idaho, the Shoshone-Bannock Tribes and the Nez Perce Tribe. Natural resource trustees, including the Fish and Wildlife Service, were also participants in discussions. Before finalizing the agreement, the EPA was also responsible for conducted government-to-government consultation with the Shoshone-Bannock Tribes and Nez Perce Tribe.

## **Is this Unique to Midas Gold?**

No. Contamination on abandoned mining sites remain a significant problem in the United States, often impacting water quality. The federal government and states lack the resources to clean up these abandoned sites and need to attract privately funded entities to do so. To attract cleanup financing, it is important to find a way to address legacy contamination on private and public land without making the private entity liable for the environmental conditions it did not create. This ASAOC meets these twin goals.

The Government Accountability Office's 2020 [report](#) on abandoned hardrock mines for the Ranking Member for the Subcommittee on Interior, Environment and Related Agencies of the U.S. Senate Committee on Appropriations, cited a lack of resources and concerns around liability as the primary roadblocks to providing solutions to the nation's abandoned mines. Specifically, the report announced that *"state agency officials and other stakeholders we interviewed, such as nongovernmental organizations and mining companies, have limited their participation in projects to address environmental hazards at abandoned mines because of concerns about their potential legal liability under CERCLA and the Clean Water Act"* (p.35). Within the report, USFS estimates that, assuming no private party contribution, it would cost USFS approximately \$6 billion to address environmental hazards at 6,600 abandoned hardrock mine sites on USFS land.

### **Does the Agreement Impact the Stibnite Gold Project or Include Mining?**

No. The agreement does not supersede the ongoing regulatory review process under NEPA (National Environmental Policy Act) for the Stibnite Gold Project and only applies to the environmental cleanup activities specified in the order. We anticipate having an official decision on the Stibnite Gold Project in late 2021.

### **Why Does the Agreement Authorize Activity Now?**

Within the ASAO, the federal agencies determine that site conditions constitute "actual or threatened release of hazardous substances" and that time critical removal actions are necessary to protect human health, welfare, and the environment. Therefore, phase 1 of this agreement is intended to address these most pressing needs that should not wait for the potential approval of the Stibnite Gold Project.

### **When will Environmental Cleanup Work Begin?**

We have already started to identify and prepare work plans with the EPA to allow work to begin as soon as spring conditions allow. The work will continue over the next four years.

### **What Work Does the Agreement Include?**

The first phase of the Agreement consists of CERCLA response actions designed to have an immediate improvement on water quality over the next four years. It includes three "time critical" removal actions where 325,000 tons of historical mine waste near the East Fork South Fork Salmon River affecting water quality in the river will be removed from key locations. Midas Gold will also conduct three water diversions designed to keep clean water away from areas of the site where interaction with large-scale legacy features have been degrading water quality. Phase 1 also provides for the examination of five adits, a biological assessment, a Section 404 Clean Water Act evaluation, and a cultural resources study in addition to a characterization study to evaluate and inform additional actions in Phase 2 and 3 of the Agreement.

The cleanup actions will be overseen by federal agencies and secured with financial assurance. The Agreement established Midas Gold will provide \$7.5 million in financial assurance to the federal agencies to guarantee the first phase of work.

### **How Much will these Actions Improve Water Quality?**

EPA will be approving water diversions and waste removal actions based on data and best management practices to keep clean water clean and remove mine waste impacting water quality. The projects in Phase 1, to be closely overseen by EPA, are being designed to have the most efficient and immediate improvement of water quality in high priority areas in the district.

### **What will Happen in Phase 2 and Phase 3?**

Phase 2 and 3 are contingent upon the Stibnite Gold Project being approved. Phases 2 and 3 will focus on the non-time critical removal actions that fall outside of the project footprint for the Project. This work will be informed by a site characterization study and may require larger scale action, planning and public review.

If the Stibnite Gold Project receives full regulatory approval, Phase 2 and Phase 3 of the Agreement may proceed with such CERCLA response actions occurring side-by-side with redevelopment and operations of the Stibnite Gold

Project that includes mine site reclamation. These two phases of the Agreement would focus on areas in the historic Stibnite mining district that are outside of our proposed project, expanding reclamation and restoration work into areas of the historical mining district that would otherwise not be addressed through our plans.

Phase 3 calls for response actions to be developed that would provide for permanent environmental solutions for areas of the site left previously unaddressed, in essence, the final phase of a comprehensive effort to finally cleanup and restore the Stibnite Mining District.

#### **What will Happen if the Project does not move Forward?**

If the Stibnite Gold Project is not permitted, the ASAOC will terminate after Phase 1 and Phases 2 and 3 will not proceed.

#### **How Does the ASAOC Impact Future Liability for Midas Gold?**

Midas Gold is not absolved of any potential liability for its own actions under any other Federal or state law as a result of being a party to this ASAOC. Instead, the agreement clarifies that by pursuing early work to help clean up environmental legacies at Stibnite, Midas Gold will not create new liability for itself for the harm caused in these contaminated areas of the site by previous operators.

#### **Will the Agreement Release Midas Gold from the Lawsuit with the Nez Perce Tribe?**

We do not know what impact the Agreement might have on the lawsuit but in a previous phase of the litigation, the federal judge overseeing the case invited the company to renew its previous motion to stay the litigation when a CERCLA order was “imminent.”

What we do know is that the ASAOC will allow for the near-term removal of sources that are causing water contamination in areas addressed by the suit. We hope that the Agreement will provide an opportunity to reach resolution with the Tribe as we would prefer to be out of the courtroom and focused on doing good work on the ground that can benefit all parties. It is important to point out the EPA and Midas Gold first started discussing the problems at site and the potential agreement well before a lawsuit over water quality was filed.

#### **What impacts will this have on the NEPA Process?**

The Agreement does not replace or supersede our ongoing permitting process or environmental review under NEPA. The proposed construction, mining operations, site restoration and other actions are summarized in the Draft Environmental Impact Statement (DEIS) released by the U.S. Forest Service in 2020. The Project will continue to be analyzed under the various review processes outlined in NEPA.

The ASAOC addresses cleanup of areas inside and outside of our proposed project footprint. If the Stibnite Gold Project is permitted, the ASAOC provides a future pathway for the ultimate restoration of the entire site, including contaminated areas beyond those being evaluated under NEPA which Midas Gold is not responsible for creating and which would not otherwise be addressed through mining.