

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

Powertech (USA) Inc.

Permit No. SD31231-0000 and
SD52173-0000

UIC Appeal No. 20-01

**EPA REGION 8 RESPONSE TO POWERTECH’S MOTION TO STRIKE
NATIONAL ENVIRONMENTAL POLICY ACT CHALLENGES**

The U.S. Environmental Protection Agency (“EPA”) Region 8 (“Region”) hereby responds to Powertech’s Motion to Strike National Environmental Policy Act Challenges (“Powertech’s Motion”). The Region opposes Powertech’s Motion for the following reasons.

On February 23, 2021, the EAB granted EPA’s request for a stay of the Oglala Sioux Tribe’s appeal of two Underground Injection Control (UIC) permits issued to Powertech (USA) and ordered EPA to file “a status report addressing the status of its review and consultations and the anticipated timing of the Region’s further actions on this permit decision.” The Region filed a Status Report and Motion for Stay of Proceedings on April 19, 2021. The EAB’s April 21, 2021 Order Setting Deadline for Response to Region’s Motion for Further Stay explains that “[t]he current briefing schedule for the Region’s response, any response Powertech may wish to file, and other pleadings in this matter are now stayed pending resolution of the Region’s motion.”

The Region maintains that a further stay of the proceedings is appropriate for the reasons outlined therein. Powertech's Motion raises a number of jurisdictional and substantive arguments on issues identified in the merits brief filed by the Oglala Sioux Tribe in support of its Petition for Review. Given the Board's previous order granting EPA's motion for a stay, its April 21, 2021 order staying this matter, as well as EPA's pending motion to continue that stay, EPA opposes Powertech's Motion to Strike National Environmental Policy Act Challenges. These jurisdictional and substantive arguments more properly belong in Powertech's response to the Petition, following the expiration of any stay of proceedings, instead of in a procedural motion while the matter is stayed. If appropriate, the Region will address Powertech's substantive arguments in its substantive briefing, if such briefing is required as a result of the expiration of any stay, or otherwise as directed by the EAB.

Statement of Compliance With Word Limitations

In accordance with 40 C.F.R. § 124.19(f)(5), the undersigned attorneys certify that this Response to Powertech's Motion to Strike National Environmental Policy Act Challenges contains fewer than 7000 words.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing EPA REGION 8 RESPONSE TO POWERTECH'S MOTION TO STRIKE NATIONAL ENVIRONMENTAL POLICY ACT CHALLENGES in the matter of Powertech (USA) Inc., Appeal No. UIC 20-01, was filed electronically with the Environmental Appeals Board's E-filing System and served by email on the following persons on May 28, 2021.

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