

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

In re:)	
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Powertech (USA) Inc.)	
)	
Permit Nos. SD31231-00000 & SD52173-00000)	UIC Appeal No. 25-01
)	
)	

POWERTECH (USA) INC.
NOTICE OF SUPPLEMENTAL AUTHORITY

Permit applicant Powertech (USA) Inc., hereby provides notice to the Environmental Appeals Board (“the Board”) and the parties in the above-referenced proceeding of the following decision issued after the filing of its Response to the Petition for Review:

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. ____ (2025). The Supreme Court’s Opinion in *Seven County*, decided on May 29, 2025, is directly applicable to arguments raised in the Petition at pages 25-30 that EPA Region 8 failed to comply with its cumulative effect review requirements. Specifically, the Court held that a NEPA cumulative effects analysis does not extend to effects of other projects that may be developed in the future, even if the project being analyzed under NEPA makes such other projects more likely to come to fruition.

The Board found in its September 8, 2024 Order (at 16) that “the Tribe failed to address the Region’s responses or demonstrate that the Region clearly erred or abused its discretion in concluding that EPA’s actions with respect to the UIC permits are exempt from NEPA” and (at 17) that the petition did not address “the long-standing federal and Board precedent cited therein

providing that the SDWA and UIC permitting program are the functional equivalent of NEPA”. Accordingly, the Board denied the NEPA claims. Nevertheless, the Petition incorporates by reference the NEPA claims from the Original Petition (at 26) in support of its claim that the Region failed to comply with 40 C.F.R. § 144.33(c)(3) additional injection wells cumulative effects evaluation requirements for area permits. The Petition argues (at 8) that the Region failed to analyze the cumulative effects of “additional mining developments [that] are reasonably foreseeable”.

In *Seven County*, the Court explained that “the textually mandated focus of NEPA is the ‘proposed action’ – that is, the project at hand – not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration...Therefore, when the effects of an agency action arise from a separate project – for example, a possible future project or one that is geographically distinct from the project at hand – NEPA does not require the agency to evaluate the effects of that separate project.” Slip op. at 16. The Court further explained that even where but-for causation exists between a project and factually foreseeable impacts of a separate project, “the separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project.” Slip op. at 16-17.

The Court elaborated that “NEPA is not a ‘game’ where project objectors can engage in ‘unjustified obstructionism.’” Slip op. at 19. “Citizens may not enlist the federal courts, ‘under the guise of judicial review’ of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand.” Slip op. at 22.

The Court's decision in *Seven County* supports by analogy the Region's decision to exclude evaluation of developments "later in time and too far away from the injection wells to be considered as cumulative effects under" 40 C.F.R. § 144.33(c)(3).

A copy of the slip opinion of *Seven County* is attached.

Respectfully submitted,

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Dated: June 4, 2025

CERTIFICATE OF SERVICE

I certify that the foregoing NOTICE OF SUPPLEMENTAL AUTHORITY in the matter of Powertech (USA) Inc., Appeal No. UIC 25-01, was filed electronically with the Environmental Appeals Board's E-filing System and served by email on the following persons on June 4, 2025.

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