

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

In the Matter of:)	UIC Appeal Nos: 11-01
Powertech (USA) Inc.)	11-02
UIC Permit No. CO51237-08412)	

**RESPONDENT REGION 8'S MOTION TO DISMISS AS MOOT
THE PETITIONS FOR REVIEW OF THE UIC PERMIT**

The United States Environmental Protection Agency Region 8 ("Region 8") moves the Environmental Appeals Board ("Board") to dismiss as moot the petitions for review filed in connection with Underground Injection Control ("UIC") Permit No. CO51237-08412, for the reasons set forth below.

Background and Cause for Motion

1. On December 3, 2010, Region 8 issued a final UIC permit to Powertech (USA) Inc. ("Permittee"), to inject water into the subsurface via a Class V well.
2. The Coloradoans Against Resource Destruction ("CARD") and James B. Woodward timely petitioned the Board to review the final permit on January 3, 2011.
3. The federal regulations applicable to the UIC permitting program allow Region 8 to withdraw the permit or portions of the permit at any time prior to a decision by the Board to grant or deny review of a permit decision. 40 C.F.R. § 124.19(d). After reviewing the petitions, the Region 8 notified the Board, the permittee and other interested parties that it was withdrawing the permit in its entirety and would prepare a

new draft permit consistent with 40 C.F.R. § 124.6. *See Notice of Withdrawal UIC Permit No. CO51237-08412, dated February 7, 2011.*

4. The new draft permit will be subject to public notice and comment as specified in 40 C.F.R. § 124.6 and may be appealed pursuant to 40 C.F.R. § 124.19.

5. Pursuant to the regulations in Part 124, any person who filed comments on a draft permit or participated in public hearings may petition the Board to review any condition of a permit decision. *See* 40 C.F.R. § 124.19(a). Because Region 8 is withdrawing the permit in its entirety, there are no longer any conditions of the permit decision to contest or review under 40 C.F.R. § 124.19.

6. Based on the circumstances described herein, the Petitions are moot. *See In re City of Marlborough Westerly Wastewater Treatment Facility*, NPDES Appeal Nos. 10-01, 10-02 & 10-03, at 2 (EAB, March 2, 2010) (Order Dismissing Petitions for Review) (appeal mooted by Region's withdrawal of entire permit modification under 40 C.F.R. § 124.19(d)); *In re City of Haverhill Wastewater Treatment Facility*, NPDES Appeal No. 08-01, at 2 (EAB, February 28, 2008) (Order Dismissing Petition for Review) (appeal mooted by Region's withdrawal of sole contested condition under 40 C.F.R. § 124.19(d)).

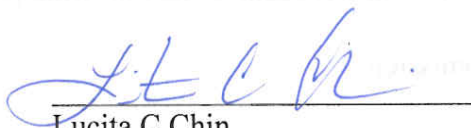
7. Region 8 has contacted the Petitioners, James B. Woodward, and Jeffrey C. Parsons for CARD, and they concur with the Region's request to dismiss the petition.

Relief Requested

For the foregoing reasons, the Respondent requests that the Board dismiss the Petitions as moot.

Respectfully submitted this 7th day of February 2011,

U.S. Environmental Protection Agency Region 8



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Dismiss as Moot the Petitions for Review of the UIC Permit were sent to the following persons in the manner indicated:

By Electronic Submission

Erika Durr
Clerk of the Board
U.S. EPA Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

By First Class U.S. Mail:

Jeffrey C. Parsons
Western Mining Action Project
P.O. Box 349
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James B. Woodward
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Dated: February 7, 2011



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