

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



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| In re: |) | |
| |) | |
| Powertech (USA) Inc. |) | UIC Appeal No. 20-01 |
| |) | |
| Permit Nos. SD31231-00000 & SD52173- |) | |
| 00000 |) | |

ORDER REGARDING ADDITIONAL PLEADINGS

On April 19, 2021, the U.S. Environmental Protection Agency Region 8 (“Region”) filed a motion requesting to further stay this matter “in light of the potential for this action to be affected by litigation pending in the D.C. Circuit Court of Appeals” (“Court”). Status Report and Motion to Stay of Proceedings at 3 (April 19, 2021). The Region requested that the Environmental Appeals Board (“Board”) stay all proceedings until the Court resolves a “crucial National Historic Preservation Act (NPHA) [sic] question” pending before the Court. *Id.* at 1. On May 3, 2021, the Board issued an order granting a motion filed by Permittee, Powertech (USA) Inc., requesting that the Board extend the deadline to respond to the Region’s motion to further stay this matter. *Order Granting Powertech’s Motion for Extension of Time to File Response* (May 3, 2021). In this order the Board repeated the provision from its earlier April 21, 2021 Order that “[t]he current briefing schedule continues to be stayed for the Region’s response, any response Powertech may wish to file, and other pleadings in this matter pending resolution of the Region’s motion.” *Id.* at 2.

On May 18, 2021, Powertech filed its response opposing the Region’s motion to further stay proceedings. *See Opposition of Powertech (USA) Inc. to Respondents’ Motion for Further Stay* (May 18, 2018). In addition, Powertech filed a motion seeking to strike the National

Environmental Policy Act (“NEPA”) issues raised by Petitioner, Oglala Sioux Tribe, in the petition for review. *See* Powertech Motion to Strike NEPA Act Challenges (May 18, 2021).

On May 28, 2021, the Region, the Oglala Sioux Tribe, and Powertech filed additional pleadings and motions. Specifically, the Region filed a response opposing Powertech’s motion to strike the NEPA challenges; the Oglala Sioux Tribe filed two pleadings (a reply supporting the Region’s motion to further stay this matter, and a motion to hold responses to Powertech’s motion to strike in abeyance); and Powertech filed a motion to strike the amicus brief filed by the Great Plains Tribal Water Alliance, Inc. *See* EPA Region 8 Response to Powertech Motion to Strike NEPA Challenges (May 28, 2021); Petitioner Reply to Powertech USA Inc. Response in Opposition to EPA Motion to Stay Proceedings (May 28, 2021); Petitioner Motion to Hold Responses to Permit Applicants Motion to Strike in Abeyance (May 28, 2021); Powertech Motion to Strike the Brief Amicus (May 28, 2021).

The parties are reminded, and the Board reiterates, that the current briefing schedule in this matter continues to be stayed for the Region’s response to the petition, any response to the petition Powertech may wish to file, and other pleadings including responses to the pending motions and pleadings filed on May 18 and May 28, until the Board’s resolution of the Region’s motion to stay these proceedings. 40 C.F.R. § 124.19(o). Parties will have an opportunity to address the issues in the pending pleadings once a briefing schedule for this matter has been established.

So ordered.

Dated: Jun 02, 2021

ENVIRONMENTAL APPEALS BOARD

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Regarding Additional Pleadings* in the matter of Powertech (USA) Inc., UIC Appeal No. 20-01, were sent to the following persons in the manner indicated.

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Dated: Jun 02, 2021

Emilio Cortes

Emilio Cortes
Clerk of the Board