

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

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

**ORDER SETTING DEADLINE FOR RESPONSE
TO REGION’S MOTION FOR STAY OF PROCEEDINGS**

On February 16, 2021, the U.S. Environmental Protection Agency, Region 8 (“Region”) filed a motion seeking a 120-day stay of proceedings before the Environmental Appeals Board (“Board”). The current deadline for the Region to file its response to the petition (along with a certified index and relevant portions of the administrative record), and for Powertech to file a response to the petition, if it so chooses, is Wednesday, February 24, 2021.

The Region requests this stay to “allow the new Administration, which took office on January 20, 2021, to be briefed on this matter and on the underlying action to determine the Agency’s position going forward in this matter.” Motion for Stay of Proceedings (Feb. 16, 2021) (“Motion”). In support, the Region cites a recent executive order that directs federal agencies to review past EPA actions to determine if they are consistent with, among other things, the policy of “improv[ing] public health and protect[ing] our environment, and ensur[ing] access to clean air and water.” *See* Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 25, 2021). In addition, the Region explains that there is pending litigation in the U.S. Court of Appeals for the D.C. Circuit challenging a recent decision by the Nuclear Regulatory Commission (“NRC”), claiming, *inter alia*, that the NRC “failed to satisfy the substantive and procedural duties...required by the

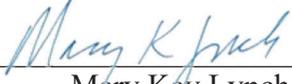
National Historic Preservation Act [(“NHPA”).” Motion at 2 (quoting *Oglala Sioux Tribe v. United States Nuclear Regulatory Comm’n*, D.C. Cir. No. 20-1489 (Statement of Issues, filed Jan. 11, 2021)). The Region states that the challenge to the NRC action is relevant to the matter before the Board because the Region relied on the NHPA compliance work conducted by NRC. *Id.* The Region also claims that Petitioner will not be prejudiced because the permits are stayed during the appeal process, and that Powertech will not be prejudiced by a stay because they have not secured necessary permits from the State of South Dakota and cannot proceed with the project until this occur. *Id.* at 3. Finally, the Region states that it contacted Powertech’s representatives and Petitioner’s attorney to ascertain whether the parties would concur or oppose this motion. *Id.* The Region reports that Petitioner does not oppose the stay, but that Powertech opposes the motion. *Id.*

In light of the motion and the proximity of the deadline for responses to the petition, the Board is setting a deadline for Powertech to file a response to the motion, if it so chooses, by no later than **Friday, February 19, 2021**. If Powertech decides to oppose the motion, its response must include the grounds for its opposition.

So ordered.

Dated: Feb 17, 2021

ENVIRONMENTAL APPEALS BOARD

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Setting Deadline for Response to Region's Motion for Stay of Proceedings* in the matter of Powertech (USA) Inc., UIC Appeal No. 20-01, were sent to the following persons in the manner indicated.

By Email:

Attorney for Petitioner

Jeffrey C. Parsons
Senior Attorney
Western Mining Action Project
P.O. Box 349
Lyons, CO 80540
(303) 823-5738
wmap@igc.org

Attorneys for Powertech (USA) Inc.

Barton Day
Law Offices of Barton Day, PLLC
10645 N. Tatum Blvd.
Suite 200-508
Phoenix, AZ 85028
(703) 795-2800
bd@bartondaylaw.com

Robert F. Van Voorhees
Van Voorhees PLLC
1155 F Street, N.W.
Suite 700
Washington, DC 20004-1357
(202) 365-3277
bob.vanvoorhees@gmail.com

Attorney for Amicus

Peter Capossela, PC
Attorney at Law
Post Office Box 10643
Eugene, Oregon 97440
(541) 505-4883
Email: pcapossela@nu-world.com

Attorneys for EPA

Lucita Chin
Senior Assistant Regional Counsel
Environmental Protection Agency Region 8
1595 Wynkoop St.
Mail Code: 8ORC-LC-M
Denver, CO 80202
chin.lucita@epa.gov

Michael Boydston
Senior Assistant Regional Counsel
Environmental Protection Agency Region 8
1595 Wynkoop St.
Mail Code: 8ORC-LC-G
Denver, CO 80202
boydston.michael@epa.gov

Leslie Darman,
Attorney-Advisor
Water Law Office, Office of General Counsel
U.S. Environmental Protection Agency
darman.leslie@epa.gov

Dated: Feb 17, 2021



Eurika Durr
Clerk of the Board