

**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

THIRD JOINT STATUS REPORT

On June 10, 2021, the Environmental Appeals Board granted the Environmental Protection Agency Region 8’s Motion to Stay in the above-captioned case. The Board stayed this matter, subject to conditions, “until such time as the D.C. Circuit renders a decision disposing of the challenge to NHPA compliance in connection with the Dewey-Burdock Project that is pending before the Court.” Order Granting Motion to Stay Subject to Conditions at 5 (June 10, 2021). The Board conditioned the stay on the parties’ filing periodic joint status reports addressing the status of the D.C. Circuit litigation, “including the status of the NHPA issues under review and any other information that the parties believe may be relevant to the petition pending before the Board.” *Id.* at 5-6. Further, the parties are to “apprise the Board within two weeks of any decision by the D.C. Circuit relevant to the NHPA issue or other issues potentially affecting the Board adjudication of the pending petition,” or “of any settlement involving issues presented in the petition pending before the Board.” *Id.* at 6. The Order further stated: “the Board may lift the stay or take other appropriate action in this matter prior to conclusion of the D.C.

Circuit litigation, or at any other time in accordance with the Board’s responsibility to manage its docket.” *Id.*

The parties in the D.C. Circuit litigation filed their final briefs on July 22, 2021. The Oglala Sioux Tribe (Petitioner), Nuclear Regulatory Commission (Respondent), and Powertech (USA) Inc. (Intervenor-Respondent) briefs all address National Historic Preservation Act (NHPA) issues. Oral argument occurred on November 9, 2021. The case has been submitted and a decision by the Court is pending.

On June 24, 2021, in the state permit proceedings, the State of South Dakota’s Department of Agriculture and Natural Resources Water Management Board (State Board) issued an order stating that Powertech’s contested Motion to Amend Procedural Order was to be argued at the State Board’s meeting on October 6-7, 2021. Following the meeting, the State Board adopted a motion to deny Powertech’s request to amend the Procedural Order. A draft Order reflecting that decision will be considered at a hearing by the Water Management Board on December 8, 2021. The filings in that matter, including the November 17, 2021 Notice of Hearing that includes a copy of the draft Order, may be accessed at the agency website: <https://danr.sd.gov/public/ccdocs.aspx?CCID=CCID95>.

The parties have not come to settlement on any of the issues presented in the petition, and do not have any new information relevant to the petition to report to the Board. In accordance with the Board’s June 21 Order, the parties will inform the Board within two weeks of any relevant decision in the D.C. Circuit matter or of any settlement involving the issues presented in the Petition.

Respectfully submitted,

EPA Region 8:

Lucita Chin
Office of Regional Counsel
EPA Region 8 (8RC-LCM)
1595 Wynkoop St.
Denver CO 80202
(303) 312-7832
chin.lucita@epa.gov

Michael Boydston
Office of Regional Counsel
EPA Region 8 (8RC-LCG)
1595 Wynkoop St.
Denver CO 80202
(303) 312-7103
boydston.michael@epa.gov

Of Counsel:
Leslie Darman
EPA Office of General Counsel

Oglala Sioux Tribe:

/s/ Jeffrey C. Parsons
Jeffrey C. Parsons
Senior Attorney
Roger Flynn
Managing Attorney
Western Mining Action Project
P.O. Box 349
Lyons, CO 80540
Tel: (303) 823-5738
Fax: (303) 823-5732
wmap@igc.org

Travis E. Stills
Managing Attorney

Powertech (USA) Inc.:

/s/ Robert F. Van Voorhees
Robert F. Van Voorhees
Robert F Van Voorhees PLLC
1155 F Street, N.W.
Suite 700
Washington, DC 20004-1357
Telephone: 202-365-3277
E-mail: bob.vanvoorhees@gmail.com
Representing Powertech (USA) Inc.

Barton Day
Law Offices of Barton Day, PLLC
10645 N. Tatum Blvd.
Suite 200-508
Phoenix, AZ 85028
Telephone: (703) 795-2800
E-mail: bd@bartondaylaw.com
Attorney for Powertech (USA) Inc.

Energy & Conservation Law
227 E. 14th St., #201
Durango CO 81301
stills@eclawoffice.org
phone: (970) 375-9231

CERTIFICATE OF SERVICE

I certify that the foregoing Third Joint Status Report 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 December 2, 2021.

Attorneys for Petitioner Oglala Sioux Tribe

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

Travis E. Stills
Managing Attorney
Energy & Conservation Law
227 E. 14th St., #201
Durango CO 81301
stills@eclawoffice.org
phone: (970) 375-9231

*Attorney for Amicus Curiae Great Plains
Tribal Water Alliance, Inc.*

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

Attorneys for Powertech (USA) Inc.

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

Lucita Chin
Office of Regional Counsel
EPA Region 8 (8RC-LCM)
1595 Wynkoop St.
Denver CO 80202
(303) 312-7832
chin.lucita@epa.gov