

**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

UNOPPOSED MOTION TO AMEND
BRIEFING AND ORAL ARGUMENT SCHEDULE

Petitioner Oglala Sioux Tribe (“Tribe”) hereby respectfully requests that the Environmental Appeals Board (“Board”) amend the recently established briefing schedule and to reset oral argument in this matter. In accordance with 40 C.F.R. § 124.19(f)(2), counsel for the Tribe has conferred with counsel for all parties and the parties have reached consensus on a proposed amended schedule setting a deadline of December 22, 2023 for the Region to file a response to the petition for review (along with a certified index and the relevant portions of the administrative record) and for Powertech to file a response to the petition, if it chooses to file, and extending the deadline for the Tribe to file a reply brief, if it chooses to file one, until January 22, 2024. Further, the parties have reached consensus on seeking to reset the oral argument to any date convenient for the Board, either between February 12, 2024 and February 28, 2024 or any date after March 6, 2024. As set forth herein, the Tribe asserts that good cause exists for amending the briefing schedule and resetting the oral argument.

In its November 16, 2023 Order Scheduling Briefing and Oral Argument, the Board set the deadline for the Region’s and Powertech’s responses to the petition at December 18, 2023 and the

deadline for the Tribe to file any reply at January 8, 2024. The Tribe seeks amend the schedule for briefing and oral argument due to significant pre-existing personal travel plans during the holiday season and pre-existing professional obligations, including other briefing and oral argument obligations, in other cases for counsel for the Tribe.

Specifically, both counsel for the Tribe have personal travel plans during the weeks of December 18-29, such that multiple significant briefing and oral argument deadlines in federal and state courts over the following three weeks (Mr. Stills: January 16; Mr. Parsons: January 5, January 12). These conflicts will render both counsel for the Tribe unable to devote sufficient time and resources to reviewing the record and addressing the arguments of both the Region and Powertech. Given these conflicts, a deadline of January 22, 2024 is the minimum extension necessary for counsel for the Tribe to prepare a reply and to obtain the necessary input and approval from the client.

Further, both counsel for the Tribe have longstanding out of state travel commitments to attend and present on panels at a continuing legal education conference from February 29 through March 3, 2024. These pre-existing and already-booked travel plans overlap directly with the Board's oral argument schedule in this matter for February 29, 2024. During conferral, counsel for the Region requested that the Tribe inform the Board that the Region could accommodate any dates other than March 5 or March 6, 2024. Further, counsel for Powertech requested that the Tribe communicate to the Board that the parties would be amenable to rescheduling oral argument for a date prior to February 29, 2024. Thus, the Tribe requests this Board to reset oral argument for a date between February 12, 2024 and February 28, 2024 or after March 6, 2024.

Based on the forgoing, and given the lack of opposition to this Motion, Petitioner asserts that good cause exists for this Board to amend the briefing and oral argument schedule as discussed herein.

Respectfully submitted this 22nd Day of November, 2023.

/s/ Jeffrey C. Parsons

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Unopposed Motion to Amend Briefing and Oral Argument Schedule were served, by email on the following persons, this 22nd day of November, 2023:

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