



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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## Office of the City Attorney

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September 17, 2013

Mike Cepak  
DENR Minerals & Mining Program  
Joe Foss Building  
523 East Capitol Ave.  
Pierre, SD 57501

**Re: Powertech (USA), Inc. Application for Large Scale Mine Permit – City of Rapid City’s Petition to Intervene**

Dear Mr. Cepak:

Please find the enclosed *Motion to Reconsider Denial of City’s Petition to Intervene & Memorandum in Support of Motion* and accompanying *Certificate of Service* filed on behalf of the City of Rapid City. These documents have been submitted in regard to the application submitted by Powertech for a large scale mining permit, currently pending before your department. A copy of this letter and the attached documents was sent by United States mail to the individuals identified on the certificate of service, on the dated indicated above.

If you have any questions or concerns, feel free to contact me directly.

Sincerely,



Ryan Soye  
Assistant City Attorney

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT**

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**IN THE MATTER OF POWERTECH  
(USA), INC. APPLICATION FOR LARGE  
SCALE MINING PERMIT**

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MOTION TO RECONSIDER DENIAL OF CITY'S  
PETITION TO INTERVENE & MEMORANDUM  
IN SUPPORT OF MOTION

COMES NOW, the City of Rapid City (City), by and through the undersigned attorney, and submits this *Motion to Reconsider Denial of City's Petition to Intervene & Memorandum in Support of Motion*, in the above-captioned matter. On September 11, 2013, the City filed its *Petition to Intervene* in this hearing. On September 16, 2013, during the prehearing conference and motions hearing, Hearing Chairman, Mr. Rex Hagg, denied the Petition on the basis that it was untimely filed. The City asks that Chairman Hagg reconsidered the City's Petition.

Due to the subject matter and issues presented in Powertech's application, the City asks for a degree of flexibility in timeliness and the filing of its Petition. Pursuant to South Dakota Codified Law §34A-10-2,

"If administrative, licensing, or other proceedings, and judicial review thereof are available by law, the agency may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof...to intervene as a party on the filing of a pleading with the agency asserting that the proceeding or action for judicial review involves conduct which has the effect of polluting, impairing, or destroying the air, water, or other natural resources or the public trust therein. Such pleading shall be filed at least three days before the last agency evidentiary hearing conducted before the issuance of a final decision." (*emphasis added*).

Even though this statute does not make a grant of intervention mandatory, it clearly contemplates instances when a right to intervene should be given significant latitude. Specifically, when a proceeding involves “conduct which has the effect of polluting, impairing, or destroying the air, water, or other natural resources or the public trust therein.”

As stated in its Petition, the City seeks intervention based on its interest in protecting the health, safety, and general welfare of its citizens. The Madison Limestone (Madison) is the primary water resource serving the City’s nearly 70,000 citizens. The Rapid City Common Council (Council) held numerous public hearings to gain insight on this project and its potential impacts on the City. During these public hearings the Council was approached by a large number of individuals, some of those who possessed specialized knowledge and expertise relevant to this type of mining. Most notable was the information on the risks associated with Powertech’s in situ mining project and the possibility of contaminants being introduced into the local land and water resources. This risk that approval of Powertech’s application may result in polluting, impairing, or destroying Rapid City’s primary water resource is precisely why the City seeks intervention.

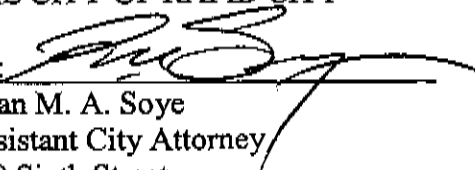
The City recognizes Powertech has performed tests and given assurances of continued water quality and isolation of local water resources. Unfortunately, this does not resolve the City’s concerns. During its public hearings, the Council was provided information on the impacts of past uranium mining projects in other parts of the country. It seems clear the adverse impacts associated with this type of project are not necessarily predictable or foreseeable at the time of planning. Safeguards cannot be guaranteed and the potential risks of this project could be much greater than those indicated in Powertech’s application. If any of these contaminants invade the Madison, this could adversely impact the City far into the future.

In response to these concerns, the official representatives for all citizens making up the second largest city in the State of South Dakota issued Rapid City Resolution No. 2013-083. In passing this resolution, the Council intended that it be considered in this hearing. The City is aware it may enter this resolution verbally through public comment but the official opinion of the City of Rapid City should not be made secondary to any other evidence considered in Powertech's application. This resolution represents the official and collective statement, issued on part of all citizens of Rapid City, that without absolute guarantees the potential risks are unacceptable.

In the Procedural and Scheduling Order released in this matter, a specific intervention status was created to allow a party the opportunity to intervene through written comment only. As this process has already been established and in light of the apparent flexibility allowed for intervention in such matters, the City asks that this Motion be granted and its Petition be approved. Again, the City's purpose in seeking intervention is based solely on its desire to have its be made part of the official record, the City will not request or cause any delay in the current proceedings or established schedule.

Dated this 17<sup>th</sup> day of September, 2013.

THE CITY OF RAPID CITY

By:   
Ryan M. A. Soye  
Assistant City Attorney  
300 Sixth Street  
Rapid City, SD 57701  
Ph: (605) 394-4140  
Email: [ryan.soye@rcgov.org](mailto:ryan.soye@rcgov.org)

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT**

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**IN THE MATTER OF POWERTECH  
(USA), INC. APPLICATION FOR LARGE  
SCALE MINING PERMIT**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date herein indicated, he served copies of the following documents:

- 1. MOTION TO RECONSIDER DENIAL OF CITY'S PETITION TO INTERVENE  
& MEMORANDUM IN SUPPORT OF MOTION**
- 2. CERTIFICATE OF SERVICE**

upon the persons designated below, by way of depositing copies thereof in United States mail, postage prepaid, at the following addresses which are the last known addresses of the persons listed, to wit:

Mike Cepak  
DENR Minerals and Mining Program  
Joe Foss Building  
523 E. Capital Ave.  
Pierre, SD 57501

Rex Hagg  
Whiting, Hagg, Hagg, Dorsey, & Hagg  
PO Box 8008  
Rapid City, SD 57709

Charles McGuigan  
Chief Deputy Attorney General  
Mickelson Criminal Justice Center  
1302 E. Hwy. 14, Suite 1  
Pierre, SD 57501

Max Main  
Bennett, Main, & Gubbrud, PC  
618 State Street  
Belle Fourche, SD 57717

Steven R. Blair  
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1302 E. Hwy. 14, Suite 1  
Pierre, SD 57501

Richard M. Williams  
Assistant Attorney General  
Mickelson Criminal Justice Center  
1302 E. Hwy. 14, Suite 1  
Pierre, SD 57501

Michael M. Hickey  
Wild Horse Sanctuary  
Bangs, McCullen Law Firm  
PO Box 2670  
Rapid City, SD 57709

Bruce Ellison  
Clean Water Alliance  
PO Box 2508  
Rapid City, SD 57709

Attn: Ashley Cortney  
Edgemont Public Library  
PO Box A/412 2<sup>nd</sup>  
Edgemont, SD 57735

Attn: Jason Walker  
Rapid City Public Library  
610 Quincy Street  
Rapid City, SD 57701


Attn: Doris Mertz  
Custer County Library  
447 Crooks Street, Ste. 4  
Custer, SD 57730

Attn: Cindy Messenger  
Hot Springs Public Library  
2005 Library Dr.  
Hot Springs, SD 57747

Attn: Michelle May  
Woksape Tipi  
Oglala Lakota College  
PO Box 310  
Kyle, SD 57752

Dated this 17<sup>th</sup> day of September, 2013.

THE CITY OF RAPID CITY

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Rapid City, SD 57701  
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