

BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

---

IN THE MATTER OF PROPOSED RULES AND AMENDMENTS TO THE MINERAL  
RULES AND REGULATIONS OF THE COLORADO MINED LAND RECLAMATION  
BOARD FOR HARD ROCK, METAL AND DESIGNATED MINING OPERATIONS,  
2 CCR 407-1

---

**RESPONSE TO ORDER REGARDING ADDITIONAL SUBMITTALS**

---

Powertech (USA) Inc. (“Powertech”) by its undersigned representatives hereby submits this Response to the July 19, 2010 Order issued by Hearing Officer Mike King (the “Hearing Officer Order”) Regarding Additional Submittals in the above-captioned rulemaking. The Hearing Officer Order directed the Division of Reclamation, Mining and Safety (“DRMS”) to submit “alternative and additional language” regarding five new or additional issues not addressed in the notices for the above captioned proposed rules nor in the proposed rule itself, and also invited parties to the rulemaking to submit alternative and additional language.

As detailed in our letter to the Mined Land Reclamation Board (“MLRB”) of this same date, Powertech respectfully submits that the inclusion of the additional issues at this late stage of this rulemaking has not been sufficiently noticed and is outside the scope of the rulemaking. We urge the Hearing Officer to reconsider adding these issues to the rulemaking at this time; however, in the event the Hearing Officer continues to seek to add these issues to the rulemaking, Powertech submits the following responses.

**1. Providing copies and/or notice of Notices of Intent to Conduct Prospecting to local governments (Proposed Rule 5).**

DRMS’s proposal should be rejected and the language of the draft rule should be retained with respect to this issue. Powertech does not propose additional language regarding this issue because the existing language of the proposed rule provides ample notice of new Notices of Intent (“NOIs”) to any interested party, including local governments, by posting on the Internet the information contained in the NOI. Internet publication is nearly immediate, cost-effective and efficient, and reaches the broadest possible public.

Proposed Rule 1.3 (4) (iii) (a) requires the Office to “post on its website within five (5) days of receipt of such notice or modification all information in a notice of intent or modification except information that the applicant has designated as exempt from disclosure.” Additionally, Proposed Rule 1.3 (1) provides the opportunity for any member of the public to review the NOI at the DRMS Office, during its normal business hours. Given that the proposed rules already contain ample opportunity for notice and review of NOIs by any member of the public, including representatives of local government, there is no need to establish yet another mechanism for notice and review. Moreover, and importantly, the Colorado legislature did not write into the enabling legislation the authority for DRMS/MLRB to require notification of local governments

when an NOI is filed. Colorado law provides for local government notification only in the context of an application for a reclamation permit. See C.R.S. 34-42-109(8) (county notification after the filing of an application for a reclamation permit), C.R.S. 34-32-1 12((10) (a) (requirement to place copy of application for reclamation permit at county offices for county in which the affected land is located). The MLRB cannot use this rulemaking to attempt to enlarge its statutory mandate to include special county notification.

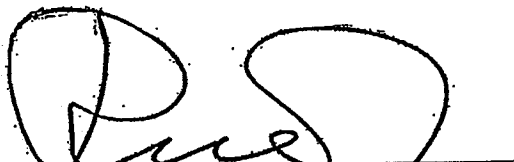
## **2. The collection of baseline water quality information related to prospecting activities.**

DRMS's language should be rejected because some of it goes beyond even the scope of the Hearing Officer's Order (that is, the vague language allowing DRMS in its unguided discretion to apply reclamation standards in Rule 3 to prospecting operations, which does not relate to any of the issues raised in the Order), and all of it is (1) unauthorized by the enabling legislation, (2) well beyond the proposed rulemaking and (3) therefore invalid. The language in DRMS's new proposed rule 3.1.6(4) allowing DRMS to require submission of baseline site characterization data prior to the initiation of prospecting is a particularly blatant example of a provision that conflicts with the Mined Land Reclamation Act ("MLRA") and is therefore invalid.

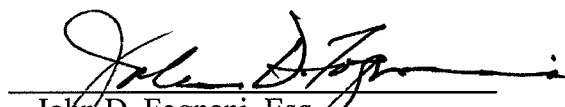
As Powertech and others have explained throughout this rulemaking process, it will be economically and technically impracticable at best - impossible at worst - for in situ operators to gather the necessary data for a baseline site characterization until *after* conducting time-consuming and expensive prospecting activities. For DRMS now, after the rulemaking has been proposed and published, to attempt to require this information even before prospecting begins is impractical and not within the law. It would be impossible for a potential prospector to gather this information without conducting prospecting work, and DRMS would have it that prospecting work cannot begin until the information is gathered. This results in an obvious "Catch-22" which would be fatal to any serious potential in situ recovery project. If the DRMS is to be authorized to determine on a case-by-case basis whether development of some limited ground water monitoring information (as opposed to development of a full-scale baseline site characterization) is warranted prior to prospecting under a given NOI, Powertech might not object to inclusion of that authority but that decision rests squarely with the Colorado General Assembly.

Powertech also endorses and incorporates by reference the response submitted in regard to these matters on June 5, 2010 by the Colorado Mining Association. Thank you for your time and attention.

Respectfully submitted this 6th day of August 2010



Richard F. Clement, President & CEO



John D. Fognani, Esq  
Fognani & Faught, PLLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 6th day of August 2010, she did file one original plus fifteen three-hole punched copies of the foregoing. RESPONSE TO ORDER REGARDING ADDITIONAL SUBMITTALS with the Division of Reclamation, Mining and Safety and did provide an electronic copy in PDF format to [Irene.Stanton@state.co.us](mailto:Irene.Stanton@state.co.us) . She did also deliver a true and accurate copy to the following via U.S. Mail.

**Colorado Water Action**

**Colorado Environmental Coalition**

**Coloradoans Against Resource Destruction (CARD)**

**Environment Colorado**

**Information Network for Responsible Mining (INFORM)**

**Save Our South Park Water 08**

Represented by:

Jeffrey C. Parsons, Sr. Attorney

Western Mining Action Project

P.O. Box 349

Lyons, Colorado 80540

[wmap@igc.org](mailto:wmap@igc.org)

**Colorado Mining Association**

Dianna L. Orf

Orf & Orf, P.C.

P.O. Box 102036

Denver, CO 80250-2036

[dianna@orfco.net](mailto:dianna@orfco.net)

**Denver Water**

Jim Miller

MC 500

1600 West 12<sup>th</sup> Avenue

Denver, CO 80204-3413

Jim.Miller@denverwater.org

**High Country Citizens' Alliance**

Dan Morse

P.O. Box 1066

Crested Butte, CO 81224

dan@hccaonline.org

**Patsy Moran**

10306 Tracewood Drive

Highlands Ranch, CO 80130

patsysmail@yahoo.com

**Petrotek Engineering Corporation**

Hal Demuth

hdemuth@petrotek.com

Ken Cooper, PW

Ken.cooper@petrotek.com

10288 W. Chatfield Ave, Suite 201

Littleton, CO 80127

**R Squared, Inc.**

George M.L. Robinson, President

9034 E. Easter Placem Suite 100

Centennial, Co 80112

GeorgeRobinson@R2Incorporated.com

**Sheep Mountain Alliance**

Travis E. Stills,. Managing Attorney

Energy Minerals Law Center 1911

Main Street, Suite 238

Durango, CO 81301

stills@frontier.net

Jeffrey C. Parson, Sr. Attorney

**Western Mining Action Project**

P.O. Box 349  
Lyons, CO 80540  
[wmap@igc.org](mailto:wmap@igc.org)

**Tallahassee Area Community**

Michael W. Meyrick  
Law Office of Michael Meyrick, P.C.  
1525 Josephine Street  
Denver, CO 80206  
[mwmeyrick@aol.com](mailto:mwmeyrick@aol.com)

**Wellington Water Works, LLC**

Bradley A. Pomeroy  
6065 S. Quebec Street, #201  
Centennial, Co 80111  
[pomoco@msn.com](mailto:pomoco@msn.com)

**By first class mail to:**

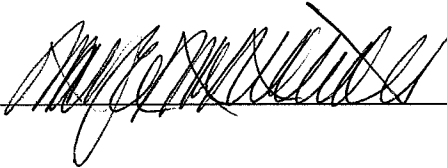
Thomas E. Varra  
9080 Weld County Road 102  
Nunn, CO 80648

Jillian Allison, Esq.  
Colorado Department of Law  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

Cheryl Linden, Esq.  
Colorado Department of Law  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

Jeff Fugate, Esq.  
Colorado Department of Law  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203

Peter Hack, Esq.  
Colorado Department of Law  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203



---