

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>POWERTECH (USA) INC., A SOUTH DAKOTA CORPORATION,</p> <p>Plaintiff,</p> <p>v.</p> <p>STATE OF COLORADO MINED LAND RECLAMATION BOARD AND MIKE KING, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES,</p> <p>Defendants.</p>	<p>EFILED Document CO Denver County District Court 2nd JD Filing Date: Nov 22 2010 3:04PM MST Filing ID: 34488107 Review Clerk: Imran Sufi</p> <p>▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General JEFF M. FUGATE Assistant Attorney General* Reg. # 37679 CHERYL A. LINDEN First Assistant Attorney General* Reg. #14185 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: (303) 866-5532 FAX: (303) 866-3558 E-Mail: Jeff.fugate@state.co.us *Counsel of Record</p>	<p>Case No. 2010 CV 8615</p> <p>Ctrm.:</p>
<p>STATE DEFENDANTS' NOTICE OF INTENT</p>	

The Colorado Mined Land Reclamation Board and the Executive Director of the Department of Natural Resources, by and through the Office of the Colorado Attorney General, hereby file this Notice of Intent to take an additional sixty days in which to file a responsive pleading in the above-entitled action. As grounds therefore, the State Defendants' state as follows:

1. This lawsuit seeks judicial review under §24-4-106, C.R.S. of the new rules and regulations the Colorado Mined Land Reclamation Board adopted which became effective September 30, 2010.

2. C.R.C.P. 4(e)(10)(A) and (B) require that the complaint filed on November 1, 2010 and served on November 4, 2010 upon a State employee of the Division of Reclamation,

Mining and Safety, a division of the Department of Natural Resources, also be served upon the Attorney General. C. R. C. P. 4(e)(10)(C) further provides that in the event the Attorney General is not served within 3 days of service upon the State employee, the time within which a responsive pleading must be filed is extended for an additional sixty days beyond the twenty days provided by C. R. C. P. 12(a).

3. To date, the Colorado Attorney General's Office has not been served with a copy of the Summons and Complaint, as required by C. R. C. P. 4(e)(10)(A) and (B).

4. The State intends to file a responsive pleading on or before January 26, 2010, which date is calculated by adding the sixty days granted by C. R. C. P. 4(e)(10)(C) to the twenty days provided by C. R. C. P. 12(a).

5. In addition, the State believes that Plaintiff has failed to notify the many hundreds of people who participated in this rulemaking proceeding of the filing of this judicial review litigation as required by the Administrative Procedure Act ("APA"). The APA requires that "every person who has participated in a rule-making proceeding by written statement, or by oral comment at a hearing" be listed on an agency's rulemaking docket. §24-4-106(4), C.R.S. [Emphasis added]. This sub-section further requires that a Plaintiff who initiates a judicial review of an agency rulemaking send notice of the commencement of the suit along with a copy of the complaint to every person on the agency's rulemaking docket by first-class certified mail within ten days of the filing of the action. *Id.*

6. The Division of Reclamation Mining and Safety has generated the rulemaking docket and it is available to the Plaintiff upon request so that the proper notice of this lawsuit can be sent to all interested persons.

Respectfully submitted this 22nd day of November, 2010.

JOHN W. SUTHERS

Attorney General

E-filed in accordance with C.R.C.P. 121, § 1-26; duly signed original on file with the Office of Attorney General for the State of Colorado

/s/Jeff M. Fugate

JEFF M. FUGATE 37679*

Assistant Attorney General

Resource Conservation

Natural Resources and Environment Section

Attorney for the Mined Land Reclamation Board and
the Department of Natural Resources

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within THE STATE DEFENDANTS' NOTICE OF INTENT upon all parties herein by LexisNexis File and Serve or by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 22nd day of November, 2010 addressed as follows:

John D. Fognani

Fognani & Faught, PLLC

1700 Lincoln Street, Suite 2222

Denver, Colorado 80203

E-filed in accordance with C.R.C.P. 121, § 1-26; duly signed original on file with the Office of Attorney General for the State of Colorado

/s/ Christine Batman
