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SEP 13 2013

MINERALS & MINING PROGRAM

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September 12, 2013

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Rapid City, SD 57709

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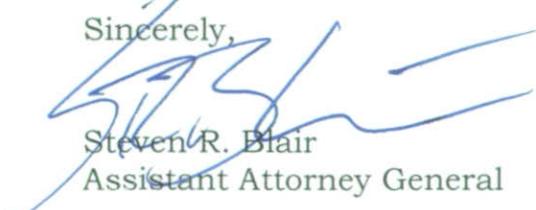
Mike Cepak
Minerals and Mining Program
Foss Building
523 East Capitol Ave.
Pierre, SD 57501

Re: *Powertech (USA) Inc., Application for Large Scale Mine Permit*

Gentlemen:

Enclosed please find true and correct copies of the Mineral and Mining Program's Response to Wild Horse Sanctuary's Motion to Compel and Mineral and Mining Program's Response to Wild Horse Sanctuary's Motion to Continue, including copies of said attachments, and an accompanying Certificate of Service. The originals of these pleadings are being sent to the Department. Copies of these documents have also been sent to each individual who has elected option "A" participation status in this matter as evidenced by the mailing list attached to the Certificate of Service.

Sincerely,


Steven R. Blair
Assistant Attorney General

SRB/jm

Enclosures

Cc/encl: All Parties of Record Noted in Certificate of Service Mailing List

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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SEP 13 2013
MINERALS & MINING PROGRAM

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF POWERTECH)	
(USA), INC. APPLICATION FOR)	M&MP's RESPONSE TO WILD
LARGE SCALE MINING PERMIT)	HORSE SANCTUARY'S MOTION TO
(Dewey-Burdock Project))	COMPEL

The Minerals & Mining Program ("M&MP") of the South Dakota Department of Environment and Natural Resources hereby responds to Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's (collectively referred to hereafter as "Wild Horse Sanctuary" or "WHS") Motion to Compel the production of documents.

In responding to several of the Wild Horse Sanctuary's discovery requests, the M&MP asserted that certain emails or documents were covered by the deliberative process privilege and thus not subject to disclosure.¹ Generally, the dispute centers around the WHS's request for "all documents related to the DENR's Memorandum of Understanding with the NRC."² WHS, through their counsel of record, attempted in good faith to informally resolve the discovery dispute as required by SDCL 15-6-37(a)(2). The attempt at informal resolution was unsuccessful. WHS has now sought an order from the Hearing Chair ordering the production of the disputed materials. M&MP resists said motion and reaffirms its

¹ See attached exhibit A: M&MP Privilege Log.
² See attached exhibit B: WHS First Set of Interrogatories and Requests for Production of Documents to South Dakota DENR, Request for Production no. 4.

belief that the requested materials are covered by a version of the deliberative process privilege.

ARGUMENT

The M&MP agrees with WHS that SDCL 19-13-1 in pertinent part states “Except as otherwise provided by Constitution or statute or chapters 19-9 to 19-18, inclusive, ...no person has a privilege to: ... refuse to produce any object or writing.” Here, however, the M&MP believes that SDCL 19-13-21 controls the discovery of the documents at issue and allows the use of the deliberative process privilege.

SDCL 19-13-21 states that “a public officer cannot be examined as to communications made to him in an official confidence, when the public interests would suffer by the disclosure.” A public officer is defined by SDCL 22-1-2(39) as

any person who holds a position in the state government or in any of its political subdivisions. By election or appointment, for a definite period, whose duties are fixed by law, and who is invested with some portion of the sovereign functions of government.

The DENR has been negotiating a Memorandum of Understanding with the NRC regarding bonding for the entire Powertech project site. The NRC (along with the Environmental Protection Agency) has primary jurisdiction over much of the site. The Memorandum of Understanding would include provisions for the State to review and comment on bond calculations provided by the NRC, and the agreement would allow the NRC to hold the State’s portion of the bond.³

The deliberative process privilege has long been recognized. *First Eastern Corp. v. Mainwaring*, 21 F.3d 465, 468 (D.C. Cir. 1994); *Mapother v. Department of*

³ See attached exhibit C, Affidavit of Mike Cepak.

Justice, 3 F.3d 1533, at 1537 (D.C. Cir. 1993); *Federal Trade Commission v. Warner Communications*, 742 F.2d 1156 (9th Cir. 1984); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975). The deliberative process privilege protects the decision making process of government agencies, and rests on the fundamental belief that the frank exchange of ideas and opinions would cease if these exchanges were forced to be disclosed. *Mapother*, 3 F.3d at 1537. The privilege also protects documents that reflect advisory opinions, or recommendations that comprise part of the process by which governmental policy is determined. *Warner Communications*, 742 F.2d 1161. “[T]he privilege serves to protect the deliberative process itself, not merely documents containing deliberative material.” *Mapother*, 3 F.3d at 1537. It protects against premature disclosure of agency policies or decision. *Warner Communications*, 742 F.2d at 1161.

The duly appointed Secretary of the Department of Environment and Natural Resources is Steve Pirner. It is Secretary Pirner, along with the Board of Minerals and Environment, who would be the signatories on any Memorandum of Understanding between the DENR and the NRC.⁴ The employees of the M&MP are under the direction and control of Secretary Pirner, and in negotiating any agreement with the NRC are essentially negotiating on behalf Secretary Pirner. Secretary Pirner and employees of the M&MP are currently engaged in the pre-decisional exchange of ideas within the department to produce opinions and recommendations regarding the policies to be found in the finalized MOU. The

⁴ *Id.*

NRC is engaged in the same review and decision making process on its end. The parties are currently in the process of analyzing each other's drafts and collectively working together to finalize a policy that will guide the DENR and NRC. A final decision in the form of a completed MOU will be disclosed to the parties and public in general.

WHS argues that the deliberative process privilege is not recognized in South Dakota. Although the South Dakota Supreme Court has not ruled on this issue, the United States District Court for the District of South Dakota found in an intermediate order entered in *Boneshirt v. Hazeltine*, D.S.D., Central Division, Civ. 01-3032, Order Denying Plaintiff's Third Motion to Compel, that the privilege applied to pre-decisional communications regarding policy made by South Dakota officials.⁵ Furthermore, based on the case law cited above, it is clear that the NRC, a federal agency, holds a deliberative process privilege in regards to its documents and communications made in negotiating a potential Memorandum of Understanding with the DENR. The NRC, as the holder of this privilege is the only entity that can waive it – the DENR is powerless to waive the NRC's privilege. In collectively drafting this policy, the NRC's opinions and recommendations to DENR regarding the Memorandum of Understanding were communications with the DENR and Secretary Pirner made in an official confidence. To force DENR to disclose all pre decisional documents related the Memorandum of Understanding with the NRC would not only force DENR to destroy the privilege held by NRC but

⁵ See attached exhibit D, Copy of *Boneshirt* Order.

would also force the disclosure of communications made to Secretary Pirner by the NRC in an official confidence. Such disclosures would be contrary to SDCL 19-13-21.

Having established the materials in question are communications made in official confidence, the next step is to determine if the public interests would suffer by their disclosure. The M&MP asserts that the public interest would be harmed by the disclosure of the documents.

First, the relevance of these documents is questionable. The relevant document, one which does not yet exist, is the final and fully executed Memorandum of Understanding. The documents at issue consist of emails between DENR staff members regarding draft versions of the Memorandum of Understanding, emails between DENR staff members and staff members of the NRC regarding draft versions of the Memorandum, and the draft versions of the Memorandum themselves. The M&MP finds them to have only minimal relevance to the matter before the Board. These draft versions of the Memorandum, and the discussions of them, are merely the documents and records used for the purposes of the decisional or deliberative process that reaches the final Memorandum. They are pre-decisional documents that may reflect the opinions of the drafter, but do not evince the policy of the DENR or the NRC. Not reflecting actual policy decisions to be implemented in the Powertech matter, the documents are of little relevance.

Second, disclosure of these materials would negatively effect the public interest in that disclosure would having a chilling effect on the free and frank

exchange of ideas and positions between the DENR and the NRC. Further, the disclosure of these materials would have a chilling effect on frank discussion regarding the proposed Memorandum between staff of the M&MP. This chilling effect would only work to slow the negotiations of the terms of the Memorandum of Understanding. It is in the best interest of the public that the DENR and NRC be able to fully and frankly discuss the issues involved in negotiating the Memorandum of Understanding. The minimal relevance of the requested documents does not outweigh this negative impact on the public interest.

Finally, disclosure of these documents would harm the public interest in that it may have a detrimental effect on the relationship between the NRC and the DENR. The NRC has communicated to the M&MP that any disclosure of the terms of the negotiations regarding the Memorandum of Understanding could have an adverse impact on the negotiations with the DENR.⁶ In that event, the NRC may refuse to enter into any agreement and the DENR may be left without the opportunity to recommend changes to any bond held by the NRC. The public could lose the Department's voice and input with the NRC. The DENR's ability to communicate with the NRC and express concerns of the Department and of the people of the State would potentially be significantly impaired.

CONCLUSION

The requested documents are pre-decisional communications made in confidence to a public officer. The disclosure of these documents would negatively

⁶ See attached exhibit C, Affidavit of Mike Cepak.

impact the public interest. Based on the arguments and authorities cited above the M&MP respectfully requests that the Hearing Chair deny Wild Horse Sanctuary's Motion to Compel.

Dated this 12 day of September, 2013



Steven R. Blair
Richard M. Williams
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Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

Counsel for Minerals and Mining Program, DENR

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

**IN THE MATTER OF THE LARGE SCALE MINE PERMIT APPLICATION OF
 POWERTECH (USA)**

DEPARTMENT'S PRIVILEGED DOCUMENT LOG

CURRENT AS OF 08/05/2013

BATES NOS.	DATE(s)	AUTHOR(s)/ AGENCY(s)	DESCRIPTION(s)	BASIS
00100-00102	6/11/2013 - 6/12/2013	Eric Holm Natural Resource Engineer III Jan Pharr Wanda Absher Customer Service Rep for American Colloid Company Dave Carroll Specialty Materials Division Manager for American Colloid Company	E-mail Correspondence - Re: Chipped Bentonite Cost	Deliberative Process Privilege
00103	6/07/2013- 6/10/2013	Eric Holm Natural Resource Engineer III Matt Hicks	E- Mail Correspondence - Re: Powertech Land Application Compliance Wells related to Bond Calculations	Deliberative Process Privilege

Attachment
 A

		DENR - Ground Water Quality		
00104-00105	5/14/2013	Mike Cepak Eric Holm Natural Resource Engineer III	E-Mail Correspondence - Re: Powertech First Year Bond Estimate	Deliberative Process Privilege
00400-00402	1/22/2013- 6/26/2013	Stephen J. Cohen New Facility Licensing - Office of Federal & State Materials Brian Walsh Eric Holm Natural Resource Engineer III Mike Cepak	E-Mail Correspondence - Re: Draft MOU with South Dakota	Deliberative Process Privilege
00403-00405	1/22/2013- 4/16/2013	Stephen J. Cohen New Facility Licensing - Office of Federal & State Materials Brian Walsh	E-Mail Correspondence - Re: Draft MOU / Draft MOU with South Dakota	Deliberative Process Privilege

		<p>Eric Holm</p> <p>Natural Resource Engineer III</p> <p>Mike Cepak</p>		
00406-00415	3/13/2013-4/04/2013	<p>Eric Holm</p> <p>Natural Resource Engineer III</p> <p>Steve Pirner</p> <p>Roxanne Giedd</p> <p>Assistant Attorney General for Ground Water Quality</p> <p>Brian Walsh</p> <p>Mike Cepak</p> <p>Bob Townsend</p> <p>DENR's Secretary's Office</p>	E-Mail Correspondence Re: Draft NRC MOU for Powertech's Dewey-Burdock Project and attachment Draft NRC - South Dakota Surety MOU4	<p>Attorney-Client Privilege</p> <p>Work Product</p> <p>Deliberative Process Privilege</p>
00416-00428	1/22/2013-04/15/2013	<p>Stephen J. Cohen</p> <p>New Facility Licensing - Office of Federal & State Materials</p>	E-Mail Correspondence Re: Draft MOU with attachment Draft NRC - South Dakota Surety MOU3	Deliberative Process Privilege

		Brian Walsh Eric Holm Natural Resource Engineer III		
		Mike Cepak Kenneth Kline Ronald Burrows		
00429-00452	3/13/13-4/15/13	Eric Holm Natural Resource Engineer III Brian Walsh Mike Cepak Bob Townsend Tim Tollefsrud Steve Pirner	E-Mail Correspondence Re: Draft NRC MOU For Powertech's Dewey Burdock With attachment Draft NRC - South Dakota Surety MOU3	Deliberative Process Privilege
00453-00464	3/07/13	Eric Holm Natural Resource Engineer III Brian Walsh Mike Cepak	E-Mail Correspondence Re: Draft NRC MOU For Powertech's Dewey Burdock With attachment Draft NRC - South Dakota Surety MOU3	Deliberative Process Privilege

		Bob Townsend		
00465-00467	2/13/13-3/7/13	Roxanne Giedd Assistant Attorney General for Ground Water Quality Eric Holm Natural Resource Engineer III Bob Townsend Mike Cepak	E-Mail Correspondence - Re: NRC MOU	Attorney-Client Privilege Work Product Deliberative Process Privilege
00468-00480	2/13/13 - 2/13/13	Roxanne Giedd Assistant Attorney General for Ground Water Quality Eric Holm Natural Resource Engineer III Bob Townsend Mike Cepak Bill Markley	E-Mail Correspondence - Re: MOU w/ NRC - With Attached MOU	Attorney-Client Privilege Work Product Deliberative Process Privilege

00481-00502	2/4/2013- 2/12/2013	<p>Roxanne Giedd Assistant Attorney General for Ground Water Quality</p> <p>Eric Holm Natural Resource Engineer III</p> <p>Mike Cepak</p>	E-Mail Correspondence - Re: Powertech Surety MOU with attached MOU	<p>Attorney-Client Privilege</p> <p>Work Product</p> <p>Deliberative Process Privilege</p>
00503-00524	2/4/2013- 2/11/2013	<p>Roxanne Giedd Assistant Attorney General for Ground Water Quality</p> <p>Eric Holm Natural Resource Engineer III</p> <p>Mike Cepak</p>	E-Mail Correspondence - Re: Draft NRC MOU for Powertech's Dewey Burdock Project with 2 attached MOU	<p>Attorney-Client Privilege</p> <p>Work Product</p> <p>Deliberative Process Privilege</p>
00525-00538	1/24/2013- 2/5/2013	<p>Eric Holm Natural Resource Engineer III</p> <p>Roxanne Giedd Assistant Attorney</p>	E-Mail Correspondence - Re: Draft NRC MOU for Powertech's Dewey Burdock Project with attached MOU	<p>Attorney-Client Privilege</p> <p>Work Product</p> <p>Deliberative Process Privilege</p>

		<p>General for Ground Water Quality</p> <p>Brian Walsh</p> <p>Mike Cepak</p> <p>Bob Townsend</p> <p>Tim Tollefsrud</p> <p>Steve Pirner</p> <p>Bill Markley</p> <p>Roberta Hudson</p>		
00539-00548	2/4/2013	<p>Eric Holm</p> <p>Natural Resource Engineer III</p> <p>Roxanne Giedd</p> <p>Assistant Attorney General for Ground Water Quality</p> <p>Mike Cepak</p>	E-Mail Correspondence - Re: Powertech Surety MOU with attached MOU	<p>Attorney-Client Privilege</p> <p>Work Product</p> <p>Deliberative Process Privilege</p>
00549-00558	2/4/2013	<p>Eric Holm</p> <p>Natural Resource Engineer III</p> <p>Mike Cepak</p>	E-Mail Correspondence - Re: FW: Revised NRC with Attached Draft NRC - South Dakota Surety MOU2	Deliberative Process Privilege

00559-00568	2/4/2013	Eric Holm Natural Resource Engineer III Mike Cepak	E-Mail Correspondence - Re: Powertech Surety MOU with attached Draft NRC - South Dakota Surety MOU2	Deliberative Process Privilege
00569-00578	2/4/13	Roxanne Giedd Assistant Attorney General for Ground Water Quality Eric Holm Natural Resource Engineer III	E-Mail Correspondence - Re: Powertech surety MOU with attachment Draft NRC - South Dakota Surety MOU	Attorney-Client Privilege Work Product Deliberative Process Privilege
00579-00589	1/24/2013 - 2/1/2013	Eric Holm Natural Resource Engineer III Roxanne Giedd Assistant Attorney General for Ground Water Quality Mike Cepak Bob Townsend	E-Mail Correspondence - Re: Draft NRC MOU for Powertech's Dewey Burdock Project attached MOU	Attorney-Client Privilege Work Product Deliberative Process Privilege
00590-00606	1/24/2013-1/31/2013	Eric Holm	E-Mail Correspondence - Re: Draft NRC MOU for Powertech's Dewey	Attorney-Client Privilege

		Natural Resource Engineer III Roxanne Giedd	Burdock Project attached MOU	Work Product Deliberative Process Privilege
		Assistant Attorney General for Ground Water Quality Mike Cepak Bob Townsend		
00607-00622	01/24/2013	Eric Holm Natural Resource Engineer III Mike Cepak Bob Townsend	E-Mail Correspondence - Re: Draft NRC MOU explanation for SP and TT - Attachment: Draft NRC - South Dakota Surety MOU	Deliberative Process Privilege
00623-00630	1/22/2013	Stephen J. Cohen New Facility Licensing - Office of Federal & State Materials Brian Walsh Eric Holm Natural Resource	E-Mail Correspondence - Re: Draft MOU - Attachments Draft NRC - South Dakota Surety MOU	Deliberative Process Privilege

		Engineer III Mike Cepak Mike Hicks Kenneth Kline Ronald Burrows Tom Brandner Eric Gronlund		
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MINERALS & MINING PROGRAM

STATE OF SOUTH DAKOTA

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT**

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SEP 13 2013

**IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.**

**WILD HORSE SANCTUARY,
SUSAN WATT, & DAYTON
HYDE'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS TO SOUTH
DAKOTA DENR**

MINERALS & MINING PROGRAM

TO: STATE OF SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT &
NATURAL RESOURCES AND THEIR ATTORNEYS OF RECORD: DIANE BEST
AND ROXANNE GIEDD:

You are hereby requested to provide answers and produce the documents specified below, within thirty (30) days of service, to Michael M. Hickey, Bangs, McCullen, Butler, Foye & Simmons, L.L.P., P.O. Box 2670, Rapid City, South Dakota, 57709, or at such other time and place, or in such other manner, as may be mutually agreed upon by the parties.

These Interrogatories and Requests for Production shall be deemed to be continuing. If information is discovered by or becomes known to you, your attorney, or to anyone acting on your behalf, after answering and before trial, which would change or add to the answers given, you are hereby directed and requested to furnish the information, under oath, to the undersigned in a timely manner. It is intended that any information held by any persons acting on behalf of you will be revealed in the answers hereto.

Demand is also made that when any document is identified in your answers to these interrogatories, or if reference is made to any document in order to provide an answer to these interrogatories, you produce the document for inspection and copying at a mutually agreed upon time, date, and place after service of your response. In lieu of such formal inspection, you may submit a legible copy of such document with your answers, and we shall pay you the reasonable cost of reproduction of such document if requested in advance.

When documents that are in your possession, custody, or control are requested, such request includes documents in the possession, custody, or control of your shareholders, officers, directors, employees, agents, representatives, partners, and attorneys (including the attorneys' partners,

Attachment
B

employees, agents, and representatives). When production of any document in your possession is requested, such request includes documents subject to your possession, custody or control. In the event that you are able to provide only part of the document(s) called for in any particular Request for Production, provide all document(s) that you are able to provide and state the reason, if any, for the inability to provide the remainder.

Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any answer or request. Whenever reference is made to a person, it includes any and all of such person's principals, employees, agents, attorneys, consultants, and representatives.

These discovery requests are not intended to be duplicative. All interrogatories and requests should be responded to fully and to the extent not covered by other interrogatories or requests. If there are answers or documents that are responsive to more than one interrogatory or request, then please so note and produce each such answer or document first in response to the interrogatory or request that is more specifically directed to the subject matter of the particular interrogatory or document.

If you or your attorney object to answering any of these interrogatories or withhold any document from production under a claim of privilege or other exemption from discovery, state in detail the grounds for the nature of the objection and, for responses to requests for production, the title and nature of the document, and furnish a list signed by the attorney of record giving the following information with respect to each document withheld:

- A. The name and title of the author and/or sender and the name and title of the recipient;
- B. The date of the document's origination;
- C. The name of each person or persons (other than stenographic or clerical assistants) participating in the preparation of the document;
- D. The name and position, if any, of each person to whom the contents of the documents have heretofore been communicated by copy, exhibition, reading, or substantial summarization;
- E. A statement of the specific basis on which privilege is claimed and whether or not the subject matter or the contents of the document is limited to legal advice or information provided for the purpose of securing legal advice; and

- F. The identity and position, if any, of the person or persons supplying the attorney signing the list with the information requested in subparagraphs above.

DEFINITIONS AND INSTRUCTIONS

1. YOU or YOUR means the State of South Dakota Department of Environment & Natural Resources, agents, servants, employees, representatives, consultants, advisors and all other persons acting or purporting to act on behalf of the Petitioner in connection with the applications presently pending before the South Dakota Board of Minerals and Environment.
2. AND as well as OR shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be construed to be outside the scope.
3. DATE means the exact day, month, and year if ascertainable; if not, the closest approximation.
4. The term DOCUMENT shall mean the original and any electronic or written copy, regardless of origin or location, of any written, typed printed, recorded or graphic matter of any kind, however, produced including but not limited to any book, pamphlet, periodical, letter, memorandum, email, text message, telegram, report, record, study, written note, working paper, chart, paper, index, tape, data sheet, data processing card, letters or other correspondence, telegrams, summaries, tabulations, cost sheets, canceled checks, financial reports and statements, motion picture films, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, micro film, or any other written, recorded, transcribed, punched, taped, filmed, or graphic material, however produced or reproduced, other data compilations, including computer data, and the memory units containing data, to which you have or have had access.
5. The terms IDENTIFY or IDENTIFICATION, when used with reference to an individual person, shall mean to state his full name, address, phone number, and present employment position or business affiliation, if known, any prior positions or affiliations, if no longer connected with the Petitioner. The terms "identify" or "identification" when used with reference to a document, shall mean to state the date and author or signor, as the case may be, the addressee, the type of document, its present or last known location or custodian and all means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a motion for its production, pursuant to SDCL 15-6-34 of the South Dakota Rules of Civil Procedure. If any such document was, but is no longer in your possession or subject to your control, state the substance of the document, the disposition which was made of it, the reason for such disposition and the date thereof.

- a. When referring to a DOCUMENT:
 - i. its author, addressee and copyees;
 - ii. the type of DOCUMENT (e.g., letter, memorandum, etc.);
 - iii. its subject matter and substance;
 - iv. if the above information is not available, some other means of identifying it;
 - v. its present location and the IDENTITY of its present custodians;
 - vi. if such DOCUMENT was, but is no longer in your possession or subject to your control, or in existence, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily to others, or (4) otherwise disposed of; and in each instance, explain the circumstances for such disposition and the date or approximate date of such disposition.

6. The term STATEMENT shall mean any oral conversation, oral statement or voice communication.
 - a. When referring to a STATEMENT:
 - i. the form of STATEMENT (e.g., in person, by telephone or other specified mode);
 - ii. the IDENTITY of the sender or maker and recipients(s) or persons hearing the same;
 - iii. its date;
 - iv. its full and exact substance;
 - v. IDENTIFICATION of all DOCUMENTS confirming, relating, referring to the subject STATEMENT.

7. The phrase ALL FACTS AND CIRCUMSTANCES, when used in connection with a request for information concerning a claim or allegation, shall mean:
 - a. a detailed summary of all evidentiary facts bearing upon or tending to support such claim or allegation;
 - b. IDENTIFICATION of the persons having knowledge of such facts;
 - c. a separate description of the facts known by each such person;
 - d. IDENTIFICATION of all DOCUMENTS bearing upon or tending to support such claim or allegation.

8. The term "PROJECT" shall mean the Dewy and Burdock proposed in situ uranium mining operations located in Fall River and Custer County, South Dakota, northwest of Edgemont, South Dakota.

INTERROGATORIES

INTERROGATORY NO. 1: What methods and calculations were used to reach the proposed first year state bonding level of \$395,000.

INTERROGATORY NO. 2: Under what authority is the Board of Minerals and Environment ("Board") authorized to allow expansion of the permit area and/or affected area without holding a hearing on such expansion?

INTERROGATORY NO. 3: Would a new application be required for expansion of the permit area and/or affected area, including full information on the particular area or areas to be added?

INTERROGATORY NO. 4: Under what authority is the Board authorized to allow the applicant to modify water usage and sources without holding a hearing on such change?

INTERROGATORY NO. 5: Knowing that groundwater restoration has usually taken far longer than originally planned at other in situ leach uranium mines, how does the DENR expect to hold Powertech to its reclamation schedule?

INTERROGATORY NO. 6: Why does the section of the DENR's "Recommendation" titled "Technical Revisions" not include a requirement for the DENR's approval in the event Powertech wants to move its processing facilities?

INTERROGATORY NO. 7: Why does the section of the DENR's "Recommendation" titled "Technical Revisions" not include a requirement for the DENR's approval if Powertech's operation would have larger than anticipated impacts on wildlife?

INTERROGATORY NO. 8: What will the DENR do if its monitoring indicates that there is an underground excursion of lixiviant or other potential contamination?

INTERROGATORY NO. 9: What will the DENR do if its monitoring indicates that there has been a suspected discharge of regulated substances to surface waters?

INTERROGATORY NO. 10: What will the DENR do if Powertech submits a corrective action plan for a well that has been improperly sealed, completed, or abandoned and the DENR deems the company's actions insufficient?

INTERROGATORY NO. 11 Under the section of the DENR's "Recommendation" titled "Land Application," would it be scientifically valid for Powertech to collect baseline data on the vegetation within the land

application areas during the winter months? If so, please provide any scientific literature upon which this response is based.

INTERROGATORY NO. 12: What regulations does the state have regarding transportation of radioactive materials, and how will the DENR enforce those regulations on the permit area? On the gravel roads surrounding the permit area?

INTERROGATORY NO. 13: Does the DENR suggest that the State relinquish some of its bonding authority to the NRC? If so, please state the reason for such suggestion.

INTERROGATORY NO. 14: Given the fact that past bonds have often been insufficient to clean up mining sites, how does the DENR intend to calculate an adequate post-closure bond?

INTERROGATORY NO. 15: Given the fact that mining companies regularly go out of business before mining reclamation is completed, how does the DENR intend to ensure that adequate trained and experienced personnel are available to complete reclamation and post-closure activities, if Powertech goes out of business before those activities are completed?

INTERROGATORY NO. 16: Why does the DENR's "Recommendation" not require a new application if Powertech proposes to recover vanadium?

INTERROGATORY NO. 17: What research has the DENR or the Game Fish & Parks Department done regarding the presence of bighorn sheep in the permit area?

INTERROGATORY NO. 18: Would the discovery of additional uranium deposits within the permit area require an application process before mining?

INTERROGATORY NO. 19: Why does the DENR's "Recommendation" fail to require a more realistic estimate of water use, when most uranium operations require much more than one pore volume of water for aquifer restoration?

INTERROGATORY NO. 20: Does the DENR anticipate adding any conditions to its "Recommendation" related to disturbance of cultural and historical properties?

INTERROGATORY NO. 22: In the event Powertech goes out of business less than 30 years after the Dewey-Burdock project is completed, who will complete post-closure monitoring?

INTERROGATORY NO. 23: Does the DENR agree with the information provided in Powertech's Large Scale Mining Permit Application at Table 5.01, Uranium ISR Permitting in South Dakota, as related to the authority of each agency listed therein?

INTERROGATORY NO. 24: How many third party contractors named on the DENR website are trained specifically in the clean up of spills and/or leaks from in situ leach mining?

INTERROGATORY NO. 25: If Powertech is awarded a large scale mining permit, what amount does the DENR anticipate requiring for the reclamation bond which, according to information on the DENR website, must cover the entire cost of hiring a third party contractor to conduct reclamation activities?

INTERROGATORY NO. 26: How many DENR employees are trained and available to monitor and enforce those portions of the large scale mining permit under its purview?

INTERROGATORY NO. 27: What concerns does DENR still have with respect to Powertech's responses regarding whether topsoil used in the reclamation will need fertilizer or other amendments to establish a vegetative cover on reclaimed areas?

INTERROGATORY NO. 28: Is the DENR satisfied with Powertech's commitment added to Section 5.3.9.1 of its Large Scale Mine Permit Application that it will not change the use of treated water storage ponds or spare storage ponds to store untreated water in the future?

INTERROGATORY NO. 29: Does the DENR agree that Powertech's submission to use the "reference area concept" to reestablish vegetative cover capable of self regeneration of reclaimed areas meets the requirements of SDCL 45-6B-39?

INTERROGATORY NO. 30: The DENR has stated it will review Powertech's operational compliance with the EPA and NRC. Please describe the process used to review Powertech's operational compliance and identify the individual responsible for conduction the analysis and review.

INTERROGATORY NO. 31: What is the process should the DENR, as an organization with limited authority over in situ mining, discover violations at this project?

INTERROGATORY NO. 32: Please state the status of the Memo of Understanding between the NRC and the DENR as relates to the bonding required on the large scale mining permit application by Powertech.

INTERROGATORY NO. 33: What has Powertech indicated it will do to avoid or mitigate any impact on the six (6) sites located within the permit area that are historic places eligible or on the National Historic Register?

INTERROGATORY NO. 34: What has Powertech indicated it will do to avoid any impact on the two (2) burial sites located within the permit area?

INTERROGATORY NO. 35: What are the DENR's rights and responsibilities should Powertech's in situ mining operation have an impact or cause damage in any way to the six (6) sites located in the permit area that are eligible or on the National Historic Register?

INTERROGATORY NO. 36: What are the DENR's rights and responsibilities should Powertech's in situ mining operation have an impact or cause damage in any way to the two (2) burial sites located in the permit area?

INTERROGATORY NO. 37: The DENR has indicated that it can mandate during the post-closure period of any in situ mining operation. What is the DENR's plan for the post-closure period of Powertech's mining operation?

INTERROGATORY NO. 38: How long does the DENR intend to hold Powertech responsible for the permit area after mining operations cease?

INTERROGATORY NO. 39: Please list under what conditions the DENR will become an "Agreement State" with the EPA and the NRC?

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Please produce copies of all documents reviewed or utilized in the calculations used to reach the proposed first year state bonding level of \$395,000.

REQUEST NO. 2: Please produce copies of all satellite imagery and aerial photography of the permit area for the Dewey-Burdock in situ leach mining project set forth in the Large Scale Mining Permit Application.

REQUEST NO. 3: Please produce copies of all documents between Powertech and John Putnam and/or Lisa Scheinost provided to the DENR.

REQUEST NO. 4: Please produce copies of all documents related to the DENR's Memo of Understanding with the NRC.

REQUEST NO. 5: Please produce all documents identifying the location of the any and all areas located within Powertech's permit area that are on or eligible for the National Historic Register and why these areas are on or eligible for this recognition.

REQUEST NO. 6: Please produce all documents identifying the location of the any and all burial sites located within Powertech's permit area.

REQUEST NO. 7: Please produce copies of all documents between the USGS and the DENR as it pertains to the project.

Dated this 3RD day of July, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:


MICHAEL M. HICKEY
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**ATTORNEYS FOR BLACK HILLS
WILD HORSE SANCTUARY,
SUSAN WATT, & DAYTON HYDE**

CERTIFICATE OF SERVICE

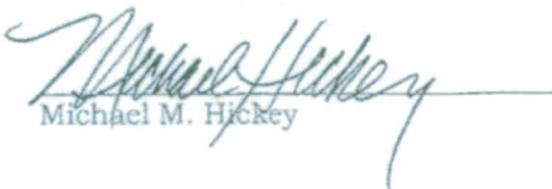
The undersigned certifies that on July 3, 2013, he caused true and correct copies of the above to be served upon each of the persons identified below as follows:

<input checked="" type="checkbox"/>	First Class Mail	<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Electronic Mail	<input type="checkbox"/>	ECF System

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Pierre, SD 57501

Diane Best
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Sioux Falls, SD 57014

**ATTORNEYS FOR STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES**


Michael M. Hickey

RECEIVED
SEP 13 2013

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

MINERALS & MINING PROGRAM

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF POWERTECH)
(USA), INC. APPLICATION FOR) AFFIDAVIT OF MICHAEL CEPAK
LARGE SCALE MINING PERMIT)
(Dewey-Burdock Project))

STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES)

Having been first duly sworn upon his oath, the undersigned, Michael Cepak, deposes and states as follows:

1. I am an employee of the South Dakota Department of Environment and Natural Resources ("DENR"), and I am assigned to the Minerals & Mining Program ("M&MP") of the Department.
2. I have been involved in the technical and procedural review of Powertech (USA), Inc.'s ("Powertech") large scale mine permit application.
3. The DENR is currently attempting to negotiate a Memorandum of Understanding with the Nuclear Regulatory Commission ("NRC") regarding bonding for the Powertech project.
4. The NRC, with the Env. Protection Agency, will have primary jurisdiction over much of the project and project site.
5. The Memorandum would include provisions for the State to review and comment on NRC bond calculations, and the agreement would allow the NRC to hold the State's portion of any bond.
6. Secretary Pirner would be signatory on behalf of the DENR on any Memorandum entered into with the NRC. The Board of Minerals and Environment would likely be a signatory to the Memorandum in that the Board is the entity that has jurisdiction over bonding matters.

Attachment
C

7. A final version of the Memorandum has not yet been negotiated. The final, fully executed, version of the Memorandum will be released to the parties and the public.

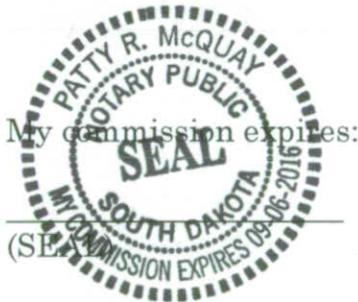
8. The DENR has been cautioned by the NRC that disclosure of information regarding the ongoing negotiations (including disclosure of potential terms of the agreement or draft versions of the Memorandum) may result in the NRC ceasing negotiations with the DENR, and a refusal by NRC to enter into any agreement with the DENR.

Dated this 12 day of September, 2013.


Michael Cepak
Minerals & Mining Program
Department of Environment and Natural Resources

Subscribed to and sworn to before me, a Notary Public, on this 12th day of
September, 2013.


Notary Public--South Dakota



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED

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MINERALS & MINING PROGRAM

ALFRED BONE SHIRT; BELVA BLACK)
LANCE; BONNIE HIGH BULL; and)
GERMAINE MOVES CAMP,)

Plaintiffs,)

vs.)

JOYCE HAZELTINE, in her official capacity)
as Secretary of the State of South Dakota;)
SCOTT ECCARIUS, in his official capacity as)
Speaker of the South Dakota House of)
Representatives; SOUTH DAKOTA HOUSE)
OF REPRESENTATIVES; ARNOLD)
BROWN, in his official capacity as President)
of the South Dakota Senate; and SOUTH)
DAKOTA SENATE,)

Defendants.)

CIV. 01-3032-KES

ORDER DENYING PLAINTIFFS'
THIRD MOTION TO COMPEL

Plaintiffs move to compel a deponent to answer questions and for defendants to disclose certain documents. Defendants oppose the request.

BACKGROUND

Plaintiffs filed this action challenging a redistricting plan promulgated by the South Dakota legislature. Plaintiffs allege that the plan violates various federal laws and that it dilutes Native American voting power. In their first request for documents, plaintiffs requested "all documents related to any redistricting plan for the State Legislature using 2000 census data" that defendants or their agents reviewed. Defendants objected to this request, calling it irrelevant and invasive of the relationship between the Legislative Research Council and the legislators. Plaintiffs also requested all documents related to defendants' contention that Native

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Americans in Districts 26 and 27 are not sufficiently numerous and geographically compact to create a majority in one or more districts.

Plaintiffs deposed the Chief Analyst at the Legislative Research Council (LRC), Reuben Bezpaletz, on August 12, 2003. Bezpaletz told plaintiffs that he prepared six maps when the legislature was considering whether to accept plaintiffs' settlement offer that would resolve the dispute within the boundaries of Districts 26 and 27. All six maps alter the configuration of Districts 26 and 27. When plaintiffs inquired further about the maps during Bezpaletz's deposition, defendants' attorney objected, claiming attorney-client privilege. Plaintiffs move to compel responses to their questions of Bezpaletz and to compel disclosure of the six maps. Defendants argue that the maps are not responsive to plaintiffs' request and that they timely objected. Defendants maintain that the maps are privileged and that plaintiffs have not shown sufficient need for the maps to overcome the privilege. Defendants also contend that the maps are not admissible as evidence of compromise negotiations under Rule 408.

DISCUSSION

1. Responsiveness and Objections

Defendants argue that they had no duty to disclose the six maps because they are not responsive to plaintiffs' discovery requests. Plaintiffs requested all documents relating to the redistricting plan for the State Legislature using 2000 census data and all documents related to the contention that Native Americans are not sufficiently numerous and geographically compact. These six maps are responsive to both requests. The first request is not limited to redistricting plans specifically intended for the state legislature. Rather, the first request references the state legislature to indicate that plaintiffs do not want redistricting plans

specifically drawn for cities or counties. Plaintiffs seek plans that relate to the state legislature's redistricting of state districts. Furthermore, the maps are responsive to plaintiffs' request for documents relating to the contention that Native Americans are neither numerous nor compact. Any alternative redistricting plans are directly relevant to proving or disproving this argument. Accordingly, the six maps are responsive to plaintiffs' requests and are not exempt from discovery on this basis.

The court also finds that defendants have not waived any exercise of privilege in this case by failing to object. Defendants' responses to plaintiffs' requests for documents contain objections, stating that the documents resulted from contacts between legislators and LRC staff. Defendants also repeatedly objected during Bezpaletz's deposition on the grounds of privilege. The court is satisfied that defendants sufficiently raised the issue of privilege.

2. Deliberative Process Privilege

Defendants contend that the maps are protected by the deliberative process privilege. The deliberative process privilege "allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." In re Sealed Case, 121 F.3d 729, 737 (D.C. Cir. 1997). "[T]he privilege serves to protect the deliberative process itself, not merely documents containing deliberative material." Mapother v. Dep't of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993). It protects against premature disclosure of proposed agency policies or decisions, F.T.C. v. Warner Comm., Inc., 742 F.2d 1156, 1161 (9th Cir. 1984), and prevents injury to the "quality of agency decisions by allowing government officials freedom to debate alternative approaches in private." In re Sealed Case, 121 F.3d at

737. See Texaco Puerto Rico, Inc. v. Dep't of Consumer Affairs, 60 F.3d 867, 884 (1st Cir. 1995) (privilege provides reasonable security to an agency's decision making process). The privilege protects advice and recommendations. Mapother, 3 F.3d at 1537. Factual material or past decisions are not protected "unless the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations. In re Sealed Case, 121 F.3d at 737.

For the privilege to apply, the material must be (1) predecisional, that is "antecedent to the adoption of agency policy, and (2) deliberative, that is actually related to the process by which policies are formulated." Texaco Puerto Rico, Inc., 60 F.3d at 884. A predecisional document reflects the personal opinions of the drafter rather than the policies of the agency. Missouri ex rel. Shorr v. United States Army Corps of Engineers, 147 F.3d 708 (8th Cir. 1998). The privilege is not absolute, and a sufficient showing of need will overcome it. Id. Four factors are relevant when determining whether the need for the material outweighs the government's interest in nondisclosure: (1) the relevance of the evidence; (2) the availability of other evidence; (3) the government's role in the litigation; and (4) "the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions." F.T.C., 742 F.2d at 1161.

In the current case, the six maps were produced for a meeting of the Executive Board in response to plaintiffs' settlement proposal. The maps, therefore, preceded the LRC's decision of whether or not to accept plaintiffs' settlement proposal. See Hinckley v. United States, 140 F.3d 277, 284 (D.C. Cir. 1998) (proving a document as predecisional requires a court to "be able to pinpoint an agency decision or policy to which the document contributed"). Because

Bezpaletz produced the maps prior to the Board's decision regarding settlement, the maps are predecisional.

The maps are also deliberative. Generally maps only contain factual information that is outside of the deliberative process privilege; however, these maps encompass more than just raw factual data. The maps do not merely reflect the topography of South Dakota; they demonstrate different redistricting possibilities. Where the districts are drawn is inextricably intertwined with the Board's decision making process regarding the feasibility of creating an additional minority-majority district, the strength of the state's case, and the prudence of accepting plaintiffs' settlement proposal. The Board's deliberations centered around these hypothetical districts inherently reveal its opinions and directly relate to the Board's deliberative process and particular decision to reject plaintiffs' proposal. See Hinckley, 140 F.3d at 284 (deliberative process privilege protects individualized decisions rather than the development of generally applicable policy).

Rejecting this proposal, moreover, was not a routine decision. It involved precise consideration of the six maps. The nature and the number of alternative maps suggests the possibility of disagreement among Board members regarding whether to accept the proposal. This indicates that the meeting involved discussion and debate about the maps and the settlement. Accordingly, the particular nature of the maps, the number of maps, and the exercise of the Board's judgment invokes the privilege in this case. See Hinckley, 140 F.3d at 284-85 (privilege applies to decisions that are not routine and that require case-specific discussion and debate).

To overcome the privilege, plaintiffs must prove that their need for the maps outweighs defendants' interest in nondisclosure. First, the maps are relevant in demonstrating whether the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district. Thornburg v. Gingles, 478 U.S. 30, 49, 106 S. Ct. 2752, 2766-67, 92 L. Ed. 2d 25 (1986). Maps drawn by the LRC that show alternative districts make this factor more or less probable. Second, plaintiffs cannot obtain similar evidence elsewhere. Indeed, defendants have consistently maintained the impossibility of redistricting alternatives and have not produced any other evidence demonstrating alternatives. These two factors support disclosure of the maps.

Third, because the government is the actual defendant in this case, it can assert the privilege to protect deliberations of its entities. First Eastern Corp. v. Mainwaring, 21 F.3d 465, 468 (D.C. Cir. 1994). The evidence does not reveal bad faith on behalf of the government. Rather, it demonstrates an attempt to prevent disclosure of their deliberative processes when rejecting the maps. Cf. In re Sealed Case, 121 F.3d at 738 (privilege generally denied where the documents shed light on government misconduct since shielding the deliberations does not serve the public's interest in honest, effective government). Nondisclosure of the maps serves the public's interest by facilitating settlements. Permitting private discussions promotes the possibility of reaching settlement agreements. This factor weighs in favor of nondisclosure.

Fourth, disclosure would hinder the frank and independent discussion regarding decisions contemplated by the Board. The Board and Bezpaletz were to assist legislators in redistricting after the 2000 census. Because the legislature had a special need for their opinions and recommendations, they "should be able to give their judgments freely without fear of

publicity.” Id. “[C]ompelled disclosure of the [maps] almost certainly injures the quality of agency decisions. It chills frank discussion and deliberation in the future among those responsible for making governmental decisions.” F.T.C., 742 F.2d at 1162. Disclosure may compromise future deliberations involving settlement offers. See Hinckley, 140 F.3d at 286 (access to internal deliberations “would seriously endanger the future candor of such discussions”). This factor favors nondisclosure of the maps.

After considering all the factors, the court finds that plaintiffs have failed to demonstrate that their need for the six maps outweighs the government’s interest in nondisclosure. Defendants have already provided plaintiffs with a multitude of evidence relating to the redistricting process after the 2000 census. Nondisclosure best serves the public’s interest in promoting settlements and the government’s interest in open, honest discussions. Applying the privilege ensures that the Board is judged by its decision rather than what it “considered before making up their minds.” Callaway Comm. Hosp. v. Sullivan, 1990 WL 125176 (W.D. Mo. 1990). Under these circumstances, the privilege applies and protects the maps from discovery.

Plaintiffs also move to compel deponent Bezpaletz to answer questions asked of him at his deposition. All the questions identified by plaintiffs are related to inquiries about the six maps. For the reasons stated previously, the court finds that the deliberative process privilege applies to this inquiry and plaintiffs’ motion to compel responses by a deponent is denied.

3. Rule 408

Defendants also contend that the maps are not discoverable under Rule 408 because they were created in response to plaintiffs’ offer of settlement. Rule 408 prohibits evidence of conduct or statements made during compromise negotiations. Fed. R. Evid. 408. “This rule is

designed to encourage settlements by fostering free and full discussion of the issues,” Ramada Dev. Co. v. Rauch, 644 F.2d 1097, 1106 (5th Cir. 1981), and furthers the public policy of promoting settlements. Fiberglass Insulators, Inc. v. Dupuy, 856 F.2d 652, 654 (4th Cir. 1988). Rule 408 bars evidence of settlement attempts offered to prove liability. Breuer Electric Mfg. Co. v. Toronado Systems of America, Inc., 687 F.2d 182, 185 (7th Cir. 1982).

Rule 408 does not “require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations[,]” or evidence offered for another purpose, “such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.” Id. Thus, parties cannot “immunize from admissibility documents otherwise discoverable merely by offering them in a compromise negotiation.” Ramada Dev., 644 F.2d at 1107. Evidence of facts revealed during negotiations are also not inadmissible. United States v. Hauert, 40 F.3d 197, 200 (7th Cir. 1994).

In this case, Bezpaletz created the six maps in response to plaintiffs’ settlement proposal. Even though the maps were not presented during formal compromise negotiations between plaintiffs and defendants, the purpose of the Executive Board’s meeting was to discuss a possible settlement. See Trans Union Credit Info. Co. v. Assoc. Credit Services, Inc., 805 F.2d 188, 192 (6th Cir. 1986) (statements at a meeting designed to discuss the interpretation of the contract at issue and how they would proceed amounted to settlement talks, which prevented discovery of the statements). Thus, the maps and statements concerning them were intended as part of the negotiations for compromise. Fiberglass Insulators, 856 F.2d at 654. The maps were generated solely in response to plaintiffs’ offer and therefore, were “not used as

a device to thwart discovery by making existing documents unreachable.” Ramada Dev. Co., 644 F.2d at 1107. Accordingly, the maps are inadmissible under Rule 408. See id. (district court properly excluded report that was collection of statements made in an effort to compromise).

In Alexander v. City of Evansville, Ind., the plaintiffs offered a settlement agreement with the City to demonstrate the City’s interpretation of certain terms in the agreement. 120 F.3d 723, 728 (7th Cir. 1997). The Seventh Circuit upheld the district court’s exclusion of the evidence. Id. Because the interpretation of the agreement was the contested issue, plaintiffs were essentially offering the agreement to prove liability. Id. Likewise in this case, plaintiffs’ suggestion that the maps are admissible to prove the first Gingles factor amounts to admitting the maps to prove a factor necessary to demonstrate defendants’ liability. Rule 408 excludes such evidence. See Ramada Dev. Co., 644 F.2d at 1107 (admitting some evidence under Rule 408 “was not intended to completely undercut the policy behind the rule”).

Plaintiffs have not provided any other justification for admitting the maps. Although the maps need not be admissible to be discoverable, plaintiffs must demonstrate that the maps have some permissible evidentiary value before the court will issue an order to compel otherwise inadmissible material. See Bottaro v. Hatton Associates, 96 F.R.D. 158, 159 (E.D.N.Y. 1982). “Given the strong public policy of favoring settlements and the congressional intent to further that policy by insulating the bargaining table from unnecessary intrusion,” a particularized showing of the likelihood of admissibility is necessary before revealing documents generated for settlement negotiations. Id. at 560. Without providing specific reasons that satisfy Rule 408, the court will not compel discovery of the maps. Cf. Hauert, 40 F.3d at 200 (evidence of

settlement agreement in tax case was admissible to show that defendant had knowledge of the law and his legal duties).

4. **Work Product Doctrine**

Because the court finds that the documents and responses to deposition questions are protected under the deliberative process privilege, the court need not reach the issue of whether the attorney work product doctrine applies.

CONCLUSION

Although the six maps are responsive to plaintiffs' request for documents, the deliberative process privilege protects them from disclosure. The maps were produced in response to plaintiffs' settlement proposal, which further shields them from discovery.

Accordingly, it is hereby

ORDERED that plaintiffs' third motion to compel (Docket 155) is denied.

Dated December 30, 2003.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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MINERALS & MINING PROGRAM

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF POWERTECH)
(USA), INC. APPLICATION FOR)
LARGE SCALE MINING PERMIT) CERTIFICATE OF SERVICE
PERMIT NO. 480)
(Dewey-Burdock Project))
)

The undersigned hereby certifies that true and correct copies of the Mineral and Mining Program's Response to Wild Horse Sanctuary's Motion to Compel in the above entitled matter were served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 12th day of September, 2013:

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HOT SPRINGS SD 57747-0790

DAYTON O HYDE
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HOT SPRINGS SD 57747-0932

MAX MAIN
BENNETT, MAIN & GUBBRUD, P.C.
618 STATE STREET
BELLE FOURCHE SD 57717

MIKE CEPAK
MINERALS AND MINING PROGRAM
FOSS BUILDING
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PIERRE SD 57501

JILLIAN ANAWATY
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DOUGLAS C UPTAIN
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ATTN:DORIS ANN MERTZ
CUSTER COUNTY LIBRARY
447 CROOKS STREET, SUITE 4
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ATTN: ASHLEY CORTNEY
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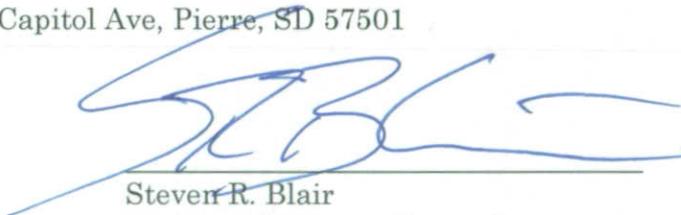
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HOT SPRINGS, SD 57747

ATTN: GOVERNMENT DOCUMENTS
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610 QUINCY ST.
RAPID CITY, SD 57701

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WOKSAPE TIPI
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And the original of the same was filed on the same date with Michael Cepak,

Joe Foss Building, 523 E. Capitol Ave, Pierre, SD 57501



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MINERALS & MINING PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF POWERTECH)	
(USA), INC. APPLICATION FOR)	M&MP's RESPONSE TO WILD
LARGE SCALE MINING PERMIT)	HORSE SANCTUARY'S MOTION TO
(Dewey-Burdock Project))	CONTINUE

The Minerals & Mining Program ("M&MP") of the South Dakota Department of Environment and Natural Resources hereby responds to Black Hills Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's (collectively referred to hereafter as "Wild Horse Sanctuary" or "WHS") Motion to Continue.

1. State Environment Impact Statement

Wild Horse Sanctuary has alleged that an Environmental Impact Statement, as per SDCL ch. 34A-9 is required to be completed for Powertech (USA), Inc.'s ("Powertech") large scale mine permit application. A state environmental impact statement is not required for this permit. The granting of permits for large scale mines in South Dakota is governed by the provisions of SDCL ch. 45-6B and ARSD 74:29. Nowhere in those statutes or administrative rules is a separate state environmental impact statement required. Further, environmental impact statements prepared according to SDCL 34A-9 are not mandatory. *In the Matter of Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Center*, 2013 SD 10, ¶ 20, 826 NW2d 649, 655.

2. Socioeconomic Study Update

Wild Horse Sanctuary also alleges that Powertech has not supplied the M&MP with an updated socioeconomic study as required by SDCL 45-6B-33.1. On August 30, 2013, the M&MP received a copy of the revisions made to Powertech's Socioeconomic Study. See attached exhibit A, DENR Corrected List of Additional Information. The submission of the updated study comported with the requirements of ARSD 74:29:01:11 that all material be submitted at least 20 days prior to the hearing.

3. Notice of Hearing

Next, Wild Horse Sanctuary argues that the M&MP has failed to adequately publish notice of the time, date and location of the hearing to be held in this matter. On August 28, 2013, Secretary Pirner's Notice of Hearing was mailed to six South Dakota newspapers with general circulations in the Black Hills area. It was requested that the Notice be published for consecutive weeks immediately prior to the hearing. As of yet certificates of publication have not been received from these newspapers. See attached exhibit B, Notice of Hearing; and exhibit C, the letters requesting publication of the Notice.

4. Republication of Notice Pursuant to SDCL 45-6B-30

According to SDCL 45-6B-30, a hearing on a large scale mine permit application is to be held 90 days from the date of filing. The original date for the hearing to be held in this matter was April 16, 2013. However, SDCL 45-6B-30 also allows the hearing date to be extended no more than 45 days. If the extended

period is longer than 45 days the applicant is required to republish notice of the filing of its application. In this case, on January 31, 2013, Powertech agreed to a 45 day extension. See exhibit D, Powertech Letter Concurring in Extension. The 45 day extension expired on May 31, 2013. On May 23, 2013, a prehearing conference was held in this matter. The Procedural and Scheduling Order entered by the Hearing Chair stated that “[f]or purposes of compliance with SDCL 45-6B-30, the contested proceedings in this matter are hereby deemed to have commenced with the granting of any written petition to intervene.” Procedural and Scheduling Order, ¶ 6. In the same Order, all written petitions to intervene that were then on file with the Department were granted. Id., ¶ 1. The provisions of SDCL 45-6B-30 have been complied with.

5. *NRC and EPA Action Prior to Board of Minerals & Environment Action*

In 2011 the South Dakota Legislature enacted Senate Bill 158 which tolled the DENR’s administrative rules regarding underground injection control Class III wells and in situ leach mining. The act was codified as SDCL 34A-2-126. On October 1, 2012, Powertech submitted its large scale mine permit application to the M&MP. The provisions of S.B. 158 can be prospectively applied to the Powertech’s large scale mine permit application.

Wild Horse Sanctuary believes any hearing regarding Powertech’s large scale mine permit should occur after the NRC and the EPA have reached a final determination on the matters before them. WHS finds it “incomprehensible” for the DENR to recommend conditional approval absent final action by the federal

entities. However, the conditions recommended by the M&MP require that Powertech obtain all applicable federal and state permits before Powertech can commence operations in the permit area. See exhibit E, Recommendation and Recommended Conditions. Further, there is no requirement in statute or rule that would stay action on the state large scale mine permit while the federal permits are decided.

CONCLUSION

The M&MP believes that all required filings and notices have been issued in this matter. Further, the M&MP believes that there is no substantive or procedural defect that would require the hearing of this matter be continued to a later date. The M&MP would, however, defer to the Hearing Chair's discretion regarding the grant or denial of Wild Horse Sanctuary's Motion to Continue.

Dated this 12 day of September, 2013



Steven R. Blair
Richard M. Williams
Assistant Attorneys General
Mickelson Criminal Justice Center
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

Counsel for Minerals and Mining Program, DENR

cc: PT Service List + DP



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

CORRECTED
LIST OF INFORMATION SUBMITTED AFTER FILING
OF LARGE SCALE MINE PERMIT APPLICATION
POWERTECH (USA) Inc.
(Reference ARSD 74:29:01:11)

RECEIVED
SEP 13 2013
MINERALS & MINING PROGRAM

In accordance with ARSD 74:29:01:11, the South Dakota Department of Environment and Natural Resources is providing a list of additional materials submitted by Powertech for its large scale mine permit application after the application was considered complete and filed on January 16, 2013. The list of additional materials is being provided to the Custer and Fall River County Commissions, interested persons, and intervening parties. The following list is for additional materials submitted on August 30, 2013. Also, pursuant to ARSD 74:29:01:11, the department is to provide copies of any supplemental item, with the exception of confidential information, to anyone upon request.

The list of additional materials submitted by Powertech since July 1, 2013, is as follows:

Submitted on August 30, 2013

1. Revisions to socioeconomic study.

The application and supplemental material listed is available for viewing at the Minerals and Mining Program, 523 East Capitol, Pierre, SD, or can be viewed on the Minerals and Mining web page at <http://denr.sd.gov/des/mm/powertechpage.aspx>. The application and supplemental material is also available for public viewing at the Custer County Register of Deeds office in Custer, South Dakota and the Fall River County Register of Deeds office in Hot Springs, South Dakota. A contested case hearing on the Powertech mine permit application is scheduled for the weeks of September 23 and November 11, 2013.

Persons desiring further information may contact Mike Cepak, Minerals and Mining Program, at (605) 773-4201.

August 30, 2013

Attachment
A

NOTICE OF HEARING
APPLICATION FOR LARGE SCALE MINE PERMIT
POWERTECH (USA) INC.'S DEWEY-BURDOCK PROJECT

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Notice is hereby given that the South Dakota Department of Environment and Natural Resources has received a large scale mining permit application from Powertech (USA) Inc., PO Box 812, Edgemont, South Dakota 57735, for its proposed Dewey-Burdock Project, a uranium in situ recovery mining operation. Powertech (USA) Inc.'s resident agent is CT Corporation System, 319 South Coteau Street, Pierre, South Dakota 57501. The primary minerals to be mined are uranium and vanadium.

The legal location of the proposed operation is:

E1/2 NE1/4, E1/2 SE1/4, SW1/4 SE1/4, S1/2 NW1/4 SE1/4, SE1/4 SW1/4, and S1/2 NE1/4 SW1/4 Section 20; W1/2, W1/2 W1/2 NE1/4, and W1/2 NW1/4 SE1/4 Section 21; S1/2 Section 27; N1/2 NW1/4, SW1/4 NW1/4, and SW1/4 Section 28; Section 29; Section 30; E1/2 Section 31; Section 32; NW1/4, SW1/4, SE1/4, and S1/2 NE1/4 Section 33; Section 34; and Section 35; T6S-R1E, Custer County

Section 1; Section 2; Section 3; W1/2 W1/2 Section 4; Section 5; Section 10; Section 11; Section 12; NW1/4, W1/2 NE1/4, and NE1/4 NE1/4 Section 14; and N1/2 Section 15; T7S-R1E, Fall River County

General Location: Approximately 13 miles northwest of Edgemont, South Dakota

The proposed mining operation will involve in situ recovery methods. Powertech will use injection wells to pump groundwater fortified with oxygen and carbon dioxide water into ore deposits to dissolve uranium. Production wells will be used to pump the uranium-laden fluids to the surface for recovery. The fluids from the production wells will be processed at two separate facilities at the mine site to extract and concentrate the uranium. Powertech may also recover vanadium in the future which will require additional processing equipment. After uranium has been removed from a well field, the groundwater will be restored to meet water quality standards. Wastewater generated by the operation will be treated and disposed primarily by injection in Class V injection wells permitted through the EPA Underground Injection Control Program. If there is not sufficient capacity in the Class V wells, the excess wastewater may be disposed by land application permitted by a DENR Groundwater Discharge Plan. The proposed post-mining land uses are rangeland and agricultural or horticultural crops.

The total acreage within the proposed permit boundary is about 10,580 acres, mostly on private land. About 240 acres of BLM land are included in the permit boundary. Powertech proposes to affect 2,528 to 3,792 acres depending upon whether primary deep injection or secondary land application is used for wastewater disposal. Estimated production is one million pounds of uranium oxide (U_3O_8) per year. Estimated duration of the operation is 20 years.

In accordance with SDCL 45-6B and SDCL 1-26, a hearing on the issuance of the permit will take place before the South Dakota Board of Minerals and Environment on September 23, 24, 25, 26, and 27, 2013, beginning at 10:00 a.m. MDT on September 23 at the Best Western Ramkota Hotel and Convention Center, 2111 N. LaCrosse Street, Rapid City, South Dakota. On September 27, 2013, the hearing will move to the Rushmore Plaza Civic Center, 444 N. Mt. Rushmore Road, Rapid City, South Dakota. If necessary to complete the hearing, the Board will reconvene on November 11, 12, 13, 14 and 15, 2013, beginning at 10:00 a.m. MST on November 11 at the Best Western Ramkota Hotel and Convention Center, 2111 N. LaCrosse Street, Rapid City, South Dakota. On November 15, 2013, the hearing will move to the Hilton Garden Inn, 815 E. Mall Drive, Rapid City, South Dakota.

Attachment
B

The Board's action will be either to approve or disapprove the permit application. This hearing is an adversary proceeding. In accordance with ARSD 74:29:01:09, individuals that have become party to the proceeding have the following rights at the hearing: to be present, to be represented by a lawyer. Individuals may represent themselves at the hearing; organizations must be represented by a lawyer. These and other due process rights will be forfeited if not exercised at the hearing. The decision, based on the hearing, may be appealed to the circuit court and the State Supreme Court as provided by law.

If the amount of controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17.

Notice is further given to individuals with disabilities that this hearing is being held in physically accessible locations. Please notify the Department of Environment and Natural Resources at least 48 hours before the public hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making special arrangements is (605) 773-4201.

Persons desiring further information may contact Mike Cepak, Minerals and Mining Program, at (605) 773-4201.

Steven M. Pirner
Secretary
Department of Environment and Natural Resources



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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August 28, 2013

Black Hills Pioneer
ATTENTION: LEGAL AD DEPARTMENT
PO Box 7
Spearfish, SD 57783-0007

Dear Sir:

Please publish the enclosed notice in your paper as "legal notice" for two issues on **September 11 and 18, 2013**. If for any reason you are unable to publish this notice on the dates specified, please immediately notify the Minerals and Mining Program at 773-4201.

After publication, submit a statement of billing for publishing the notice along with an Affidavit of Publication. Your billing should be sent to the following:

Minerals and Mining Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Sincerely,

/s/
Patty McQuay
Minerals and Mining Program
(605) 773-4201

Enclosure: Notice of Hearing Application for Large Scale Mine Permit Powertech (USA) Inc.

Attachment
C



**DEPARTMENT of ENVIRONMENT
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August 28, 2013

Custer County Chronicle
ATTENTION: LEGAL AD DEPARTMENT
PO Box 551
Custer, SD 57730-0551

Dear Sir:

Please publish the enclosed notice in your paper as "legal notice" for two issues on **September 11 and 18, 2013**. If for any reason you are unable to publish this notice on the dates specified, please immediately notify the Minerals and Mining Program at 773-4201.

After publication, submit a statement of billing for publishing the notice along with an Affidavit of Publication. Your billing should be sent to the following:

Minerals and Mining Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Sincerely,

/s/
Patty McQuay
Minerals and Mining Program
(605) 773-4201

Enclosure: Notice of Hearing Application for Large Scale Mine Permit Powertech (USA) Inc.



**DEPARTMENT of ENVIRONMENT
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August 28, 2013

Lakota Country Times
ATTENTION: LEGAL AD DEPARTMENT
PO Box 386
Martin, SD 57551-0386

Dear Sir:

Please publish the enclosed notice in your paper as "legal notice" for **two** issues on **September 11 and 18, 2013**. If for any reason you are unable to publish this notice on the dates specified, please immediately notify the Minerals and Mining Program at 773-4201.

After publication, submit a statement of billing for publishing the notice along with an Affidavit of Publication. Your billing should be sent to the following:

Minerals and Mining Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Sincerely,

/s/
Patty McQuay
Minerals and Mining Program
(605) 773-4201

Enclosure: Notice of Hearing Application for Large Scale Mine Permit Powertech (USA) Inc.



DEPARTMENT of ENVIRONMENT
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www.state.sd.us/denr

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August 28, 2013

Hot Springs Star
ATTENTION: LEGAL AD DEPARTMENT
PO Box 1000
Hot Springs, SD 57747-1000

Dear Sir:

Please publish the enclosed notice in your paper as "legal notice" for **two** issues on **September 10 and 17, 2013**. If for any reason you are unable to publish this notice on the dates specified, please immediately notify the Minerals and Mining Program at 773-4201.

After publication, submit a statement of billing for publishing the notice along with an Affidavit of Publication. Your billing should be sent to the following:

Minerals and Mining Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Sincerely,

/s/
Patty McQuay
Minerals and Mining Program
(605) 773-4201

Enclosure: Notice of Hearing Application for Large Scale Mine Permit Powertech (USA) Inc.



DEPARTMENT of ENVIRONMENT
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www.state.sd.us/denr

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August 28, 2013

Rapid City Journal
ATTENTION: LEGAL AD DEPARTMENT
PO Box 450
Rapid City, SD 57709-0450

Dear Sir:

Please publish the enclosed notice in your paper as "legal notice" for two issues on **September 11 and 18, 2013**. If for any reason you are unable to publish this notice on the dates specified, please immediately notify the Minerals and Mining Program at 773-4201.

After publication, submit a statement of billing for publishing the notice along with an Affidavit of Publication. Your billing should be sent to the following:

Minerals and Mining Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Sincerely,

/s/
Patty McQuay
Minerals and Mining Program
(605) 773-4201

Enclosure: Notice of Hearing Application for Large Scale Mine Permit Powertech (USA) Inc.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

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MINERALS & MINING PROGRAM

August 28, 2013

Edgemont Herald-Tribune
ATTENTION: LEGAL AD DEPARTMENT
PO Box 660
Edgemont, SD 57735-0660

Dear Sir:

Please publish the enclosed notice in your paper as "legal notice" for two issues on **September 11 and 18, 2013**. If for any reason you are unable to publish this notice on the dates specified, please immediately notify the Minerals and Mining Program at 773-4201.

After publication, submit a statement of billing for publishing the notice along with an Affidavit of Publication. Your billing should be sent to the following:

Minerals and Mining Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Sincerely,

/s/
Patty McQuay
Minerals and Mining Program
(605) 773-4201

Enclosure: Notice of Hearing Application for Large Scale Mine Permit Powertech (USA) Inc.

RECEIVED
SEP 13 2013

MINERALS & MINING PROGRAM

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
RECOMMENDATION
POWERTECH (USA) INC.
LARGE SCALE MINE PERMIT APPLICATION

The Department of Environment and Natural Resources is recommending conditional approval of Powertech (USA) Inc.'s application for its proposed Dewey-Burdock Project, a uranium in situ recovery mining operation. Powertech's address is PO Box 812, Edgemont, South Dakota 57735. The resident agent is CT Corporation System, 319 South Coteau Street, Pierre, South Dakota 57501. The legal location of the proposed operation is:

E1/2 NE1/4, E1/2 SE1/4, SW1/4 SE1/4, S1/2 NW1/4 SE1/4, SE1/4 SW1/4, and S1/2 NE1/4 SW1/4 Section 20; W1/2, W1/2 W1/2 NE1/4, and W1/2 NW1/4 SE1/4 Section 21; S1/2 Section 27; N1/2 NW1/4, SW1/4 NW1/4, and SW1/4 Section 28; Section 29; Section 30; E1/2 Section 31; Section 32; NW1/4, SW1/4, SE1/4, and S1/2 NE1/4 Section 33; Section 34; and Section 35; T6S-R1E, Custer County

Section 1; Section 2; Section 3; W1/2 W1/2 Section 4, Section 5; Section 10; Section 11; Section 12; NW1/4, W1/2 NE1/4, and NE1/4 NE1/4 Section 14; and N1/2 Section 15; T7S-R1E, Fall River County

General Location: Approximately 13 miles northwest of Edgemont, South Dakota.

The proposed mining operation will involve in situ leach recovery methods. Powertech will use injection wells to pump groundwater fortified with oxygen and carbon dioxide into ore deposits to dissolve uranium. Production wells will be used to pump the uranium-laden fluids to the surface for recovery. The fluids from the production wells will be processed at two separate facilities at the mine site to extract and concentrate the uranium. Powertech may also recover vanadium in the future which will require additional processing equipment. After uranium has been removed from the ore body underlying a well field, the groundwater will be restored to meet Nuclear Regulatory Commission restoration standards. Powertech will also be required to obtain a U.S. EPA aquifer exemption for any well field. Wastewater generated by the operation will be treated and disposed primarily by injection in Class V injection wells permitted through the EPA Underground Injection Control Program. If there is not sufficient capacity in the Class V wells, the excess wastewater may be disposed by land application permitted under a Groundwater Discharge Plan, which is subject to approval by the State Water Management Board. The proposed post-mining land uses are rangeland and agricultural or horticultural crops.

The total acreage within the proposed permit boundary is about 10,580 acres, mostly on private land. About 240 acres of Bureau of Land Management land are included in the permit boundary. Powertech proposes to affect 2,528 to 3,792 acres depending upon whether primary deep injection or secondary land application is used for wastewater disposal. Estimated production is one million pounds of uranium oxide (U_3O_8) per year. Estimated duration of the operation is 20 years.

Pursuant to ARSD 74:29:01:15, the department is recommending conditional approval of Powertech's permit application. The department has determined that the application addresses all of the requirements of SDCL 45-6B and ARSD 74:29, and should be approved subject to the conditions attached to this recommendation. The application, with the recommended conditions, provides to

Attachment

D

those portions of the operation within the jurisdiction and regulation of the board, the necessary safeguards to protect the environment during and following the term of operation and ensures that the land is appropriately reclaimed to a beneficial use following termination of the operation. This recommendation does not cover those elements of the mine that were previously subject to regulation under ARSD Chapter 74:29:11 (In situ leach mining) including the well fields, well field monitoring, well construction, excursion detection and mitigation, uranium processing facilities, and ground water restoration. These elements will be regulated by the U.S. EPA and the federal Nuclear Regulatory Commission.

This recommendation is being mailed to you pursuant to ARSD 74:29:01:15. Petitions to intervene and become party to the proceedings pursuant to ARSD 74:29:01:09 must be filed with the Department of Environment and Natural Resources no later than April 22, 2013. Since intervention petitions were received after the Notice of Filing was published, a hearing on the mine permit application will be scheduled for a future date. All parties to the hearing will be notified of the date and location of the hearing when scheduled.

A copy of the application may be reviewed at the department's Minerals and Mining Program, 523 East Capitol Avenue, Pierre, South Dakota, on the department's web page at <http://denr.sd.gov/des/mmm/powertechpage.aspx>, the Custer County Register of Deeds in Custer, South Dakota, or the Fall River County Register of Deeds in Hot Springs, South Dakota. Information about the contents of a petition to intervene can be found at ARSD 74:09:01:01 (<http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=74:09:01:01>). Petitions should be mailed to the Minerals and Mining Program, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182.

Persons needing further information about this permit application may contact Mike Cepak, Minerals and Mining Program, Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182, or phone (605) 773-4201.

Steven M. Pirner
Secretary
Department of Environment and Natural Resources

April 15, 2013

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**RECOMMENDED CONDITIONS
POWERTECH (USA) INC.
DEWEY-BURDOCK PROJECT**

General

1. The conditional approval of this permit application incorporates by reference those representations made by Powertech, as to plans, specifications, operations, environmental impacts, and reclamation as contained in the permit application submitted October 1, 2012, with supplemental information submitted on December 4, 2012, January 10, 2013 and April 2, 5, 9 and 11, 2013. The representations contained in these documents are general conditions of this permit unless modified by a future technical revision, amendment, or permit, or modified by other conditions imposed by the Board of Minerals and Environment (board).
2. This permit and all rights under it are expressly conditioned on the truth of representations made by the applicant, Powertech, its officers, and employees in the application and supporting documentation relating to the application. Should any material representation prove to be false, this permit and all rights under it may be canceled by the board.
3. The operation shall be conducted in compliance with all Custer and Fall River County requirements. All Custer County permits shall be obtained as necessary.
4. This permit is conditioned upon compliance with all applicable laws and regulations.
5. Powertech shall abide by the recommendations of the South Dakota Department of Tourism, the South Dakota Department of Agriculture, the South Dakota Department of Game, Fish and Parks, and the South Dakota Department of Health, except as modified or restated in these conditions.

Other Permits

1. Prior to appropriating water for its operations, Powertech shall obtain the necessary State of South Dakota Water Rights permits.
2. Prior to commencing operations in the permit area, Powertech shall obtain a Source and Byproduct Material License (License) from the United States Nuclear Regulatory Commission (NRC).
3. Prior to commencing operations in the permit area, Powertech shall obtain an aquifer exemption and Underground Injection Control (UIC) Class III permit from the United States Environmental Protection Agency (EPA).

4. Powertech shall obtain a UIC Class V permit from the EPA prior to disposal of mine waste waters through underground injection.
5. Powertech shall obtain a State of South Dakota Ground Water Discharge Plan prior to disposal of mine waste waters by land application. Land application of liquid wastes may not occur if sufficient capacity is available to dispose of the liquid wastes via Class V UIC well(s) permitted through the EPA. If insufficient Class V UIC capacity is available as determined by Powertech and demonstrated to the Department of Environment and Natural Resources (department), the excess treated liquid wastes may be disposed via land application in accordance with the Ground Water Discharge Plan and associated conditions, with department approval.
6. Powertech shall obtain a US Army Corps of Engineers 404 permit, if required, prior to initiating construction or mining activities that affect the waters of the United States.
7. Powertech shall obtain a South Dakota Surface Water Discharge Permit, if required, prior to discharging to surface waters. No discharge or release to surface water is allowed without a Surface Water Discharge Permit.
8. Powertech shall obtain, as necessary, a South Dakota Surface Water Discharge Permit for Storm Water Discharges associated with construction activities (Storm Water Permit for Construction Activities) and/or industrial activities (General Storm Water Discharges Associated with Industrial Activities).

Water Quality

1. Process solutions, waste water disposal, or surface water runoff from the site shall not cause violations of South Dakota Ground Water Discharge Permit requirements, ground water quality standards (ARSD 74:54:01) outside of EPA's approved aquifer exemption boundary, or surface water quality standards (ARSD 74:51:01), as appropriate. There shall not be any unauthorized loss or release of solutions from the uranium recovery process to the surface environment or ground water outside EPA's approved aquifer exemption boundary.
2. On or prior to March 1 of each year the mine is in operation, Powertech shall submit an annual surface and ground water characterization report beginning the year the mine permit is granted. This report shall include, but not be limited to, water quality and water level data gathered and an interpretation of the data.
3. Referencing Powertech's Large Scale Mine Permit application, Powertech shall sample the surface water sites listed in Table 5.5-2 and the ground water sites listed in Table 5.5-1 on a quarterly basis, and shall sample monthly the sites listed in Table 5.5-3 for the parameters listed in Table 6.2-1.

4. The department reserves the right to modify the water quality monitoring defined in condition no. 3 above if water quality monitoring results indicate a modification is warranted. Modifications may include establishing additional surface and ground water monitoring sites, adding parameters, changing sampling frequency, or changing sampling schedules.

Surface and Ground Water Mitigation Plans

1. If any completed component of the facility contaminates ground water outside of the exempted aquifer or the mine permit boundary to the point that ground water quality standards are violated, or there is a discharge or release to surface water, the department may, in conjunction with an enforcement action, require Powertech to develop and submit a site-specific mitigation plan for department review and approval. The plan shall describe those measures that will be taken to mitigate and further prevent surface or ground water contamination. Such measures may include, but are not limited to:
 - a. Obtaining a Surface Water Discharge permit;
 - b. Installing additional water treatment system facilities; and
 - c. Treating contaminated ground water or surface water.

As part of the mitigation plan, Powertech shall include cost estimates for implementing mitigation measures. If the department determines that further remedial measures are needed, the department reserves the right to require Powertech to submit additional bond and plans and specifications, including construction quality assurance plans, for approval.

Sedimentation and Erosion Control

1. Powertech shall submit a final sediment and erosion control plan prior to the commencement of construction activities. Updates to the plan shall be submitted prior to the development of new well fields, roads, and facilities.
2. Erosion and sedimentation controls shall be in place and functional during all phases of clearing, earthwork, construction, mining, and reclamation, and during the postclosure period in the permit area, in accordance with Powertech's General Permits for Storm Water Discharges associated with construction and/or industrial activities. Powertech shall submit a map developed in accordance with a storm water permit for the mine permit area showing sediment and erosion control locations and type prior to any land disturbance in the permit area. The Best Management Practices/Storm Water Pollution Prevention Plan shall be updated as needed.

Interim sedimentation and erosion controls shall be used on disturbed land during clearing, construction, mining, and reclamation until these areas are stabilized, in

accordance with the General Permits for Storm Water Discharges associated with construction and/or industrial activities.

3. Powertech shall inspect, clean out, repair, or upgrade the sediment and erosion controls as necessary to maintain compliance with its Surface Water Discharge Permit and General Permits for Storm Water Discharges associated with construction and/or industrial activities, as applicable. Prior to land disturbance, Powertech shall submit a maintenance plan for the control structures to the department for review and approval.
4. Powertech shall install rock check dams, diversion ditches, or other adequate structures needed to minimize channelization and erosion from surface runoff. Surface water diversions and final reclamation drainage channels must meet the requirements of ARSD 74:29:07:09.

Plans and Specifications - General

1. Powertech shall submit detailed plans and specifications for the following facilities prior to the construction of each respective facility:
 - a. Diversion ditches and culverts;
 - b. Land application systems, berms and catchment basins; and
 - c. Major sedimentation and erosion control structures.

Within 30 days of submission, the department shall approve, disapprove, conditionally approve, or request additional information necessary to approve the plans and specifications. The department will not unreasonably withhold its final approval of the plans and specifications if they reflect the technical parameters specified in the permit. If disapproved, the department shall identify those items necessary for approval. If plans and specifications are disapproved or a request for additional information is made, the department shall have 30 days after receipt of Powertech's response to approve, conditionally approve, or disapprove the plans and specifications.

2. Conditions placed on plans and specifications approvals by the department shall be considered permit conditions. Conditions placed on plans and specifications will not alter the conceptual design of the facility as permitted. Powertech may request a hearing before the board to contest any conditions placed on plans and specifications approvals.
3. If the department requires, Powertech shall submit to the department as-built drawings (record drawings) complete with technical specifications for facilities required to have plans and specifications submitted. Powertech shall submit the required drawings within 60 days of completion of each component of the facility.

Construction Quality Assurance (CQA)

1. As part of a detailed plans and specifications document, if the department requires, Powertech shall submit a CQA plan for construction to include diversion ditches, culverts, land application berms, catchment basins, major sedimentation and erosion control structures, and any associated lining systems. If required, the CQA plan shall be submitted to the department for review and approval.
2. Conditions placed on CQA methods, monitoring, testing, sampling, and documenting, shall be considered permit conditions. Powertech may request a hearing before the board to contest any conditions placed on CQA plan approvals.

Pond Leakage Response

1. Powertech shall notify the department of all pond leaks that are also reported to the NRC (reportable leak as defined by NRC). For leakage reporting to the pond leak detection system, Powertech shall give notice to the department via email or telephone within 48 hours after detection of reportable leakage. For leakage through the pond lining system and into the environment, Powertech shall report to the department immediately after detection.
2. For pond leakage into the environment, Powertech shall implement response actions as necessary to mitigate releases and cleanup contamination to state standards.

Air Quality

1. Powertech shall comply with all requirements under the Clean Air Act.
2. Powertech shall effectively control fugitive dust emissions during all phases of construction and operation. Powertech shall follow the applicable control measures or other techniques and measures that are equally effective as identified in the Natural Events Action Plan (NEAP) approved August 4, 2005 (information on the NEAP is available from the department's Air Quality Program).

Complaints

1. Powertech shall notify the department within five working days of written complaints concerning the operation. Powertech shall submit to the department a copy of any reports or mitigation plans regarding the complaints. The department, on finding that a complaint is based in fact and represents a permit violation or hazardous situation, will require Powertech to develop a mitigation plan to correct the violation or the hazard. The completion date for the mitigation plan will be set at the time of the department's request.

Wildlife Protection

1. Powertech shall install protective structures and make every effort to contain solutions and chemicals, and keep areas harmful to wildlife in a condition where access by wildlife is minimized. This includes, but is not limited to, process and retention ponds, process solution delivery systems, and process buildings. Process solution and retention pond design shall include wildlife protection features such as the following:
 - a. Fencing with mesh and height specifications for large and small mammal exclusion;
 - b. Pond design to include avian deterrent systems such as solution covers or hazing systems to prevent bird and bat contact with toxic solutions (if present at concentrations above department-approved trigger values); and
 - c. Provisions or designs facilitating egress should wildlife become entrapped in steep sided ponds.
2. The final version of the avian monitoring and mitigation plan shall be submitted to the department and the Department of Game, Fish, and Parks for approval prior to the commencement of construction activities. The representations contained in the approved plan are general conditions of Permit No. 480 unless modified by a future technical revision, amendment, or permit, or modified by other conditions imposed by the board.
3. Powertech shall promptly notify the Department of Game, Fish and Parks if species or critical habitat of species designated as threatened or endangered on state or federal lists are discovered within the permit area.
4. Powertech shall report wildlife mortalities within 24 hours to the Department of Game, Fish and Parks.
5. Powertech shall secure a South Dakota Scientific Collector's Permit pursuant to ARSD 41:09:16 and SDCL 24-6-32, prior to taking or collecting any wildlife species. Powertech shall obtain any required federal permits, as necessary, prior to taking, possessing, breaking or destroying any nest or the eggs of the kinds of birds, for which the taking or killing is otherwise prohibited.

Biological Assessment and Monitoring

1. Powertech shall implement a response plan to assess impacts to the aquatic system if a discharge, release or spill of process solutions, waste water, or toxic solutions in concentration in excess of ground or surface water quality standards (ARSD 74:54:01 and 74:51:01) impacting aquatic resources occurs. The decision to implement this plan will be mutually agreed upon by the department and the Department of Game, Fish and Parks. This plan shall require Powertech to mobilize, as soon as practicable, a qualified person to complete a quantified assessment of damages to the stream

ecosystem. A preliminary report of these findings shall be provided to the state within 15 working days of completion of field data collection and a final report shall be provided to the state with 45 working days of receiving the preliminary report.

Spill Contingency Plan

1. All affected land under Permit No. 480 shall be included under Powertech's spill contingency plan. Prior to the commencement of construction activities, Powertech shall submit for department approval a final spill contingency plan covering Permit No. 480.
2. Powertech shall immediately report to the department any reportable discharge or release of regulated substances to the environment in accordance with SDCL 34A-12 and ARSD 74:34:01, or if it could cause a violation of surface or ground water quality standards. Powertech shall report suspected discharges of regulated substances to the department within 24 hours after the suspected release is identified.
3. Cleanup of any discharges or releases shall be initiated immediately and conducted in accordance with applicable state and federal laws, rules and requirements.

Well Fields

1. For any wells constructed, including injection, production and monitoring wells, Powertech shall prepare and file well construction records as required by ARSD 74:02:04:65. The well construction records shall be submitted to the water rights program within one month of well completion.
2. Powertech shall maintain records of well testing results, including those for mechanical integrity testing (MIT), and shall provide the records to the department upon request.
3. For any well abandoned and plugged, Powertech shall prepare and file well plugging records as required by ARSD 74:02:04:71. The plugging records shall be submitted to the water rights program on an annual basis.
4. For corrective actions done on wells that are improperly sealed, completed, or abandoned, Powertech shall submit copies of the corrective action plans. The corrective action plans shall be submitted to the water rights program on an annual basis.

Excursions

1. Powertech shall give notice of an excursion to the department at the same time notice is given to the NRC in accordance with NRC License Condition 11.5. Powertech shall also submit the excursion notification letter required by NRC License Condition 11.5 within seven days after the excursion is confirmed.
2. Powertech must restore ground water from any excursions outside the aquifer exemption boundary to either ambient conditions or South Dakota Ground Water Quality Standards (ARSD 74:54:01) as applicable.

The department may take regulatory action against Powertech for any excursion outside the aquifer exemption boundary that violates South Dakota Ground Water Quality Standards.

Groundwater Restoration

1. The department's Ground Water Quality Standards in ARSD 74:54:01 apply to all ground water in the state with total dissolved solids concentrations less than 10,000 mg/L, except within EPA's approved aquifer exemption area. Outside of EPA's approved aquifer exemption area, Powertech's mining operation shall not cause ground water to violate the Ground Water Quality Standards. Inside EPA's approved aquifer exemption area, Powertech shall comply with all NRC ground water restoration requirements.

Land Application

1. Powertech shall submit for approval final plans and specifications and an operating and maintenance plan for the land application catchment basins prior to the commencement of land application.
2. Prior to the commencement of land application activities, Powertech shall submit its Standard Operating Procedures (SOP) for the operation of the land application system to the department for approval.
3. The application rate at the land application sites shall be controlled to prevent any surface runoff of the effluent. Powertech must ensure the application rate does not cause water to accumulate in the catchment areas or pond in the land application areas during normal operations to prevent impacts to wildlife.
4. Powertech shall develop a comprehensive sampling plan for soils and vegetation within the land application area for the department and Department of Game, Fish, and Parks approval prior to the commencement of land application operations. The plan shall address soil and vegetative sampling prior to and upon completion of land application within the catchment areas and pivot points and include a map showing

soil and vegetation sample locations. The plan shall also address the potential for metals bioaccumulation in vegetation from land applied solutions, including the following:

- a. Characterizing solutions to determine monitoring parameters;
- b. Environmental pathway and receptor analysis;
- c. Baseline and reference metal concentrations in the terrestrial food chain;
- d. Species monitoring strategies;
- e. Reporting schedules; and
- f. Data and method validation.

As part of the plan, Powertech shall collect baseline data on the soils and vegetation within the land application areas at least 60 days prior to the commencement of land application activities. Based on the baseline data, Powertech shall develop and submit for the department and Department of Game, Fish, and Parks approval trigger values for metals and metalloids in soils and vegetation. If a trigger value for a parameter is exceeded it will initiate a response action for mitigative and contingency measures.

5. Regarding condition no. 4 above, Powertech shall sample soils for the following parameters: calcium, magnesium, potassium, sodium, sulfate, SAR, arsenic, copper, lead, molybdenum, selenium, uranium, vanadium, and zinc. The department reserves the right to modify the soil sampling parameters if soil sampling results indicate a modification is warranted.

Maintenance and Retention of Records

1. Powertech shall retain records of all monitoring information at the mine site for the following:
 - a. Laboratory analyses, including a description of or reference for the procedures and methods used for sample collection, preservation, and quality control and the name, address, telephone number, and laboratory identification number of the laboratory performing the analyses;
 - b. Calibration and maintenance records and all original records of continuous monitoring instrumentation, and copies of all reports required by the permit;
 - c. The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures; and
 - d. Information requested by the department for inclusion in the annual report.

Records shall be retained for a period of at least three years from the date of the sample, measurement, or report. This period may be extended by request of the department at any time. The department may require Powertech to submit the records to the department at any time during the retention period.

Submittal of NRC and EPA Reports and Documents

1. Powertech shall submit to the department, for information purposes only, the following information, reports or documents required by NRC or EPA for the Dewey-Burdock Project:
 - a. Supplemental information regarding well fields B-WF-6, B-WF-7 and B-WF-8 in the Darrow Mine area, including hydrologic test packages, concerning the development of these well fields;
 - b. All surface water and ground water sampling data provided to the NRC or EPA at the same time they are provided to the NRC or EPA;
 - c. Water quality data from the four quarterly samples required by NRC under NRC License Condition 12.10 for each well within 2 km (1.25 miles) of the boundary of each wellfield as measured from the perimeter monitoring well ring. This data shall be submitted at the same time it is submitted to the NRC;
 - d. Plans and specifications, including as-built or record drawings, for the following facilities:
 - i. Central processing plant;
 - ii. Satellite plant;
 - iii. Process and retention ponds;
 - iv. Well fields and header houses;
 - v. Uranium byproduct material handling and disposal systems;
 - vi. Modification to facilities, including:
 - a) Pond water storage capacity and pond configuration;
 - b) Conversion of waste water or storm water ponds to process ponds;
 - c) Recovery processes within the processing facilities, including the recovery of vanadium; and
 - d) Relocation of processing facilities;
 - e. Plans for response actions to leakage detected in pond liner systems;
 - f. Modifications to the mine plan;
 - g. Modifications to well field configuration within the permitted affected areas;
 - h. Modification to mine design and disturbance areas to include contiguous areas of potential ore;
 - i. Modification to the size of area to be worked at any one time;
 - j. Well field hydrogeologic data and injection authorization data packages for each well field;
 - k. The semiannual report required by NRC under Materials License Condition 11.1 B, which discusses the status of the well fields in operation. The report progress of wellfields in restoration and restoration progress, status of any long-term excursions, and a summary of MITs conducted during the reporting period;
 - l. The groundwater quality data required by NRC under Materials License Condition 11.3. This data includes the background groundwater quality for the ore zone, overlying aquifers, underlying aquifers, alluvial aquifer, and perimeter monitoring areas;

- m. Reports regarding groundwater restoration provided to the NRC or EPA. This includes, but is not limited to, the following reports:
 - i. Notification when mining of a well field or production area is completed and groundwater restoration has begun;
 - ii. Target restoration values for the well field;
 - iii. Restoration sampling;
 - iv. Restoration progress reports;
 - v. Any plans to modify groundwater restoration methods or schedules;
 - vi. Notification when restoration values are achieved; and
 - vii. Amendment of target restoration values or application for alternate concentration limits;
- n. Any reports regarding excursions provided to the NRC or EPA, including, but not limited to, the following reports:
 - i. Quarterly reports required by NRC under Materials License Condition 11.1 A that include a summary of excursion parameter concentrations, wells placed on or removed from excursion status, corrective actions taken, and the results for all wells that were on excursion status during the quarter;
 - ii. The initial report of the excursion, including monitoring data or other information that indicates any contaminant may cause adverse impacts to an unauthorized zone;
 - iii. A report describing the excursion and its cause;
 - iv. Verifying analyses taken from the affected well and the monitoring wells adjacent to the affected well;
 - v. Other results from excursion-related monitoring;
 - vi. Remedial action plan and schedule for mitigating the excursion, including steps taken or planned to reduce, and eliminate the excursion;
 - vii. A ground water analysis report;
 - viii. Follow-up progress reports, including the quarterly and semi-annual reports required by the NRC under NRC License Condition 11.1; and
 - ix. Amended remedial actions plans for excursions;
- o. Radiation surveys provided to the NRC, including, but not limited to, the following reports:
 - i. Radiation survey plans of surface facilities; and
 - ii. Radiation survey results;
- p. The Safety and Environmental Review Panel (SERP) annual report;
- q. Any plans to modify the chemicals added to the lixiviant to include alternative oxidizing agents such as hydrogen peroxide and alternate complexing agents such as sodium bicarbonate;
- r. Reports to EPA regarding the amount of waste water disposed via Class V UIC wells; and
- s. Bonding or financial assurance related correspondence submitted to NRC and EPA, copies of NRC's and EPA's financial assurance review, and the final approved financial assurance arrangements with NRC and EPA.

Reclamation

1. Available topsoil or other material suitable for use as a plant growing medium shall be removed for road, land application system, diversion and erosion control construction, and stockpiled for use in reclamation. Topsoil stockpiles shall be clearly labeled and shall be stabilized to prevent wind and water erosion. Berms and/or other sediment and erosion control structures shall be installed on and around topsoil stockpiles to minimize erosional loss of soil resources.
2. Powertech shall submit updated topsoil salvage estimates, updated topsoil stockpile locations, and topsoil estimates for upgraded and new access roads prior to the commencement of construction activities.
3. Until final closure and bond release, Powertech shall maintain sufficient access to reclaimed areas to allow for any necessary reclamation maintenance. Roads not necessary for future use shall be reclaimed after the successful reclamation of all affected areas.
4. Pursuant to ARSD 74:29:08, Powertech shall conduct concurrent and interim reclamation on all areas where mining or land disturbance is completed.
5. Powertech shall submit to the department and the Fall River and Custer County District Conservationists any required test plot or similar data on the performance of the approved seed mix on reclaimed areas. Information on forage production must also be submitted with this data.
6. As one of the measures of revegetation success in reclaimed areas, vegetative cover in the reclaimed areas shall be equivalent to the vegetative cover in the reference areas as determined through statistical methods approved by the department.
7. Powertech shall submit a copy of the revised decommissioning, decontamination, and reclamation plan required under NRC License Condition 12.23 at the same time it is submitted to the NRC. If there are any changes to the reclamation plan as outlined in the mine permit application, Powertech shall submit a technical revision covering those changes. If there will be a change in the overall postmine land use, a new mine permit application is required.

Reclamation Bond (under SDCL 45-6B)

1. Pursuant to SDCL 45-6B-21, Powertech shall submit a reclamation bond or surety (hereinafter bond) in the amount of three hundred ninety-five thousand dollars (\$395,000.00) to cover the first year of construction in areas where the board has jurisdiction. Pursuant to SDCL 45-6B-27, the bond will be reassessed on a yearly basis to account for any planned land disturbance for the coming year. Issuance of the permit is contingent on the department's receipt of the first installment of the bond.

At the time of this recommendation, it is the intention of the department to enter into a Memorandum of Understanding (MOU) with the NRC regarding bonding for the entire mine site, subject to approval by the board. Conceptually, the MOU will specify that the NRC will hold the state's portion of the bond and that the parties to the agreement jointly manage the bond in terms of adjusting it as site conditions change through the mine life and releasing it as portions of the facility are decommissioned and reclaimed. The department's portion of the bond will cover costs for reclaiming the land application area, access roads, and other surface areas not associated with the central processing plant, satellite plant, process ponds, and well fields. NRC's portion of the bond will include facility decommissioning (central processing plant, satellite plant, process and retention ponds, facilities that store radioactive or byproduct material, and well fields), groundwater restoration, non-Class III and V well plugging, radiological surveys, and environmental monitoring. EPA will have a separate bond covering the plugging and abandonment of all Class III and Class V injection wells.

If the MOU is in place by the time of hearing, issuance of the permit shall be contingent on Powertech submitting the first installment of the bond to NRC.

Postclosure

1. All affected land under Permit No. 480 shall be included in the postclosure plan.
2. Before the start of the postclosure period, Powertech shall submit an updated postclosure plan, to include an updated hydrologic monitoring plan, to the department for approval. The postclosure plan shall be updated to reflect actual site conditions at the time of mine closure, and shall include, in addition to hydrologic monitoring, vegetation monitoring, sediment and erosion control systems, and miscellaneous maintenance and care.

The department reserves the right to modify postclosure monitoring plans, schedules and parameters if monitoring results indicate a modification is warranted.

3. The postclosure period shall begin at the time the first well field has achieved ground water restoration and is released by the NRC. As each subsequent well field is restored and as other elements of the facility are decommissioned and reclaimed, they will enter into the postclosure period. The postclosure period shall last for a period not to extend beyond 30 years after the last well field has achieved ground water restoration and other elements of the facility are decommissioned and reclaimed, unless the board determines that a longer or shorter period is necessary for compliance with all applicable performance standards or design and operating criteria.
4. Powertech's liability for the affected mine area shall continue until certification of the completion of the postclosure care plan is approved by the board.
5. Powertech grants to the board or its representatives permission to enter the reclaimed area to monitor reclamation success and to take air, water, and biological samples

during the postclosure period. The department shall give Powertech the opportunity to accompany any inspector from the department or other agent of the board during the postclosure period.

Postclosure Bond

1. In accordance with SDCL 45-6B-91, Powertech shall submit a postclosure bond to cover postclosure care and maintenance costs. The postclosure bond shall be submitted in increments as the NRC releases well fields that have achieved ground water restoration and as other elements of the facility are decommissioned and reclaimed. The postclosure bond will be used by the state to carry out the post closure plan if Powertech fails to perform required postclosure care. The postclosure bond amount will be calculated as each well field or other element of the facility is released by NRC and will be adjusted for inflation and site conditions on an annual basis.
2. The postclosure bond shall be held for a period of 30 years after reclamation bond release to ensure that all established reclamation and performance standards are met and that the affected land is stable and free of hazards, vegetation is self-regenerating, impacts to the hydrology and other natural resources have been minimized, and the site is maintenance free to the extent practicable. If the board finds that an extension of the postclosure period is necessary, the postclosure bond, or portion necessary to ensure continued compliance, shall be held for the extended period. If the board reduces the length of the postclosure care period, the postclosure bond shall be held until the end of the reduced period. Until the board finds that the site meets all applicable performance standards, the postclosure bond shall include funds to carry out required monitoring and maintenance work, and funds for contingencies. Funds left at the end of the postclosure period will be released to Powertech.

When Powertech believes it is in full and continuing compliance with applicable performance standards, it may petition the board for release or reduction of the postclosure bond by submitting certification that postclosure care is complete.

3. The department and the board reserve the right to increase or reduce the amount of postclosure bond based on site performance factors including site stability, presence of hazards, revegetation success, hydrologic impacts, the need for long-term surface or ground water treatment, and releases of substances that adversely impact natural resources.

Technical Revisions

The board, pursuant to ARSD 74:29:03:16, hereby authorizes the department to approve proposed technical revisions to Powertech (USA) Inc.'s Dewey-Burdock Project mining permit for:

1. Modifying monitoring plans, locations, parameters, and time frames for subject matter areas not regulated by the NRC or EPA;
2. Modifying monitoring analytical methods, limits of detection and reporting requirements for subject matter areas not regulated by the NRC or EPA;
3. Modifying compliance limits or trigger values for chemical parameters for subject matter areas not regulated by the NRC or EPA;
4. Modifying plans and specifications for permitted facilities not regulated by the NRC or EPA;
5. Submitting and modifying quality control and quality assurance plans for facilities not regulated by the NRC or EPA;
6. Adding contiguous, affected land within the permit boundary with the total of such additions not to exceed twenty (20) percent of the permitted affected land area of 2,528 acres for this permit if deep disposal wells are used without land application to dispose treated wastewater or 3,793 acres for this permit if land application is used. The maximum amount of expansion allowed without land application (20% of 2,528 acres) is 505.6 acres, and the maximum amount of expansion allowed with land application (20% of 3,793 acres) is 758.6 acres;
7. Modifying or relocating diversions or erosion, sedimentation, or drainage control structures;
8. Modifying or relocating ancillary facilities within the permit boundary, including equipment storage areas, parking lots, office buildings, septic systems, perimeter fencing, utilities (phone lines, natural gas lines, power lines, water lines), sediment ponds, and stockpiles;
9. Relocating chemical or petroleum storage areas;
10. Modifying or relocating roads within the permit boundary;
11. Modifying or relocating utilities within the permit boundary;
12. Modifying topsoil stripping plans and relocating topsoil and spoil stockpiles;
13. Modifying the size of area to be worked at any one time;
14. Modifying dust control measures;
15. Modifying operating time tables for proposed operations;
16. Modifying the recovery process to include the potential recovery of vanadium;
17. Changing, modifying, developing, enhancing, or increasing water treatment technology, water treatment regimens and mineral processing technologies;
18. Modifying water usage and sources as allowed by water rights permits;
19. Modifying the size and configuration of the land application areas, including catchment areas, in conjunction with any changes to the ground water discharge plan;
20. Modifying the reclamation plan within the constraints of ARSD 74:29:03;
21. Modifying the reclamation time tables for proposed reclamation and decommissioning;
22. Implementing new and improved reclamation techniques as they are developed;
23. Modifying seeding mixtures or rates;
24. Using irrigation, fertilizer or nurse crops in reclamation;
25. Modifying reclamation or vegetation performance standards;
26. Relocating, adding or removing reference areas used to establish revegetation success;

27. Modifying stocking guidelines and reclamation success standards to reflect climatic conditions;
28. Modifying reclamation monitoring techniques;
29. Modifying livestock carrying capacities;
30. Modifying designated crop types for areas designated with the postmining land use of agricultural or horticultural cropland;
31. Modifying reporting procedures and parameters as allowed within the mining laws and mine permit; and
32. Modifying postclosure plans and monitoring time frames.

Technical revisions must comply with ARSD 74:29:03:03 and must be submitted to the department in writing. The department shall approve, disapprove, conditionally approve, or request additional information deemed necessary to approve technical revisions within thirty days of receipt.



POWERTECH (USA) INC.

RECEIVED
SEP 13 2013
MINERALS & MINING PROGRAM

John Mays
Vice President – Engineering

January 31, 2013

Department of Environment and Natural Resources
PMB 2020
Joe Foss Building
523 East Capital
Pierre, South Dakota 57501-3182

ATTN: Mike Cepak, Engineering Manager 1, Mining and Minerals Program

Re: Request for Time Extension – Powertech Dewey-Burdock Project Large Scale Mine Permit Application

Dear Mr. Cepak:

I am filling in for Mr. Blubaugh as he is temporarily out on leave due to a death in the family.

The letter is in response to your letter dated January 16, 2013.

Powertech concurs with your request for a time extension not to exceed 45 days as referenced by SDCL 45-6B-20.

Sincerely,

John Mays
Vice President – Engineering

cc: R.F. Clement
M. Hollenbeck
R. Blubaugh
Max Main



POWERTECH (USA) INC.

5575 DTC Parkway, Ste. 140
Greenwood Village, CO 80111

Telephone: 303-790-7528
Facsimile: 303-790-3885

Website: www.powertechuranium.com
E-mail: info@powertechuranium.com

Attachment
E

RECEIVED
SEP 13 2013
MINERALS MINING PROGRAM

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF POWERTECH)	
(USA), INC. APPLICATION FOR)	
LARGE SCALE MINING PERMIT)	CERTIFICATE OF SERVICE
PERMIT NO. 480)	
(Dewey-Burdock Project))	
)	

The undersigned hereby certifies that true and correct copies of the Mineral and Mining Program's Response to Wild Horse Sanctuary's Motion to Continue in the above entitled matter were served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail, at Pierre, South Dakota, on this 12th day of September, 2013:

MICHAEL M HICKEY
WILD HORSE SANCTUARY
BANGS, MCCULLEN LAW FIRM
PO BOX 2670
RAPID CITY SD 57709-2670

SUSAN W WATT
PO BOX 790
HOT SPRINGS SD 57747-0790

DAYTON O HYDE
PO BOX 932
HOT SPRINGS SD 57747-0932

MAX MAIN
BENNETT, MAIN & GUBBRUD, P.C.
618 STATE STREET
BELLE FOURCHE SD 57717

MIKE CEPAK
MINERALS AND MINING PROGRAM
FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE SD 57501

JILLIAN ANAWATY
2804 WILLOW AVE
RAPID CITY SD 57701-7240

JERRI BAKER
705 N RIVER ST
HOT SPRINGS SD 57747-1412

CINDY BRUNSON
11122 FORT IGLOO RD
EDGEMONT SD 57735-7346

BRUCE ELLISON
CLEAN WATER ALLIANCE
PO BOX 2508
RAPID CITY SD 57709-2508

MARY GOULET
338 S 5TH ST
HOT SPRINGS SD 57747-2302

KAREN ELLISON
8265 DARK CANYON RD
RAPID CITY SD 57702-4769

GARDNER GRAY
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PRINGLE SD 57773-0153

EDWARD F HARVEY
1545 ALBANY AVE
HOT SPRINGS SD 57747-2216

GARY HECKENLAIBLE
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RAPID CITY SD 57709-0422

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EDGEMONT SD 57735-7322

LILIAS JARDING
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RAPID CITY SD 57709-0591

MARVIN KAMMERER
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RAPID CITY SD 57701-8408

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RAPID CITY SD 57701-0947

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RAPID CITY SD 57702-7088

ROBERT LEE
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RAPID CITY SD 57701-4766

ROGER ROWE
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RAPID CITY SD 57701-4766

RICK V SUMMERVILLE
6509 SEMINOLE LN
RAPID CITY SD 57702-7088

DOUGLAS C UPTAIN
3213 W MAIN #112
RAPID CITY SD 57702-2314

ATTN:DORIS ANN MERTZ
CUSTER COUNTY LIBRARY
447 CROOKS STREET, SUITE 4
CUSTER, SD 57730

ATTN: ASHLEY CORTNEY
EDGEMONT PUBLIC LIBRARY
P.O. A / 412ND
EDGEMONT, SD 57735

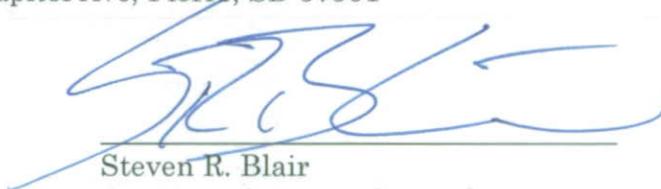
ATTN: CINDY MESSENGER
HOT SPRINGS PUBLIC LIBRARY
2005 LIBRARY DR.
HOT SPRINGS, SD 57747

ATTN: GOVERNMENT DOCUMENTS
RAPID CITY PUBLIC LIBRARY
610 QUINCY ST.
RAPID CITY, SD 57701

ATTN: MICHELLE MAY
WOKSAPE TIPI
OGLALA LAKOTA COLLEGE
P.O. BOX 310
KYLE, SD 57752

And the original of the same was filed on the same date with Michael Cepak,

Joe Foss Building, 523 E. Capitol Ave, Pierre, SD 57501



Steven R. Blair
Assistant Attorney General
Mickelson Criminal Justice Center
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Pierre, South Dakota 57501
Telephone: (605) 773-3215