

## Defenders of the Black Hills

P. O. Box 2003, Rapid City, SD 57709 Phone: (605) 399 -1868

March 6, 2009

Hearing Chairman Lee M. McCahren  
Board of Minerals and Environment  
Department of Environment and Natural Resources  
523 East Capitol Avenue  
Pierre, SD 57501-3182

RECEIVED  
MAR 10 2009  
Division of Financial  
& Technical Assistance

Re: Request to restart the Process on the Special, Exceptional, Critical, or Unique Lands Determination and Notice of Intent to Operate submitted by Powertech (USA) Inc.

Dear Mr. McCahren:

The process to make a decision on the Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate, dated Aug. 20, 2008, and submitted by Powertech (USA) Inc must begin anew. A change in material fact was given by Powertech during the Feb. 19, 2009, Hearing that was conducted in Pierre, SD, before the Board of Minerals and Environment.

In its Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate, dated Aug. 20, 2008, Powertech (USA) Inc. stated in Section 4.2 Historic, and reiterated in Sections 4.3 Archaeological, 4.6 Ethnologic, and 4.8 Cultural, the following according to the Level III Cultural Resources Evaluation that was conducted by the Archaeology Laboratory, Augustana College, Sioux Falls, SD, on behalf of Powertech:

“...the sheer volume of sites documented in the area is noteworthy. The land evaluated as part of the Level III cultural resources evaluation has an average site density of approximately 1 site per 8.1 acres...”

This same application also states:

“I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.”

This statement was signed by Mark Hollenbeck, Project Manager

It was from the information that was given by Powertech (USA) Inc., to the Department of Environment and Natural Resources, and attested to by Mark Hollenbeck, that we and others gathered our facts, expert opinions, and submitted nominations to request that this land area must be listed as Special, Exceptional, Critical, or Unique under South Dakota law.

However, during the Hearing held before the Board of Minerals and Environment on Feb. 19, 2009, Mr. Max Main, on page 104 of the Hearing transcript, states:

“...the density of one site per 8.1 acres was an error in the summary submitted by Powertech.”

Mr. Main did not provide any documentation or evidence to support his remark which is in opposition to their own expert's statement provided by Archaeology Laboratories, Augustana College, Sioux Falls, SD, and contrary to the information that was provided to DENR, the Board, the other agencies, and the public. It also raises the question of what other information from their experts that was provided in Powertech's summary was also in error.

This 'error' is a change in a material fact on the Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate, dated Aug. 20, 2008, and submitted by Powertech (USA) Inc. and has a direct effect on Sections 4.2, 4.3, 4.6, and 4.8. It further changes the application submitted by Powertech and makes it incomplete.

The Board, all of the other state agencies involved, and the public must be given the opportunity to review and study the correct information that relates to the Sections previously mentioned. We are certain that the Board of Minerals and Environment would make every effort to grant the agencies involved and the public the opportunity to peruse any new information or evidence.

Therefore, Defenders of the Black Hills, and I as an individual, state that the Request for Determination of Special, Exceptional, Critical, or Unique Lands and Notice of Intent to Operate, dated Aug. 20, 2008, and submitted by Powertech (USA) Inc. is incorrect and incomplete. The correct information regarding Sections 4.2, 4.3, 4.6, and 4.8, with substantiating evidence or documentation must be made available for our review and study. In addition, this would require that a new notice must be sent to the agencies involved and the general public with the new information, and a new hearing must be scheduled.

Thank you.

Sincerely,



Charmaine White Face, Coordinator  
and as an individual

Sent via email to certain parties and the US Postal Service to all parties

cc: Custer County Register of Deeds  
Fall River County Register of Deeds  
SD State Historical Society  
Department of Game, Fish, and Parks  
Department of Agriculture  
Archaeology Laboratory, Augustana College

Roxanne Giedd, Asst. Attorney General  
Bruce H. Ellison  
Max Main for Powertech (USA) Inc.  
Archaeological Research Center  
Department of Tourism