

State of South Dakota  
Before The Water Management Board

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WATER RIGHTS  
PROGRAM

In the Matter of Water Permit  
Application Nos.  
2685-2 and 2686, Powertech  
(USA) Inc.,  
By Powertech (USA), Inc.

Brenda Gamache Response  
and correction of law and  
adding Ground Water Discharge  
Plan Application Submitted  
By Powertech (USA), Inc.  
September 11, 2013

In the Matter of the 2012  
Groundwater Discharge  
Plan Application Submitted  
By Powertech (USA), Inc.

To The Water Management Board,

I would like to correct my motion and again request to The Water Management Board, that the exhibits I am entering with this motion, support the fact that by law The Water Management Board does have the power to protect the surface waters of South Dakota, and in this motion would ask The Water Management Board to make the Surface Water Quality Program be part of the hearing without being subpoenaed, but for all petitioners to have the right in this hearing to have questions answered by all DENR programs that were involved in the recommendations, for the 2012 Discharge Plan Application Submitted by Powertech (USA), Inc. and Water Permit Application Nos. 2685-2 and 2686.

Exhibit 1) Law 46-2A-20

Exhibit 2) DENR WR and GWQ Response to Gamache Motion Dated August 23,2013

Page 6 . (5)

Exhibit 3) DENR Ground Water Quality Program Disclosure Of Expert Report

Page Attachment A : d and #4,and #12

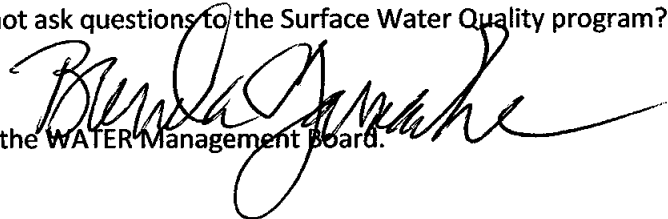
Exhibit 4) Brenda Gamache's response only given from WR Program, no response was given from GWQ Program Answer to question (9) States that the question would be answered thru other programs.

Exhibit 5) Surface Water Quality (what we do)

How can The Water Management Board be able to make a decision on the behalf of the Public Interest and Beneficial Use of our water, if they cannot ask questions to the Surface Water Quality program?

I respectfully ask this motion be granted by the WATER Management Board.

Brenda Gamanche



46-2A-20. Term limitation on water withdrawal from Madison formation in certain counties. Notwithstanding §§ 46-1-14 and 46-2A-7, no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the Water Management Board determines, based upon the evidence presented at a hearing that:

(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and

(2) The information, whether provided by the applicant or by other means, shows that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs.

**Source:** SL 1992, ch 315, § 1.

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At this late date, however, after the close of the discovery completion date, even this procedure must be rejected due to the untimeliness of the request. Discovery was to have been completed by now so that the Parties could prepare for hearing, and forcing continued discovery will prejudice WR and GWQ by interfering with that preparation.

5. Gamache’s Motion is not likely to result in the discovery of relevant evidence.

The Surface Water Quality Program was not involved in reviewing or processing either of these applications, with were analyzed and processed by employees in the WR or GWQ Programs. Therefore, the extent of any relevant evidence it would have would be limited to surface water quality sampling in the area.

This information on sampling sites is public record and Ms. Gamache has already obtained it. More specifically, on August 15, 2013, Gamache filed “Claimant’s Interrogatories and request for Production of Documents to Plaintiff” with WR.<sup>1</sup> WR responded to this discovery request under separate filing. Although it objected to the requests for the reasons listed above, WR did disclose the names and titles of surface water quality officials, the website for the surface water sampling network for South Dakota surface water sampling data, a map of sampling sites, and instructions on how to obtain the surface water quality data. The WR response was mailed to Ms. Gamache on August

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<sup>1</sup>This discovery request was not served on any party and was not served on the Surface Water Quality Program.

Herald-Tribune, Hot Springs Star, Lakota Country Times, and Rapid City Journal), which included newspapers located within one or both of the two affected counties (Custer and Fall River Counties) per ARSD 74:54:02:08; and on the DENR website.

- d. -DENR recommends conditional approval of the application as set out in GWQ AR Exh. 137, incorporated herein as if fully set out, which contains the Plan, associated permits, and conditions to the Plan. The conditions being proposed were developed by myself and other staff in the Ground Water Quality Program, with additional input from staff in the Minerals and Mining and Surface Water Quality Programs; comments from Powertech on draft conditions were received and some changes were made as a result.
  1. Condition 1 is a standard condition incorporated into all ground water discharge plans. The intent of the condition is to require that the proposed activities stated in the plan application, including, but not necessarily limited to monitoring, discharge minimization measures and contingency plans, become requirements of the plan without restating the application in the conditions. Similarly, any future technical revision or amendments shall be treated as if they are a condition of the plan.
  2. Condition 2 prevents land application from occurring prior to the issuance of other permits required for the operation. Additionally, condition 3 is related to condition 2, as the discharge criteria for land application stipulated under condition 3 are directly related to the disposal capacity of an Environmental Protection Agency (EPA) issued Class V underground injection control (UIC) permit.
  3. Condition 3 was added as the land application system is a backup to the primary disposal means via Class V UIC wells. The plan application states in Section 1.0, that "The first and preferred alternative is treatment followed by injection in Class V wells completed in the Minnelusa or Deadwood Formations" and "In the event that the Class V UIC permit is not approved or insufficient disposal capacity is available, Powertech (USA) proposes to treat the liquid waste and dispose it in land application systems permitted under a Groundwater Discharge Plan through the South Dakota Department of Environment and Natural Resources (DENR)".
  4. Condition 4 was added after consulting with staff from the Surface Water Quality Program, as Surface Water Quality Program has previously permitted land application systems at wastewater collection and treatment facilities under surface water discharge permits. This condition comes from standard wording used in these surface water discharge permits and ultimately comes from the DENR publication: *Recommended Design Criteria Manual for Wastewater Collection and Treatment Facilities*.
  5. Condition 5 establishes that accidental and non-regulated releases are not permitted under the plan. The plan is regulating only land application of treated wastewater that would occur during normal operations at the site. The intent of this condition is to clarify that accidental releases or intentional dumping are not approved under ARSD 74:54:02:03, are not automatic or preapproved with the issuance of this plan, and must be cleaned up or remediated as required under South Dakota codified law (SDCL) 34A-2-48. The application of fertilizer

statistical calculation, and also provide indications of seasonal variations in the natural ground water.

8. Condition 8 is a standard requirement of the water quality variance permit under ARSD 74:54:02:11, facility construction permit under ARSD 74:54:02:13 and periodic submission of monitoring reports under ARSD 74:54:02:20.
9. Condition 9 was added to further protect ground water. Footnote 1 was included because the radium standard under ARSD 74:54:01:04 is for combined radium 226 and 228, whereas effluent limits stated under 10 CFR 20, Appendix B, Table 2, Column 2 are separate for the radium 226 and 228 isotopes. Footnote 2 was included because the unit of compliance for uranium under ARSD 74:54:01:04 is mass per volume (mg/L), and the unit of compliance under 10 CFR 20, Appendix B, Table 2, Column 2 is radioactivity per volume of (pCi/L). While DENR is aware of conversion formulas between mg/L and pCi/L, DENR research yielded differing conversion formulas; therefore, both compliance units are listed. Footnote 3 was included based on a review of beta particles (man-made) under ARSD 74:54:01:04, which states a standard of 4 mrem/yr. This standard was adopted, based on EPA's Drinking Water Standards. However, unlike most standards, the mrem/yr is a dosage rate rather than volumetric concentration; which could be difficult to quantify in water that is non-potable. Therefore an alternate method for determining beta particle compliance was investigated. This footnote was developed based on guidance from 40 CFR 141.26, which governs monitoring and compliance for radionuclides in community drinking water systems, and EPA publications: *Implementation Guidance for Radionuclides*; and *EPA 816-F-00-002* (March 2002), Appendix I.
10. Condition 10 was added to expand upon the soil monitoring plan outlined in Section 6.4 of the plan application, by specifying the time of year to collect the soil samples. The schedule was set for the fall in order to gauge the soil loading at, or near the end of each growing season, and during the months of more average seasonal precipitation according to Table 3.1-5 of the plan application.
11. Condition 11 is a standard condition incorporated into all ground water discharge plans. The intent for this condition is to account for potential unknowns or unanticipated changes that may arise after the plan is issued, and to correct these issues should they occur. This condition is intended to work similar to ARSD 74:54:02:22, with the intent to correct any issues prior to, and prevent a plan violation, rather than after a violation has occurred.
12. Condition 12 was added to strengthen the surface water monitoring plan outlined in Section 6.2 of the plan application. After consulting with Surface Water Quality Program staff, additional parameters were added to those listed on Table 6.2-2 in the plan application, based on those parameters on Table 5.8-2 that are estimated to be above the numeric ground water standards (ARSD 74:54:01:04) in the land application effluent.
13. Condition 13 is a modification of a standard condition incorporated into all ground water discharge plans at mine sites. The intent of this condition is to determine effluent quality prior to initiation of land application and to allow for

Answer: See the answer to Interrogatory 4 for water sampling data.

**8. Has SWQ done any tests of the Angostura Reservoir or the Cheyenne entering into the Reservoir for Radiation or Radium concentrations? (Please provide me a copy).**

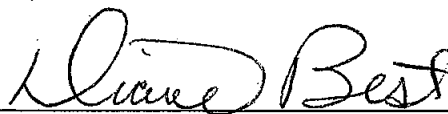
Answer: See the answer to Interrogatory 4 for water sampling data.

**9. Pass Creek is a contributory to Beaver Creek, which Beaver Creek contributes to Cheyenne River, which contributes to Angostura. What are the recommendations of SWQ if a flood would occur in the area of the proposed project site, since Pass Creek and Beaver Creek run in the project site, what would SWQ do or suggest needs to be done, to protect these 4 South Dakota surface waters for the use of recreation, irrigation, aquatic life so they would not end up with high amount of radiation, radium and all the chemicals proposed to be on the site from contaminating these waters?**

Answer: Water Rights has no information on these flooding claims. DENR information on this issue, if any, would be in other programs in the DENR. Please note that information on the Groundwater Discharge Permit (to be heard at the same time as the Water Rights Applications) is available on the DENR website and discovery has been provided to all parties regarding that application.

SIGNATURES AS TO OBJECTIONS:

Dated this 23rd day of August, 2013.



Diane Best  
Assistant Attorney General  
317 N. Main Ave.  
Sioux Falls, SD 57104  
Telephone: (605) 367-5880, Ext. 105

## Surface Water Quality Program

**Kelli Buscher  
Administrator**

**Contact Information | Staff  
Directory**

<b>2012 Integrated Report</b>
<b>Manure Management Training</b>
<b>Pesticide General Permit</b>
<b>Hyperion Energy Center - New Water Quality Data</b>
<b>Spearfish FERC 401 Certification</b>
<b>Storm Water Permit Database</b>
<b>Electronic Discharge Monitoring Reporting (Net DMR)</b>

### What we do:

The primary responsibilities of the Surface Water Program are:

- o regulate (permit) and monitor discharges of wastewater;
- o establish surface water quality standards; and
- o conduct routine monitoring of surface water to ensure the state's natural resources are protected.

To find information about a surface water issue, choose a topic from the left border of this page or browse the list in this box:

ADMINISTRATIVE RULES OF SOUTH DAKOTA