

STATE OF SOUTH DAKOTA



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SEP 10 2013

WATER RIGHTS  
PROGRAM

**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**CHARLES D. McGUIGAN**  
CHIEF DEPUTY ATTORNEY GENERAL

September 9, 2013

Eric Gronlund  
Department of Environment  
and Natural Resources  
523 East Capitol Avenue  
Pierre, SD 57501

Re: *In the Matter of Powertech (USA), Inc. Applications,  
Water Management Board*

Dear Eric:

Enclosed is the original of the *Memorandum for Prehearing Chair Hoyt to "B" Participants* and Certificate of Service in the above-referenced matter. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeffrey P. Hallem".

Jeffrey P. Hallem  
Assistant Attorney General

JPH/rar  
Enclosures

cc w/encl: Everett Hoyt, Prehearing Chair  
Parties listed on Certificate of Service  
Rodney Freeman, Hearing Chair

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER )  
PERMIT APPLICATIONS 2685-2 )  
and 2686-2, POWERTECH (USA), )  
INC. )

CERTIFICATE OF SERVICE

IN THE MATTER OF THE 2012 )  
GROUNDWATER DISCHARGE )  
PLAN APPLICATION SUBMITTED )  
BY POWERTECH (USA), INC. )

The undersigned hereby certifies that a true and correct copy of a  
*Memorandum from Prehearing Chair Hoyt to "B" Participants* filed in the above  
entitled matter was 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 9<sup>th</sup> day of September,  
2013:

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DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
PMB 2020  
523 EAST CAPITOL  
PIERRE SOUTH DAKOTA 57501-3182  
www.denr.sd.gov

September 9, 2013

TO: ALL PERSONS WHO HAVE ELECTED OR HAVE BEEN DESIGNATED "B" STATUS

From: Everett Hoyt - Prehearing Chair

RE: *In the Matters of Water Permit Applications and Ground Water Discharge Plan  
Application Submitted by Powertech (USA), Inc.*

Dear "B" Status Party:

You have either elected or been designated to participate in the above hearing as a "B" party. This status allows you to make sworn testimony before the Water Management Board at the beginning of the hearing. Any statement from a "B" party will be given under oath and transcribed by a court reporter. While you are under oath, all "A" parties and the Board will be able to ask you questions about your testimony. The hearing is currently scheduled to begin at 8:30 a.m. Monday, October 7, 2013 at the Ramkota Hotel in Rapid City, South Dakota. The Board intends to begin taking sworn testimony from "B" parties that morning, and continue until all "B" parties desiring to do so have testified. Currently, there are some 200 individuals that have elected or been designated as a "B" party. The Water Management Board is attempting to determine how many "B" parties actually intend to testify.

To assist the Board in determining who will be testifying, please check the appropriate boxes below and return this letter to Eric Gronlund, DENR, 523 East Capitol, Pierre, South Dakota 57501 by September 20, 2013.

1. Do you intend to be present at the hearing?  
 Yes       No
2. Do you intend to make a sworn statement to the Board?  
 Yes       No
3. In minutes, how long do you anticipate your statement will take?  
(15 minute maximum)  
 Five       Ten       Other (number) \_\_\_\_\_

To aid you in making these determinations, attached are some guidelines that the Board intends to use regarding the taking of sworn testimony. If you have any questions, you may contact Jeff Hallem, Assistant Attorney General and Counsel for the Water Management Board at 1302 East Highway 14, Suite 1, Pierre, South Dakota 57501 or by telephone (605) 773-3215.

## Criteria for Taking Sworn Testimony from “B” Parties

1. All individuals desiring to testify will need to sign in at the hearing. The Board intends to take testimony in the order individuals have signed in.
2. Individuals giving sworn testimony may be questioned by the “A” parties and Board members regarding their testimony. Individuals will need to answer each question, unless otherwise instructed by the Board Chairman.
3. The maximum length of time for each individual’s sworn testimony is 15 minutes. The Board Chairman, consistent with the contested case provisions in SDCL 1-26-19, may limit duplicative testimony and testimony that is not relevant to the Applications before the Board.
4. The hearing before the Water Management Board concerns only Applications for two ground water permits and a ground water discharge plan submitted by Powertech (USA), Inc. The Board of Minerals and Environment is the sole State administrative agency that determines whether a mining permit should be issued to Powertech.
5. The criteria for granting a ground water permit, set forth in SDCL 46-2A-9, are:
  - 1) Water must be available for the proposed use;
  - 2) The proposed diversion can be developed without unlawful impairment of existing rights;
  - 3) The use of the water must be a beneficial use; and
  - 4) The use of the water must be in the public interest.
6. Criteria for conditional approval and disapproval of a ground water discharge plan, set forth in ARSD 74:54:02:09 and 74:54:02:10, are:
  - 1) The application for the ground water discharge plan must be procedurally complete;
  - 2) The ambient ground water quality will not be degraded or water quality variance permit can be issued to degrade the ambient water quality to the standards of §§ 74:54:01:04 and 74:54:01:05; and
  - 3) The implementation of the purposed monitoring plan is adequate for compliance monitoring to ensure beneficial uses will not be impaired and there will be no hazard to human health