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MINERALS & MINING PROGRAM

**MARTY J. JACKLEY**  
ATTORNEY GENERAL

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

May 31, 2013

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Bennett, Main & Gubbrud, P.C.  
618 State Street  
Belle Fourche, SD 57717

Rex Haag  
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Charles McGuigan  
Chief Deputy Attorney General  
Mickelson Criminal Justice Center  
1302 E. Hwy. 14, Suite 1  
Pierre, SD 57501

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 signed Procedural and Scheduling Order with attached Election of Participation Form, along with a Certificate of Service. Copies of these documents have been mailed to each individual or group that has petitioned to intervene in this matter or otherwise filed written comments with the Department, as evidenced by the mailing list attached to the Certificate of Service. The originals of these pleadings have been sent to the Department.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Blair for".

Steven R. Blair  
Assistant Attorney General

SRB/jm  
Enclosures

Cc/encl: Rich Williams  
All Interested Parties Noted in Cert. of Service Mailing List

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JUN 03 2013  
MINERALS & MINING PROGRAM

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

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IN THE MATTER OF POWERTECH	)	PROCEDURAL AND SCHEDULING
(USA), INC. APPLICATION FOR	)	ORDER
LARGE SCALE MINING PERMIT	)	
(Dewey-Burdock Project)	)	

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Upon consideration of the Motion for Procedural and Scheduling Order filed by the Department of Environment and Natural Resources, and argument submitted by all parties and interested persons at the prehearing conference held in this matter, and otherwise being fully informed as to matters pertinent thereto, the following Order shall be entered in the above captioned action.

It is ORDERED:

1. All Petitions to Intervene in the mine permit application proceedings that were on file with the Department prior to the prehearing conference are granted.
  
2. All persons who have filed Petitions to Intervene in the above captioned matter shall file with the Department an Election of Participation using the attached form. The Election form must be filed by June 14, 2013. Persons who do not file an Election of Participation Form will be treated as if they have elected to limit their participation to submitting sworn testimony at the beginning of the contested case hearing (Option B). Any Party may change participation status by notifying, in writing, Mike Cepak, DENR Minerals and Mining Program, Foss

Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182, (605) 773-3151, no later than July 15, 2013, of their intent to change participation status. The Party must also serve copies of the notification on Applicant, DENR Counsel, all parties who have elected full participation (Option A), Hearing Chairman Rex Hagg, and Board counsel Charles McGuigan. A service list, including full names and addresses may be obtained from Mr. Cepak.

3. Any party electing full participation in the contested case proceeding (Option A) who is a corporation, partnership, association, or other legal entity (including non-profit organizations) shall be required to be represented by an attorney.

4. All attorneys who will be representing any party at the formal contested case proceeding shall file a Notice of Appearance in this matter. Further, all non-resident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.

5. The following pre-hearing schedule and obligations apply to Applicant, DENR, and all parties who elect Option A:

a.) Discovery requests must be initiated (served upon the applicable party) by July 3, 2013. Discovery shall be limited to the extent that each party is permitted to serve on any other party no more than 50 written interrogatories, including discrete subparts, no more than 50 requests for production of documents, and that no more than 10 depositions may be taken by each party. Relief from these limitations may be granted by the chair upon written request served upon all

parties and good cause shown. The parties shall attempt to informally resolve any discovery dispute. If a discovery dispute cannot be resolved a party may file a motion with the Hearing Chair in the same manner as provided 5(h) below.

b.) Discovery shall be completed no later than September 1, 2013.

c.) Each party shall disclose in writing, no later than August 15, 2013, the names of any expert that party intends to call as a witness at the hearing of this matter. This disclosure must include copies of any *curricula vitae*, along with copies of any expert report the party intends to offer.

d.) Each party shall disclose in writing, no later than September 3, 2013, the name, address, and contact information for any and all witnesses that Party expects to call during the hearing of this matter. This disclosure must include a brief one or two sentence summary of each witness' expected testimony.

e.) Each party shall provide in writing, no later than September 3, 2013, a list identifying all exhibits that party intends to offer into evidence in its case in chief at the hearing and copies of said exhibits. The copies may be provided by electronic means.

f.) All exhibits shall be marked in advance of contested proceedings by each Party. Each party shall contact Mike Cepak, DENR Minerals and Mining Program, (605) 773-3151, to obtain a block of exhibit numbers. Exhibit numbers 1-99 are reserved for the Department, and exhibit numbers 100-599 are reserved for Powertech.

g.) Each party shall provide a sufficient number of copies of exhibits for use at the contested case hearing, including 12 copies for use by the Board, its counsel, and court reporter, and enough additional copies for all Parties participating in the contested proceedings.

h.) All original pleadings and prehearing motions shall be sent by first class mail to Mike Cepak, DENR Minerals and Mining Program, Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota 57501-3182. Parties must also serve copies of all pleadings and motions on all other parties, including the Hearing Chair, Rex Hagg, and Board Counsel, Charles McGuigan. Parties must also send copies of all pleadings and motions to the following public libraries:

Attn: Doris Mertz  
Custer County Library  
447 Crooks Street, Ste. 4  
Custer, SD 57730

Attn: Ashley Cortney  
Edgemont Public Library  
PO Box A / 412 2<sup>nd</sup>  
Edgemont, SD 57735

Attn: Cindy Messenger  
Hot Springs Public Library  
2005 Library Drive  
Hot Springs, SD 57747

Attn: Jason Walker  
Rapid City Public Library  
610 Quincy Street  
Rapid City, SD 57701

Attn: Michelle May  
Woksape Tipi  
Oglala Lakota College  
PO Box 310  
Kyle, SD 57752

A service list shall be mailed to each party by the Department; additional copies of the service list may be obtained from Mr. Cepak.

i.) Copies of all discovery requests, discovery responses, and any items identified in subsections c), d) & e) above, shall be served on all Parties, with

the originals to be filed with the Department. Parties must also send copies of all pleadings and motions to the following public libraries:

Attn: Doris Mertz  
Custer County Library  
447 Crooks Street, Ste. 4  
Custer, SD 57730

Attn: Ashley Cortney  
Edgemont Public Library  
PO Box A / 412 2<sup>nd</sup>  
Edgemont, SD 57735

Attn: Cindy Messenger  
Hot Springs Public Library  
2005 Library Drive  
Hot Springs, SD 57747

Attn: Jason Walker  
Rapid City Public Library  
610 Quincy Street  
Rapid City, SD 57701

Attn: Michelle May  
Woksape Tipi  
Oglala Lakota College  
PO Box 310  
Kyle, SD 57752

Items being served according to this section do not need to be served upon the Hearing Chair or Board's Counsel.

6. For purposes for compliance with SDCL 45-6B-30, the contested case proceedings in this matter are hereby deemed to have commenced with the granting of any written petition to intervene. The proceedings are by operation of this Order continued to allow for orderly discovery until the date set by the Board for the contested case hearing. Applicant, Powertech, Inc. (USA), has waived any objection for any delay in bringing this matter to hearing until September 23, 2013.

7. The contested case hearing before the Board of Minerals and Environment shall commence on September 23, 2013, at a location to be determined by the Board. It is anticipated that the contested case hearing will take at a minimum five days.

8. The contested case hearing will proceed as follows:

a.) The holding of a public meeting to take sworn testimony from those parties that have chosen Option B on the Election of Participation form.

b.) After the completion of public testimony, the formal contested case proceeding will start and any preliminary motions from the parties will be heard.

c.) Full parties (including those who have elected Option A) may make opening statements

d.) The order of presentation of witnesses and evidence for the contested proceedings shall be as follows:

i.) Applicant Powertech (USA) Inc.;

ii.) DENR Minerals and Mining Program;

iii.) other parties electing full participation (Option A) in an order established by the Hearing Chair;

iv.) rebuttal by Powertech and/or DENR;

v.) Board members may ask questions of any witness.

e.) After the record is closed, the full parties (including those that have elected Option A) may offer short closing arguments in the same order as noted above.

f.) At the conclusion of the proceedings, the Board may render a decision and direct the prevailing party to provide Findings of Fact and Conclusions of Law consistent with the decision. Other parties will be given an opportunity to

file proposed Findings and Conclusions for the record. Alternatively, the Board may take the matter under advisement until its next board meeting.

9. Questions concerning the arrangements for the contested case proceeding and service list are to be made to Mike Cepak, DENR Minerals and Mining Program at (605) 773-3151 or [mike.cepak@state.sd.us](mailto:mike.cepak@state.sd.us)

Dated this 28<sup>th</sup> day of May, 2013

  
\_\_\_\_\_  
Rex Hagg, Hearing Chair  
S.D. Board of Minerals and Environment

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JUN 03 2013  
MINERALS & MINING PROGRAM

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

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

---

The undersigned hereby certifies that true and correct copies of the signed Procedural and Scheduling Order with attached Election of Participation form, all filed in the above captioned matter were served upon the following persons:

Max Main  
Bennett, Main & Gubbrud, P.C.  
618 State Street  
Belle Fourche, SD 57717;

Rex Haag  
Whiting, Haag, Haag, Dorsey & Haag  
PO Box 8008  
Rapid City, SD 57709;

Charles McGuigan  
Chief Deputy Attorney General  
Mickelson Criminal Justice Center  
1302 E. Hwy. 14, Suite 1  
Pierre, SD 57501;

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

and upon each of the persons shown in the attached list, by First Class United States Mail, postage prepaid, on this 31<sup>st</sup> day of May, 2013.



---

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Richard M. Williams  
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MARY KATE NELSON STAKNER  
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26643 LARIAT RD  
CUSTER SD 57730-9105

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FALL RIVER COUNTY CONSERVATION DISTRICT  
ARCHIE COLLINS, CHAIR  
341 S. CHICAGO STREET  
HOT SPRINGS SD 57747

CUSTER COUNTY CONSERVATION DISTRICT  
PAUL NETTINGA, CHAIR  
447 CROOK STREET  
CUSTER SD 57730

MICHAEL M. HICKEY  
ATTORNEY AT LAW  
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ATTN: ASHLEY CORTNEY  
EDGEMONT PUBLIC LIBRARY  
P.O. A / 412<sup>ND</sup>  
EDGEMONT, SD 57735

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

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

ATTN: JASON WALKER  
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610 QUINCY ST.  
RAPID CITY, SD 57701

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

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

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STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

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

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TO: All Persons who filed Petitions to Intervene in the above captioned matter:

You filed or signed a petition or sent comments to the Department of Environment and Natural Resources regarding the Powertech large scale mine permit application currently pending before the Board of Minerals and Environment. To clarify your intent, you must elect: A) to participate as a full party in the formal contested case proceeding, including presenting testimony subject to cross examination, offering exhibits, cross examining other witnesses, making and defending objections, addressing legal argument, and having the option to appeal to the courts if desired; or B) provide sworn testimony only during the public comment period of the contested case proceeding subject to cross examination by the parties and questioning by the Board; or C) rely on the information you may have already filed with the Department. Election of options B or C will waive some of the rights, and relieve you of some of the obligations, you have if you participate as a full party under Option A.

**YOU MUST RETURN THIS FORM TO MIKE CEPAK, DENR**  
**MINERALS AND MINING PROGRAM, ON OR BEFORE JUNE 14, 2013.**

FAILURE TO COMPLETE AND RETURN THIS WILL BE CONSTRUED AS  
AN ELECTION TO PROCEED UNDER OPTION B. A PERSON MAY  
CHANGE THEIR PARTICIPATION STATUS AS PROVIDED IN THE  
BOARD'S PROCEDURAL ORDER.

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\_\_\_\_\_ (A) I wish to participate as a full party in this proceeding by presenting testimony subject to cross examination, offering exhibits, cross examining other witnesses, making and defending objections, addressing legal argument, and having the option to appeal to the courts if desired. I understand that if I am appearing on my own behalf, I do not need to be represented by a lawyer, but that all corporations, partnerships, nonprofit associations, and other legal entities must have a lawyer represent them if they participate as a party.

\_\_\_\_\_ (B) I wish to offer my sworn testimony at the beginning of the contested case hearing. I understand that due to the large number of parties, I may be limited to 10-15 minutes. I understand my testimony will be subject to cross examination and I will not have all the rights nor obligations of a full party.

\_\_\_\_\_ (C) I wish to rely on the petition or any other comments I have already submitted to the Department. I do not wish to testify or participate as a full party in these proceedings.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

Mail to: Mike Cepak, DENR Minerals and Mining Program, Foss Building,  
523 E. Capitol Ave., Pierre, SD 57501