

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	)	DENR'S FIRST RESPONSE TO
LARGE SCALE MINING PERMIT	)	WILD HORSE SANCTUARY, SUSAN
PERMIT NO. 480	)	WATT, & DAYTON HYDE'S FIRST
(Dewey-Burdock Project)	)	SET OF INTERROGATORIES AND
	)	REQUESTS FOR PRODUCTION
	)	

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The Minerals and Mining Program ("M&MP"), of the South Dakota Department of Environment and Natural Resources ("DENR"), is the only DENR party to this proceeding. M&MP hereby provides its First Set of Responses to the Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's First Set of Interrogatories and Requests for Production dated July 3, 2013 ("First Set of Interrogatories and Requests for Production"). The M&MP reserves the right to supplement these disclosures for any reason, including, but not limited to (a) ongoing factual discovery including any depositions of witnesses identified by all parties, and (b) ongoing investigation by attorneys and the parties.

**PRELIMINARY STATEMENT**

Definitions: Words used in the M&MP's Responses herein carry the same meaning as the definitions in the Interrogatories and Requests for Production, except as specifically noted herein.

Federal Agency Acronyms: These responses refer to the Nuclear Regulatory Commission as "NRC," the United States Geological Survey as "USGS," and the Environmental Protection Agency as "EPA."

Relevancy: By making these Responses, the M&MP does not concede that the information sought is relevant to the subject matter of this action or is reasonably calculated to lead to the discovery of admissible evidence.

Preservation of Objections: M&MP's responses are made without in any way intending to waive, but on the contrary, intending to preserve: (a) the right to raise, in any subsequent proceeding in or the trial of this or any other action, all questions of foundation, relevancy, materiality, privilege, hearsay and evidentiary admissibility of any responses provided herein; (b) the right to object on any ground to the use or introduction into evidence of said responses in any subsequent proceeding in or the trial of this or any other action, on any grounds; and (c) the right to object on any ground at any time to other interrogatories, requests for production, requests for admissions or other discovery involving said responses or the subject matter thereof.

## **GENERAL OBJECTIONS**

1. To the extent the Interrogatories and Requests for Production are intended to elicit information protected by the attorney-client privilege or the work product rule or which contain or reflect the impressions, conclusions, opinions, legal research or theories of the M&MP's attorneys, the M&MP objects and asserts these privileges to the fullest extent permitted by law.

2. The M&MP objects to each Interrogatory and Request for Production to the extent it seeks to require the M&MP provide information on behalf of any individual or entity other than the M&MP.

3. The M&MP objects to each Interrogatory and Request for Production to the extent that it seeks information with respect to entities or individuals other than the parties involved in this litigation. Such requests are overly broad, unduly burdensome and oppressive, and not reasonably calculated to lead to the discovery of admissible evidence.

4. The M&MP objects to each Interrogatory and Request for Production to the extent that it seeks information, the disclosure of which would violate constitutional, statutory, or common law privacy rights of others, contract or confidentiality agreements between the M&MP and third parties, confidential settlement discussions or agreements, or court orders restricting disclosure.

5. The M&MP objects to each Interrogatory and Request for Production to the extent it demands information that is already in the possession of or has been previously produced to, offered for review, inspection and copying by any party during the course of the above entitled proceeding or demands information which is as readily available to any other party to the pending proceeding as the M&MP on the grounds that such a request is unduly burdensome, harassing and cumulative.

6. The M&MP objects to each Interrogatory and Request for Production to the extent that it seeks the disclosure of information or data which is beyond the permissible scope of the South Dakota Rules of Civil Procedure, in that it is

irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

7. The M&MP objects to each Interrogatory and Request for Production to the extent it purports to obligate the M&MP to supplement answers beyond that which is contemplated or mandated by the South Dakota Rules of Civil Procedure.

8. The M&MP objects to each Interrogatory and Request for Production that is so broad, vague, ambiguous, uncertain, and unintelligible that the DENR cannot determine the nature of the answers sought, and to which the DENR is therefore unable to respond.

9. The M&MP has not completed its preparation for hearing. Therefore, the M&MP Responses are given subject to the DENR's right to produce evidence of any subsequently discovered facts.

10. The M&MP objects to each Interrogatory and Request for Production to the extent that it demands information for which the required good cause or substantial need, as dictated by applicable statutes, court rules, and case law, has not been shown.

11. The M&MP objects to Interrogatories and Requests for Production using the term "you" as overly broad, unduly burdensome and oppressive, M&MP does not act or purport to act on behalf of any *Applicant or Petitioner* in this matter and cannot answer Interrogatories and Requests for Production on behalf of any *Applicant or Petitioner*. Notwithstanding this objection, the M&MP will respond to

the Interrogatories and Requests for Production as though they seek information within the custody or control of the M&MP.

12. The M&MP objects to each Interrogatory and Request for Production to the extent it seeks "all" or "every" fact, event or other item on the grounds that the requests using these terms are overly broad, unduly burdensome and oppressive, and are not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, the M&MP will construe these terms to encompass information, the contents of which constitute or can reasonably be determined to refer to the matter requested and which are in the custody or control of the M&MP.

13. The M&MP objects to each Interrogatory and Request for Production to the extent it seeks information from the "DENR", "the State" or "the State of South Dakota" rather than the Minerals and Mining Program of DENR. Requesting that the M&MP search for information from all programs, agencies, departments, subdivisions, and employees of DENR or the state is oppressive and creates an undue burden upon the M&MP. The M&MP will respond to the requests as though they are made to the Minerals and Mining Program of DENR, the only entity with jurisdiction over the review of applications pending before the Board of Minerals and Environment.

14. The M&MP incorporates fully the above stated Preliminary Statement and General Objections into each of the following specific objections and responses, and no specific objection or response shall be construed to waive any of the General Objections.

## WRITTEN INTERROGATORIES

1. **What methods and calculations were used to reach the proposed first year state bonding level of \$395,000.**

A draft copy of the bond calculation is attached. See Bates Nos.00100-00194.

These calculations represent the reclamation costs for the first year of the project for those portions of the project the M&MP believes would be covered under state authority. NRC bond calculations are not included. The calculations should be considered draft and may be subject to change. There are some areas covered in the calculation which may be under the jurisdiction of NRC. For example, M&MP included reclamation of land application areas within the permit area. However, these particular areas are actually under NRC jurisdiction. The bond may be modified to reflect these changes.

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?**

The term "Expansion" is a term of art used by the M&MP in ARSD 74:29:03:02. An expansion of the boundaries of the permit area is a major modification requiring a new permit application. A new permit application would require a public hearing.

Any Modifications of the permit by means of a new permit, amendment or technical revision may be contested by the public pursuant to SDCL 45-6B and ARSD 74:29 and subject to a hearing. If the modification is not contested, either by the public, DENR or the BME, the modification could be approved by the M&MP.

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?**

The term "Expansion" is a term of art used by the M&MP in ARSD 74:29:03:02. An expansion of the boundaries of the permit area is a major modification requiring a new permit application. A new permit application would require a public hearing. All processes and information required of a new permit filing would be necessary.

If the modification is within the permit boundary, depending upon circumstances, a new permit (ARSD 74:29:03:02), amendment (ARSD 74:29:03:01) or technical revision (ARSD 74:29:03:16) could be required. The type of information submitted would depend on which type of filing was required. Each of these filings could be contested interested parties and heard at a public hearing.

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?**

The M&MP would not have authority to modify water usage and sources. Water use modifications would be under the purview of the Water Management Board.

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?**

Objection as to form, argumentative. The interrogatory is speculative and assumes facts not in the record when stating "knowing that groundwater restoration has usually taken far longer than originally planned..." The terms "usually", "far longer" and "other in situ leach uranium mines" are vague and ambiguous as they are not defined with any specificity.

Without waiving this objection, the M&MP provides the following information:

The Board does not have jurisdiction to enforce groundwater reclamation as that area is controlled by the NRC as described in the reclamation schedule. The M&MP will work with the NRC as requested.

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?**

DENR does not have jurisdiction over processing facilities. NRC has primacy and jurisdiction over the location and design of the process facilities.

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?**

Objection, the phrase "larger than anticipated" is vague and ambiguous.

Without waiving this objection, the M&MP provides the following information:

Because any Technical Revision to a Large Scale Mining Permit requires consultation with Game Fish and Parks pursuant to ARSD 74:29:03:16 and ARSD 74:29:03:03, a separate Technical Revision section for this purpose is not required.

**8. What will the DENR do if its monitoring indicates that there is an underground excursion of lixiviant or other potential contamination?**

Objection, because the exact course of action cannot be determined until an excursion occurs and is examined, any statement about future acts would be speculative.

Without waiving this objection, the M&MP provides the following information:

Excursions from the production zone into the aquifer exemption area are under the jurisdiction of the NRC and EPA. Depending on the contents of the fluid, excursions traveling out of the aquifer exemption area or beyond the permit boundaries may be subject to enforcement by the NRC, EPA and M&MP.

**9. What will the DENR do if its monitoring indicates that there has been a suspected discharge of regulated substances to surface waters?**

Objection, because the exact course of action cannot be determined until a discharge occurs and is examined, any statement about future acts would be speculative.

Without waiving this objection, the M&MP provides the following information:

Depending on the location and nature of the discharge, the M&MP anticipates working with the entity having primary jurisdiction. This may

include working with the Surface Water Quality Program or the NRC regarding possible enforcement actions.

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?**

Objection, because the exact course of action cannot be determined until a corrective action plan is needed and submitted, any statement about future acts would be speculative.

Without waiving this objection, the M&MP provides the following information:

The EPA and NRC would have jurisdiction over wells that are improperly sealed, completed or abandoned. DENR would work with these agencies as requested

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.**

Objection, the term "scientifically valid" is a specific term of art that may not accurately reflect the concerns with sampling in winter months.

Without waiving this objection, the M&MP provides the following information:

M&MP would reject any baseline data collection during the winter months. The baseline collection of vegetation within the land application areas would be conducted from April to September of each year.

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?**

The M&MP does not regulate the transportation of radioactive materials. The regulation of the transportation of radioactive materials is handled at the federal level by the United States Department of Transportation and the NRC.

- 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.**

No. The M&MP will not relinquish its bonding authority to NRC.

The NRC has primacy for the site and will calculate the bond for the portions of the site for which it has jurisdiction, including facility decommissioning (central processing plant, satellite plant, process and retention ponds, facilities that store radioactive or byproduct material, well fields and land application areas), 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

The M&MP's portion of the bond would cover costs outside of NRC and EPA jurisdiction and would include reclaiming all access roads, and other surface areas not associated with the central processing plant, satellite plant, process ponds, well fields and land application areas.

It is the intention of the DENR to enter into a Memorandum of Understanding (MOU) with the NRC regarding bonding for the site, subject to approval by the board. The MOU would include provisions for the state to review and comment on bond calculations provided by the NRC and for the NRC to hold the state's portion of the bond.

- 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?**

Objection, the interrogatory is argumentative as it states, without support, that "past bonds have often been insufficient..." The interrogatory assumes facts not in the record. The terms "often" and "insufficient" are vague and ambiguous.

Without waiving this objection, the M&MP provides the following information:

M&MP recommends a postclosure bond as described in the "Postclosure Bond" section of the recommendation regarding Powertech (USA) Inc.'s Large Scale Mine Permit Application. The postclosure bond will be based on

conditions at the time of reclamation bond release by NRC. The postclosure bond will cover those activities outlined in the postclosure plan in Section 6.8 of the Large Scale Mine Permit application, including surface water monitoring, alluvial ground water monitoring in land application areas, vegetation, and erosion and sediment controls. The postclosure bond will be adjusted for inflation and site conditions on an annual basis.

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?**

Objection, the interrogatory is argumentative as it states, without support, that "mining companies regularly go out of business before mining reclamation is completed..." The interrogatory assumes facts not in the record. The term "regularly" is vague and ambiguous. The interrogatory is speculative as it requests information about an event that has not happened and may not happen.

Without waiving this objection, the M&MP provides the following information:

If Powertech goes out of business before mining reclamation is completed, the NRC and M&MP would use the reclamation bond to restore the site. The reclamation bond would include funds to allow the hiring of third party consultants and trained personnel to complete reclamation. M&MP would use the postclosure bond to hire third party personnel to complete postclosure activities.

16. **Why does the DENR's "Recommendation" not require a new application if Powertech proposes to recover vanadium?**

The M&MP believes that the technical revision process provides the necessary safeguards should Powertech seek to recover vanadium. Powertech stated the possibility of vanadium recovery in Application for Mining/Milling Permit in Appendix 1/0-A, Large Scale Mine Permit Application. Vanadium would be recovered in the same solutions as the uranium. Technical Revisions, no.16 would allow for modifying the recovery process to include the potential recovery of vanadium. The technical revision process as described in ARSD 74:29:03:16 allows interested persons to petition for a contested case hearing.

**17. What research has the DENR or the Game Fish & Parks Department done regarding the presence of bighorn sheep in the permit area?**

The M&MP has not conducted any research regarding the presence of bighorn sheep in the permit area. M&MP objects to the remainder of the interrogatory in that it requests information not in the possession of M&MP. To the extent that the Game Fish & Parks Department is in possession of the requested information, the information is equally available to all parties and the burden of deriving or ascertaining the answers will be substantially the same for all parties.

Without waiving this objection, the M&MP provides the following information:

The Department of Game, Fish and Parks ("GF&P") produced the attached *Draft Action Plan for Management of Bighorn Sheep in South Dakota (2013)*. See Bates 00017-00039. The M&MP is unaware of other research regarding the presence of bighorn sheep in the permit area that may have been conducted by GF&P.

**18. Would the discovery of additional uranium deposits within the permit area require an application process before mining?**

Yes. Depending upon circumstances, a new permit (ARSD 74:29:03:02), amendment (ARSD 29:03:01) or technical revision (ARSD 74:29:3:16) could be required.

**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?**

Objection as to the form of the question, the phrase "fail to require" is argumentative in that it presupposes an obligation on the M&MP that doesn't exist. M&MP did not "fail" to include a Recommendation on water use. The terms "most", "more realistic" and "much more" are vague and ambiguous and argumentative as used in this interrogatory.

Without waiving this objection, the M&MP provides the following information:

Water use will be governed by the NRC or the Water Management Board.

20. **Does the DENR anticipate adding any conditions to its “Recommendation” related to disturbance of cultural and historical properties?**

No. The Memorandum of Agreement (“MOA”) with the South Dakota State Archeologist in Appendix 3.11-B, lists stipulations Powertech will follow in protecting cultural resources. The MOA and stipulations found therein are treated as conditions of the permit. *See* <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>

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?**

Objection, the interrogatory is speculative as it requests information about an event that has not happened and may not happen.

Without waiving this objection, the M&MP provides the following information:

The M&MP will use the postclosure bond to hire a third party contractor to complete those activities outlined in the postclosure plan in Section 6.8 of the Large Scale Mine Permit application, including surface water monitoring, alluvial ground water monitoring in land application areas, vegetation, and erosion and sediment controls.

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?**

The M&MP generally agrees with the Table 5.01.

24. **How many third party contractors named on the DENR website are trained specifically in the cleanup of spills and/or leaks from in situ leach mining?**

Unknown. The contractors listed at <http://denr.sd.gov/des/gw/tanks/ContractorList.aspx> are not considered by the M&MP as an exclusive list. This list was developed by the Ground Water Program as emergency contractors for responding to regulated substance spills. The M&MP may consider all qualified contractors should cleanup be necessary in areas under the jurisdiction of M&MP. Spills occurring in the well field areas and process areas and spills involving 11e(2) byproduct

material, as defined in 42 U.S.C. 2014 § 11e(2), would be under the jurisdiction of the NRC.

- 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?**

Objection, the interrogatory is speculative as it requests information about a future event. Under the phased approach, the total amount of the bond cannot now be known.

Without waiving this objection, the M&MP provides the following information:

Please refer to the response to Interrogatory No. 1. The M&MP will calculate the bond in phases in anticipation of disturbance. For phased bonding, the M&MP will look ahead one year in advance, and the bond will be calculated based on Powertech's projections for land disturbance. SDCL 45-6B-27 allows the state from time to time to increase or decrease the bond so it will cover the costs that would accrue to the state.

As outlined in its Recommended Conditions under "Reclamation Bond (under SDCL 45-6B)", the M&MP has calculated a draft bond amount of (\$395,000.00) to cover the first year of construction in areas only where the M&MP has jurisdiction. This calculation is based on projections Powertech has given the M&MP regarding the first year of construction. Prior to the hearing the M&MP and NRC will clarify which areas fall under their respective jurisdictions, and the M&MP will adjust its bond calculation as necessary.

- 26. How many DENR employees are trained and available to monitor and enforce those portions of the large scale mining permit under its purview?**

The M&MP has four employees who have capability to monitor activities regulated by M&MP. Staff members from the Ground Water Quality, Air Quality and Water Rights Programs would also be available to monitor activities regulated by their respective programs.

- 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?**

Powertech addressed the M&MP's concerns in the January 10, 2013 Supplemental Information for Large Scale Mine Permit Application. The M&MP has no additional concerns regarding Powertech's responses. See <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>

- 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?**

Yes. The M&MP is satisfied with Powertech's commitment added to Section 5.3.9.1 "Diversion Channels" in the January 10, 2013 Supplemental Information for Large Scale Mine Permit Application. See <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>

- 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?**

Yes. Reference areas are allowed pursuant to ARSD 74:29:07:06 (3) and have been used in the past to evaluate site reclamation prior to bond release.

- 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.**

Reports will be routed to the appropriate staff in M&MP, Ground Water Quality Program, Surface Water Quality Program and Air Quality Program, who have the technical background to review the information and data. If violations or problems are found, the NRC, EPA, other DENR programs or Powertech would be contacted as appropriate.

The M&MP cannot identify the individual responsible for conducting the analysis and review. Various DENR personnel across several programs will be involved with conducting the analysis and review, including engineers (reclamation and construction) and hydrologists (water quality data). DENR programs involved may include the M&MP, Ground Water Quality, Surface Water Quality, Air Quality, and Water Rights. It is unknown which individuals will ultimately be assigned.

- 31. What is the process should the DENR, as an organization with limited authority over in situ mining, discover violations at this project?**

If violations are suspected, the M&MP would contact the entity with jurisdiction over the subject matter in question.

- 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.**

On April 15, 2013, the DENR transmitted a marked-up copy back to the NRC. On July 15, 2013, the NRC stated that it was continuing to review those changes.

- 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?**

Powertech's plan is found in Section 5.6.12.2 of the Large Scale Mine Permit Application. Additionally, the Memorandum of Agreement ("MOA") with the South Dakota State Archeologist in Appendix 3.11-B, lists stipulations Powertech will follow in protecting cultural resources. See <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>

The Application and the MOA are treated as conditions of the Large Scale Mine Permit.

- 34. What has Powertech indicated it will do to avoid any impact on the two (2) burial sites located within the permit area?**

See response to Interrogatory 33. Powertech has also stated: "In addition, avoidance is recommended for two unevaluated historic burial sites located in proximity to proposed construction activities until their NRHP eligibility is determined."

- 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?**

Failure to meet the conditions of the plan found in Section 5.6.12.2 of the Large Scale Mine Permit and the MOA with the State Archeologist would be

considered violations of the Large Scale Mine Permit and enforced accordingly by the M&MP. See <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>

- 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?**

It is currently unknown if the sites in fact contain human remains. Nonetheless, Powertech plans to avoid the sites. Failure to meet the conditions of the plan found in Section 5.6.12.2 of the Large Scale Mine Permit and the MOA with the State Archeologist would be considered violations of the Large Scale Mine Permit and enforced accordingly by the M&MP. See <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>

- 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?**

Objection, it is unclear from the interrogatory what "mandate" is being inquired into.

Without waiving this objection, the M&MP provides the following information:

In accordance with SDCL 45-6B-91, Powertech was required to develop a postclosure plan which is discussed in Section 6.8 of the Large Scale Mine Permit application. The postclosure plan would go into effect after the NRC and DENR find reclamation to be satisfactory and the reclamation bond is released. The plan would be enforced as a condition of the Large Scale Mine Permit.

- 38. How long does the DENR intend to hold Powertech responsible for the permit area after mining operations cease?**

Objection, specific postclosure requirements cannot be determined by the M&MP until after the NRC determines the affected areas to be reclaimed or restored. Any statement about future acts would be speculative.

Without waiving this objection, the M&MP provides the following information:

The length of the postclosure period is set by SDCL 45-6B-91 at 30 years. Depending upon site conditions, however, the Board of Minerals and Environment may modify the length of the postclosure plan to ensure

compliance with all applicable standards. This can mean reducing or extending the period if conditions warrant.

**39. Please list under what conditions the DENR will become an "Agreement State" with the EPA and the NRC?**

There are no plans at this time for South Dakota to become an "Agreement State" with NRC or request delegation of an unnamed EPA program.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**Preface:**

All documents submitted in response to the below requests are being provided in the manner in which they are kept by the M&MP.

Further, the following Requests for Production (as well as the foregoing Written Interrogatories) include broad and voluminous requests. Some of the information produced or described by M&MP is responsive to more than one request. To the extent any material is listed or produced in response to a Request, but is not listed or produced in response to other Requests where it could arguably be listed or produced, any failure to so list or produce such item a second time is unintentional or due to the broad or voluminous nature of the requests. Accordingly, such information should be considered as responsive even if produced in response to other Requests.

**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.**

Objection, the Request for Production ("RFP") calls for documents, materials and information that would reveal opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated and are protected by the deliberative process privilege.

Without waiving this objection, the M&MP provides the following information:

*See draft calculation worksheet and related documents, Bates 00100-00194.*

**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.**

Objection, the production of "all satellite imagery and areal photography" of the permit area is overly broad, unduly burdensome and not reasonably calculated to

lead to the discovery of admissible evidence. The request also seeks documentation not in the possession of the M&MP. As such, to the extent that such documentation exists, the information is equally available to all parties and the burden of deriving or ascertaining the answers will be substantially the same for all parties.

Without waiving this objection, the M&MP provides the following information:

The aerial photograph provided with the bond calculation in the response to Request No. 1 is the only aerial photo DENR has that may be different than those in the mine permit application found on DENR's web site. See <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx> ..

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

The M&MP is not in possession of any documents between Powertech and John Putnam and / or Lisa Scheinost.

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

Objection, the MOU is still in draft form and thus pre-decisional. The Request for Production ("RFP") calls for documents, materials and information that would reveal opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated and are protected by the deliberative process privilege.

**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.**

Objection, SDCL 1-20-21.2 provides that records relating to the location of an archeological site are confidential. Subject to a confidentiality agreement, arrangements may be made with the State Archeologist for viewing.

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

Objection, SDCL 1-20-21.2 provides that records relating to the location of an archeological site are confidential. Subject to a confidentiality agreement, arrangements may be made with the State Archeologist for viewing.

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

See Bates 000700-00739 Additional documents between the USGS and the M&MP are posted at: <http://denr.sd.gov/des/mm/powertechminepermitapp.aspx>

SIGNATURES AS TO OBJECTIONS:

Dated this 20<sup>th</sup> day of August, 2013



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*Counsel for Minerals and Mining Program, DENR*



CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the *DENR First Set of Responses to the Wild Horse Sanctuary, Susan Watt, and Dayton Hyde's First Set of Interrogatories and Requests for Production* 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 2nd day of August, 2013:

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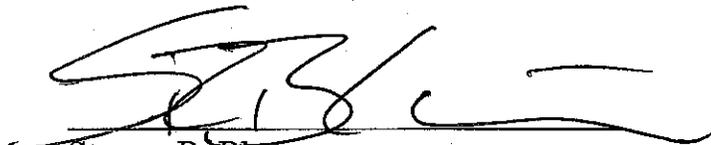
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ATTN: MICHELLE MAY  
WOKSAPE TIPI  
OGLALA LAKOTA COLLEGE  
P.O. BOX 310  
KYLE, SD 57752

And the original of the same was filed on the same date with Michael D. Cepak ,  
Joe Foss Building, 523 E. Capitol Ave, Pierre, SD 57501

A handwritten signature in black ink, appearing to read 'S. Blair', with a long horizontal flourish extending to the right.

Steven R. Blair  
Assistant Attorney General  
Mickelson Criminal Justice Center  
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