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MINERALS & MINING PROGRAM

STATE OF SOUTH DAKOTA

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT**

**IN THE MATTER OF THE LARGE
SCALE MINE PERMIT APPLICATION
OF POWERTECH (USA) INC.**

**WILD HORSE SANCTUARY,
SUSAN WATT, & DAYTON
HYDE'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS TO SOUTH
DAKOTA DENR**

TO: STATE OF SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT &
NATURAL RESOURCES AND THEIR ATTORNEYS OF RECORD: DIANE BEST
AND ROXANNE GIEDD:

You are hereby requested to provide answers and produce the documents specified below, within thirty (30) days of service, to Michael M. Hickey, Bangs, McCullen, Butler, Foye & Simmons, L.L.P., P.O. Box 2670, Rapid City, South Dakota, 57709, or at such other time and place, or in such other manner, as may be mutually agreed upon by the parties.

These Interrogatories and Requests for Production shall be deemed to be continuing. If information is discovered by or becomes known to you, your attorney, or to anyone acting on your behalf, after answering and before trial, which would change or add to the answers given, you are hereby directed and requested to furnish the information, under oath, to the undersigned in a timely manner. It is intended that any information held by any persons acting on behalf of you will be revealed in the answers hereto.

Demand is also made that when any document is identified in your answers to these interrogatories, or if reference is made to any document in order to provide an answer to these interrogatories, you produce the document for inspection and copying at a mutually agreed upon time, date, and place after service of your response. In lieu of such formal inspection, you may submit a legible copy of such document with your answers, and we shall pay you the reasonable cost of reproduction of such document if requested in advance.

When documents that are in your possession, custody, or control are requested, such request includes documents in the possession, custody, or control of your shareholders, officers, directors, employees, agents, representatives, partners, and attorneys (including the attorneys' partners,

employees, agents, and representatives). When production of any document in your possession is requested, such request includes documents subject to your possession, custody or control. In the event that you are able to provide only part of the document(s) called for in any particular Request for Production, provide all document(s) that you are able to provide and state the reason, if any, for the inability to provide the remainder.

Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any answer or request. Whenever reference is made to a person, it includes any and all of such person's principals, employees, agents, attorneys, consultants, and representatives.

These discovery requests are not intended to be duplicative. All interrogatories and requests should be responded to fully and to the extent not covered by other interrogatories or requests. If there are answers or documents that are responsive to more than one interrogatory or request, then please so note and produce each such answer or document first in response to the interrogatory or request that is more specifically directed to the subject matter of the particular interrogatory or document.

If you or your attorney object to answering any of these interrogatories or withhold any document from production under a claim of privilege or other exemption from discovery, state in detail the grounds for the nature of the objection and, for responses to requests for production, the title and nature of the document, and furnish a list signed by the attorney of record giving the following information with respect to each document withheld:

- A. The name and title of the author and/or sender and the name and title of the recipient;
- B. The date of the document's origination;
- C. The name of each person or persons (other than stenographic or clerical assistants) participating in the preparation of the document;
- D. The name and position, if any, of each person to whom the contents of the documents have heretofore been communicated by copy, exhibition, reading, or substantial summarization;
- E. A statement of the specific basis on which privilege is claimed and whether or not the subject matter or the contents of the document is limited to legal advice or information provided for the purpose of securing legal advice; and

- F. The identity and position, if any, of the person or persons supplying the attorney signing the list with the information requested in subparagraphs above.

DEFINITIONS AND INSTRUCTIONS

1. YOU or YOUR means the State of South Dakota Department of Environment & Natural Resources, agents, servants, employees, representatives, consultants, advisors and all other persons acting or purporting to act on behalf of the Petitioner in connection with the applications presently pending before the South Dakota Board of Minerals and Environment.
2. AND as well as OR shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses which otherwise might be construed to be outside the scope.
3. DATE means the exact day, month, and year if ascertainable; if not, the closest approximation.
4. The term DOCUMENT shall mean the original and any electronic or written copy, regardless of origin or location, of any written, typed printed, recorded or graphic matter of any kind, however, produced including but not limited to any book, pamphlet, periodical, letter, memorandum, email, text message, telegram, report, record, study, written note, working paper, chart, paper, index, tape, data sheet, data processing card, letters or other correspondence, telegrams, summaries, tabulations, cost sheets, canceled checks, financial reports and statements, motion picture films, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, micro film, or any other written, recorded, transcribed, punched, taped, filmed, or graphic material, however produced or reproduced, other data compilations, including computer data, and the memory units containing data, to which you have or have had access.
5. The terms IDENTIFY or IDENTIFICATION, when used with reference to an individual person, shall mean to state his full name, address, phone number, and present employment position or business affiliation, if known, any prior positions or affiliations, if no longer connected with the Petitioner. The terms "identify" or "identification" when used with reference to a document, shall mean to state the date and author or signor, as the case may be, the addressee, the type of document, its present or last known location or custodian and all means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a motion for its production, pursuant to SDCL 15-6-34 of the South Dakota Rules of Civil Procedure. If any such document was, but is no longer in your possession or subject to your control, state the substance of the document, the disposition which was made of it, the reason for such disposition and the date thereof.

- a. When referring to a DOCUMENT:
 - i. its author, addressee and copyees;
 - ii. the type of DOCUMENT (e.g., letter, memorandum, etc.);
 - iii. its subject matter and substance;
 - iv. if the above information is not available, some other means of identifying it;
 - v. its present location and the IDENTITY of its present custodians;
 - vi. if such DOCUMENT was, but is no longer in your possession or subject to your control, or in existence, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily to others, or (4) otherwise disposed of; and in each instance, explain the circumstances for such disposition and the date or approximate date of such disposition.
6. The term STATEMENT shall mean any oral conversation, oral statement or voice communication.
 - a. When referring to a STATEMENT:
 - i. the form of STATEMENT (e.g., in person, by telephone or other specified mode);
 - ii. the IDENTITY of the sender or maker and recipients(s) or persons hearing the same;
 - iii. its date;
 - iv. its full and exact substance;
 - v. IDENTIFICATION of all DOCUMENTS confirming, relating, referring to the subject STATEMENT.
7. The phrase ALL FACTS AND CIRCUMSTANCES, when used in connection with a request for information concerning a claim or allegation, shall mean:
 - a. a detailed summary of all evidentiary facts bearing upon or tending to support such claim or allegation;
 - b. IDENTIFICATION of the persons having knowledge of such facts;
 - c. a separate description of the facts known by each such person;
 - d. IDENTIFICATION of all DOCUMENTS bearing upon or tending to support such claim or allegation.
8. The term "PROJECT" shall mean the Dewy and Burdock proposed in situ uranium mining operations located in Fall River and Custer County, South Dakota, northwest of Edgemont, South Dakota.

INTERROGATORIES

INTERROGATORY NO. 1: What methods and calculations were used to reach the proposed first year state bonding level of \$395,000.

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 8: What will the DENR do if its monitoring indicates that there is an underground excursion of lixiviant or other potential contamination?

INTERROGATORY NO. 9: What will the DENR do if its monitoring indicates that there has been a suspected discharge of regulated substances to surface waters?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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.

INTERROGATORY NO. 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?

INTERROGATORY NO. 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.

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 16: Why does the DENR's "Recommendation" not require a new application if Powertech proposes to recover vanadium?

INTERROGATORY NO. 17: What research has the DENR or the Game Fish & Parks Department done regarding the presence of bighorn sheep in the permit area?

INTERROGATORY NO. 18: Would the discovery of additional uranium deposits within the permit area require an application process before mining?

INTERROGATORY NO. 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?

INTERROGATORY NO. 20: Does the DENR anticipate adding any conditions to its "Recommendation" related to disturbance of cultural and historical properties?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 24: How many third party contractors named on the DENR website are trained specifically in the clean up of spills and/or leaks from in situ leach mining?

INTERROGATORY NO. 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?

INTERROGATORY NO. 26: How many DENR employees are trained and available to monitor and enforce those portions of the large scale mining permit under its purview?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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.

INTERROGATORY NO. 31: What is the process should the DENR, as an organization with limited authority over in situ mining, discover violations at this project?

INTERROGATORY NO. 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.

INTERROGATORY NO. 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?

INTERROGATORY NO. 34: What has Powertech indicated it will do to avoid any impact on the two (2) burial sites located within the permit area?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 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?

INTERROGATORY NO. 38: How long does the DENR intend to hold Powertech responsible for the permit area after mining operations cease?

INTERROGATORY NO. 39: Please list under what conditions the DENR will become an "Agreement State" with the EPA and the NRC?

REQUESTS FOR PRODUCTION OF DOCUMENTS

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.

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.

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

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

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.

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

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

Dated this 3RD day of July, 2013.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.

BY:


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**ATTORNEYS FOR BLACK HILLS
WILD HORSE SANCTUARY,
SUSAN WATT, & DAYTON HYDE**

CERTIFICATE OF SERVICE

The undersigned certifies that on July 3, 2013, he caused true and correct copies of the above to be served upon each of the persons identified below as follows:

<input checked="" type="checkbox"/>	First Class Mail	<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Electronic Mail	<input type="checkbox"/>	ECF System

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**ATTORNEYS FOR STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES**


Michael M. Hickey