

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

RECEIVED
SEP 13 2013
MINERALS & MINING PROGRAM

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

SABRINA KING'S
OBJECTIONS TO APPLICANT'S MOTIONS

I, Sabrina King, full "A" party intervenor in the Large Scale Mine Permit application proceedings, object to Powertech's motion to allow narrative testimony on the following grounds:

1. Improper citation and use of statute: Powertech cites, as justification for their motion, SDCL 1-29-19(1), yet declined to cite the entire statute which clearly states, "[t]he rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed." Full and proper reading of 1-29-19 shows the Board of Minerals and Environment is not limited to following the rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts.
2. Legal right for all parties to cross-examine: SDCL 1-29-19(2) clearly states "[a] party may conduct cross-examinations required for a full and true disclosure of the facts." The Board of Minerals and Environment is obligated by statute to allow for cross-examination by all parties. As various parties may have questions which relate directly to ascertaining the full and true disclosure of the facts, testimony in this case should remain open to the specific question method of testimony.
3. Rule 611(a) can be met without limiting parties' right to cross-examination: The intent of Rule 611(a), to ensure reasonable control over the mode and order of interrogating witnesses, can be met throughout the hearing proceedings without limiting parties' rights before the hearing has begun. The request for narrative testimony precludes parties' from exercising their full right to a proper hearing by cross-examining all witnesses and is thus untimely and should be denied.

Additionally, I object to Powertech's motion in limine on the following grounds:

1. Admission of evidence as required by law: According to SDCL 45-6D-26, Board of Minerals and Environment is required to conform to the provisions of SDCL 1-26 in these proceedings. SDCL 1-26-19(1) states "[w]hen necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law."

Powertech has listed virtually all evidence as hearsay. Such non-specific classifications clearly violates 1-26-19(1), and many of these are of a type commonly relied upon by reasonably prudent persons in the

conduct of their affairs. Additionally, 1-26 is the law to be referenced regarding the rules of evidence, not 19-16-1 and 4.

2. Should the Hearing Chair decide to follow the rules of civil court, a majority of the evidence submitted by parties as exhibits meet the requirements of SDCL 19-16-3 and are therefore allowed under law. Judgements on the legal allowance of any specific piece of evidence should be brought during the hearing and should be exhibit-specific.

Dated this 11 day of September, 2013.



SABRINA KING

"A" Full Party Intervenor

**917 WOOD AVE
RAPID CITY, SD 57702**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Objections of Sabrina King, an "A" full party intervenor, to Powertech's Motion to Allow Narrative Testimony and Powertech's Motion *In Limine* were served upon all listed "A" intervenors and necessary parties listed by the South Dakota Department of Environment and Natural Resources online on September 11, 2013 by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail in Rapid City, South Dakota on this 11 day of September, 2013.



TYPE YOUR NAME HERE AND SIGN ABOVE LINE

"A" Full Party Intervenor