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SEP 16 2013

WATER RIGHTS
PROGRAM

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.

POWERTECH'S
RESPONSE TO MOTION TO
CONTINUE

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

This response is made by Powertech (USA) Inc. ("Powertech") to the motion to continue made by Black Hills Wild Horse Sanctuary, Susan Watt and Dayton Hyde (collectively "WHS").

1.

**Nuclear Regulatory Commission ("NRC") and
Environmental Protection Agency ("EPA") Proceedings**

WHS argues that Powertech should first obtain a NRC license and EPA permits before the hearing on its water permit applications and groundwater discharge plan is held. There is no legal requirement that these must be in place before the Water Management Board ("Board") can hold its hearing on the water permit applications and groundwater discharge plan.

One of the recommended conditions for Powertech's large-scale mine permit requires Powertech to obtain a NRC license and an EPA Class III permit "[p]rior to commencing operations in the permit are." Powertech's water permits and ground water discharge plan both apply to Powertech's in situ mining project. This mining project, and the usage and discharge of water during the course of mining operations will not occur

until or unless the large-scale mining permit is issued, with the conditions that Powertech obtain a NRC license and an EPA Class III permit prior to commencing operations. There is therefore no detriment in this matter proceeding prior to Powertech obtaining a NRC license and EPA permits.

Regarding the NRC license, it should be pointed out that in the March 2013 Safety Evaluation Report issued by the NRC for the Dewey-Burdock Project, the NRC staff recommends approval of Powertech's license application.

2.

Legislative Changes.

As to the 2011 enactment of Senate Bill 158, now codified at SDCL 34A-2-126, that law was enacted and in force over a year before Powertech submitted its water permit applications and groundwater discharge plan application. Prospective application of the law means the tolled administrative rules do not apply to Powertech's applications.

WHS asserts in its motion that DENR "deferred regulatory authority over Class III injection wells and in situ leach mining to the federal government." In fact, South Dakota has never had regulatory primacy over these matters. South Dakota has never been an agreement state for NRC licensing, and it has never had primary regulatory authority over Class III UIC permits.

Conclusion

For the reasons set forth above, WHS's motion to continue should be denied.

Dated this 12th day of September, 2013.

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IN THE MATTER OF WATER PERMIT
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POWERTECH (USA) INC.

CERTIFICATE OF SERVICE

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

I, DWIGHT GUBBRUD, as one of the attorneys for Powertech (USA) Inc., do hereby certify that on the 12th day of September, 2013, I caused the originals of the following documents:

1. **POWERTECH'S RESPONSE TO WILD HORSE SANCTUARY'S MOTION TO DISCLOSE AND REQUEST FOR PROTECTIVE ORDER;**
2. **POWERTECH'S RESPONSE TO MOTION TO CONTINUE; and**
3. **CERTIFICATE OF SERVICE,**

to be filed with: Eric Gronlund
 DENR
 Foss Building, 523 E. Capitol Ave.
 Pierre, SD 57501-3182

and full, true and complete copies of said documents to be served upon the following named persons at their last known mailing addresses, as follows:

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by depositing the same in the United States Mail in Belle Fourche, South Dakota with first class postage thereon fully prepaid, in envelopes addressed as above.



DWIGHT GUBBRUD