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WATER RIGHTS
PROGRAM

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
and 2686-2, Powertech (USA),)
Inc.)

CORRECTED

CERTIFICATE OF SERVICE

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

On January 30, 2013, the undersigned Office signed a Certificate of Service that indicated service of the below documents upon the individuals identified in the list attached to the Certificate of Service. It has come to the attention of the undersigned that, through inadvertence, the documents were not actually mailed to three addressees on that list. Therefore, the undersigned hereby certifies that true and correct copies of the: Appointment of Prehearing Chairman; Appointment of Water Management Board to Conduct Evidentiary Hearing; Notice of Hearing on Groundwater Discharge Plan Application; Motion to Consolidate and Motion for Procedural Order (with Proposed Procedural Order and Election of Participation form); Notice of Procedural Hearing (Prehearing Conference); and Answer of DENR

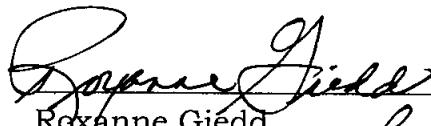
Groundwater Discharge Program; in *In the Matter of Water Permit Applications 2685-2 and 2686-2* and/or *In the Matter of 2012 Groundwater Discharge Plan Application Submitted by Powertech (USA), Inc.* were served upon the following persons:

Stacy Reetz
546 Jennings Ave
Hot Springs, SD 57747

Cindy Brunson
11122 Fort Igloo Rd
Edgemont, SD 57735

Elaine Everhart
Allen Chesson
545 N River Street
Hot Springs SD 57747

on this 31st day of January 2013 by First Class Mail, postage pre-paid.



Roxanne Giedd
Deputy Attorney General
Chief, Civil Litigation Division
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

By Patricia A. [Signature]
Assistant Attorney General

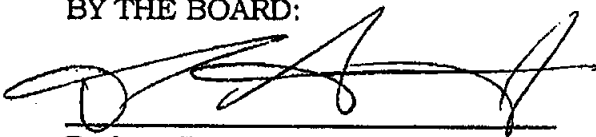
STATE OF SOUTH DAKOTA
BEFORE THE WATER MANAGEMENT BOARD
APPOINTMENT OF PREHEARING CHAIRMAN

For the efficient administration of matters coming before this Board, this Board hereby appoints Qu Hoyt to serve as a Prehearing Chairman until October 15, 2013. This appointment applies to all cases and controversies coming before the Board, unless the Board finds it appropriate to appoint a different Board member for a specific case. The function of the Prehearing Chairman is:

1. To rule on requests for appointment of hearing examiners under SDCL 1-26-18.3.
2. To establish procedural schedules, rule on procedural motions, and resolve discovery disputes as necessary for water permit hearings and other cases.
3. To hear motions on dispositive matters if the full Board is unable to convene to hear such a matter. In such cases, the Prehearing Chairman may recommend a decision for final Board action.

Dated this 3rd day of October, 2012.

BY THE BOARD:



Rodney Freeman, Chairman

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES


IN THE MATTER OF THE 2012)	APPOINTMENT OF WATER
GROUNDWATER DISCHARGE)	MANAGEMENT BOARD TO
PLAN APPLICATION SUBMITTED)	CONDUCT EVIDENTIARY HEARING
BY POWERTECH (USA), INC.)	

Under SDCL 34A-2-36.1 and ARSD 74:54:02:14, the Secretary of the Department of Environment and Natural Resources ("Secretary") issues groundwater discharge permits, which are the "final approval" of a groundwater discharge plan. Under ARSD 74:54:02:09, 74:54:02:11, 74:54:02:13, the South Dakota Water Management Board ("WMB") issues initial approval of a groundwater discharge plan by "issuing all applicable permits described in §§ 74:54:02:11 [water quality variance permits] and 74:54:02:13 [groundwater discharge facility construction permits]".

In order to promote administrative economy and to prevent the duplicative expenditure of resources by the parties to this proceeding, the Secretary hereby appoints the WMB to conduct the evidentiary hearing for the groundwater discharge permit required by SDCL 34A-2-36.1 and ARSD 74:54:02:14 along with the inter-related permits issued by the WMB under ARSD 74:54:02:09, 74:54:02:11 and 74:54:02:13, and to issue a

recommendation to the Secretary on Powertech (USA), Inc.'s ("Powertech") application for a groundwater discharge permit.

Upon receipt of the record from the WMB, including any permits it issues under ARSD 74:54:02:11 and 74:54:02:13 and its determination of whether to approve Powertech's application for a Groundwater Discharge Plan under ARSD 74:54:02:09, the Secretary will review the transcript of the proceeding, the exhibits admitted during the proceeding, the pleadings filed in the proceeding, and the recommendation made by the Water Management Board, and then issue a final decision as to whether to issue, deny, or issue with conditions the groundwater discharge permit requested by Powertech (USA), Inc.

 1/29/13

Steven Pirner, Secretary
South Dakota Department of Environment and
Natural Resources
523 E. Capitol Ave.
Pierre, SD 57501

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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

TO: ALL PERSONS ON ACCOMPANYING CERTIFICATE OF SERVICE:

NOTICE IS HEREBY GIVEN that the South Dakota Water Management Board (WMB") will consider the above entitled application for a groundwater discharge plan beginning at 8:30 AM on March 18, 2013 at the Best Western Ramkota Hotel, 2111 North LaCrosse Street, in Rapid City, South Dakota. This evidentiary hearing will be conducted under the procedures in SDCL 1-26-16 et seq. and ARSD ch. 74:50:01.

This hearing is to consider the application filed by Powertech (USA), Inc. ("Powertech") for approval of a "Groundwater Discharge Plan" for a Land Application Disposal System under ARSD 74:54:02:09, for issuance of a "Water Quality Variance Permit" for the same under ARSD 74:54:02:11, for issuance of a "Groundwater Discharge Facility Construction Permit" for the same under SDCL 34A-2-27 and ARSD 74:54:02:13, and for a recommended decision to the Secretary of the Department of Environment and Natural Resources ("Secretary") regarding issuance of a "Groundwater Discharge Permit" for the same under SDCL 34A-2-36.1 and ARSD 74:54:02:14, which Permit constitutes

final approval of the Groundwater Discharge Plan under ARSD 74:54:02:14.

The Land Application Disposal System at issue in the application is part of Powertech's proposed uranium in situ leach mine and processing facility located about 13 miles northwest of Edgemont, SD. The legal location of the proposed operation is portions of section 20, 21, and 27-35; T6S-R1E, Custer County and portions of sections 1-5, 10-12, 14 and 15; T7S-R1E, Fall River County.

Powertech submitted a Groundwater Discharge Plan Application for discharges associated with the land application of treated wastewater from Powertech's proposed uranium in situ leach mine and processing facility on March 9, 2012. This Application includes applications for a water quality variance permit for a perimeter of operational pollution, a groundwater discharge facility construction permit, and a groundwater discharge permit. The purpose of a Groundwater Discharge Plan is to ensure the protection of ground water resources by monitoring and evaluating discharges to ground water from the land application of treated wastewater, establishing a groundwater protection plan, and, in the event of plan exceedances, establishing remediation requirements.

The Department of Environment and Natural Resources is recommending conditional approval of the Ground Water Discharge Plan and associated permits. Conditions of the Ground Water Discharge Plan consist of land application effluent requirements, effluent, soil, stream and ground water monitoring and reporting requirements, application rate requirements, runoff prevention, contingency plan requirements, and technical revision

authorization. The conditions have been previously publically noticed by the DENR and are available at DENR's website as well as upon request.

The conditions proposed by the DENR are not binding on the WMB or the Secretary and may be revised or rejected in whole or in part as a result of the contested case proceeding. As a result of the contested case proceeding, the WMB may grant, conditionally grant, or deny the application for a Groundwater Discharge Plan, a Water Quality Variance Permit, and/or a Groundwater Discharge Facility Construction Permit; and may recommend that the Secretary grant, conditionally grant, or deny the application for a Groundwater Discharge Permit. The Secretary may, as a result of the evidentiary hearing and recommended decision of the WMB, grant, conditionally grant, or deny the application for a Groundwater Discharge Permit.

The legal authority under which this hearing is to be held is SDCL 1-40-19, SDCL 34A-2-27, 34A-2-29, 34A-2-30, 34A-2-31, 34A-2-35, 34A-2-36.1, and ARSD chs. 74:54:01 and 74:54:02. The particular sections of the statutes involved are SDCL 34A-2-27, 34A-2-36.1 through SDCL 36A-2-39, and SDCL 34A-2-40. The particular sections of the rules involved are ARSD ch. 74:54:01 (specifically including ARSD 74:54:01:04 and 74:01:05) and all of ARSD ch. 74:54:02, particularly ARSD §§ 74:54:02:02, 74:54:02:06, 74:54:02:08, 74:54:02:09, 74:54:02:10, 74:54:02:11, 74:54:02:13, 74:54:02:14, 74:54:02:17, 74:54:02:18, 74:54:02:19, 74:54:02:20, 74:54:02:22, 74:54:02:23, 74:54:02:25, 74:54:02:26, 74:54:02:27 and 74:54:02:28(4)). In addition, the effluent limits in 10 CFR 20, Appendix B, Table 2, are involved.

Under ARSD 74:54:02:09, the WMB may conditionally approve the Groundwater Discharge Plan application by issuing all applicable permits described in §§ 74:54:02:11 and 74:54:02:13 if it finds that:

- (1) The application for a groundwater discharge plan is procedurally complete;
- (2) The ambient groundwater quality will not be degraded or a water quality variance permit can be issued to degrade the ambient water quality to the standards of §§ 74:54:01:04 and 74:54:01:05; and
- (3) The implementation of the proposed monitoring plan is adequate for compliance monitoring to ensure beneficial uses will not be impaired and there will be no hazard to human health.

Under ARSD 74:54:02:10, the WMB may disapprove the Groundwater Discharge Plan application if it finds that:

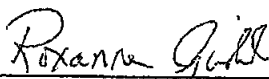
- (1) The application is procedurally incomplete;
- (2) The ambient groundwater quality will be degraded and a water quality variance permit cannot be issued to degrade the ambient water quality to the standards of §§ 74:54:01:04 and 74:54:01:05;
- (3) The beneficial uses of groundwater will be impaired or there is a hazard to human health from the potential discharge;
- (4) The application describes a discharge resulting from an accidental spill or leak or intentional dumping of a pollutant, unless the application is submitted as part of a remediation plan and if it has been shown by either study or practice that all reasonable other alternatives for groundwater clean-up will not result in further removal of contaminant concentrations from the groundwater; or
- (5) The application describes a discharge that will degrade groundwater quality to a level lower than the standards in §§ 74:54:01:04 and 74:54:01:05.

This contested case proceeding is an adversary proceeding and any party has the right to be present at the hearing and to be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at

the hearing. Decisions of the Board and Secretary may be appealed to the Circuit Court and State Supreme Court as provided by law.

Under SDCL 1-26-17(6), notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." However, since this particular matter involves consideration of a Groundwater Discharge Plan and recommendation for a Groundwater Discharge Permit, a monetary controversy in excess of \$2,500.00 or termination of a property right is not involved. As a result, the DENR maintains that the hearing must be conducted by the WMB.

Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify Eric Gronlund of the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

 1-30-13

Roxanne Giedd
Deputy Attorney General
Chief, Civil Litigation Division
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

Counsel for Groundwater Discharge Program, DENR.

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
and 2686-2, Powertech (USA),)
Inc.)

MOTION TO CONSOLIDATE AND
MOTION FOR PROCEDURAL
ORDER

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

COMES NOW, the South Dakota Department of Environment and Natural Resources Water Rights Program and Groundwater Quality Program (hereinafter "DENR"), and asks that the Board's duly appointed Prehearing Chairman Everett Hoyt CONSOLIDATE the two applications pending before the Water Management Board ("WMB"), and ENTER A PROCEDURAL ORDER (as described more fully below) in the above matters.

In support of these Motions, the DENR submits the following:

- 1) Powertech (USA), Inc. ("Powertech") has submitted applications for water permits (applications 2685-2 and 2686-2), and an application for approval

of a Groundwater Discharge Plan by the WMB (which includes applications for a Water Quality Variance Permit, a Groundwater Discharge Facility Construction Permit) and a Groundwater Discharge Permit (which is issued by the Secretary of DENR). These applications concern Powertech's proposed uranium in situ leach mine and processing facility located near Edgemont, S.D.

- 2) The Secretary of DENR has issued an Appointment of Water Management Board to Conduct Evidentiary Hearing.
- 3) Board member Everett Hoyt was appointed on October 3, 2012 by the WMB to serve as pre-hearing chair in all matters pending before the WMB.
- 4) A Notice of Hearing was published for the above entitled water permit applications and the final date for intervention therein was November 26, 2012. There are numerous intervenors, some of whom requested additional time to prepare for hearing. An automatic continuance was issued pursuant to SDCL 46-2A-5.
- 5) The DENR Notice of Recommendation for the Groundwater Discharge Plan application was published and the final date for submitting a petition for a contested case proceeding on that application was January 18, 2013. Several hundred persons submitted petitions for a contested case proceeding on the Groundwater Discharge Plan application.
- 6) The DENR has scheduled a procedural hearing for February 8, 2013, for consideration of this Motion (and any other procedural motions that may be

made at that time). In addition to providing for the orderly disposition of both of the above entitled proceedings, the February 8, 2013 hearing fulfills the prehearing requirement of ARSD 74:50:02:10 for the Groundwater Discharge Plan application.

- 7) The DENR moves and proposes that the above entitled proceedings be consolidated and heard together in Rapid City, South Dakota from March 18-22, 2013. DENR submits that consolidation of these hearings will eliminate significant duplication of testimony and evidence concerning Powertech's proposed uranium in situ leach mine and processing facility, and will thereby promote administrative economy for the WMB, the DENR, Powertech, and all parties to the proceedings.
- 8) Upon information and belief, the DENR believes that many of the several hundred persons who filed petitions for a contested case proceeding on the Groundwater Discharge Plan are interested in submitting comments to the WMB, but not in participating as a Party in the proceeding. In matters that have been held before other boards where there have been significant numbers of interested persons involved, those boards have held a public hearing prior to the initiation of the formal contested case proceeding to take comments from interested persons. The DENR believes that this process may assist in orderly procedure on this matter. DENR therefore proposes that all petitioners make an Election of Participation by March 1, 2013 that conveys whether the petitioner wishes to participate as a full

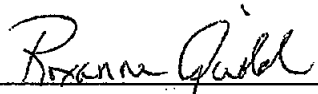
party in the formal contested case proceeding; provide public comments during a public hearing held by the WMB prior to initiation of the formal contested case proceeding; or rely on his or her written petition already filed with the Board. A proposed Election of Participation form is attached to the draft Procedural Order submitted with this Motion.

- 9) The DENR requests that any Party who will be represented at the formal contested case proceeding by an attorney be required to have their attorney file a Notice of Appearance. All nonresident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2.
- 10) The DENR requests that any Party to the formal contested case proceeding who is a corporation, partnership, association, or other legal entity (including non-profit organizations) be required to be represented by an attorney.
- 11) The DENR requests that the following prehearing schedule be established and apply to all Parties to the formal contested case proceeding:
 - i) Disclosure of expert witnesses and exchange of expert reports—
February 22, 2013.
 - ii) Disclosure of the names of witnesses each Party expects to call during the contested case proceeding – March 8, 2013.

- iii) A list identifying the exhibits each Party expects to offer into evidence during the contested case proceeding – March 8, 2013.
- iv) All exhibits be marked in advance by each party and that each party be prepared to provide a sufficient number of copies for use at hearing, including 10 copies for use by the Board, its counsel, and court reporter, and copies for all Parties participating in the contested case proceeding.
- v) Each Party shall contact Eric Gronlund, Water Rights Division, DENR at 605-773-3352 to obtain a block of Exhibit Numbers. DENR Water Rights has reserved Exhibit Numbers 1-99; DENR Groundwater Quality Program has reserved Exhibit Numbers 100-199; Powertech has reserved Exhibit Numbers 200-299.
- vi) All original pleadings are to be sent by regular first class mail to Eric Gronlund, DENR, Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501-3182. Parties must serve copies on all other parties, the Prehearing Chair, Board Counsel Jeff Hallem, and undersigned counsel.
- 12) A draft procedural order is attached hereto for the Chair's consideration.
- 13) All persons who filed petitions to intervene in the water permit applications and all persons who petitioned for a contested case proceeding on the Groundwater Discharge Plan application are provided with copies of

this Motion, except to the extent that the petitioners' names or addresses were illegible and not available in routine directory information.

Dated this 30th day of January, 2013.



Roxanne Giedd
Deputy Attorney General
Chief, Civil Litigation Division
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

Counsel for Groundwater Discharge Program, DENR.

Diane Best
Assistant Attorney General
South Dakota Office of Attorney General
317 N. Main Avenue
Sioux Falls SD 57104-6032

Counsel for Water Rights Program, DENR.

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
and 2686-2, Powertech (USA),)
Inc.)

PROCEDURAL ORDER

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

Upon consideration of the Motions for Consolidation and Procedural Order filed by the Department of Environment and Natural Resources Water Rights Program and Groundwater Quality Program, and argument submitted by all parties and interested persons at the Procedural Hearing (Prehearing Conference) held on February 8, 2013, it is hereby ORDERED that:

- 1) The above-entitled matters are hereby consolidated.
- 2) All persons who have filed Petitions to Intervene or Petitions for a Contested Case in the above-entitled matters must file an Election of Participation using the enclosed form by March 1, 2013.
- 3) Attorneys who have not yet filed Notices of Appearance for persons who intend to participate in the formal contested case proceeding are directed to do so immediately. Nonresident counsel must be able to demonstrate compliance with the *pro hac vice* requirements of SDCL 16-18-2 to participate in this matter.

- 4) All corporations, partnerships, associations, and other legal entities (including non-profit associations) must be represented by counsel in this proceeding.
- 5) The following prehearing schedule applies:
 - i) Each Party will disclose, in writing sent to all other Parties, the names of expert witnesses, curricula vitae, and a copy of any expert report that it intends to offer to each party of record by February 22, 2013.
 - ii) Each Party will disclose, in writing sent to all other Parties, the names of witnesses each Party expects to call during the contested case proceeding by March 8, 2013.
 - iii) Each Party will provide, by writing sent to all other Parties, a list identifying the exhibits that Party expects to offer into evidence during the contested case proceeding by March 8, 2013.
 - iv) All exhibits shall be marked in advance by each party and that each party must be prepared to provide a sufficient number of copies for use at hearing, including 10 copies for use by the Board, its counsel, and court reporter, and copies for all Parties participating in the contested case proceeding.
 - v) Each Party shall contact Eric Gronlund, Water Rights Division, DENR at 605-773-3352 to obtain a block of Exhibit Numbers. DENR Water Rights has reserved Exhibit Numbers 1-99; DENR Groundwater Quality Program

has reserved Exhibit Numbers 100-199; Powertech has reserved Exhibit Numbers 200-299.

- vi) All original pleadings are to be sent by regular first class mail to Eric Gronlund, DENR, Foss Building, 523 E. Capitol Avenue, Pierre, SD 57501-3182. Parties must serve copies on all other parties, the Prehearing Chair, Board Counsel Jeff Hallem, and undersigned counsel.
- 6) The public hearing before the full Board will begin at 8:30 am on March 18, 2013 in Rapid City South Dakota at the following location: Best Western Ramkota, 2111 N. LaCrosse Street, Rapid City, South Dakota. The formal contested case proceeding will immediately follow the public hearing. It is anticipated the proceedings will take at least five days and will conclude on March 22, 2013. The order of the proceeding will be as follows:
- i) There will be a public hearing with participants making informal comments not to exceed 15 minutes each. Parties shall not participate in the public hearing, but shall reserve their comments for testimony during the formal contested case proceeding.
 - ii) Once the public hearing is completed, the formal contested case proceeding will start with any preliminary motions from the Parties.
 - iii) The Parties of record will make opening statements.
 - iv) Witnesses and evidence will be taken subject to objection and cross examination, in the following order:
 - (a) Applicant Powertech (USA), Inc.;
 - (b) DENR Water Rights Program;

(c) DENR Groundwater Quality Program;

(d) Other Parties following an order established by the Chairman.

v) After the record is closed, the Parties will offer short closing arguments in the same order.

vi) 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 of fact and conclusions of law for the record.

Alternatively, the Board may take the matter under advisement until its next Board meeting.

7) Questions concerning the arrangements for the public hearing or formal contested case proceeding, and requests for designation of exhibit numbers for the contested case proceeding, are to be made to DENR employee Eric Gronlund at Eric.Gronlund@state.sd.us or 605-773-3352.

Dated this _____ day of January, 2013.

Everett Hoyt, Prehearing Chair
South Dakota Water Management Board

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
and 2686-2, Powertech (USA),)
Inc.)

ELECTION OF PARTICIPATION

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

TO: All Persons who filed Petitions to Intervene or Petitions to Initiate a Contested Case in either of the above-entitled matters:

You filed or signed a petition or sent comments to the Department of Environment and Natural Resources on one or both of the Powertech matters listed above pending before the Water Management Board. To clarify your intent, you must elect to: a) 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 public comments during a public hearing session before the formal contested case proceeding begins; OR c) rely on information you already filed. Election of (b) and (c) will waive some the rights you have if you participate as a Party under (a). You must return this form to the DENR on or before March 1, 2013. Failure to complete and return this

form by March 1, 2013 waives your right to participate as a full party in this proceeding.

Dated this _____ day of February, 2013.

Everett Hoyt, Prehearing Chair
South Dakota Water Management Board

_____ 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.

_____ I wish to provide public comments during a public hearing before the formal contested case evidentiary hearing begins. I understand that due to the large number of parties, I may be limited to 10-15 minutes.

_____ I wish to rely on the petition that I submitted or signed. I do not wish to testify or participate in person.

Date: _____

Signature: _____

Printed name: _____

Address: _____

Telephone number: _____

Email address: _____

Mail to: Eric Gronlund, DENR, 523 E. Capitol Ave., Pierre, SD 57501

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
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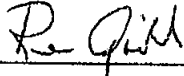
NOTICE OF PROCEDURAL
HEARING (PREHEARING
CONFERENCE)

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

Notice is hereby given that a Procedural Hearing and Prehearing Conference will be held on February 8, 2013 at 1:00 o'clock p.m. before Everett Hoyt, the hearing Chair of the South Dakota Water Management Board, at the following location:
Holiday Inn at Civic Center, 505 North Street, Rapid City, South Dakota.

The Prehearing Conference will address the Motion for Procedural Order filed by the Department of Environment and Natural Resources, as well as any other motion or issue raised by the Parties and interested persons at that time.

Dated this 30th day of January, 2013.



Roxanne Giedd
Deputy Attorney General
Chief, Civil Litigation Division
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

Counsel for Groundwater Discharge Program, DENR.

Diane Best
Assistant Attorney General
South Dakota Office of Attorney General
317 N. Main Avenue
Sioux Falls SD 57104-6032

Counsel for Water Rights Program, DENR.

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF THE 2012)	ANSWER OF DENR
GROUNDWATER DISCHARGE)	GROUNDWATER QUALITY
PLAN APPLICATION SUBMITTED)	PROGRAM TO PETITIONS FOR
BY POWERTECH (USA), INC.)	CONTESTED CASE

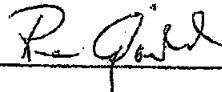
The Groundwater Quality Program of the Department of Environment and Natural Resources, pursuant to ARSD 74:50:02:04, hereby Answers the Petitions for Contested Case filed in the above-entitled matter as follows:

1. Over two hundred Petitions for Contested Case were filed in this proceeding. The number of petitions makes it impossible for the Groundwater Quality Program to respond to each and every allegation, contention or assertion raised in these Petitions in its Answer.
2. The Groundwater Quality Program therefore denies each and every factual allegation, contention or assertion raised in these Petitions, and its failure to respond to specific allegations or assertions shall not constitute an admission.

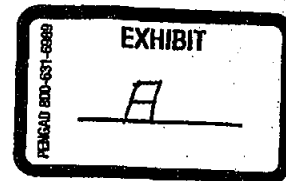
3. The Groundwater Quality Program asserts that the "Groundwater Discharge Plan" and its associated permit applications are procedurally complete.
4. The Groundwater Quality Program asserts that the "Water Quality Variance Permit" for a perimeter of operational pollution (POP) applied for by Powertech (USA), Inc., if conditioned as recommended by the Groundwater Quality Program, can be issued to degrade the ambient water quality to the standards of ARSD 74:54:01:04 and 74:54:01:05 in accordance with ARSD 74:54:02:11 and 74:54:92:17 upon Powertech's justification of necessary economic or social development.
5. The Groundwater Quality Program asserts that the implementation of the proposed monitoring plans contained in the "Groundwater Discharge Plan" and its associated permit applications, if conditioned as recommended by the Groundwater Quality Program, is adequate for compliance monitoring to ensure beneficial uses of the groundwater will not be impaired and there will be no hazard to human health.
6. The Groundwater Quality Program asserts that the "Groundwater Discharge Plan" and its associated permit applications, if conditioned as recommended by the Groundwater Quality Program, does not establish any of the conditions for which the applications may be denied under ARSD 74:54:02:10.

7. The Groundwater Quality Program desires, recommends and requests that the Water Management Board conditionally approve the "Groundwater Discharge Plan" application submitted by Powertech (USA), Inc. by conditionally issuing a "Water Quality Variance Permit" and a "Groundwater Discharge Facility Construction Permit".
8. The Groundwater Quality Program also desires, recommends and requests that the Water Management Board recommend that the Secretary of DENR conditional issue a "Groundwater Discharge Permit" to Powertech (USA), Inc.
9. The conditions which the Groundwater Quality Program recommends be placed on the "Groundwater Discharge Plan" and its associated permits issued to Powertech (USA), Inc. are attached hereto as Exhibit A, and incorporated herein as if fully set out.
10. These conditions and recommendations were based upon the application materials and other submissions by Powertech (USA), Inc. and the analysis and the extensive procedural and substantive review performed by the DENR on the application materials and other submissions, on the statutes and regulations involved, and on other materials and documents on which DENR relies in the course of execution of its duties and responsibilities.

Dated this 30th day of January, 2013.



Roxanne Giedd
Deputy Attorney General
Chief, Civil Litigation Division
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501
Counsel for Groundwater Quality Program, DENR.



ATTACHMENT 4
GWD 1-13 POWERTECH DEWEY-BURDOCK CONDITIONS
FOR THE LAND APPLICATION DISPOSAL SYSTEM
December 12, 2012

1. The Ground Water Discharge Plan application, along with any amendments and technical revisions shall become part of these conditions, with the exception of those items specifically added, deleted, or amended in these conditions to the plan. The plan consists of a construction permit, ground water quality variance and a ground water discharge permit.
2. The plan is not effective until all other related state, federal and local permits and licenses that are required for operations are obtained.
3. Land application of liquid wastes may not occur if sufficient capacity is available to dispose of the liquid wastes via Class V UIC well(s) permitted through the United States Environmental Protection Agency. If insufficient Class V UIC capacity is available as determined by Powertech and demonstrated to the Department, the excess treated liquid wastes may be disposed via the land application system in accordance with the ground water discharge plan and conditions. (Refer to Section 1.0 of the ground water discharge plan, submitted on March 9, 2012.) Prior to commencing land application, Powertech shall provide written notification to the department.
4. The application rate at the land application sites shall be controlled so as to prevent any surface runoff of the effluent. Powertech must ensure the application rate does not cause water to accumulate in the catchment areas or excessive ponding in the land application areas during normal operations (i.e., dry conditions). To prevent ground saturation and runoff, no application is permitted during periods of heavy or prolonged precipitation. Land application may not take place when ground or soil conditions are frozen or covered with snow or ice, or will result in the land application water freezing at the surface. Any runoff leaving the catchment areas would be a violation of surface water rules and would require a separate surface water discharge permit. The land application equipment shall, to the extent feasible, be installed and operated in such a manner as to minimize wind drift of the effluent and formation of aerosols.
5. Leaks, spills or other releases from the well fields, Class V UIC well(s), processing facilities, ponds or associated appurtenances, and fertilizer applied at rates greater than recommended by the manufacturer or the South Dakota Department of Agriculture for agronomic purposes, do not constitute permitted discharges under the ground water discharge plan, and must be remediated to applicable state law, rules and standards.
6. The permitted allowable limit (PAL) for each of the parameters of concern must not be exceeded at the compliance points, and are set at the South Dakota Ground Water Quality Standard (ARSD 74:54:01:04)**. For natural ambient concentrations that exceed the Standard, the PAL shall be set at the ambient concentration as outlined in the chart below. Permitted allowable limits will be updated once prior to land application operation in accordance with ARSD 74:54:02:18 and condition 7 to reflect natural variations in ground water quality.

	TDS	Sulfate	Chloride	Uranium (dissolved)	Gross Alpha	Radon
BC-1	3727 mg/L	2346 mg/L	250 mg/L	0.086 mg/L	76.61 pCi/L	1883 pCi/L
BC-2	3904 mg/L	2488 mg/L	250 mg/L	0.03 mg/L	24.8 pCi/L	2766 pCi/L
BC-3	3175 mg/L	2009 mg/L	250 mg/L	0.03 mg/L	30.7 pCi/L	1765 pCi/L
DC-1	6413 mg/L	4130 mg/L	250 mg/L	0.041mg/L	24.5 pCi/L	1962 pCi/L
DC-2	4646 mg/L	2129 mg/L	847 mg/L	0.03 mg/L	17.5 pCi/L	2132 pCi/L
DC-3*	11234 mg/L*	7508 mg/L*	822 mg/L*	0.03 mg/L*	21.2 pCi/L*	4478 pCi/L*
DC-4	11462 mg/L	7600 mg/L	250 mg/L	0.03 mg/L	25.9 pCi/L	4747 pCi/L

* For compliance wells that are dry or contain insufficient water to collect at least three ambient samples, the ambient concentration for determining PALs shall be established as the arithmetic mean plus one standard deviation of the sample data from the two nearest alluvial wells. For DC-3, these wells are DC-2 and DC-4.

** If the gross beta concentration, excluding naturally occurring potassium-40, is less than 50 pCi/L, gross beta will be considered in compliance with the ground water quality standard. If the concentration exceeds 50 pCi/L, then Powertech will analyze specific concentrations of beta particles and convert the concentrations from pCi/L to mrem/yr using the conversion tables in EPA 816-F-00-002 (March 2002), Appendix I.

7. Following the four months of ambient ground water monitoring as required by ARSD 74:54:02:18, Powertech will continue to collect monthly ground water samples from applicable wells for a total period of one year (eight months beyond initial four month ambient sampling period) and quarterly groundwater samples thereafter until mining commences. Thereafter regular sampling will be conducted in accordance with the monitoring plan outlined in Section 6 of the plan application. All samples collected prior to initial mining or land application will be used to update ambient ground water quality to reflect natural fluctuations in concentrations at that time. The arithmetic mean plus one standard deviation of the sample data shall represent the ambient concentrations for each of the parameters of concern. Subsequently, applicable permitted allowable limits will be updated in accordance with ARSD 74:54:02:18.
8. The ground water compliance monitoring points are: BC-1, BC-2, BC-3, DC-1, DC-2, DC-3 and DC-4. The compliance points are to be sampled in accordance with the monitoring plan outlined in Section 6 of the plan application. Monitoring results shall be submitted to the Ground Water Quality Program of the Department of Environment and Natural Resources within 10 days after Powertech's receipt from the laboratory.
9. Effluent shall not be applied with radionuclide concentrations above South Dakota Ground Water Quality Standards (ARSD 74:54:01:04, Table One) unless ambient alluvial radionuclide concentrations are above the standard. For radionuclides not listed in ARSD 74:54:01:04, Table One, effluent limits shall be set at the 10 CFR 20, Appendix B, Table 2, Column 2 limits as listed in the following table. Alluvial ambient for effluent limit determination is the arithmetic mean of all ambient based PALs for each radionuclide in the compliance point wells at each POP zone.

	SD ARSD 74:54:01:04	10 CFR 20, Appendix B
Beta particle and photon radioactivity (from man-made radionuclides)	4 mrem/yr ³	N/A
Gross alpha particle activity, excluding radon and uranium	15 pCi/l	N/A
Radium (combined 226 and 228)	5 pCi/l ¹	N/A ¹
Radium 226	N/A ¹	60 pCi/l ¹
Radium 228	N/A ¹	60 pCi/l ¹
Radon	300 pCi/l	N/A
Uranium	0.03 mg/l ²	300 pCi/l ²
Lead-210	N/A	10 pCi/l
Polonium-210	N/A	40 pCi/l
Thorium-230	N/A	100 pCi/l

¹Effluent is required to meet ARSD 74:54:01:04 for combined radium 226 and 228. If the alluvial ambient is above the standard of 5 pCi/l for either radium 226 or 228, the limits shall be separated and the alluvial ambient for each parameter shall be the effluent limits. No individual effluent limit will be set below the standard of 5 pCi/l. If the alluvial ambient is higher than the corresponding 10 CFR 20, Appendix B limit of 60 pCi/l, the effluent limit shall be 60 pCi/l.

²Uranium concentrations must meet both ARSD 74:54:01:04 ground water quality standard of 0.03 mg/l (or ambient) and 10 CFR 20, Appendix B limit of 300 pCi/l.

³If the gross beta concentration excluding naturally occurring potassium-40 is less than 50 pCi/L, the effluent will be deemed to be in compliance with the ground water quality standard. If the concentration exceeds 50 pCi/L, then Powertech will analyze specific concentrations of beta particles and convert the concentrations from pCi/L to mrem/yr using the conversion tables in EPA 816-F-00-002 (March 2002), Appendix I.

10. Soil samples are to be collected annually each fall from each of the land application pivot areas active during that year and analyzed for the parameters listed in Table 6.4-1 (updated August 2012) of the Plan application, with the addition of radium 228.
11. If monitoring shows extreme variability or unpredictability in analytical results, or if the reliability of the monitoring program or the parameters monitored are inappropriate or inadequate, the Department may require Powertech to submit a revised monitoring and treatment program to correct the identified deficiencies for Department review and approval.
12. In addition to the parameters listed in Table 6.2-2 of the Plan application, operational stream sampling shall include: total dissolved solids (TDS), total suspended solids (TSS), hardness, chloride, sulfate, arsenic, cadmium, chromium and selenium. Unless noted, the parameters are to be analyzed as dissolved. If monitoring on Beaver or Pass Creeks show sufficient variability between upgradient and downgradient monitoring sites that could indicate potential influence from the land application systems, Powertech shall immediately begin investigating and develop and implement a mitigation and remediation plan.
13. Prior to initiation of land application for the season, the effluent must be sampled by Powertech and analyzed for the parameters listed in Tables 6.1-3 (updated August 2012) and

6.3-1 of the Plan application, with the addition of radium 228. Powertech shall notify the Department at least 72 hours prior to the initiation of land application to provide the Department opportunity to take effluent samples for chemical characterization. Following initiation of land application for each season, the effluent will be sampled monthly in accordance with the Monitoring Plan (Section 6) of the Plan application until land application ceases for each season. The Department may conduct duplicate sampling during any regular sampling event and during the annual audit.

14. One to two monitoring well(s) shall be installed in each POP zone near the ponds in order to aid in differentiating potential impacts from the land application system verses potential leaks from the ponds. These wells are to be monitored on the same schedule as the interior monitoring wells outlined in Section 6 of the plan application. Should monitoring in these wells indicate leakage from the ponds could be influencing water quality in the POP zone, Powertech shall submit to the Department an investigative plan to determine the extent and magnitude of this influence and possible remediation options as required by condition 5.
15. Should the water quality in interior monitor wells indicate an increasing trend in constituent concentrations that could potentially trigger a permit limit violation at a compliance well, Powertech will implement a contingency plan as outlined in Section 8 of the Plan application.
16. In accordance with ARSD 74:54:02:23(4) the Department is authorized to approve technical revisions to a ground water discharge facility without the requirement of a permit modification or renewal. Such technical revisions include the following:
 - a. Monitoring plans or parameters;
 - b. Plans and specifications for permitted facilities;
 - c. Reasonable changes to the quality of discharged waste;
 - d. Reasonable changes in volume of discharged waste;
 - e. Quality control and quality assurance plans;
 - f. Any other changes that will not result in the degradation of the ground water above the South Dakota Water Quality Standards.

Technical revisions must be submitted to the Department in writing. The Department shall either approve, disapprove, conditionally approve, or request additional information within 30 days after receipt.

STATE OF SOUTH DAKOTA

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF WATER)
PERMIT APPLICATIONS 2685-2)
and 2686-2, Powertech (USA),)
Inc.)

CERTIFICATE OF SERVICE

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

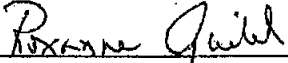
The undersigned hereby certifies that true and correct copies of the:
Appointment of Prehearing Chairman; Appointment of Water Management
Board to Conduct Evidentiary Hearing; Notice of Hearing on Groundwater
Discharge Plan Application; Motion to Consolidate and Motion for Procedural
Order (with Proposed Procedural Order and Election of Participation form);
Notice of Procedural Hearing (Prehearing Conference); and Answer of DENR
Groundwater Discharge Program; in *In the Matter of Water Permit Applications
2685-2 and 2686-2* and/or *In the Matter of 2012 Groundwater Discharge Plan
Application Submitted by Powertech (USA), Inc.* were served upon the following
persons:

Eric Gronlund
DENR
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501-3182

Jeffrey P. Hallem
Attorney General's Office
1302 E. Hwy. 14, Ste. 1
Pierre, SD 57501

Everett Hoyt
4422 Carriage Hills Drive
Rapid City SD 57702

, and upon each of the persons shown in the attached lists on this 30th day of
January 2013 by First Class Mail, postage pre-paid.



Roxanne Giedd
Deputy Attorney General
Chief, Civil Litigation Division
Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Applicant:
Powertech(USA)Inc.
Richard Blubaugh
5575 DTC Parkway # 140
Greenwood Village CO 80111

Represented by:
Max Main
Bennett Main & Gubbrud
618 State St
Belle Fourche SD 57717

Petitioners:

Angela R Jarding
Mike Jarding
27201 Valley Rd
Hot Springs, SD 57747

William Ing
1446 Evanston Ave
Hot Springs, SD 57747

Gail M Soave
14249 Lyons St
Livonia, MI 48154

Don Kelley
Kim Kelley
12637 Merritt-Estes Rd
Deadwood, SD 57732

Jerry Bloomer
2146 Minnekahta Ave
Hot Springs, SD 57747

Virginia Panarella
26979 SD HWY 89
Hot Springs, SD 57747-6002

Mary Kay Carle
5821 Michael Ct
St Cloud, MN 56303

Kathryn Weller
Jennifer Lena
8812 Dunsmore Rd
Rapid City, SD 57702

Cindy Rowe
Cheryl A Rowe
Roger Rowe
7950 Dark Canyon Rd
Rapid City, SD 57702

Judith R Van Cleave
7711 Dark Canyon Rd
Rapid City, SD 57702

Marsha Seabolt
4435 Dolphin
Rapid City, SD 57701

Cindy Powell
1637 38th St
Rapid City, SD 57702

Sandra Woodard
PO Box 533
Oglaga, SD 57764-0533

Susan Hey
312 N 40th St
Rapid City, SD 57702

John E Larson
10374 Dryland Dr
Edgemont, SD 57735

Dallas Keiswetter
Bonnie Keiswetter
12899 Sapphire Ln
Hot Springs, SD 57747

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Judy Gaalswyk
912 9th St
Rapid City, SD 57701

Michael O'Rourke
4513 Leo Dr #4
Madison, WI 53716

Beth Audette
1929 Evergreen Dr
Rapid City, SD 57702

Sister Gabriella Crowley
720 W Wiswall Place
Sioux Falls, SD 57105

Gena Parkhurst
PO Box 1914
Rapid City, SD 57709

Mark Mason
1161 Deadwood Ave #3
Rapid City, SD 57702

Anna K Ball
Po Box 46
Piedmont, SD 57769

Ronald Fischer
711 6th Ave E
Mobridge, SD 57601

Charlene J Smith
PO Box 481
Rapid City, SD 57709

Eloise Kaneshiro
Gwen E Kaneshiro
1446 Evanston Ave
Hot Springs, SD 57747

Shawntera Kennedy
Corey Kennedy
140 Adonia Lane
Rapid City, SD 57701

Larry Tegantvoort
10041 Ventura Ln
Summerset, SD 57718

Bill Walsh
7450 Dark Canyon Rd
Rapid City, SD 57702

Rick Good Voice Flute
Katherine L. Montague
1216 Wambli Dr
Rapid City, SD 57701

James R. McGrath
Daria McGrath
8403 Pioneer Circle
Rapid City, SD 57702

Karen Pettigrew
1203 St Cloud St
Rapid City, SD 57701

Bette Wilkinson
3718 Redwood St
Rapid City, SD 57701

Kenneth D Anderson
24035 Palmer Gulch Rd
Hill City, SD 57745

Charleton T Reynar
Antoinette Reynar
28025 Cascade Rd
Hot Springs, SD 57747

LaVella Birkland
Jay Birkland
301 S 6th St
Hot Springs, SD 57747

Stanley T Keys
6595 Dark Canyon Rd
Rapid City, SD 57702

Mark Boddicker
13850 Battle Creek Rd
Hermosa, SD 57744

Jeremy A Horton
Roger Horton
Jo Beth Troxel
PO Box 629
Edgemont, SD 57735

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

James L Olson
Rev. Jodi Olson
12350 Beaver Den Dr
Custer, SD 57730

Regina A Koch
515 N 1st St #1
Rapid City, SD 57701

Julia Woodard
Brandon Bad Wound
639 Pahasapa Rd
Rapid City, SD 57701

Dahl H McLean
11853 Acorn Ridge Rd
Spearfish, SD 57783

Cheryl Jarding
John B Jarding
202 E Nebraska St
Rapid City, SD 57701

Marvin Kammerer
22198 Elk Vale Rd
Rapid City, SD 57701

Carol Merwin
Carol Meson
2247 Cedar Dr
Rapid City, SD 57702

Irene Fandrich
301 S 6th St
Hot Springs, SD 57747

Adrian Forette III
119 S. Berrypine Rd.
Rapid City, SD 57702-1911

Karen N Miller
3119 Turtle Creek Ct
Rapid City, SD 57703

Kim Alarie
840 Spruce St Lot 320
Rapid City, SD 57701

Jeremy Smith
287 Evans Lane
Spearfish, SD 57783

Patricia Jenkins
284 Evans Lane
Spearfish, SD 57783

Patricia E Ohliger
Eileen Ohliger
446 S 5th St
Hot Springs, SD 57747

Annabelle Between Lodge
PO Box 118
Oglala, SD 57764

Anne Fields, Ph.D.
2415 Amberbrooke Ln.
Grayson, GA 30017

Barbara Sharp
445 S 3rd St
Hot Springs, SD 57747

Cynthia Messenger
12750 Merchen Rd #18
Hot Springs, SD 57747

Robin Wynia
12750 Merchen Rd
Hot Springs, SD 57747

Robert Lee
338 S 5th St
Hot Springs, SD 57747

Valerie J Naylor
23201 Custer Trails Rd
Rapid City, SD 57702

Jean Nachtigall
12746 Country Rd
Hot Springs, SD 57747

Linda M Styger
11962 Sundance Dr
Hot Springs, SD 57747

Debra J Weishaupl
110 N 3rd St
Hot Springs, SD 57747

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Karla R LaRive
839 Almond St
Hot Springs, SD 57747

Eiray Rosaaen
Twyla Amiotte
PO Box 125
Buffalo Gap SD 57722

Alan Walker
303 Ceclea St
Buffalo Gap, SD 57722

Jerry Simunter
22769 Jenny Rd
Hot Springs, SD 57747

Glen Graves
George Ann Graves
304 4th St
Buffalo Gap, SD 57722

Joe W Montgomery
210 Pine St
Buffalo Gap, SD 57722

Luella J Hicks
PO Box 144
Buffalo Gap, SD 57722

Heather J Besco
PO Box 82
Buffalo Gap, SD 57722

Sharon & Alex Christie
PO Box 74
209 N 2nd St
Buffalo Gap, SD 57722

Billy Jack McLaughlin
PO Box 25
Buffalo Gap, SD 57722

Laurence & Margaret Lamont
PO Box 53
Buffalo Gap, SD 57722

Susan R Henderson
11507 HWY 471
Edgemont, SD 57735

Brenda Gamache
2337 Wilson Ave
Hot Springs, SD 57747

Mary Ellen Uptain
Douglas Uptain
3213 W Main #112
Rapid City, SD 57702

Linda L Smith
947 S Chicago St
Hot Springs, SD 57747

Bernard & Laurie Barnaud
12129 Sagebrush Rd
Nisland, SD 57762

Rebecca Michele Lord
PO Box 952
Hill City, SD 57745-0952

Judith A Joba
3463 Elk Creek
Piedmont, SD 57769

Frank J Kloucek
2966 423rd Ave
Scotland, SD 57059

Jon Fair
Cheryl Fair
12909 Sheps Canyon Rd
Hot Springs, SD 57747

Barbara Cromwell
2313 Cruz Dr
Rapid City, SD 57702

Alison Swan
703 N River St
Hot Springs, SD 57747

Margaret Mary Keogh
1851 City Springs Rd
Rapid City, SD 57702-9602

Sudhi Baumberger
12374 Baumberger Rd
Deadwood, SD 57732

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Therese Marie Furois
1851 City Springs Rd
Rapid City, SD 57702

Francis Dicesare
1501 11th St
Rapid City, SD 57701

Jerri Baker
Terri Baker
705 N River St
Hot Springs, SD 57747

Shirley Lautenschlager
Robert Lautenschlager
3507 Idlewild Ct
Rapid City, SD 57702

Donna M Fischer
12311 Whitetail Rd
Deadwood, SD 57732

Bruce Ellison
Law Office of Bruce Ellison
PO Box 2508
328 East NY St
Rapid City, SD 57709

Lorna Jost
21939 464th Ave
Volga, SD 57071

Kathy Durrum
10374 Dry Land Dr
Edgemont, SD 57735

Ray Gellerman
12349 Moss Rock Lane
Custer, SD 57730

Dr. Suzan Nolan
1164 Lookout Ln
Rapid City, SD 57701

Mary R Burrows
2309 Wilson Ave
Hot Springs, SD 57747

Clifford H. Heinzen
Virginia M Heinzen
Kip Heinzen
309 S 6th St
Hot Springs, SD 57747

Katie Roseland
5811 Gemini St
Rapid City, SD 57703

Mary Goulet
338 S 5th St
Hot Springs, SD 57747

Georgia Holmes
838 Birch
Hot Springs, SD 57747

Nancy C Magnuson
PO Box 54
Buffalo Gap, SD 57722

Elaine Noyers
4104 Lakeview Dr
Rapid City, SD 57702

M. Engle
T. Engle
115 Scott St
Edgemont, SD 57735

Susan W Watt
PO Box 790
12163 Highland Rd.
Hot Springs, SD 57747

B.R. Brygider
104 Tulliamore Rd
Gdn. City, NY 11530-2512

Dayton O Hyde
Black Hills Wild Horse Sanctuary
PO Box 932
12165 Highland Rd
Hot Springs, SD 57747

Lillas C Jarding
PO Box 591
Rapid City, SD 57709

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Charmaine White Face
Defenders of the Black Hills
He Sapa O'nakijin
PO Box 2003
Rapid City, SD 57709

Tom Emanuel
South Dakota Peace & Justice Center
19 N Pine St.
Vermillion, SD 57069
Jeremiah J Davis
130 E Centennial
Rapid City, SD 57701

Sabrina King
14705 Harter Ct
Piedmont, SD 57769

Gary E Heckenlaible
PO Box 422
Rapid City, SD 57709

Shirley Frederick
3411 Idlewild Ct
Rapid City, SD 57702

Lilias C Jones-Jarding
418 N 44th St
Rapid City, SD 57702

Robert V Shannon
24705 Timber Ridge Road
Hermosa, SD 57744

Dennis & Penny Kouckles
12484 Willow Creek Rd
Custer, SD 57730

Angelia Baldwin
PO Box 191
307 3rd St
Pierpont, SD 57468

Sarah Peterson
510 Jennings
Hot Springs, SD 57747

Rick Summerville
Rebecca R Leas, Ph. D.
6509 Seminole Lane
Rapid City, SD 57702

Valerie A Parker, MD
4814 Cliff Dr
Rapid City, SD 57702

Mike Linderman
446 Battle Mtn. Ave
Hot Springs, SD 57747

Donald L Ackerman
27128 Wonderland Rd
Hot Springs, SD 57747

Rick Rewe
28149 Shep's Canyon Rd
Hot Springs, SD 57747

Rick Britton
PO Box 53
Hot Springs, SD 57747

Mary Solway
Jason Solway
910 S 6th St
Hot Springs, SD 57747

Hannah Bochert
Sherman St
Hot Springs, SD 57747

Bonnie Manity
545 N River #313
Hot Springs, SD 57747

Elton Zornes
12742 HWY 18
Hot Springs, SD 57747

Jana Firkins
244 Galveston Ave
Hot Springs, SD 57747

Russ Sisk
12619 Brooke Canyon Rd
Hot Springs, SD 57747

Alica
Madeline Ortego
PO Box 861
Pine Ridge, SD 57773

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Frank Ruther
545 N River St #413
Hot Springs, SD 57747

Wendolyn Weimers
306 N 19th St
Hot Springs, SD 57747

Lisa Masterson
445 S 6th St
Hot Springs, SD 57747

Margaret Ikonen
28612 W South Shore Rd
Hot Springs, SD 57747

Charles Cox
2307 Jennings Ave
Hot Springs, SD 57747

Susan Malewke
545 N River St #401
Hot Springs, SD 57747

Resident
12560 Beaver Creek Rd
Hot Springs, SD 57747

Rosie Elmore
PO Box 886
Hot Springs, SD 57747

Kristen Wilder
506 Jennings Ave
Hot Springs, SD 57747

Chris Pierce
101 N Chicago
Hot Springs, SD 57747

Amber Gill
718 Harney
Custer, SD 57730

Jason Nachtigall
12749 County Rd
Hot Springs, SD 57747

Stacy Reetz
546 Jennings Ave
Hot Springs, SD 57747

Glenn Mushaney
PO Box 272
Hot Springs, SD 57747

Grant Rush
PO Box 712
Hot Springs, SD 57747

Wade Evans
27338 Taylor Ln
Hot Springs, SD 57747

Betty Russell
PO Box 836
Hot Springs, SD 57747

Richard Stone
12959 Buffalo Circle
Hot Springs, SD 57747

Pam Ludweg
810 Gordon
Custer, SD 57730

Terry Johnson
26680 Buffalo Butte Dr.
Hot Springs, SD 57747

Darla Stevens
1622 Evanston
Hot Springs, SD 57747

Ellen Heafner
504 S 19th
Hot Springs, SD 57747

Russell D Witte
301 S Chicago
Hot Springs, SD 57747

Richard Nowlan
202 Dakota St
Hot Springs, SD 57747

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Dawn Johnson
PO Box 1123
Hot Springs, SD 57747

Barbara Walter
545 N River St
Apt #503
Hot Springs, SD 57747

May Gozelet
338 S River St
Hot Springs, SD 57747

Jody McKean
Jim McKean
27317 Hidden Ct
Hot Springs, SD 57747

Rube D.
104 Jefferson St
Edgemont, SD 57735

Judy Gaalough
912 9th St
Rapid City, SD 57701

Connlann Schochzented
Connie Schwarzenbach
John Schwarzenbach
2229 Minnekahta Ave
Hot Springs, SD 57747

Otis Osborn
523 St Francis St
Rapid City, SD 57701

Jacqueline Arpen
2004 Maple Ave
Rapid City, SD 57701

Lexxie & Steve Meyer
13050 Lakeview Dr
Hot Springs, SD 57747

Phil Heckman
Juli Ames-Curtis
11936 Hay Creek Rd
Custer SD 57702

Susan Stareck
PO Box 686
Hot Springs, SD 57747

Cindy Brunson
11122 Fort Igloo Rd
Edgemont, SD 57735

Ed Harvey
Edward Harvey
1545 Albany Ave
Hot Springs, SD 57747

Forest and Andy Johnson
610 Nellie Lane
Spearfish, SD 57783

Jeanie Tiff
2342 Willson Ave
Hot Springs, SD 57747

Sandra Woodward
PO Box 533
Oglala, SD 57764-0533

Karla Larive
PO Box 752
Hot Springs, SD 57747

Dale Steineke
13130 Greg Dr
Hot Springs, SD 57747

Peggy Detmers
Joel Detmers
13488 Shelter Dr
Rapid City, SD 57702

Rodney Knudson
PO Box 25
Hulett, WY 85720

Jenna Shaw
J&M Shaw
12083 Beardsley Dr
Hot Springs, SD 57747

Jillian Anawaty
Dakota Rural Action
2804 Willow Ave
Rapid City, SD 57701

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Marsha Millier
27316 Hidden Ct
Hot Springs, SD 57747

Carrie Regelin
2312 Serten Ave
Rapid City, SD 57701

Jim Peterson
1203 11th St
Rapid City, SD 57701

George J. Corrigan
446 S 5th St
Hot Springs, SD 57747

Harold Arns
22723 Tawney Ct
Box Elder, SD 57719

Wally Caln
690 S 6th St
Hot Springs, SD 57747

Debra White Plume
PO Box 71
Manderson, SD 57756

Rick Draeger
617 St Cloud
Rapid City, SD 57701

Teresa Daiss
Niklaus Towne
28423 Old HWY 79
Hot Springs, SD 57747

Matie Tyson
2508 Crown Hill
Rapid City, SD 57702

Greg Langer
PO Box 141
Buffalo Gap, SD 57722'

Leora Drapper
Joe Drapper
13174 Fall River Rd
Hot Springs, SD 57747

Diane Gross
PO Box 389
Hot Springs, SD 57747

Lisa Freshour
2045 Canton Ave #535
Hot Springs, SD 57747

Angie Balwin
PO Box 191
Pierpont, SD 57468

Betty Runzerel
PO Box 836
Hot Springs, SD 57747

Mary Boots
Wayne Boots
Ray Boots
25588 Mt Shadow Rd
Edgemont, SD 57735

Mary Helen Pederson
PO Box 646
Hot Springs, SD 57747

Jesse Grant
1938 Detroit Ave
Hot Springs, SD 57747

Ashley Fempson
PO Box 587
Hot Springs, SD 57747

Carla R. Marshall
PO Box 3184
Rapid City, SD 57709

Lila Streff
12379 Beaver Den Dr
Custer, SD 57730

Jeannie Fine
Gardner & Lynn Gray
PO Box 153
Pringle, SD 57773

Interested Persons List for Ground Water Quality Plan 1-13-Powertech USA, Inc.

Maxine Jensen
Donald Jensen
806 Galveston
Hot Springs, SD 57747

Kelise Walter
Jason Parker
1005 S River St
Hot Springs, SD 57747

Kendra Dexter
Ross Dexter
23278 Pebble Ct
Hot Springs, SD 57747

Dianna Jensen
27999 Cascade Rd
Hot Springs, SD 57747

Gerald Blidooe
27635 View Rd
Oral, SD 57766

Gary A McDowell
107 South St Apt B
Rapid City, SD 57701

Parties of Record List for Water Permit No. 2685-2 & 2586-2 – Powertech (USA) Inc

Applicant:

Powertech(USA)Inc.
Richard Blubaugh
5575 DTC Parkway # 140
Greenwood Village CO 80111

Represented by:

Max Main
Bennett Main & Gubbrud
618 State St
Belle Fourche SD 57717

Petitioners:

Dewane Stearns
11500 Indian Canyon Rd
Edgemont SD 57735

Tom Emanuel
19 Pine St
Vermillion SD 57069

National Park Service-Water Resource Division
William R Hansen
1201 Oakridge Dr # 250
Fort Collins CO 80525

Susan Henderson
11507 Hwy 471
Edgemont SD 57735

Bruce Ellison
PO Box 2508
Rapid City SD 57709

Mark & Jennifer Belitz
28233 Cascade Rd
Hot Springs SD 57747

Cindy Brunson
11122 Fort Igloo Rd
Edgemont SD 57735

Jeremiah J Davis
130 E Centennial
Rapid City SD 57701

Defenders of the Black Hills
Charmaine White Face
PO Box 2003
Rapid City SD 57709

Mark Tubbs
10891 River Rd
Edgemont SD 57735

Jerri Baker
705 N River St
Hot Springs SD 57747

City of Hot Springs
Don De Vries
303 N River Rd
Hot Springs SD 57747

Rebecca R Leas Ph D
6509 Seminole Lane
Rapid City SD 57702

Barbara Cromwell
2313 Cruz Dr
Rapid City SD 57702

Parties of Record List for Water Permit No. 2685-2 & 2586-2 -- Powertech (USA) Inc

Donald H Kelley MD
12637 Merritt Estes Rd
Deadwood SD 57732

Karl W. Bothul
338 S 17th
Hot Springs SD 57747

Marvin Kammerer
22198 Elk Vale Rd
Rapid City SD 57701

Linda Pirales
606 S River
Hot Springs SD 57747

Larry & Doris Belitz
12747 Oak Road
Hot Springs SD 57747

Neal Miller
486 Almond St
Hot Springs SD 57747

Gena M Parkhurst
PO Box 1914
Rapid City SD 57709

Jewell Keown
410 S 4th St
Hot Springs SD 57747

Lilias Jarding
418 N 44th St
Rapid City SD 57702

Barbara Sharp
445 S 3rd
Hot Springs SD 57747

Jillian Anawaty
2804 Willow Ave
Rapid City SD 57701

Mary Goulet
338 S 5th St
Hot Springs SD 57747

Sabrina King
14705 Halter Court
Piedmont SD 57767

Dorothy Richards
340 N 23rd St
Hot Springs SD 57747

Gary Heckenlible
PO Box 422
Rapid City SD 57709

Raymond Palmer
27221 Windy Rd
Hot Springs SD 57747

SD Dept. of Game Fish & Parks
Leslie Murphy – Sr Biologist
523 E. Capitol Ave
Pierre SD 57501

Jerry Bloomer
2146 Minnekahta
Hot Springs SD 57747

Edward H Binns
408 N 17th St
Hot Springs SD 57747

William Ing & Eloise Kaneshiro
1446 Evanston Ave
Hot Springs SD 57747

Fall River County Commission
Michael P Ortner - Chairman
906 N River St
Hot Springs SD 57747

Peggy Semler
PO Box 27
Hot Springs SD 57747

Casey Neugebauer
27552 S Buffalo Gap Rd
Oral SD 57766

Parties of Record List for Water Permit No. 2685-2 & 2586-2 – Powertech (USA) Inc

Mel Pence
2330 Washington Ave
Hot Springs SD 57747

Louise Kursave
27275 SD Hwy 79
Buffalo Gap SD 57722

Betty Welch
PO Box 14
Edgemont SD 57735

Rusty Witte
301 S Chicago
Hot Springs SD 57747

Lennie Walleen
446 S 16th St
Hot Springs SD 57747

Dan Jensen
806 Galveston Ave
Hot Springs SD 57747

Gary Schweigert
279 Cascade Rd
Hot Springs SD 57747

Maura Smith
306 Joplin # 8
Hot Springs SD 57747

Kellee Walton
1005 S River St
Hot Springs SD 57747

Michelle Sugeg
PO Box 139
Hot Springs SD 57747

Milli Vong
333 N River St
Hot Springs SD 57747

Linda L Smith
947 S Chicago St
Hot Springs SD 57747

Jerry & Ronald Baker
705 N River St
Hot Springs SD 57747

Jeanie Tiff
2342 Wilson Ave
Hot Springs SD 57747

Lyle Jensen
13167 Fall River Rd
Hot Springs SD 57747

Lynda Davies
PO Box 1204
Hot Springs SD 57747

Brenda Gamache
2337 Wilson Ave
Hot Springs SD 57747

Alison Swan
302 S 16th St
Hot Springs SD 57747

Donald & Bonnie Maritz
545 N River St #313
Hot Springs SD 57747

Calvin Larive
713 N River St
Hot Springs SD 57747

Sharon Parker
1913 Jennings Ave
Hot Springs SD 57747

Robert Lee
338 S 5th St
Hot Springs SD 57747

Gary Putnam
204 4th Ave
Edgemont SD 57735

Gary Friendshuh
27098 Elk Rd
Buffalo Gap SD 57722

Parties of Record List for Water Permit No. 2685-2 & 2586-2 -- Powertech (USA) Inc

Dan Lang
27564 Ponderosa Rd
Hot Springs SD 57747

Dayton O Hyde
PO Box 932
Hot Springs SD 57747

Susan Watt
PO Box 790
Hot Springs SD 57747

Leora & Joe Doppen
13174 Fall River Rd
Hot Springs SD 57747

Susan Stolarcek
PO Box 686
Hot Springs SD 57747

Trip Williams
27662 Scenic Rd
Hot Springs SD 57747

Judith Klein
238 N 6th St
Hot Springs SD 57747

Craig Romey
342 N 4th
Hot Springs SD 57747

Michelle Brock
26846 Hwy 385
Hot Springs SD 57747

Nancy Blatchford
441 S 4th Street
Hot Spring SD 57747

Rich and Jackie Gericke
305 S 14th Street
Hot Springs SD 57747

Elaine Everhart
545 N River Street
Hot Springs SD 57747

Allen Chesson
545 N River Street
Hot Springs SD 57747

Gary Friedshuh
22098 Elk Road
Buffalo Gap SD 57722

Moses and Ciser Hernandez
705 N River St
Hot Springs SD 57747

Sarah and AJ Phillips
705 N River Street, Apt 1
Hot Springs SD 57747

Richardo Jacoue ?
601 Albany Avenue
Hot Springs SD 57747

Julie and Emily Christensen
603 N River Street
Hot Springs SD 57747

Paula Tonemah ?
306 Thompson
Hot Springs SD 57747

Loraine Tucker
PO Box 1129
Hot Springs SD 57747

Eddie Berford
241 Galveston Avenue
Hot Springs SD 57747

Veronica Herandez
705 N River St
Hot Springs SD 57747

DeAnn McComb
PO Box 254
Hot Springs SD 57747

Georgiana Cross
2045 Canton Avenue #530
Hot Springs SD 57747

Parties of Record List for Water Permit No. 2685-2 & 2586-2 – Powertech (USA) Inc

Karen Yekel
2455 Minnekahta
Hot Springs SD 57747

Marion Muhm
1614 Coldbrook Avenue
Hot Springs SD 57747

Patricia Hernandez
246 South 6th St, Apt 4
Hot Springs SD 57747

Miriam and Ken Martin
801 N River Street
Hot Springs SD 57747

Jake Haacke
1026 Evanston Avenue
Hot Springs SD 57747

Brianna Badure
PO Box 971
Hot Springs SD 57747

Rex and Mildred Piper
12616 Argyle Road
Hot Springs SD 57747

Jim Red Cloud
13084 Gray Drive
Hot Springs SD 57747

J Smith
2728 Hot Brook
Hot Springs SD 57747

Steve ?
2317 Washington
Hot Springs SD 57747

BJ Hunter
353 Bears Ave
Hot Springs SD 57747

Jim Johnson
12569 W Cascade Mt Rd
Hot Spring SD 57747

Gail Saxonis
745 Happy Hollow
Hot Spring SD 57747

Barbara Walter
545 N River St # 503
Hot Spring SD 57747

Carolyn Hertel
27615 Country View Rd
Hot Spring SD 57747

Gary Miles
27582 Rathbun Rd
Hot Spring SD 57747

Niklaus Towne
28423 Old Hwy 79
Hot Spring SD 57747

Ray Powell
2025 Lincoln Ave
Hot Spring SD 57747

Joe Bassingham
10985 Pleasant Valley Rd
Edgemont SD 57735

Joel Hawkins
504 16th St
Hot Spring SD 57747

Terry Holcomb
105 S 23rd St
Hot Spring SD 57747

Grady Lockhart
PO Box 152
Oelrichs SD 57652

Rose Pettris
12544 West Cascade Rd
Hot Spring SD 57747

Parties of Record List for Water Permit No. 2685-2 & 2586-2 -- Powertech (USA) Inc.

James B Woodward
PO Box 599
Wellington CO 80549

Jennie Sotherland
27735 Cascade Rd
Hot Springs SD 57747

LATE FILED

W Cindy Gillis
Gonzalez Law Firm
522 7th St # 202
Rapid City SD 57701