

December 1, 2010

William J. Froehlich, Chair  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Mark O. Barnett  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Richard F. Cole  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

In the Matter of  
POWERTECH (USA) INC.,  
Docket No. 40-9075-MLA; ASLBP No. 10-898-02-MLA-BD01

Dear Administrative Judges:

Pursuant to 10 C.F.R. §§ 2.336(b) and (c) and 2.1203, the Nuclear Regulatory Commission (NRC) Staff provides the Licensing Board and the parties with an updated index listing documents required to be disclosed by the Staff. (Attachment 1.) These documents may be viewed by accessing the hearing file for this proceeding that is maintained by the NRC's Office of the Secretary. The Staff is also attaching indices listing documents that, under 10 C.F.R. § 2.390, are exempt from disclosure and for which the Staff is asserting a privilege or immunity. (Attachments 2 and 3.)

Along with the attached lists, the Staff is providing affidavits (1) certifying that all relevant materials have been disclosed to the extent required by 10 C.F.R. § 2.336(c), and (2) formally invoking the deliberative process privilege for certain documents.

The Staff will update its mandatory disclosures, hearing file, and privilege logs no later than January 3, 2011.

Sincerely,

***/Signed (electronically) by/  
Michael J. Clark***

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Michael J. Clark  
Counsel for NRC Staff

Enclosures: Attachment 1: Hearing File Index  
Attachment 2: Deliberative Process Privilege Log  
Attachment 3: Attorney-Client/Deliberative Process Privilege Log  
Affidavit of Ronald Burrows  
Declaration of Bill Von Till

cc: Electronic Information Exchange Service List

**ATTACHMENT 1**  
**POWERTECH HEARING FILE AND MANDATORY DISCLOSURES**  
**Update — December 1, 2010**

	<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>
00-385	ML103330215	12-Nov-2010	2010/11/12 Powertech Dewey-Burdock LA -
00-386	ML103330216	19-Nov-2010	2010/11/19 Powertech Dewey-Burdock LA - Request for submitting the culture resources survey
00-387	ML103330217	19-Nov-2010	2010/11/19 Powertech Dewey-Burdock LA - RE: Request for submitting the culture resources survey
00-388	ML103330220	22-Nov-2010	2010/11/22 Powertech Dewey-Burdock LA - NRC's Consultation letter for proposed Dewey-Burdock ISR facility near Edgemont, SD
00-389	ML103330221	22-Nov-2010	2010/11/22 Powertech Dewey-Burdock LA - FW: Transmittal of Cultural Report
00-390	ML103330300	17-Nov-2010	2010/11/17 Powertech Dewey-Burdock LA - Clarification of Assumptions regarding Drilling Emissions for DDWs
00-391	ML103330301	29-Nov-2010	2010/11/29 Powertech Dewey-Burdock LA - FW: Request for submitting the culture resources survey
00-392	ML103330304	22-Nov-2010	2010/11/22 Powertech Dewey-Burdock LA - News article FYI

**ATTACHMENT 2**  
**POWERTECH HEARING FILE AND MANDATORY DISCLOSURES**  
**DELIBERATIVE PROCESS LOG**  
**Update — December 1, 2010**

Certain documents otherwise subject to inclusion in the hearing file and mandatory disclosures for this proceeding have been determined by the NRC Staff to contain information subject to withholding from public disclosure as predecisional, deliberative information. Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents withheld under the deliberative process privilege.

<b>ID#</b>	<b>Accession Number</b>	<b>Author/Affiliation</b>	<b>Title/Description</b>	<b>Document Date</b>	<b>Document Type</b>	<b>Addressee/Affiliation</b>	<b>Comment</b>	<b>Page Count</b>
DP-00-253	ML103330210	Yilma, Haimanot (NRC/FSME)	2010/11/16 Powertech Dewey-Burdock LA - supplemental RAI response	11/16/2010	E-Mail	Burrows, Ronald; Lancaster, Thomas; Cohen, Stephen (NRC/FSME)	Email proposing meeting to discuss RAI responses.	2
DP-00-254	ML103330291	Fesko, Gregory (MTSO/MT/BLM/DOI)	2010/11/19 Powertech Dewey-Burdock LA - Fw: Tribal Meeting in Spearfish	11/19/2010	E-Mail	Yilma, Haimanot (NRC/FSME)	Interagency email discussing coordination of government to government consultation.	6
DP-00-255	ML103330298	Prikryl, James (CNWRA)	2010/11/29 Powertech Dewey-Burdock LA - FW: Revised cultural and historical resources	11/29/2010	E-Mail	Yilma, Haimanot (NRC/FSME)	Internal email discussing revisions to cultural resources section of SEIS.	2

**ATTACHMENT 3**  
**POWERTECH HEARING FILE AND MANDATORY DISCLOSURES**  
**ATTORNEY-CLIENT/DELIBERATIVE PROCESS PRIVILEGE LOG**  
**Update — December 1, 2010**

Certain documents otherwise subject to inclusion in the hearing file or mandatory disclosures for this proceeding contain communications between NRC Staff and legal counsel. Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents withheld under the attorney-client privilege. Additionally, these documents have been determined by the NRC Staff to contain predecisional, deliberative information. As such, they are being withheld under the deliberative process privilege as well.

	<b>Accession Number</b>	<b>Author Name &amp; Author Affiliation</b>	<b>Title</b>	<b>Document Date</b>	<b>Document Type</b>	<b>Addressee Name &amp; Addressee Affiliation</b>	<b>Comment</b>	<b>Pages</b>
AC-00-83	ML103330288	Jehle, Patricia (NRC/OGC)	2010/11/19 Powertech Dewey-Burdock LA - RE: Revision to TCP section	11/19/2010	E-Mail	Yilma, Haimanot; Davis, Jennifer (NRC/FSME)	Raises legal questions concerning Tribal consultation	2
AC-00-84	ML102780092	Davis, Jennifer (NRC/FSME)	2010/11/15 Powertech Dewey-Burdock LA - Revision to TCP section	9/15/2010	E-Mail	Yilma, Haimanot; (NRC/FSME); Jehle, Patricia (NRC/OGC)	Raises legal questions concerning Tribal consultation	18

December 1, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
POWERTECH (USA) INC.,	)	Docket No. 40-9075-MLA
	)	
(Dewey-Burdock In Situ Uranium Recovery Facility)	)	ASLBP No. 10-898-02-MLA-BD01

AFFIDAVIT OF RONALD BURROWS CONCERNING MANDATORY  
DISCLOSURE REQUIREMENT OF 10 C.F.R. § 2.336(c)

I, Ronald Burrows, do hereby state as follows:

1. I am employed as a Senior Health Physicist in the Nuclear Regulatory Commission's Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, Decommissioning and Uranium Recovery Licensing Directorate. Among my responsibilities, I serve as Project Manager for Powertech (USA) Inc.'s application for a license to be used in connection with the proposed Dewey-Burdock uranium recovery facility. In this capacity, I am managing the preparation of the NRC Staff's hearing file and mandatory disclosures in connection with Powertech's application.
2. I hereby certify that all materials the Staff must disclose in this proceeding under 10 C.F.R. § 2.336 (b) and (c) have been disclosed, and that the disclosures are accurate and complete as of the date of this certification.
3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
Ronald Burrows

Executed in Rockville, MD  
this 1<sup>st</sup> day of December, 2010

December 1, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
POWERTECH (USA) INC.,	)	Docket No. 40-9075-MLA
	)	
(Dewey-Burdock In Situ Uranium Recovery Facility)	)	ASLBP No. 10-898-02-MLA-BD01

DECLARATION OF BILL VON TILL

I, Bill Von Till, do hereby state as follows:

1. I am employed as Chief of the Uranium Recovery Licensing Branch in the Nuclear Regulatory Commission’s Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, Decommissioning and Uranium Recovery Licensing Directorate. My supervisory responsibilities include oversight of the NRC Staff’s review and evaluation of Powertech (USA) Inc.’s application for a license to be used in connection with the proposed Dewey-Burdock uranium recovery facility. On this date I am acting for Keith McConnell, who is Deputy Director in the Division of Waste Management and Environmental Protection, with responsibility for the Decommissioning and Uranium Recovery Licensing Directorate.

2. As part of their responsibilities in preparing the hearing file and mandatory disclosures for this proceeding, NRC staff members under my supervision identified a number of documents as privileged because they contain information concerning the Staff’s deliberative process. Those documents are listed in Attachment 2 and Attachment 3 to the Staff’s November Update to the Hearing File, which I understand will be filed on December 1, 2010.

3. I have personally reviewed the documents identified as privileged in Attachment 2 and have determined, in accordance with the guidance set forth in Management Directive 3.4,

that all documents contain predecisional information concerning the Staff's review of Powertech's license application. These documents contain the Staff's analyses, recommendations, opinions or evaluations, and they may not necessarily reflect the final agency position with respect to the matters discussed therein. Each of the documents comprises part of the deliberative process necessary to the Staff's review of Powertech's license application.

4. Further, I have determined that disclosure of the documents could result in harm to the agency, in that it would (a) prematurely disclose the preliminary views of individual Staff members or the Staff prior to reaching a final agency decision, potentially creating confusion as to the actual policy or views of the NRC Staff; (b) hinder the efficiency of the Staff, in that forced disclosure of its internal discussions on an unresolved issue would tend to chill all future deliberations and would interfere with the Staff's ability to engage in a free exchange of opinions and analyses prior to publishing its final review documents; and (c) imply or suggest incorrectly that the opinions of the Staff members involved in these communications are actually the final decisions of the agency, when no such final decision has yet been made.

5. Accordingly, I formally invoke the deliberative process privilege with respect to each of the documents listed in Attachment 2 and Attachment 3 to the Staff's December Update to the Hearing File, dated December 1, 2010.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
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Bill Von Till

Executed in Rockville, Maryland  
this 1st day of December, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
POWERTECH (USA) INC	)	Docket No. 40-9075-MLA
	)	ASLBP No. 10-898-02- MLA-BD01
	)	
(Dewey-Burdock In Situ Uranium Recovery	)	Date: December 1, 2010
Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S HEARING FILE UPDATE" in this proceeding have been served via the Electronic Information Exchange (EIE) this 1<sup>st</sup> day of December, 2010, which to the best of my knowledge resulted in transmittal of the copies to those on the EIE Service List for this proceeding.

***/Signed (electronically) by/  
Michael J. Clark***

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Michael J. Clark  
Counsel for the NRC Staff