

February 10, 2011

Mr. Richard E. Blubaugh
Vice President of Environmental Health
and Safety Resources
Powertech (USA), Inc.
5575 DTC Parkway, Suite 140
Greenwood Village, CO 80111

SUBJECT: NRC REJECTION OF POWERTECH (USA), INC.'S REQUEST FOR
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE FOR THE
PROPOSED DEWEY-BURDOCK IN SITU RECOVERY FACILITY
(TAC NO. J00830)

Dear Mr. Blubaugh:

By letter dated August 10, 2009, Powertech (USA) Inc. (Powertech) resubmitted a Source Materials License application to the U.S. Nuclear Regulatory Commission (NRC) staff for the Dewey-Burdock Uranium Project, a proposed uranium in situ recovery (ISR) facility. By letter dated November 4, 2010, Powertech submitted clarifications to issues identified by the NRC related to the review of Powertech's Environmental Report for the proposed Dewey-Burdock uranium ISR facility.

Powertech's November 4, 2010, letter also included a Powertech Affidavit, signed by Richard E. Blubaugh, dated November 4, 2010. The affidavit requested that the information submitted in response to NRC staff Request for Additional Information (RAI) Clarifications for RAI-WR2(2) (ADAMS accession # ML10278010), titled Attachment A of Response to RAI ER_WR-3, be withheld from public disclosure pursuant to 10 CFR 2.390 for the following reasons:

1. The data provided in response to the NRC staff "RAI Clarifications for RAI-WR2(2)" is proprietary under 10 CFR Section 2.390(a)(4) as it is a portion of the database used for the economic valuation and mine planning for the proposed Dewey-Burdock Project.
2. The data is also geological in nature and was acquired from proprietary drill hole logs and, thus, is considered privileged and confidential under 10 CFR 2.390(a)(9).
3. The data contained in the response have been held in confidence by Powertech due to its part in the business and economic modeling used by Powertech to evaluate the Dewey-Burdock Project. Due to the extreme sensitivity of this information, Powertech does not provide such information to public or private entities.
4. The data contained in the above-mentioned portion of the responses are customarily held in confidence by businesses and other organizations seeking to protect information related to the economic modeling aspects of the development of uranium projects such as the Dewey-Burdock Project.

5. The data contained in the above-mentioned response are being transmitted to the NRC staff in confidence. Indeed, any such data shown to NRC staff were only revealed in a non-public context.
6. The data regarding the Fuson Isopach listed in Powertech's response to "RAI Clarifications for RAI-WR2 (2)" are not available in any public sources.
7. Release of the data and information contained in the above mentioned response to "RAI Clarifications for RAI-WR2 (2)" may cause substantial harm to Powertech and its shareholders should competitors and/or opponents of the proposed Dewey-Burdock Project attempt to reinterpret and publish the data for the purpose of negatively affecting the licensing and permitting or economic valuation of the proposed Dewey-Burdock Project.

Section 2.390(b)(1)(iii) of 10 CFR Part 2 of the Commission's regulations requires that each supporting affidavit contain a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. The section further requires the statement to "address with specificity" the considerations listed in 10 CFR 2.390(a)(4).

Upon review of the affidavit, and the material requested to be withheld from public disclosure, in light of the aforementioned paragraphs of the regulations, NRC staff has determined the affidavit fails to adequately support that request. NRC staff evaluated Powertech's request under 10 CFR 2.390(a)(9). 10 CFR 2.390(a)(9) provides an exception to public disclosure for geological and geophysical information and data, including maps, concerning wells. Powertech bases their withholding request under 10 CFR 2.390(a) for drill hole data. NRC staff has determined that this type of information (drill hole locations and depths) is not the type of information addressed by 10 CFR 2.390(a)(9). See *Black Hills Alliance v. U.S. Forest Service*, 603 F. Supp. 117, 122 (D.S.D. 1984) (holding that Exemption 9 in the Freedom of Information Act applies only to "well information of a technical or scientific nature," and not to general mineral exploration data, such as the location, depth, or number of exploration drill holes). Therefore, the drill hole data does not qualify for the exception specified in 10 CFR 2.390(a)(9).

NRC staff also evaluated Powertech's claim under 10 CFR 2.390(b)(4)(ii) that the data requested to be withheld are of a type customarily held in confidence by its owner. NRC staff has reviewed other applications for projects similar to Dewey-Burdock and has not found this to be the case. NRC staff has determined that this type of data submitted by other applicants with similar projects has not been held in confidence by those applicants. In addition, NRC staff notes that there are a substantial amount of similar data from Powertech itself that are already publicly available. For example, Powertech's application dated August 10, 2009, contains information on over 5800 exploratory boreholes including locations and isopachs that can be used to derive data similar to the data sought to be withheld from public disclosure in Powertech's November 4, 2010, affidavit.

Lastly, NRC staff evaluated Powertech's claim that the release of the data requested to be withheld may cause substantial harm. However, the document provides no details that might be examined under 10 CFR 2.390(b)(4)(v) such as the extent of economic harm, examples of specifically how this harm could materialize, or how the data sought to be withheld from public disclosure is unique from the substantial amount of similar Powertech data related to the Dewey-Burdock Project already publicly available to competitors and opponents via the internet and various public libraries. More importantly, however, is the requirement under 10 CFR

2.390(b)(4)(v) to address whether that public disclosure of the data requested to be withheld is *likely* to cause substantial harm, not just that the potential for substantial harm exists. Powertech only claims that release of the data *may* cause the harm that it asserts. We have reviewed your request and all of the supporting information in accordance with the requirements of 10 CFR 2.390 and have concluded that you have not provided sufficient justification for us to determine that the information sought to be withheld from public disclosure contains proprietary, or confidential commercial information.

Accordingly, we have concluded that the information sought to be withheld from public disclosure does not meet the requirements of 10 CFR 2.390. Therefore, your request to withhold the information submitted in response to NRC staff RAI Clarifications for RAI-WR2(2), titled Attachment A of Response to RAI ER_WR-3, as described in your November 4, 2010 letter, from public disclosure is denied.

The staff cannot return any portion of the document in question because the NRC needs to retain the information in the document to make licensing decisions for your August 10, 2009 Source Materials License Application as stated above. In accordance with 10 CFR 2.390(c), the information sought to be withheld will be placed in the Commission's Public Document Room 30 days after your receipt of this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Ronald A. Burrows, Project Manager
Uranium Recovery Licensing Branch
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No. 40-9075

cc: Amy Thurkill, Powertech (USA)
John Mays, Powertech (USA)
Bob Townsend, SD DENR
Mike Cepak, SD DENR
Marian Atkins, BLM
Mike McNeil, FS
Lynn Kolund, FS
Valois Shea, US EPA, Region 8

2.390(b)(4)(v) to address whether that public disclosure of the data requested to be withheld is *likely* to cause substantial harm, not just that the potential for substantial harm exists. Powertech only claims that release of the data *may* cause the harm that it asserts. We have reviewed your request and all of the supporting information in accordance with the requirements of 10 CFR 2.390 and have concluded that you have not provided sufficient justification for us to determine that the information sought to be withheld from public disclosure contains proprietary, or confidential commercial information.

Accordingly, we have concluded that the information sought to be withheld from public disclosure does not meet the requirements of 10 CFR 2.390. Therefore, your request to withhold the information submitted in response to NRC staff RAI Clarifications for RAI-WR2(2), titled Attachment A of Response to RAI ER_WR-3, as described in your November 4, 2010 letter, from public disclosure is denied.

The staff cannot return any portion of the document in question because the NRC needs to retain the information in the document to make licensing decisions for your August 10, 2009 Source Materials License Application as stated above. In accordance with 10 CFR 2.390(c), the information sought to be withheld will be placed in the Commission's Public Document Room 30 days after your receipt of this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

Ronald A. Burrows, Project Manager
 Uranium Recovery Licensing Branch
 Decommissioning and Uranium Recovery
 Licensing Directorate
 Division of Waste Management
 and Environmental Protection
 Office of Federal and State Materials
 and Environmental Management Programs

Docket No. 40-9075

cc: Amy Thurkill, Powertech (USA)
 John Mays, Powertech (USA)
 Bob Townsend, SD DENR
 Mike Cepak, SD DENR
 Marian Atkins, BLM
 Mike McNeil, FS
 Lynn Kolund, FS
 Valois Shea, US EPA, Region 8

DISTRIBUTION: JWhitten, RIV KMcConnell DOrlando BVonTill

ML103440513

Office	DWMEP	DWMEP	DWMEP	OGC	DWMEP	DWMEP
Name	RBurrows	TLancaster	BGarrett	MClark	BVonTill	RBurrows
Date	12/10/10	12/13/10	12/13/10	12/17/10	2/10/11	2/10/11

OFFICIAL RECORD COPY