

April 24, 2013

Mr. Reid Nelson, Director  
Federal Agency Programs  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue  
Suite 803  
Old Post Office Building  
Washington, DC 20004

SUBJECT: SECTION 106 ACTIVITIES FOR THE PROPOSED DEWEY-BURDOCK IN-SITU URANIUM RECOVERY PROJECT IN FALL RIVER AND CUSTER COUNTIES, SOUTH DAKOTA; INVITE PARTICIPATION IN THE SECTION 106 PROCESS AND REQUEST FOR GUIDANCE AND CLARIFICATION

Dear Mr. Nelson:

With this letter, the U.S. Nuclear Regulatory Commission (NRC) staff formally invites the Advisory Council on Historic Preservation (ACHP) to become an active consulting party in the Section 106 process for Powertech (USA) Inc.'s proposed Dewey-Burdock In-Situ Uranium Recovery Project in Fall River and Custer Counties, South Dakota (Map 1 shows the proposed project area). The NRC staff also provides the ACHP with an update on the staff's Section 106 consultation efforts for the Dewey-Burdock Project (Enclosure 2). A brief description of the NRC efforts to date follows (Enclosure 3). A chronology of the NRC staff's consultation efforts is detailed in the Enclosures.

The license boundary for the project encompasses 10,580-acres in Fall River and Custer Counties. Although the project site is 10,580-acres, the area of ground disturbance is considerably smaller. Only 243 acres will be used for wellfield development, construction of the central processing plant and satellite plants, installation of all associated piping, and road construction. An additional 2,394-acre of project land has been established as a buffer zone surrounding the wellfields and plant facilities. The area of potential effects (APE) for ground disturbance totals 2,637-acres (Map 3 shows the areas of potential impact). The remainder of the project area maybe subject to visual or auditory effects; these effects will be examined during the continued consultation efforts with all consulting Tribes.

Additional land disturbance may occur within the project boundary for waste disposal through land application methods and/or for power line development. The need for these actions is still unclear, and for this reason the precise locations of future disturbances are unknown. Therefore, the NRC staff plans to use a phased approach and develop a programmatic agreement (PA), as allowed by 36 CFR 800.4, to address sites that could be impacted by the land application disposal option, as well as land that would be disturbed for power line development (Map 2 shows the archeological sites). The NRC staff emphasizes that

development of future wellfields outside the area identified in the license application requires a separate license application and new NRC safety and environmental reviews, including a new Section 106 review. The NRC staff is consulting with 23 interested Tribes to identify and evaluate properties of traditional religious and cultural significance that may be affected by the proposed action. To date, the NRC staff has held three face-to-face meetings and three teleconferences with the Tribes. The NRC staff provided the Tribes with copies of the Class III Cultural Resource survey. The staff has also shared information with Tribes through numerous letters, emails and follow-up phone calls, in an effort to gather information about the location and National Register eligibility of properties within the proposed project area.

Several issues have arisen during meetings between tribal representatives and the NRC staff on which consensus has not been reached. Many of the consulting Tribes have stated that a close-interval (5 meters) pedestrian inventory or survey of the entire 10,580-acre project area is necessary to identify properties of religious and cultural significance that might be impacted by the proposed project. The Tribes expressed concerns about the future expansion of the project into areas beyond the 243-acre area of ground disturbance and its 2,394-acre buffer zone. The Tribes raised concerns that new areas may be developed within the Dewey-Burdock site without tribal consultation and continued NRC involvement. Recently, some Tribes have claimed that a close-interval pedestrian survey of the entire 10,580-acre project area is the only way the NRC can meet the reasonable and good faith standard for identification of historic properties of significance to the Tribes.

The NRC staff has considered the information provided by the Tribes, but we do not agree that an intensive pedestrian survey of the entire project area is necessary to identify and evaluate potential historic properties that may be affected by the project. The NRC staff notes that, under 36 CFR 800.4(b)(1), federal agencies consider several factors in determining what constitutes a “reasonable and good faith” effort for identifying historic properties. These include “past planning, research and studies, the magnitude and nature of the undertaking and the degree of federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the APE.” The regulation also states that this level of effort may include a variety of information-gathering approaches, including “sample field surveys.”

The NRC staff believes an intensive survey for properties of traditional religious and cultural importance to Tribes is appropriate for the 2,637-acres that include the area of direct ground disturbance and its buffer zone. For that area, the impact to historic properties could be significant. While there is also some potential for effects on any historic properties that may lie outside the area of ground disturbance and its buffer zone—auditory or visual effects, for example—these effects should be limited, temporary and reversible. For this reason, the NRC staff believes that less intensive investigative approaches would be reasonable, prudent, and appropriate. The NRC staff’s position is consistent with the nature of the undertaking at issue, the regulations at 36 CFR 800.4(b)(1) and 800.8, and ACHP guidance regarding the reasonable and good faith standard for property identification.

Since the NRC staff initiated the Section 106 process in March 2010, the staff has expended significant effort in trying to obtain information on any traditional religious and cultural properties that may be present at the Dewey-Burdock site. The staff's efforts, outlined in the enclosures to this letter, have offered multiple opportunities for interested Tribes to consult with the staff. The NRC staff believes that it has made a good faith and reasonable effort to reach out to interested Tribes to commence identification efforts for the proposed Dewey-Burdock site. To date, however, the staff has been unable to obtain tribal agreement regarding an approach for identifying potential properties at the site. Nor has the staff received any information from the consulting Tribes regarding any *known* properties at the site.

With respect to the field survey requested by the Tribes, NRC communicated with the consulting parties in December 2012 that Powertech will offer specific times in the spring of 2013 where the Dewey-Burdock site would be opened for interested Tribes to perform on-the-ground surveys. Although the NRC staff does not agree that an intensive pedestrian survey of the entire project area is necessary to identify and evaluate potential historic properties that may be affected by the project, in an effort to work collaboratively with all interested Tribes, the NRC staff sent an invitation letter to the Tribes on February 8, 2013 to conduct an on-the-ground field survey. The survey allows the Tribes to examine areas of their choosing within the 10,580-acre project boundary, but focus on the 2,637-acres (243-acre area of ground disturbance and its 2,394-acre buffer zone). The NRC staff would also like to initiate discussions regarding the development of a PA over the next several weeks to address remaining areas of consultation under Section 106 for the Dewey-Burdock project. The NRC staff believes that the level of survey efforts outlined above is reasonable and appropriate, and is consistent with 36 CFR 800.4(b)(1). After historic properties are identified, staff will follow 36 CFR 800.4(c)(1) to evaluate the significance of the properties.

The NRC appreciates any guidance from the ACHP regarding path forward as stated above to move the Dewey-Burdock Section 106 consultation forward.

R. Nelson

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If you have any questions regarding the content of this letter or the enclosures, please contact Ms. Haimanot Yilma of my staff at 301-415-8029 or by email at [Haimanot.Yilma@nrc.gov](mailto:Haimanot.Yilma@nrc.gov).

Sincerely,

**/RA/**

Larry W. Camper, Director  
Division of Waste Management  
and Environmental Protection  
Office of Federal and State Materials  
and Environmental Management Programs

Enclosures:

1. Maps 1-3
2. Summary of Tribal Consultation Activities
3. Section 106 Tribal Outreach Efforts

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1. Map 1
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<b>NAME</b>	HYilma	AWalker-Smith	KHsueh	PJehle via email	AMohseni	LCamper
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