

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Chief Administrative Judge:

In the Matter of

POWERTECH (USA) INC.,

(Dewey-Burdock In Situ Uranium Recovery
Facility)

Docket No. 40-9075-MLA

MEMORANDUM AND ORDER

(Protective Order Governing the Disclosure of Sensitive Unclassified
Non-Safeguards Information (SUNSI))

Upon consideration of (1) the Motion for Entry of a Protective Order by the Nuclear Regulatory Commission Staff (NRC Staff), and (2) the Answer of the Oglala Sioux Tribe to Motion for Entry of a Protective Order, I GRANT the motion and issue this Protective Order, the terms of which are as follows:

1. In a letter dated January 15, 2010, the Oglala Sioux Tribe (Petitioner) stated that it intends to petition to intervene in this proceeding. Mrs. Theresa Two Bulls, President of the Oglala Sioux Tribe, and Ms. Grace Dugan, the Tribe's designated legal counsel, requested access to Sensitive Unclassified Non-Safeguards Information (SUNSI) in their capacities as representatives of the Petitioner.

2. This Protective Order shall govern the Petitioner's access to and use of protected information identified as SUNSI by Powertech (USA) Inc. (Applicant). Applicant withheld this information from the public record pursuant to 10 C.F.R. § 2.390 because it contains detailed descriptions of the locations of archaeological sites within the boundary of the proposed facility.

The protected material describing the locations of archaeological sites is referenced in “Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources of Archeological Sites, January 25, 2010.” This Protective Order shall remain in effect until specifically terminated by the Atomic Safety and Licensing Board or the Commission.

3. Mrs. Theresa Two Bulls and Ms. Dugan, as well as Mr. Jeffrey C. Parsons and Mr. Travis E. Stills who also have filed appearances as counsel for Petitioner, shall each execute and file the attached Non-Disclosure Affidavit in order to gain access to information on the locations of archaeological sites included in reports submitted by Applicant to the NRC Staff. Petitioner’s representatives that do not execute and file the Non-Disclosure Affidavit will not receive access to the SUNSI.

4. Other than the filing deadlines set forth in this Order, the terms of this Protective Order do not apply to the NRC Staff, contractors, or NRC legal counsel. The NRC Staff’s use of SUNSI is governed by NRC regulations and policies as well as other applicable law.

5. SUNSI shall be treated as confidential by Petitioner. SUNSI shall not be used except as necessary for the conduct of a proceeding on the Application. Petitioner may make copies of and take notes of SUNSI, but such copies and notes become SUNSI, subject to the terms of this Order. Petitioner shall take reasonable precautions to ensure that SUNSI is not distributed to unauthorized persons.

6. The Petitioner shall maintain all SUNSI in a secure location, and shall not provide the SUNSI to anyone not authorized to receive it pursuant to this Order.

7. As legal counsel for the Oglala Sioux Tribe, Ms. Dugan, Mr. Parsons, and Mr. Stills may allow legal staff under their supervision access to SUNSI as necessary in the course of their representation. Ms. Dugan, Mr. Parsons, and Mr. Stills shall be responsible for ensuring

that their staff complies with the terms of the Order and the Non-Disclosure Affidavit and will be subject to sanctions for any violations by their staff.

8. The Petitioner shall maintain a log of all copies or materials that contain SUNSI within their possession or control. Upon the termination of a proceeding on the Application or upon order by the Atomic Safety and Licensing Board or Commission, the Petitioner shall: (1) return all materials containing SUNSI to the Applicant or destroy the materials, except that copies of filings, official transcripts, exhibits, and notes may be redacted so that only those portions containing SUNSI are destroyed; and (2) submit a Non-Disclosure Affidavit stating that the SUNSI within their possession or control has been returned or destroyed, and shall serve a copy of the executed Non-Disclosure Affidavit on the Applicant and NRC Staff within 15 days.

9. If Petitioner has reason to suspect that SUNSI may have been lost or misplaced, or that SUNSI has otherwise become available to unauthorized persons, Petitioner shall promptly notify the Licensing Board of those suspicions and the reason for them.

10. The Licensing Board may alter or amend this Protective Order and resolve disputes. The Petitioner, Applicant, or NRC Staff may seek amendments to this Order or the Non-Disclosure Affidavits by filing a motion for amendment.

11. Pleadings or other documents for filing that contain SUNSI shall be filed electronically using the E-Filing system. The Petitioner shall take the necessary actions to obtain a digital certificate and file documents in this proceeding using the E-Filing system. The person filing the document must properly choose the option to prevent the document from being filed in the public docket. Only members of the Board, NRC Staff counsel, Applicant's counsel, and authorized persons should be "checked" as recipients on the electronic service list. If any party to a proceeding on this Application intends to submit an exhibit, testimony, or pleading containing SUNSI without using the E-Filing system, the party shall notify the Licensing Board

prior to such filing. Nothing in this Order shall preclude a party to a proceeding on the Application from objecting to the use of an exhibit, testimony, or a pleading because it contains SUNSI. The Licensing Board may issue additional orders concerning the use of SUNSI at a hearing.

12. Nothing in this Order shall preclude any person from seeking public disclosure of SUNSI in accordance with NRC regulations and applicable federal law. Nothing in this Order shall preclude any person from seeking, through discovery in any other administrative or judicial proceeding, information protected by this Order.

13. Any violation of this Protective Order or any violation of a Non-Disclosure Affidavit executed in accordance with this Order may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate. Nothing in this Order restricts or waives the Applicant's or NRC's rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SUNSI.

14. This Protective Order does not apply to information that the NRC Staff, Atomic Safety and Licensing Board, or Commission determines to not be SUNSI.

15. The Petitioner must file executed Non-Disclosure Affidavits within 3 days after the service of this Order.

16. Unless directed otherwise by subsequent order, within 25 days of the date Petitioner is provided access to SUNSI, Petitioner must file any proposed contentions the development of which depend on access to SUNSI.

17. The Applicant and NRC Staff may file Answers within 25 days after service of any proposed contentions the development of which depend on access to SUNSI.

18. The Petitioner may file a Reply to any Answers within 7 days after service of the Answers.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD PANEL

/RA/

E. Roy Hawkens
CHIEF ADMINISTRATIVE JUDGE

Rockville, Maryland
March 5, 2010

NON-DISCLOSURE AFFIDAVIT

I, _____, being duly sworn, states:

- 1. I have read the _____, 2010 Atomic Safety and Licensing Board protective order issued in connection with the Powertech (USA) Inc., Dewey-Burdock In Situ Uranium Recovery Facility license application proceeding, Docket No. 40-9075-MLA. I will comply in all respects with the protective order’s terms and conditions. I will protect and keep confidential all Sensitive Unclassified Non-safeguards Information (SUNSI)¹ in accordance with the terms of this Non-Disclosure Affidavit.
- 2. I will not disclose SUNSI to anyone except an authorized person. I will protect documents containing or revealing SUNSI in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such SUNSI), so that the SUNSI contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.
- 3. When not under my direct control or the direct control of another authorized person, I will keep and protect all documents containing or revealing SUNSI (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container. I will not transmit by facsimile any material containing SUNSI.
- 4. Each document that contains or reveals SUNSI shall be marked “Contains SUNSI Information” in a conspicuous manner.
- 5. Neither during nor after this proceeding, will I publicly reveal any SUNSI that I receive by virtue of this proceeding as long as the information remains SUNSI and is not otherwise a matter of public record.
- 6. I acknowledge that any violation of the terms of this affidavit or the Atomic Safety and Licensing Board’s protective order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me that the Atomic Safety and Licensing Board or the Commission may deem to be appropriate.

WHEREFORE, I do solemnly agree to protect and keep confidential such protected information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

(Name)

Subscribed to and sworn before me this _____ day of _____, 2010.

Notary Public

My commission expires:

¹ The protected SUNSI material describing the locations of archaeological sites is referenced in "Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources or Archeological Sites, January 25, 2010." Archaeological reports and data in the public record are not subject to the Board’s protective order or the restrictions described in this affidavit.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
POWERTECH (USA) INC.) Docket No. 40-9075-MLA
(Dewey-Burdock In Situ Recovery Facility)
Source Materials License Application))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (PROTECTIVE ORDER GOVERNING THE DISCLOSURE OF SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI)) have been served upon the following persons by Electronic Information Exchange.

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POWERTECH (USA) INC., DOCKET NO. 40-9075-MLA
MEMORANDUM AND ORDER (PROTECTIVE ORDER GOVERNING THE DISCLOSURE OF
SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI))

Aligning for Responsible Mining
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Pine Ridge, SD 57770
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David Cory Frankel, Esq.
arm.legal@gmail.com

[Original signed by Evangeline S. Ngbea]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of March 2010.