

January 25, 2010

Oglala Sioux Tribe
Theresa Two Bulls, President
PO Box 2070
Pine Ridge, SD 57770

Grace Dugan, Attorney
Gonzales Law Firm
522 7th Street Street
Suite 202
Rapid City, SD 57701

Re: Docket No. 40-9075-MLA, Response to Request for Sensitive Unclassified Non-Safeguards Information (SUNSI) Regarding License Application Request of Powertech (USA) Inc. Dewey-Burdock In Situ Uranium Recovery Facility in Fall River and Custer Counties, SD. (Federal Register Notice of Hearing, 75 Fed. Reg. 467 (January 5, 2010))

Dear Ms. Dugan:

The U.S. Regulatory Commission Staff (NRC Staff) is responding to your and your client's request for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) regarding cultural resources. Powertech (USA) Inc. ("Applicant") has designated this information as SUNSI, under 10 C.F.R. §2.390, because it contains detailed information on the locations of archaeological sites within the boundary of the proposed facility.

The release of records pertaining to the location of archaeological sites is restricted under South Dakota Codified Laws (SDCL), specifically, § 1-20-21.2, Confidentiality of records pertaining to location of archaeological site—Exceptions.

Any records maintained pursuant to [§ 1-20-21](#) pertaining to the location of an archaeological site shall remain confidential to protect the integrity of the archaeological site. The state archaeologist may make the information from the records of an archeological site available to any agency of state government and any political subdivision of the state or to any tribe, which, in the opinion of the state archaeologist, may conduct an activity that affects any such site. The state archaeologist shall also make the information from the records of an archeological site available to the owner of the land that is an archeological site and may make the information available to any qualified researcher or research entity.

SDCL § 1-20-21.2.

The Applicant has filed reports concerning the survey, reconnaissance, and excavation of cultural resources on the proposed facility site. Specific information on the location of archaeological sites is included in these reports. This information is withheld from the public record to prevent trespassing on, tampering with, or destruction of archaeological sites by unqualified and unauthorized persons, pursuant to the direction of the South Dakota State Archaeologist. Cultural resources information without specific site location information is

available for review at the South Dakota Historical Society, Archaeological Research Center, 2425 E. St. Charles St., Rapid City, SD 57709-1257.

For the reasons stated below, the NRC Staff has determined the request by the Oglala Sioux Tribe for access to the cultural resources information should be granted to its president, Theresa Two Bulls. As legal counsel for the Oglala Sioux Tribe, Grace Dugan should be granted access, as well.¹

Pursuant to the "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation" ("SUNSI Order"), 75 Fed. Reg. 467, the NRC Staff evaluated your request to determine whether (1) there is a reasonable basis to believe the requestor is likely to establish standing to participate in this NRC proceeding, and (2) there is legitimate need for access to SUNSI.

Standing

The Oglala Sioux Tribe seeks SUNSI as a potential party to the above-mentioned NRC proceeding and anticipates intervention. Under 10 C.F.R. § 2.309 (d) (1) (i)-(iv) a requestor may establish standing by providing their name, address, and telephone number; the nature of the requestor's right to be made a party, the nature and extent of their interest in the proceeding, and possible effects a decision or order in the proceeding may have on their interest. The Oglala Sioux Tribe of Pine Ridge, whose aboriginal lands extended to the Applicant's proposed site, has presented an interest in any cultural resources at the Applicant's site and has shown an interest in the possible effects the Applicant's proposed facility may have on cultural resources within the site boundary.

There is a reasonable basis to believe that the Oglala Sioux Tribe is likely to establish organizational standing to participate in this NRC proceeding because of the interests of the Oglala Sioux Tribe in protecting their cultural resources.

Need for SUNSI

The SUNSI Order stipulates that the request must explain why publicly available information would not be sufficient to develop a contention. The cultural resources documents concerning the proposed facility are not in the public record for this proceeding. Therefore, the requestors do not have knowledge of the cultural resources reconnaissance conducted and have not had access to the cultural resources documents. It is possible the requestors will be able to find all pertinent cultural resources information in the publicly available materials in the offices of the South Dakota Historical Society; however, the NRC Staff recognizes that specific site locations may be necessary for the Oglala Sioux Tribe consideration.

The SUNSI Order stipulates conditions may apply to access to those documents. These conditions may include, but are not limited to, the signing of a non-disclosure affidavit and a protective order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI.

¹ A document identifying the non-public cultural resources documents restricted as SUNSI is attached: "Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources or Archeological Sites, January 25, 2010."

Pursuant to requirements of the SUNSI Order, the terms and conditions for access to SUNSI will be set forth in a Protective Order and Affidavit of Non-Disclosure. The terms and conditions will be determined in consultation with the State Archaeologist, South Dakota State Historical Society, Archaeological Research Center in Rapid City, SD to ensure the requirements of SDCL § 1-20-21.2 are met.

NRC staff will file a motion for Protective Order and draft Non-Disclosure Affidavit within 20 days of this filing.

Access to the information will be granted once Ms. Two Bulls and Ms. Dugan have executed non-disclosure affidavits and agree to be bound by the terms of the protective orders setting forth the terms and conditions to prevent the unauthorized or inadvertent disclosures of SUNSI by each individual who will be granted access to SUNSI.

Sincerely,

/Signed (electronically) by/
Patricia A. Jehle

Patricia A. Jehle
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear regulatory Commission
Mail Stop O 15 D-21
Washington, D.C. 20555-0001

Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources or Archeological Sites

"Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources or Archeological Sites, January 25, 2010."

Accession Number	Document Date	Title
ML091070678	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. I, Chapter 5, Section 5.22 through Figure 5.213.
ML091070681	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. II, Cover through Chapter 5, Section 5.90.
ML091070683	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. II, Chapter 5, Section 5.91 through Figure 6.125.
ML091070685	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. III, Cover through Chapter 6, Figure 6.235.
ML091070697	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. I: Cultural Resources Report, Cover through Chapter 4.
ML091070699	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. I, Chapter 5, Section 5.1 through 5.21.
ML091070700	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. III, Chapter 6, Section 6.52.2 through Chapter 8.
ML091070717	25-Nov-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Addendum 2, Vol. 1, Additional Survey Report, Section 27, 31....
ML091070718	25-Feb-2009	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Addendum 2, Vol. 2, Appendices.
ML091070720	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. IV, Appendices.
ML091070721	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Vol. V, Appendices.
ML091070723	17-Oct-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Addendum 1, Vol. 1, Evaluative Testing Report.
ML091070725	25-Feb-2009	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within Southern Black Hills, Custer & Fall River Counties, SD, Addendum 1, Vol. 2, Appendices.
ML091070726	14-Jan-2009	Evaluative Testing of Four Sites within Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality, Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume 1, Evaluative Testing Report.
ML091070727	14-Jan-2009	Evaluative Testing of Four Sites within Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality, Southern Black Hills, Custer and Fall River Counties, South Dakota, Volume 2: Appendices.
ML092880425	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota. Volume V: Appendices.
ML092880426	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota. Volume V: Appendices.
ML092880427	14-Jan-2009	Evaluative Testing of Four Sites within Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality, Southern Black Hills, Custer and Fall River Counties, South Dakota - Volume 1: Evaluative Testing Report.
ML092880428	17-Oct-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, SD - Add. 1, Vol. 1: Evaluative Testing Rept, Cover - Page 69.
ML092880430	17-Oct-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, SD - Add. 1, Vol. 1: Evaluative Testing Rept, Page 70 - Page 162.
ML092880431	25-Nov-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota - Add. 2, Vol. 1: Additional Survey Report, Cover - Page 77.

"Attachment: Docket No. 40-9075-MLA, List of Documents Containing SUNSI Pertaining to Cultural Resources or Archeological Sites, January 25, 2010."

Accession Number	Document Date	Title
ML092880432	25-Nov-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota - Add. 2, Vol. 1: Additional Survey Report, Pages 78 - 166.
ML092880433	10-Aug-2009	A Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota - Add. 1, Vol. 2: Appendices.
ML092880435	14-Jan-2009	Evaluation Testing of Four Sites within Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project Locality, Southern Black Hills, Custer and Fall River Counties, South Dakota, Vol. 2: Appendices.
ML092880438	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Cover through Page 4.15.
ML092880439	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 4.16 through 5.64.
ML092880441	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 5.65 through 5.153.
ML092880442	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 5.154 through 5.232.
ML092880443	1-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 5.233 through 5.290.
ML092880445	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 5.291 through 5.373.
ML092880448	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.83 through 6.132.
ML092880449	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.133 through 6.204.
ML092880451	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.205 through 6.308.
ML092880452	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.309 through 8.23.
ML092880453	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Appendix A.
ML092880457	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Pages 6.1 through 6.82.
ML092880458	31-Mar-2008	A Level III Cultural Resources Evaluation of Powertech (USA) Incorporated's Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota, Appendix A, Continued.
ML092880459	10-Aug-2009	A Level III Cultural Resources Evaluation of Powertech (USA) Inc.'s Proposed Dewey-Burdock Uranium Project Locality within the Southern Black Hills, Custer and Fall River Counties, South Dakota - Add. 2, Vol. 2: Appendices.