



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission sec.nv.gov

901 South Stewart Street, Suite 4001 -- Carson City, Nevada 89701-5249

SEC Appeal Hearing

Notice Pursuant to NRS 233B.121 and NAC 445B.891

Date: April 15, 2010

To: Appellants:
Phil Jacka
Robert E. Dolan
Massey K. Mayo

Nevada Division of Environmental Protection, Bureau of Air Pollution Control, Represented by Nhu Nguyen, DAG, Office of the Attorney General

Intervener:
Jungo Land & Investments, Inc.
Represented by Debbie A. Leonard of McDonald Carano Wilson, LLP

From: John B. Walker, Executive Secretary

Subject: Appeal Hearing: Class I Air Quality Operating Permit to Construct Permit No. AP4953-2525 issued to Jungo Land & Investments, Inc.

A three-member panel of the State Environmental Commission (SEC) has scheduled an appeal hearing on the above referenced permit. **The hearing will be held on May 21, 2010 at 9:30 a.m. in Carson City, Nevada at the Bryan Building, 901 South Stewart St., 2nd floor Tahoe Conference Room.** Each appellant's appeal has been consolidated into one hearing pursuant to NAC 445B.8957. In addition, on April 12, 2010, Robert E. Dolan and Massey K. Mayo clarified that they were acting as one appellant in this case.

The SEC has jurisdiction to hear this appeal pursuant to NRS 445B.350, NRS 445B.360, NAC 445B.890 and NAC 445B.891. The Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) sections involved in this appeal are: NRS 445B.100, NRS 445B.145, NRS 445B.155, NRS 445B.310(1)(a), NRS 445B.470(3), NAC 445B.310(1)(a), and NAC 445B.3365. In addition to these specific sections, appellants also cite NRS Chapter 445B and NAC Chapter 445B as being involved in this appeal.

About the Appeal: In May 2009 the Nevada Division of Environmental Protection Bureau of Air Pollution Control (BAPC) received an application for an operating permit to construct a Class I facility from Jungo Land & Investments, Inc.

As way of background, Jungo Land & Investments, Inc. proposes to develop a Class 1 municipal solid waste landfill near Winnemucca, Nevada. The proposed landfill is located about 30 miles west of the city of Winnemucca, Nevada along the south side of Jungo Road and adjacent to the Union Pacific Railroad. The total surface area of the site is approximately 634 acres; the proposed landfill "footprint" would be about 560 acres and the design capacity would be about 58.5 million megagrams or 64.49 million short tons. The landfill is proposed as a "no co-disposal" facility and thus would not accept hazardous wastes.

The Jungo landfill is proposed as a regional disposal site for portions of northern California that generally include the nine counties which make up the San Francisco Bay Area. Jungo Land & Investments, Inc. notes that wastes generated in Humboldt County and other counties in Nevada could also use the disposal facility. The proposed landfill would receive about 4,000 tons of waste per day for up to 100 years. The waste would be shipped by rail from northern California to Nevada.

Jungo Land & Investments, Inc. has submitted two permit applications to the Nevada Division of Environmental Protection (NDEP). The first permit application was filed with NDEP's Bureau of Waste Management in March 2008 and is known as the Jungo Landfill Application; this permit is currently undergoing technical review and is projected to proceed to public comment in late 2010.

The second permit application —which is the subject of this appeal—was filed in February 2009 with NDEP's Bureau of Air Pollution Control for a Class I Air Quality Operating Permit to Construct. NDEP's public notice for the air quality permit was issued in May 2009. Following the public notice, comments were received and a public hearing was held by NDEP on August 19, 2009 in Winnemucca, Nevada.

Following this public hearing, on March 5, 2010, NDEP simultaneously issued Permit No. AP4953-2525, which is the final operating permit to construct, along with a formal public comment and response document. This final decision was subsequently appealed to the SEC on March 15, 2010 in separate appeals by Phil Jacka, Robert E. Dolan and Massey K. Mayo.

Appeal Issues presented: Appellant Jacka presents four issues in his appeal: (1) NDEP did not assess ambient air quality at the Jungo site location; (2) EPA models used by NDEP did not fit the criteria of this site such as the specific

topography and geographic land composition; (3) the leachate collected from the landfill for watering down the garbage is very contaminated; and (4) high winds will cause air pollution by putting hazardous waste into the air.

Appellants Dolan and Mayo list 18 points in their appeal which are summarized as follows:

- BAPC failed to act consistent with public policy as stated in NRS 445B.100 by not doing any modeling to determine the quantity of fugitive dust and/or particulate matter and not requiring Jungo Land & Investments, Inc. ("Jungo") to provide any modeling on this point.
- The January 8, 2009 and April 1, 2009 dust control plans proposed by Jungo and accepted by BAPC did not contain the best practical method to control fugitive dust and/or particulate matter and/or odors. The plan excluded commonly accepted industry procedures or practices, which are listed on pages 2 and 3 of the enclosed appeal form.
- The dust control permit requirement "use of water trucks to spray water on disturbed areas on a regular basis" is vague and there is no way to monitor Jungo's compliance. Similarly "the maximum opacity of emissions" "equal to or greater than 20 percent" and "determined by a visual measurement" is vague as to who makes the determination and when. The lack of proper standards and definitions means that the substantive due process requirements of the Fourteenth Amendment are lacking.
- Relative to fugitive dust and/or particulate matter, BAPC does not conduct a site evaluation, do modeling, provide standards to be used to evaluate compliance with the offered dust control plan, and set a condition for the operating permit that monitoring equipment be used to measure the emissions from the landfill site, which is an abuse of discretion and arbitrary and/or capricious.
- BAPC's March 5, 2010 Response to Comments contains erroneous findings in response to questions 22 and 31.
- BAPC acted in violation of NAC 445B.310(1)(a) when it failed to adequately determine the potential to emit.
- BAPC failed to determine whether Jungo made a material misrepresentation of fact in connection with the conditional use permit when it stated that there would be no effect on abutting properties.

- Jungo's lack of specificity in its application about the quantity of various kinds and types of solid waste to be deposited, or percentage of asbestos, renders the LandGEM model statistically meaningless. The application is silent concerning the quantity, type and procedure, if any, in connection with the acceptance of electronic waste.
- BAPC failed to include the mathematical probability of lightning strikes to the landfill site in its modeling to determine if the landfill meets or can meet the requirements under the Clean Air Act.
- BAPC violated its own policy in connection with the process and procedures it followed in granting the permit. According to the BAPC Air Dispersion Modeling Guidelines, applicants must provide all requirement information, including but not limited to, a proposed emission inventory of all regulated air pollutants including those from insignificant activities.
- It appears that additional and supplemental information and/or documents were submitted to BAPC but were not provided in a timely fashion to the public for review and/or public commentary.

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at: <http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>. NRS 233B.121 to 233B.150 are also applicable.

Related Information: Additional information about this appeal is available on the State Environmental Commission's website at the following location: http://www.sec.nv.gov/main/jungo_appeal.htm

ecc: Members, SEC Appeals Panel
 Leo Drozdoff, NDEP Administrator
 Colleen Cripps, NDEP Deputy Admin.
 Tom Porta, NDEP Deputy Admin.
 Mike Elges, NDEP/BAPC
 Greg Remer, NDEP/BAQP
 Larry Kennedy, NDEP/BAPC
 Marta Adams, SDAG
 Rose Marie Reynolds, SEC/DAG