

FORM # 3
FORM FOR REQUESTING AN APPEAL HEARING
BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

1. Name, address, telephone number, and signature of applicant:
Name: CLEAN DESERT FOUNDATION, INC.
Address: 90 DOLAN LANE, LLC, 311 S. BRIDGE ST., SUITE E., WINNEMUCCA
Telephone: 775-625-3200 NEVADA, 89445
Signature: [Signature]
Representative Capacity (if applicable): yes; counsel
2. Specify type of applicant: Individual, Partnership, Corporation, or Other: Other: Non-profit
3. Other person or persons authorized to receive service of notice: N/A
4. Complete description of the business or activity and the location of the activity involved in the request: CLASS 1 - SOLID WASTE DISPOSAL SITE
25 MILES WEST OF WINNEMUCCA ON
JUNGO ROAD.
5. Nature of the appeal and grounds thereof: see supplement
6. Section or sections of the State Air Quality Regulations, Water Pollution Control Regulations, Hazardous Waste Regulations, Solid Waste Management Regulations, or NRS section involved in the appeal: NRS CHAPTERS 444, 445A, NAC 444, AND
AS SET FORTH IN THE ATTACHED SUPPLEMENT
7. Approximate time in hours and minutes necessary for delivery of oral testimony and reading of prepared statements as admissible evidence to be entered in the record: 2 DAYS
- Date of Request 3/9/12

Send Form To: John B. Walker, State Environmental Commission, 901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249

CLEAN DESERT FOUNDATION
SUPPLEMENT TO FORM 3- Permit # SW495REV00

QUESTION 5- Grounds for appeal:

1) As regards the collection and storage of solid waste, the permit has been granted in direct violation of the five stated policies of the State of Nevada under NRS 444.440. Said five policies are: to protect the health and welfare; prevent water or air pollution; prevent the spread of disease and the creation of nuisances; conserve natural resources; and enhance the beauty and quality of life.

2) As regards “Water Pollution Control” said permit violates the goals found in the “Legislative declaration” in NRS 445A.305 (1) that pollution of water adversely affects public health and welfare; is harmful to wildlife, fish and other aquatic life; and impairs domestic and other beneficial uses of water, and violates the policy of the State of Nevada as stated in NRS 445A.305 (2) (a) and (b), which is to “maintain the quality of the water of the State”. The permit fails to adequately maintain (and protect) the quality of water consistent with the public health and enjoyment versus the minimal (if at all) “economic development” from the landfill operation.

3) The granting of the permit was done in violation of, and in excess, of the substantive and procedural laws that governs the Nevada Division of Environmental Protection (NDEP), and/or was made upon unlawful procedure, and/or is clearly erroneous in view of reliable, probative and substantial evidence on the whole record, and/or is arbitrary and/or capricious and/or the result of an abuse of discretion. NRS 233B.135

4) The “Waters of the State” includes “all bodies or accumulations of water, surface and underground, natural or artificial”. NRS 445A.415. This means that the aquifer under the landfill site is a “Water of the State”. The leachate that will be released by the landfill unduly threatens and/or does damage to the aquifer which is directly under the landfill site. Indeed, in January 2007, groundwater was encountered at a depth of approximately 60 feet below ground surface. Jungo submission, Volume 3, appendix 4, monitoring plan. The “dry-tomb” technology contemplated by the permit, under the relevant facts and circumstances herein, which include, without limitation, that fresh and clean water is a scarce commodity in the desert, fails to meet the unique goals and needs of the citizens and fails the policy of the State of Nevada. Said other relevant facts and circumstances include, without limitation, that the life of the landfill site and the post closure risks far exceeds the expected timeline of effectiveness of the double liners. In short, the aquifer will be poisoned by the leachate which is comprised of chemicals, herbicides and such heavy metals as cadmium, chromium, copper, lead, molybdenum, and zinc. The only question is when the damage to the aquifer will happen, not if it will happen.

The approval under the permit of the **variance from the 100 foot distance** from the uppermost aquifer to the location of the landfill site is an abuse of discretion, and was arbitrary and capricious, and violates, inter alia, NAC 444.678(2), and NAC 444.678 (9). Moreover, and quite troubling, is that the design criterion for the liner fails to comply with the requirements of NAC 444.681. At best, said design only delays the release of leachate and other waste-derived

constituents into the underlying aquifer and environment generally, so the goal of “prevention” of water pollution is not present. This ultimate release of leachate and other waste-derived constituents directly threatens the safety of the “Waters of the State”, and the health of those citizens and wildlife that will consume and/or use the water from said aquifer in the future. The location of a Class I site must prevent pollutants and contaminants from the landfill site from degrading water of the state. NAC 444.678. This permit fails in this regard.

Liner Degradation Evaluation program- The permit does not include an effective program. Among other practical problems not sufficiently taken into account is the fact that millions of tons of waste will be on top of the leak location, and the very process of reaching said damaged liner (which will be accomplished with the use of heavy machinery) will result more damage to the liner.

5) **Surface Water**-The approval under the permit of **the variance from the 1000 foot distance requirement of any surface water from the landfill site violates NAC 444.678 (9)**, and is an abuse of discretion, and/or was arbitrary and capricious, and/or done in excess of agency authority, and otherwise inconsistent with the goals and policies of the State of Nevada.

The historical anecdotal record is that the landfill site is prone to regular “ponding” and/or flooding. This often results in substantial amount of surface water not only being closer than 1000 feet to the landfill site (which is prohibited), but on top of it. Given the documented poor quality of the soil for perm making, how could the permit not have been granted in violation of limitation imposed by NAC 444.678 (9)? If and when said surface water breaches the perm (and/or trenches) and makes uncontrolled contact with the landfill unit over the course of days, weeks, if not months, an environmental catastrophe is possible, if not highly probably. At least it would be a horrible event that could have been avoided by regulators had they adhered to regulations and the stated policy and goals of the State of Nevada. Meanwhile, the idea that Jungo has “proof” that it now must maintain which shows “that the unit or lateral expansion will not, ‘result in the washout of solid waste that poses a hazard to public health and safety and the environment’ ”, NAC 444.6785 (1) (c), is fanciful.

Pictures of ponding and flooding in the southern portion of the desert valley in which the landfill is located are provided. See exhibit “H”. The location of a Class I site must prevent pollutants and contaminants from the landfill site from degrading water of the state. NAC 444.678 (2) and NAC 444.6785 (1) (c). This permit fails in this regard.

Meanwhile fairy shrimp have been located near the landfill site which gives strong evidence of the fact that the site is prone to ponding, flooding and/or substantial intermittent precipitation, and that fish and wildlife inhabit the area. See exhibits A, B, E and F.

The design elements of the landfill directed at diverting groundwater flows through berms and trenches fail to adequately account for the considerable “ponding” that occurs on the playa, and the poor quality of the soil (for this purpose) at the location. There will be inevitable movement of water into the trash cells above the liners. The permit fails to adequately address, if at all, what the permittee can do if and when the ponding interferes with normal operation.

Will the waste be piled on the side of the railroad during the ponding episode? Will the required daily activities of burial be impossible or the like?

And what if there is extreme ponding, beyond the documented ponding occurrences demonstrated through pictures and anecdotal evidence? The permit is silent on this matter.

6) **Use of soil at landfill site-** The soil to be used as ground cover is from the landfill site and it is inadequate to meet the “workable and compactible” requirement for ground cover, as required by NAC 444.678 (4). This point is also directly supported by the research and report of the USDA, in soil report of 2009 (exhibit “D”), which reveals that the soil at the landfill site is either poor or limited for said purpose. Said inadequacies are due to elemental deficiencies in composition and physical characteristics. Although NDEP gives lip service to the recognition of the limitations of the soil on site, the humble conditions imposed by NDEP still renders the soil inadequate for all the important tasks which include, without limitation, building berms and trenches to protect against water damage to the waste cells, and for ground cover. Furthermore, said soil is ill suited to support the weight of millions of tons of waste above the aquifer, even with the height reduction of the landfill.

7) The permit has failed to adequately protect, and certainly does not meet the expectations under the law to “enhance the beauty and quality of the environment”, or the beauty of the Nevada desert, in violation of NRS 444.440 (5).

8) The permit fails to adequately take into account the instability caused and/or increase in intensity, strength and frequency of seismic activity and/or earthquakes at the landfill site due to the substantial well drilling activity of Nevada Geothermal Power company at its Blue Mountain Power plant. See Exhibits “I”, and “J”. Said power site was placed in service on October 12, 2009 and is only four or so miles away from the landfill site.

The NDEP apparently relied on a Golder and Associates study, (volume 1 appendix K) for the permit, and Golder relied upon inadequate and date material. Its data was from a 2002 United States Geological Survey (USGS) report that was updated in 2008, exhibit “K”, before the aforesaid nearby power plant’s operation. The Golder study is completely silent on the power plant and its operation, and is not even considered as a “variable” to their formula. This results in improper and inaccurate modeling, and has resulted in arbitrary and capricious decision making and the clearly erroneous act of issuing of the permit. Said Golder data pre-date the substantial activities of Nevada Geothermal Power Company in the area. A review of relevant portions of the “Status of Resource Development at the Blue Mountain Geothermal Project”, exhibit “L” herein, reveals that many wells have been drilled to between 2,370 to 5,426 feet deep, and that at least three of said wells are successful, and producing power. This fact raises new questions which NDEP have ignored. There is anecdotal evidence that earthquakes can be caused by the drilling of waste water wells, exhibit “M” “N”. Indeed, the Geothermal Energy Association, as late as 2007, in its report, “A Guide to Geothermal Energy and the Environment” reveal that, “... geothermal production and injection operations have at time resulted in low-magnitude events known as “microearthquakes.” See exhibit “O”. Yet the permit is fatally flawed in this regard.

9) The permit inadequately considers the substantial wind gusts and/or the powerful regular prevailing winds as regards causing adverse consequences, relative to both the location of the landfill and the possible point of unloading the garbage and/or solid waste, to adjoining land owners and/or users near the respective locations, and/or the citizens of Humboldt County, Nevada, and wildlife by the spreading or emission of noxious odors and/or unhealthy particulate matter and/or other hazardous materials through the air, surface water.

10) The failure of the applicant, and/or the conditional permit, to adequately consider the likelihood that lightning will regularly strike the landfill site and that said lightning strikes will substantially reduce the effectiveness of any proposed environmental safety methods as regarding limiting the emission to the air and otherwise of noxious odor, particulate matter and/or other hazardous materials.

11) The permit fails to comply with NRS 444.560 and the rules promulgated pursuant thereto, including, without limitation, NAC 444.629, NAC 444.678, NAC 444.679, NAC 444.6795, NAC 444.6887.

12) To the extent the permit was granted based on any waiver of the limitations on distance and/or other terms of NRS 444.560, and/or NAC 444.629, 444.678, NAC 444.679, NAC 444.6795, NAC 444.6887, the aforesaid waiver was done without sufficient or good cause, and/or was arbitrary, capricious, and/or the result of an abuse of discretion, and inconsistent with the goals and policies of the State of Nevada as regards the health, safety and welfare of the citizens, wildlife and animals of the state.

13) Since all underground water within the boundaries of the State of Nevada belong to the public, the decision of NDEP fails to adequately protect the ownership rights of the public to said underground water. The plan for monitoring water under NRS 444.560 and NAC 444.683 is inadequate.

14) The undersigned adopts and incorporates by reference as if fully restated herein all of the points, facts and arguments from the attached exhibits:

“A”- the December 1, 2011 letter to Jon Taylor from Richard Cook;

“B”- the five page letter to Jon Taylor from Charles Schlarb;

“C”- the December 2, 2011 letter and attachments to Jon Taylor from Tom Brissenden.

“D”- The soil report of the USDA dated October 13, 2009

“E”- Four page document consisting of the copy of the undated cover letter from Chuck Schlarb, and Richard Cook which details issues relative to harvesting “fairy shrimp” in and around and/or near the landfill site.

“F”- Seven page document consisting of the copy of the undated cover letter from Chuck Schlarb, and details relative to soil liquefaction of the landfill site.

“G”- Three page document consisting of the copy of the correspondence dated December 10, 2011 from Richard Cook and Chuck Schlarb, and details relative to storm water containment.

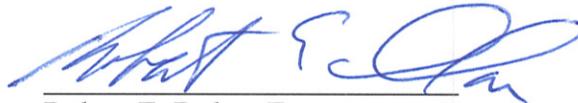
15) **Groundwater monitoring program:** As found in Volume 3 Appendix D (of the Jungo submission to NDEP), it does not fulfill the obligation of NAC 444.7484 (2) or (3), and the post closure monitoring period of only 25-30 years is too short. And, the financial guarantee required of the permittee under the permit is insufficient.

Among other weakness is that leachate can easily pass between the proposed widely spaced groundwater monitoring devices, and otherwise fails to meet the goals of NAC 444.7484. In short, the methods for sampling and analysis are not appropriate under the permit. Among other problems, the permit does not require sufficient time for detection and mitigation capabilities over the true life and post-closure life of the landfill, as regards the future danger to the aquifer. How then can the financial guarantees required under the permit be anything other than a mere guess? Indeed, in California the requirement is that landfill developer must bear the burden of post-closure monitoring and responsibility “until such time as the waste in the unit no longer constitutes a threat to water quality”, Exhibit P, 27 CCR 20950. The instant permit completely fails in this regard.

The time period of risk to the aquifer greatly exceeds the 25-30 year period herein for post closure monitoring. Indeed, Dr. Lee opined that the risk to the aquifer exceeds multiple hundreds of years, if not thousand(s). Exhibit “Q”. Ultimately, future generations of Humboldt County, and Nevada generally, will be left with a massive liability in dealing with the new “superfund” site, and the damaged/polluted ground water. However, as in California, said risk and financial obligation should remain on the permittee until the risk to the aquifer is over.

CONCLUSION

The Clean Desert Foundation believes that the clearly stated public policy of the State of Nevada is violated and will not be served by the granting of the permit in question. Indeed, the quality of life, and the health and safety of the citizens of Nevada, and other users of the public (and private) land and water near the landfill (which includes animal and other wildlife) will be substantially adversely affected in the near future and for generations to come. The granting of the permit is an unnecessary and shameful event, and about which the State Environmental Commission has the power to remedy by reversing the decision of NDEP.



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cc: Clean Desert Foundation, Inc.
Enclosures: exhibits A-Q