



A PROFESSIONAL  
LAW CORPORATION

201 South Main Street  
Suite 1800  
Salt Lake City, Utah 84111  
Telephone 801.532.1234  
Facsimile 801.536.6111  
pbl@parsonsbehle.com

Michael J. Tomko

Direct Dial  
(801) 536-6718  
E-Mail  
MJTomko@parsonsbehle.com

June 16, 2011

**RECEIVED**  
JUN 21 2011  
ENVIRONMENTAL PROTECTION

**VIA E-MAIL AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. John B. Walker  
Executive Secretary  
State Environmental Commission  
901 So. Steward Street, Suite 4001  
Carson City, Nevada 89701

**Re: Appeal of Air Operating Permit: Class I Operating Permit No.  
AP4953-1148.01 by Refuse, Inc.**

Dear Mr. Walker:

Enclosed is Refuse, Inc.'s Response to Nevada Division of Environmental Protection's Motion for Briefing Schedule in the above-referenced matter.

If you have any questions, please feel free to give me a call.

Sincerely,

Parsons Behle & Latimer



Michael J. Tomko

MJT/lb  
Enclosure

cc: Jasmine K. Mehta (w/encl.)  
Andrew M. Kenefick (w/encl.)

1  
2  
3  
4  
5  
6  
7  
8  
9

**BEFORE THE STATE ENVIRONMENTAL COMMISSION**  
**STATE OF NEVADA**

In Re:

Appeal of Air Operating Permit: Class I  
Operating Permit No. AP4953-1148.01 by  
Refuse, Inc.

**REFUSE, INC.'S RESONSE TO  
NEVADA DIVISION OF  
ENVIRONMENTAL  
PROTECTION'S MOTION FOR  
BRIEFING SCHEDULE**

10 Refuse, Inc., ("RI") by and through its counsel, Richard J. Angell and Michael J. Tomko,  
11 hereby responds to the Nevada Division of Environmental Protection-Bureau of Air Pollution  
12 Control's ("NDEP-BAPC") motion for briefing schedule in the matter of RI's appeal of its Class I  
13 Operating Permit No. AP4953-1148.01.

14 The RI appeal concerns the recent revisions to the Class I (Title V) Air Operating Permit  
15 ("Permit") for the Lockwood Regional Landfill ("Landfill") in Storey County, Nevada.  
16 Specifically, the Permit includes requirements that RI must install or operate continuous emission  
17 monitoring systems ("CEMS") to continuously monitor emissions of carbon monoxide ("CO")  
18 and nitrogen oxides ("NO<sub>x</sub>") from three internal combustion engines that RI intends to install to  
19 generate electricity from landfill gas generated at the Landfill. RI's appeal is based, in part, on its  
20 belief that the CEMS requirement is inconsistent with NDEP-BAPC permitting regulations and  
21 policies and deviates from NDEP-BAPC's application of such regulations and policies to  
22 similarly situated facilities. In response to RI's appeal, NDEP-BAPC filed its motion requesting  
23 that the State Environmental Commission ("Commission") require RI to set forth its specific  
24 arguments, with citations to statutory and regulatory provisions and to the record, supporting its  
25 contentions that NDEP-BAPC has allegedly acted beyond its authority, arbitrarily and  
26 capriciously, and without legal basis in the record.

1 As highlighted by NDEP-BAPC's request for detailed briefing, including citations to the  
2 record, the nature of RI's appeal requires that it have the opportunity to conduct discovery  
3 regarding the basis for the CEMS requirement included in the Permit, as well as NDEP-BAPC's  
4 application of its regulations and policies to similar air emission sources regarding CEMS  
5 requirements. RI's discovery will entail the issuance of subpoenas for the production of records  
6 and other documents by the NDEP-BAPC and potentially the oral deposition<sup>1</sup> of one or more  
7 witnesses. This type of discovery is contemplated by the rules for practice before the  
8 Commission. See NAC 445B.892. Upon receiving NDEP-BAPC's discovery responses, RI will  
9 need sufficient time to review this information to both determine the adequacy of the responses as  
10 well as incorporate such facts into its opening brief.

11 To date, RI and NDEP-BAPC have been unable to identify a mutually agreeable briefing  
12 and hearing schedule that accommodates the discovery needs for this appeal. Negotiations on this  
13 issue can be summarized as follows. Counsel for RI contacted NDEP-BAPC counsel on June 7  
14 and explained that it had been recently contacted by RI and asked to represent RI in this appeal.  
15 RI received NDEP-BAPC's proposed briefing schedule on June 6, 2011. On June 9, following an  
16 preliminary evaluation of the issues, counsel for RI contacted the Executive Secretary to the  
17 Commission, John Walker, and explained that, based on existing schedules and commitments and  
18 in order to allow for adequate time to review relevant documents, pursue discovery and brief and  
19 prepare for hearing, counsel was requesting that the hearing be scheduled for some time mid- to  
20 late September. Mr. Walker requested that counsel for RI contact counsel for NDEP-BAPC and  
21 attempt to work out a mutually acceptable schedule. During telephone conferences on June 10  
22 and June 15, counsel for RI and counsel for NDEP-BAPC discussed the schedule for the hearing.  
23 Unfortunately, counsel for NDEP-BAPC is unwilling to consider any period of time later than the  
24 week of August 10, the date proposed in NDEP-BAPC's motion.

25  
26  
27 <sup>1</sup> Counsel for NDEP-BAPC has indicated that NDEP-BAPC would oppose any request by RI to conduct oral  
28 depositions. While RI does not agree with NDEP-BAPC's position, RI is still evaluating whether this type of  
discovery will be necessary for this appeal and the possibility of depositions is included in RI's response and  
proposed schedule in order to reserve RI's rights on the this issue, subject to any objections by NDEP-BAPC.

1 The basis for NDEP-BAPC's objection to a later hearing date is unclear to RI. This  
2 appeal is centered on terms that NDEP-BAPC included in the Permit that affect the RI's plans to  
3 construct and operate electrical generating equipment that will combust gases generated at the  
4 Landfill. RI currently complies with state and federal regulations for controlling landfill gas  
5 through collection and flaring. The opportunity to power electrical generating equipment with  
6 gases from the Landfill represents an alternative option for RI to pursue to generate renewable  
7 energy by combusting the landfill gas that would otherwise be lawfully flared without generating  
8 any energy. Therefore, any extra time required for the discovery and briefing necessary to  
9 adequately present this appeal is a burden borne solely by RI while it waits for resolution of its  
10 Permit terms and there is no burden or detriment inflicted on NDEP-BAPC in this situation.

11 RI proposes that the briefing schedule be as follows:


- 12 • On or before July 1, 2011 – RI to file its requests to the Commission for issuance  
13 of subpoenas requesting documents and any possible depositions.
- 14 • Within four (4) weeks of receiving complete responses to RI's subpoenas  
15 requesting documents and the conclusion of any potential depositions conducted  
16 by RI, RI to file its opening brief.
- 17 • Within four (4) weeks after RI filing its opening brief, NDEP-BAPC to file its  
18 responsive brief
- 19 • Within two (2) weeks after NDEP-BAPC filing its responsive brief, RI to file a  
20 reply brief prior to hearing before the Commission.
- 21 • RI reserves the right to request post-hearing briefing, depending on the evidence  
22 presented at the hearing before the Commission.

23 Accordingly, for the reasons outlined above, counsel for RI respectfully opposes NDEP-  
24 BAPC's proposed schedule and respectfully requests that the Commission set the hearing  
25 schedule recommended by RI. Depending on the speed of NDEP-BAPC's responses to RI's  
26 discovery requests, the hearing could occur during the week of September 19 or later, depending  
27 on whether other later dates would be more workable for NDEP-BAPC. This schedule is  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

necessary to allow RI to properly prepare its appeal and provide the detailed briefing, including citations to the record, as requested by NDEP-BAPC.

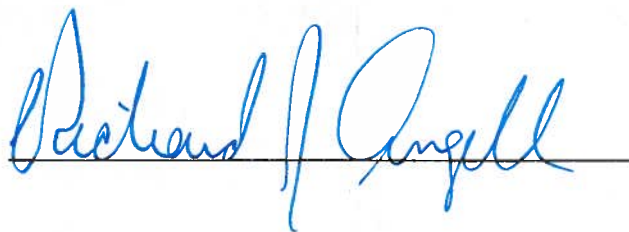
DATED this 16<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
RICHARD J. ANGELL  
Nevada State Bar No. 9339  
MICHAEL J. TOMKO  
PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111

**CERTIFICATE OF SERVICE**

1  
2 I, Richard J. Angell, certify that I am an employee of Parsons Behle &  
3 Latimer, and that on this 16<sup>th</sup> day of June, 2011, I deposited for mailing a true and correct copy  
4 of the foregoing **REFUSE, INC.'S RESPONSE TO NEVADA DIVISION OF**  
5 **ENVIRONMENTAL PROTECTION'S MOTION FOR BRIEFING SCHEDULE**, via  
6 United States Postal Service in Salt Lake City, Utah, by first class mail, postage prepaid, to the  
7 following:

8  
9 Jasmine K. Mehta  
10 Deputy Attorney General  
11 Nevada Attorney General's Office  
12 100 North Carson Street  
13 Carson City, NV 89701

14   
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28