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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 REQUEST FOR
RECONSIDERATION OF
ORDER REGARDING
ISSUANCE OF SUBPOENA**

10 Refuse, Inc., ("RI") by and through its counsel, Richard J. Angell and Michael J. Tomko,
11 respectfully requests limited reconsideration of a specific item in the State Environmental
12 Commission's (the "Commission") July 11, 2011, Order Regarding Issuance of Subpoena,
13 Briefing Schedule and Hearing Date (the "Order") in the above captioned matter.

14 Specifically, the Commission's Order requires the Nevada Division of Environmental
15 Protection, Bureau of Air Pollution Control ("NDEP-BAPC") to:

16 provide the following documents regarding permits with continuous
17 emissions monitoring systems ("CEMS") issued since January 1, 2001 in
18 ***PSD-triggered air basins***: (1) NDEP's technical review document of the
19 permit application; (2) draft permit that is noticed for public comment; (3)
20 public comments and responses to comments; and (4) final permit.

Order at 1, l. 21 – 25 (emphasis added).

21 The Order's limitation of RI's requested subpoena to PSD-triggered air basins appears to
22 be based on NDEP-BAPC's assertion that RI's request is overly broad because it is not "limited
23 in scope to air basins that are similar to the one in which Appellant's project is located." NDEP-
24 BAPC Opposition to Request for Subpoena ("Opposition") at 2, l. 17 – 18; *see also* Opposition at
25 3, l. 18 – 19. However, NDEP-BAPC provided no explanation as to why this limitation was
26 appropriate. In contrast to NDEP-BAPC's arguments to limit RI's subpoena, there are two
27 important reasons why such a limitation is inappropriate and will result in NDEP-BAPC's
28 withholding documents that are central to RI's pending appeal.

1 First, the implication of NDEP-BAPC's argument is that the CEMS have been imposed to
2 protect against the PSD increments and therefore only permit decisions that relate to CEMS in
3 PSD-triggered air basins are relevant. However, NDEP-BAPC failed to acknowledge that the
4 disputed permit conditions require RI to install CEMS for both oxides of nitrogen ("NO_x") *and*
5 *carbon monoxide* ("CO"). Although the air basin in which the subject RI facility is located has
6 been triggered for the NO_x PSD increment, there is *no* PSD increment for CO. Therefore, NDEP-
7 BAPC's effort to limit the subpoena to "similarly situated" PSD-triggered air basins has no
8 relevance whatsoever to its decision to require CO CEMS at the RI facility. Accordingly, there is
9 no basis for limiting the subpoena to PSD-triggered air basins with regard to the CEMS
10 requirement for CO emissions from the RI facility.

11 The second reason for not limiting the request to PSD-triggered air basins is that NDEP-
12 BAPC's own increment analysis demonstrates that the NO_x increment is not even remotely
13 threatened by RI's facility according to the relevant portion of NDEP-BAPC's *Technical Review*
14 *document. See Table 5.5-2 in NDEP-BAPC's Technical Review and Determination of Continued*
15 *Compliance for: Refuse, Inc., Lockwood Landfill* (Feb.8, 2011) (Attachment "A"). At the two
16 receptors that have been identified by NDEP-BAPC in the vicinity of the RI facility as having the
17 highest PSD-increment consumption, NDEP-BAPC's own analysis shows that RI's impacts are
18 less than 1/10th of one percent and far less than the 0.1 µg/m³ significant impact level cited by
19 NDEP-BAPC's analysis. NDEP-BAPC's analysis further shows that at the two receptors that
20 have been identified by NDEP-BAPC as having the highest impacts from RI's facility, the
21 increment is not threatened, as there is only a total maximum concentration (that is RI's impacts
22 plus all other increment-consuming sources) of 3.24 µg/m³ compared to an increment of 25
23 µg/m³. Accordingly, RI does not believe that NDEP-BAPC can simply rely on the fact that RI's
24 facility is located in an air basin triggered for NO_x as supporting its decision to require CEMS for
25 NO_x in RI's permit. Therefore, it will be relevant if RI can establish that NDEP-BAPC has not
26 imposed CEMS on similarly situated sources to RI's regardless of the air basins in which they are
27 located.

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1 For the foregoing reasons, RI respectfully requests that the Commission reconsider and
2 modify its order to require that NDEP-BAPC provide the documents specified by the
3 Commission in its order but *without* regard to whether the permit is for a source located in a PSD-
4 triggered air basin. If these documents are not included in the scope of the subpoena, the record
5 will be incomplete and it will be impossible for the Commission to properly consider RI's appeal.

6 DATED this 13th day of July, 2011.

7 

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CERTIFICATE OF SERVICE

I, Richard S. Angell, certify that I am an employee of Parsons Behle & Latimer, and that on this 13th day of July, 2011, I deposited for mailing a true and correct copy of the foregoing **REFUSE, INC.'S REQUEST FOR RECONSIDERATION OF ORDER REGARDING ISSUANCE OF SUBPOENA**, via United States Postal Service in Salt Lake City, Utah, by first class mail, postage prepaid, to the following:

Jasmine K. Mehta
Deputy Attorney General
Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701

Richard S. Angell

Attachment “A”

**NDEP’s Technical Review Determination of Continued Compliance for:
Refuse, Inc., Lockwood Landfill (Feb. 8, 2011)**

TECHNICAL REVIEW

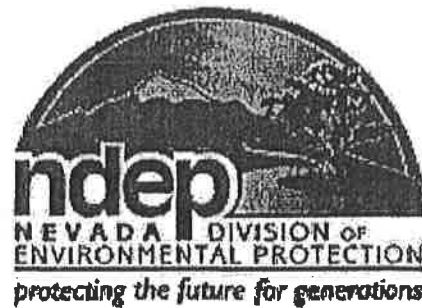
AND DETERMINATION OF CONTINUED COMPLIANCE

FOR:

REFUSE, INC. LOCKWOOD LANDFILL LANDFILL GAS-TO-ENERGY PROJECT

Storey County, Nevada, HA – 83

**Class I (Title V) Air Quality Operating Permit
AP4953-1148.01 (Significant Revision), FIN A0018
Air Case #11AP0088**



BY

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR POLLUTION CONTROL

PAT MOHN, P.E.
STAFF ENGINEER III

FEBRUARY 8, 2011



5.0 AMBIENT AIR IMPACT ANALYSIS (CONTINUED)

Table 5.5-1 – Refuse, Inc. PM₁₀ Increment Consumption

PM ₁₀ Results							
Increment Std. = 30 µg/m ³ 24-hour avg							
Increment Std. = 17 µg/m ³ annual avg							
Met Year	Avg. Period	Increment Receptors				RF Contrib.	Max. RF Conc.
		Rec. No	X Coord.	Y Coord.	Total Conc.		
2000	24	2922	302500	4388500	63.48016	0.00164	--
		2984	303500	4389000	53.87526	-0.00093	--
		2983	303000	4389000	44.25916	0.00573	--
		2982	302500	4389000	36.14110	0.00162	--
		3044	303000	4389500	34.26601	0.00329	--
		2923	303000	4388500	27.47479	-0.00093	--
		1288	276500	4375000	5.01706	0.89316	0.89316
	Annual	13	273500	4358000	-2.57874	-0.00117	--
		1159	274500	4374000	-17.59702	0.35115	0.35115
	2001	24	2922	302500	4388500	31.26916	0.00472
3294			283900	4381200	28.89546	0.00443	--
1220			273500	4374500	9.30548	2.95667	2.95667
Annual		13	273500	4358000	-2.27307	-0.00110	--
		1160	275000	4374000	-14.98864	0.34209	0.34209

As can be seen in Table 5.5-1, above, at all receptors where the modeled concentration exceeds the increment standard, activities related to Refuse Inc.'s, Class I Significant Revision do not significantly contribute (i.e., concentrations > 0.5 ug/m³ for the 24-hour standard and >0.1 ug/m³ for the annual standard) to concentrations that exceed the standard.

Table 5.5-2 – Refuse, Inc. NO_x Increment Consumption

NO _x Results							
Increment Std. = 25 µg/m ³ annual avg							
Met Year	Avg. Period	Increment Receptors				RF Contrib.	Max. RF Conc.
		Rec. No	X Coord.	Y Coord.	Total Conc.		
2000	Annual	1587	274000	4377500	22.42728	0.02240	--
		1282	273500	4375000	3.237333	1.36056	1.36056
2001	Annual	1587	274000	4377500	21.26962	0.02173	--
		1282	273500	4375000	3.23954	1.30782	1.30782

Table 5.5-2 shows no receptors where the concentration exceeds the increment standards for NO_x as the result of activities related to Refuse, Inc.'s Class I Significant Revision.