

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

3  
4 In Re: )  
5 Appeal of Air Operating Permit: Class I )  
6 Operating Permit No. AP4953-1148.01 )  
7 by Refuse, Inc. )  
8

**NEVADA DIVISION OF  
ENVIRONMENTAL PROTECTION'S  
OPPOSITION TO REQUEST FOR  
RECONSIDERATION OF THE SEC'S  
ORDER REGARDING REFUSE, INC.'S  
REQUEST FOR SUBPOENA**

9 The Nevada Division of Environmental Protection, Bureau of Air Pollution Control  
10 ("NDEP-BAPC"), by and through counsel, Catherine Cortez Masto, Attorney General for the  
11 State of Nevada, William Frey, Senior Deputy Attorney General, and Jasmine K. Mehta,  
12 Deputy Attorney General, hereby opposes Refuse, Inc.'s request for reconsideration of the  
13 Order regarding Refuse, Inc.'s request for subpoena.

14 Refuse, Inc. seeks reconsideration of the Order limiting production of permits with  
15 continuous emissions monitoring systems ("CEMS") to PSD-triggered basins. It does not  
16 appear that Refuse, Inc. seeks reconsideration of the time limitation that only requires  
17 production of permits issued since January 1, 2001.

18 As NDEP previously argued, Refuse, Inc.'s request for statewide permits is overly  
19 broad and not reasonably calculated to lead to the discovery of admissible evidence.  
20 NRCP 26(b)(1) and NRCP 45(c). An appeal is not a basis for a fishing expedition and  
21 Refuse, Inc.'s request for such permits statewide is exactly that. Limiting the production of  
22 permits with CEMS to PSD-triggered basins will allow Refuse, Inc. to obtain information  
23 regarding the NDEP's issuance of permits where it has had to manage increment  
24 consumption – regardless of the type of air emission – in other basins that are PSD-triggered,  
25 which was the situation here.

26 If, however, the SEC determines that NDEP should produce all permits with CEMS  
27 statewide, NDEP requests more time for such production. NDEP is under an obligation to  
28 timely process permits for its applicants, and to the extent that its employees must focus on

1 locating and gathering responsive documents; its ability to process pending applications is  
2 necessarily delayed. NDEP requests an additional four weeks to produce such documents in  
3 order to be able to fulfill its obligation to timely process pending applications. Alternatively,  
4 NDEP would make those permit files available for inspection at NDEP's offices to Refuse, Inc.  
5 within the next two weeks. Refuse, Inc. could then determine which documents it would like to  
6 copy (limited to the scope set forth in the SEC's order), and indicate which documents it  
7 would like copied, at Refuse, Inc.'s expense. NDEP would then send those documents to a  
8 vendor to copy and bates-stamp them for production.

9 DATED this 20th day of July, 2011.

10 CATHERINE CORTEZ MASTO  
11 Attorney General

12 By:

13 WILLIAM FREY  
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**CERTIFICATE OF SERVICE**

I, Rosiland M. Hooper, certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 20th day of July, 2011, I deposited for mailing a true and correct copy of the foregoing **NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S OPPOSITION TO REQUEST FOR RECONSIDERATION OF THE SEC'S ORDER REGARDING REFUSE, INC.'S REQUEST FOR SUBPOENA**, via United States Postal Service in Carson City, Nevada, by first class mail, in a postage-prepaid envelop, and by electronic service to the following:

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Rosiland M. Hooper, Legal Secretary II  
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