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

4  
5 In Re:

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

**REQUEST FOR JUDICIAL  
NOTICE**

9 Refuse, Inc., (“RI”) by and through its counsel, Richard J. Angell and Michael J. Tomko,  
10 respectfully submits this Request for Judicial Notice (the “Request”) in the above captioned  
11 matter.

12 The matters of fact and law covered by this request have already been identified in RI’s  
13 prehearing briefs are contained in, or are closely related to, exhibits to the prehearing briefs. RI  
14 makes this request for judicial notice in the interest of conserving the Commission’s time and  
15 resources and streamlining the appeal hearing proceedings.

16 Nevada law authorizes the Commission to take notice of judicially cognizable facts and of  
17 generally recognized technical or scientific facts within the specialized knowledge of the  
18 Commission. NRS 233B.123(5). Judicially noticed facts must be “capable of accurate and ready  
19 determination by resort to sources whose accuracy cannot reasonably be questioned, so that the  
20 fact is not subject to reasonable dispute.” NRS 47.130. In the case of appeals such as this, “the  
21 experience, technical competence and specialized knowledge of the agency [the Commission]  
22 may be utilized in the evaluation of the evidence.” NRS 233B.123(5). Nevada law also  
23 recognizes matters of law that are subject to judicial notice, such as statutes and regulations that  
24 are published and commonly recognized by courts in Nevada or other states. *See* NRS 47.140.  
25 Judicial notice in adjudication of contested cases before the Commission requires that “Parties  
26 must be notified either before or during the hearing, or be reference in preliminary reports or  
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1 otherwise, of the material noticed, including any staff memoranda or data, and they must be  
2 afforded an opportunity to contest the material so noticed.” NRS 233B.123(5).

3 The facts and law that RI are requesting the Nevada State Environmental Commission (the  
4 “Commission”) take judicial notice of are contained in the following exhibits:

5 1. Naniwa operating permit (Nevada Class I Permit No. AP4911-1062) (NDEP2876  
6 – NDEP2899) (attached as Exhibit A). Portions of the draft Naniwa permit (NDEP2834 – NDEP  
7 2871) were included as Exhibits 1 – 3 to RI’s Opening Brief and an entire copy of the draft permit  
8 was provided the NDEP as Exhibit “T” to its Response Brief. RI is not aware of substantive  
9 differences between the signed version of the Naniwa permit and the draft version.

10 2. South Coast Air Quality Monitoring District (“SCAQMD”) operating permits  
11 issued to USA Waste of Cal (El Sobrante Landfill) (attached as Exhibit B) and Waste  
12 Management Disposal & Recycling Services Inc. (Bradley Landfill) (attached as Exhibit C) that  
13 require continuous emission monitors (“CEMS”). The SCAQMD permits requiring CEMS for  
14 Landfill-Gas-to-Energy (“LFGTE”) projects were discussed in the all of the prehearing briefs  
15 submitted to the Commission by RI and NDEP.

16 3. SCAQMD rule requiring CEMS for LFGTE facilities. Attached as Exhibit D.  
17 The CEMS requirement in the SCAQMD LFGTE permit is based on the promulgated rule.

18 4. Excerpts from the Chaffee Landfill Operating Permit attached as Exhibit 8 to RI’s  
19 Opening Brief.

20 5. Stack test data from other LFGTE projects subject to similar emission limits using  
21 Cat 3520 engines, which are the same engines subject to this appeal. This data was provided as  
22 Exhibit 5 to RI’s Opening Brief.

23 6. Information regarding the performance and utility of handheld air emissions  
24 analyzers attached as Exhibit 7 to RI’s Opening Brief.

25 All of this material is appropriate for the Commission to recognize through judicial notice  
26 pursuant to NRS 233B.123(5). Item No. 1, the Naniwa operating permit, is essentially self-  
27 explanatory as it is another operating permit issued to a different nearby source in the same air  
28 basin as RI’s facility. The terms of that permit are closely related to the subject matter of RI’s

1 appeal and, as a component of the Department of Conservation and Natural Resources  
2 (“DCNR”), the Commission certainly has the experience, technical competence and specialized  
3 knowledge to consider the terms of the Naniwa permit, which was also drafted on the DCNR’s  
4 behalf by NDEP.

5 Likewise, the matters of fact and law included in Item Nos. 2 – 4, above, are also  
6 appropriate for the Commission to take judicial notice of pursuant to NRS 233B.123(5), 47.130  
7 and 47.140. This information is provided in publicly available regulatory code sections or  
8 operating permits and which can readily be confirmed as accurate and not subject to reasonable  
9 dispute. The subject matter of this material is the same as the topic of this appeal, putting it  
10 squarely within the specialized knowledge of the Commission that is necessary to hear this  
11 appeal. *See* NRS 233B.123(5).

12 The technical information identified in Item No. 5, above, is helpful for the Commission  
13 to understand the emissions measured from identical engines at other facilities that are subject to  
14 similar permit limitations. Stack test data is technical information that is within the specialized  
15 knowledge of the Commission as contemplated by NRS 233B.123(5), it is from accurate sources  
16 and it is helpful to the Commission for understanding the actual versus potential emissions of the  
17 engines that are the subject of this appeal. RI is providing an affidavit from Paul Pabor, Vice  
18 President, Renewable Energy for Waste Management, Inc. (“Affidavit,” attached as Exhibit E), in  
19 support of the stack test data to assure the Commission that the data is from sources whose  
20 accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute  
21 pursuant to NRS 47.130(2)(b). Mr. Pabor will also be testifying at the hearing.

22 As explained in the affidavit, the stack test data was gathered at nine different locations  
23 around the United States pursuant to permit conditions for each of the respective facilities.  
24 Affidavit ¶¶ 6 – 11. The stack tests were conducted by approved testing companies according to  
25 applicable sampling protocols. Affidavit ¶¶ 12 – 13. The results of the stack tests were recorded  
26 by individuals responsible for performing the tests and reported to the respective air quality  
27 authorities. Affidavit ¶¶ 14 – 16. The stack test results were not rejected by the air quality  
28 authorities and the results were maintained as identical copies in environmental compliance files

1 for the respective facilities. Affidavit ¶¶ 17-19. As noted above, NDEP has received advance  
2 notice about the stack test data when it was included with RI's Opening Brief. Accordingly, it is  
3 appropriate for the Commission to take judicial notice of this information.

4 Finally, the information identified in Item No. 6, above, is also within the expertise of the  
5 Commission. This information relates to the feasibility of using handheld air emissions  
6 analyzers, which are an alternative that RI has offered to replace the overly burdensome CEMS  
7 requirements in the current version of the Lockwood Landfill operating permit.

8 In summary it is appropriate for the Commission to take judicial notice of the items listed  
9 above. This will conserve time and resources and enable the Commission to focus on the  
10 substantive issue of this appeal—whether emissions can be sufficiently monitored without the use  
11 of CEMS, which are unnecessary and overly burdensome in this case.

12 DATED this 4<sup>th</sup> day of October, 2011.

13   
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CERTIFICATE OF SERVICE

I, Richard J. Angell, certify that I am an employee of Parsons Behle & Latimer, and that on this 4<sup>th</sup> day of October, 2011, I deposited for mailing a true and correct copy of the foregoing **REQUEST FOR JUDICIAL NOTICE**, via electronic mail and 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

