

## Feds say they lack jurisdiction to intercede on proposed landfill



Written by Dee Holzel

Thursday, March 25 2010 03:30

WINNEMUCCA — A request from anti-garbage forces to have the federal government step in and complete an EIS (Environmental Impact Statement) for the proposed Jungo Rd. landfill was denied in a letter from the Environmental Protection Agency dated March 15.

The request for intervention came in a letter to the EPA from members of Nevadans Against Garbage (NAG) who requested agencies of the federal government conduct a full EIS of the project under the authority of the National Environmental Policy Act (NEPA).

Responding to the NAG request was Jeff Scott, Division Director, Waste Management Division, US EPA Region 9, who outlined the role of the federal government and the role of state government in the waste permitting process – with special regard to the fact the proposed landfill is slated to be constructed on private property.

"NEPA is triggered only by federal actions and does not apply to actions undertaken by state or local agencies," Scott notes. "...there is no pending EPA action which would trigger any NEPA responsibility for our agency."

Landfill permitting falls under the jurisdiction of the State of Nevada, not the federal EPA, the letter notes. The matter will remain under the jurisdiction of the Nevada Department of Environmental Protection (NDEP); however, Scott did note if another agency opted to complete an EIS the EPA would be responsible for reviewing the completed document.

As for the wildlife concerns, Scott wrote, the Nevada Department of Wildlife (NDOW) may review and provide comments on wildlife issues related to the construction or operation of the landfill.

Page 2: Letter from EPA to NAG

Page 3: Letter from NAG to EPA

*For more information on this topic:*

[Nevadans Against Garbage seek federal intervention](#)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 Hawthorne St.

San Francisco, CA 94105-3901

March 15, 2010

Ms. Tami Vetter

Ms. Lianne Iroz

Ms Annie Drake

Nevadans Against Garbage

PO Box 1685

Winnemucca, NV 89446

Dear Ms. Vetter, Ms. Iroz and Ms. Drake,

I am writing in response to your letter to Jared Blumenfeld, Regional Administrator, United States Environmental Protection Agency Region IX ("EPA") dated January 14, 2010, conveying your concerns about the construction and operation of the proposed Jungo landfill. You raised concerns about the environmental impacts from the proposed landfill, especially impacts on groundwater and municipal water supplies, transport of windborne waste material, and exposure of wildlife to waste material.

You specifically ask EPA, the U.S. Fish and Wildlife Service and the Bureau of Land Management (BLM) to conduct a full environmental review of the project under the National Environmental Policy Act (NEPA). You also raise the issue of EPA's role in waste, air and water permitting decisions. As a result of your letter, we have contacted our State of Nevada counterparts and the Bureau of Land Management (BLM) to further understand the issues and to convey your concerns with the proposed Jungo landfill project. The concerns raised in your letter are discussed below.

NEPA is triggered only by federal actions and does not apply to actions undertaken by state or local agencies. As discussed more fully below, there is no pending EPA action which would trigger any NEPA responsibility for our agency. Further, it is also our understanding that because the Jungo Landfill is located on private land BLM does not have any NEPA responsibility either. But that is a determination to be made by BLM. You may want to direct further questions about BLM's NEPA obligation to Scott Richey of the BLM at 775-623-1709. Please note that if another federal agency decides to prepare an environmental impact statement under NEPA, EPA has a responsibility to review and comment in writing on that document.

For landfill permitting, the State of Nevada, not EPA, implements an approved solid waste program under the Resource Conservation and Recovery Act (RCRA) and has primary authority for permitting decisions for the proposed landfill. While EPA sets national standards for Municipal Solid Waste Landfills (MSWLF's), we have no direct oversight of MSWLF's in approved states. Currently the NDEP is performing a technical evaluation of the Jungo Landfill's application for a Municipal Solid Waste Disposal Site Permit. Upon completion of the evaluation, NDEP will draft and publish a notice of intent to issue or deny issuance of the permit and at that time will formally solicit comments from the public. NDEP's evaluation process is expected to take until at least late 2010 and then will be followed by a public comment period.

You also raised concerns that a pending U.S. Geological Survey (USGS) study of the potential for groundwater contamination from the proposed Jungo Landfill might not be considered prior to permit issuance. NDEP received the USGS study on 3/5/10 and indicated to us that only they will consider the study during their evaluation of the Jungo Permit application.

NDEP also implements delegated air and water programs under the Clean Air Act (CAA) and the Clean Water Act (CWA). Under the Clean Water Act, NDEP implements the stormwater program requirements, including coverage under Nevada's Construction Stormwater General Permit. Prior to beginning any potential construction activities, Jungo Land and Investments Inc. (JLII) will need to apply for coverage under the Construction Stormwater General Permit. NDEP indicates that the proposed Jungo Landfill is designed to control all stormwater flows on-site and will not discharge stormwater from the site. Therefore, NDEP anticipates that no Industrial Stormwater discharge permit will be required for ongoing operations.

For the Clean Air Act, NDEP is the delegated authority for implementing CAA New Source Performance Standards (NSPS) for MSW Landfills. Based on Jungo Landfill's design capacity, the landfill is subject to the provisions of 40 CFR Part 60 Subpart WWW and requires a Class I (Title V) Air Quality Operating Permit to Construct. NDEP issued a draft permit for public comment on June 5, 2009 and after considering comments issued the final permit on March 5, 2010. Please note that issuance of the air permit does not allow construction to commence as this proposed project must still be reviewed and permitted by NDEP's Bureau of Waste Management.

The Nevada Department of Wildlife (NDOW) will review and provide comments on wildlife issues related to construction or operation of the landfill. If you have questions regarding NDOW's review process please contact NDOW Habitat Staff Specialist, Steve Siegel at 775-688-1561.

Finally, further information and documents regarding the proposed Jungo Landfill can be found at NDEP's Jungo Landfill site <http://ndep.nv.gov/jungo/index.htm>. If you have questions regarding NDEP's permitting process NDEP's contact is Eric Noack at 775-687-9366. I hope this information is helpful to you. EPA will continue to monitor developments with the project as part of our ongoing work with NDEP. Please contact Eileen Sheehan of my staff at 415-972-3287 if you have any further questions.

Jeff Scott, Division Director

Waste Management Division

US EPA Region 9

January 14, 2010

Jared Blumenfeld, Regional Administrator

US Environmental Protection Agency, Region 9

75 Hawthorne Street

San Francisco, CA 94105

Re: Jungo Disposal Site, Humboldt County, Nevada

Mr. Blumenfeld:

We are writing to you because of our concern with the construction and operation of a proposed "mega-fill" disposal site in Desert Valley, west of Winnemucca in Humboldt County, NV. A local petition recently identified 3,636 Humboldt County residents who also voiced their opposition to this project. As proposed, this landfill would become a repository for more than 2 billion pounds of garbage annually, imported from California for up to 95 years. It would cover at least one square mile, 200 feet high, at the base of the Jackson Mountain Wilderness Area and the Jungo delta of the Black Rock Desert. Environmental impacts that may exist with the proposed project have not been completely evaluated. Most important of these are: 1) a threat to groundwater and

municipal water supplies, 2) the transport of contaminated soils and dried wastewater treatment sludge by prevailing winds to occupied areas and communities in the vicinity of the site, and 3) the impact to numerous wildlife species that will be attracted to contaminated slurry collected adjacent to the waste piles.

In a *Wall Street Journal* article dated November 6, 2009 Recology admitted miscalculating the community's reaction to the project. Chief Executive Michael Sangiacomo was quoted in the article, saying, "We went in there thinking, perhaps naively, this wouldn't be that big a deal." In our opinion, Recology and their subsidiary Jungo Land and Investments, Inc. (JLII) have shown little concern for the long-term welfare of the public or the environment, instead showing more interest in corporate profits and business growth.

We further believe that the State of Nevada has been unable to properly review the proposed landfill. Specific site data and impact analysis are incomplete and are absent the contributions from environmental professionals who routinely provide analysis to projects covered under National Environmental Policy Act (NEPA) review. To illustrate this, it was recently learned and reported to state and county officials that state regulators (Nevada Division of Environmental Protection {NDEP}) have failed to ask a sister state agency (Nevada Department of Wildlife {NDOW}) to assess the impacts of this project to wildlife, including Threatened and Endangered, sensitive, and species covered under the Migratory Bird Treaty Act. Moreover, information has been presented to regulatory officials citing relevant U.S. Geological Survey (USGS) data suggesting critical analyses have not been conducted concerning the potential for groundwater contamination and the significant risk posed to domestic water supplies in Winnemucca, Lovelock, Imlay, and to Desert Valley.

Recognizing the potential risk this project poses to the health and safety of this area, US Senator for Nevada Harry Reid secured funding for a comprehensive study to be conducted by the USGS. The long-term goal of this study is to evaluate the potential for environmental threats and to assess the human risk posed by long-term groundwater contamination. Our concern is that JLII could secure State and County permits and begin

construction on this project before this critical study is completed. Our plea is that you will intervene and carefully examine all the facts surrounding this project and evaluate this site to best provide for public health & safety, environmental stewardship, and the sustained economic growth to this area. We are requesting your assistance prior to further permitting and construction. This request is contrasted by state and local regulatory goals of generating tax revenue streams or corporate profits at any expense.

It is our position that under no circumstances should a waiver be granted by regulators pertaining to standards outlined under (NAC 444.678) which, if granted, would allow the placement and storage of toxic slurry closer to the static groundwater in the aquifer than allowed by state law.

NDEP's "role in this decision to allow the Jungo Disposal Site to operate at the proposed

location is minimal and only related to ensuring the operating company meets state and

federal environmental standards related to landfills." NDEP has made this statement publicly, and has at the same time omitted critical data offered to help in analyzing the risks to groundwater, wildlife, and the fugitive transport of contaminants and long-term air quality. The reluctance of the applicants to complete and offer an EIS for this proposal has omitted much of the vetting required to properly permit such a project. Absent that

opportunity to evaluate the Jungo project through a comprehensive EIS, we feel additional regulatory review is needed to close gaps in data collection and analysis and omissions in the project application.

We therefore request that the US Environmental Protection Agency, US Fish and Wildlife Service, and the Bureau of Land Management (BLM) conduct a full environmental review of the project under the terms of the National Environmental Policy Act (NEPA), the Clean Water Act, and the Clean Air Act prior to issuing

permits. It is our contention that the federal government has jurisdiction over this site given the proximity to federal lands managed by the BLM, the groundwater below, and the air quality standards adjacent to the proposed site.

We strongly believe that if the proposed project is allowed to move forward in its present form, prior to the completion of a thorough environmental and groundwater evaluation, the probability exists for substantial harm to these fragile ecosystems and many of the communities within this region.

Thank you for your time and expertise in this matter.

Sincerely,

Tami Vetter, Lianne Iroz, Annie Drake

Nevadans Against Garbage