

In the Matter of Stipulated Order of Abatement 17-01
Hearing on APCO's Petition filed November 1, 2019

November 18, 2019

Hearing Board Members:

The November 1, 2019 enforcement petition of APCO Gary Willey was not filed to impugn or question the good faith exhibited by the Hearing Board and the APCO in taking a "bird in the hand" approach with the Stipulated Order of Abatement approved in April 2018, nineteen months ago. It was filed because it has become abundantly clear that (a) the SOA is not working (and may not be workable), and (b) State Parks is unwilling to abide by and comply with the terms of the "stipulated" agreement into which it entered voluntarily.

So, this is not a situation where the APCO is providing an upbeat update on how well things are going. To the contrary, it's a situation where the APCO has found it necessary to come back to the Hearing Board with a petition for enforcement and/or issuance of a new, more emphatic abatement order.

As you receive evidence, consider the petition's prayer for relief, and possibly consider a further proposed stipulation coming from State Parks, the APCO, or both, I urge you to keep one key question in mind. **Are we dealing with a case where the current stipulated order can be salvaged for parties demonstrating good faith efforts to comply, or is this more likely a case where, rhetorically, we're being asked to put lipstick on a pig?**

As you consider this question during the hearing and your deliberations, please bear in mind the dismal record of non-compliance State Parks has created already:

1. The foundational component for SOA compliance is a final, approved, Particulate Matter Reduction Plan (PMRP). Although a highly conditioned approval was offered by the APCO in June 2019, the conditions of that approval have been ignored.
2. One of the most important conditions to approval of the PMRP was completion of environmental documents under CEQA. Although an expedited Subsequent Environmental Impact Report (SEIR) was proposed and promised in connection with final approval of a PRMP, no draft SEIR has yet surfaced for agency circulation and public review.
3. Certainly, by clear implication, Annual Reports and Work Plans are to be submitted starting in 2019 to implement an approved PRMP. Again, all three iterations of the still deficient AWRP for 2019 refer to a "draft" PMRP and not a final PMRP.

4. The only “on the ground” mitigation completed by State Parks under the SOA was the work specified in the SOA to be completed in 2018. No on-the ground mitigation has been undertaken during the first 11.5 months of 2019.
5. Despite three (3) tries since August, State Parks has yet to submit to the APCO an approvable ARWP for 2019.
6. The draft ARWPs submitted by State Parks openly concede or reflect that State Parks is not addressing information items required by the SOA. Examples: State Parks concedes a total failure to meet the SOA’s educational outreach requirement; State Parks fails provide required information about the actual source(s) of funding (including reserves) for work it will be doing; State Parks states at numerous locations in the ARWP that is not in a position to comply with mandated reporting obligations because it is still waiting on the completion of various analyses of data collected in the spring and summer
7. The draft ARWPs submitted by State Parks do not even mention, much less allow time for scheduling, required approval and environmental review that must be undertaken by the California Coastal Commission (“CCC”) *before any mitigation work under an ARWP may be commenced.*
8. While State Parks has struggled to comply with any of its post-2018 obligations under the SOA, it has also managed to ignore all its independent obligations under the dust pollution mitigation Coastal Development Permit (#3-12-050) approved in 2017. Where was State Parks work plan for mitigation to be completed in 2019 required by that permit?
9. Perhaps most troublesome of all, the record demonstrates indisputably that State Parks has essentially shoved the advice, counsel and timely participation of the Scientific Advisory Group aside. The SAG was supposed to represent the “scientific adult in the room.” Despite, or perhaps because of, the SAG’s demonstration of being a highly qualified, knowledgeable and committed group that really gets what’s going on, State Parks has given short shrift to the SAG.

Given this very problematic history of State Parks’ consistent/persistent non-compliance with an SOA unfortunately lacking any meaningful enforcement mechanism for non-compliance, is there a way for the Hearing Board to rectify things?

I would say yes, and suggest the following two measures as the quickest, surest, most efficient and cost-effective way to address an longstanding nuisance that continues unabated. These mitigation measures would remain in effect until, at a minimum, there is complete compliance with any process or procedural amendments to the SOA imposed

by or agreed to by the Hearing Board, a final PRMP is in place, and a CCC-approved Work Plan is in place. The abatement measures could also remain in place until State Parks has received CCC approval of a Public Works Plan (PWP).

1. Require State Parks by January 1, 2020 to demarcate the entire 48-acre foredune polygon recommended by the SAG and prohibit all vehicular activity in that area.
2. Require State Parks by January 1, 2020 to demarcate and prohibit all vehicular activity within the portion of the La Grande Tract owned by San Luis Obispo County and any privately-owned parcels within the La Grande Tract where State Parks does not have written authority to operate.

These interim abatement measures are clear, certain, objectively measurable, and easy to both explain and understand. They don't depend on metrics, they don't require vegetation, they should not require any permitting, and they don't create any extraordinary funding challenges. To avoid perpetuating the many non-working provisions of the current SOA, these new abatement measures should be imposed through a totally new, clean order of abatement.

In San Luis Obispo County, there is one body that has the right, authority and stewardship responsibility to abate air pollution nuisances to protect public health. It is not the APCO, it is not the APCD Board, and it is not the County Health Commission. It is the APCD Hearing Board on which you sit.

We know you take your responsibilities seriously; we need and rely on you to be willing to step up, and forward, to make the right decision. However hard that might be. But please, please, please, don't make this a case of being fooled twice.

Respectfully,

Michael Normoyle
Nipomo Mesa Resident