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BEFORE THE HEARING BOARD OF THE SAN LUIS OBISPO COUNTY  
AIR POLLUTION CONTROL DISTRICT  
STATE OF CALIFORNIA

In the Matter of  
  
CALIFORNIA DEPARTMENT OF  
PARKS AND RECREATION – OFF-  
HIGHWAY MOTOR VEHICLE  
RECREATION DIVISION – OCEANO  
DUNES STATE VEHICLE  
RECREATION AREA,

Case No. 17-01

**REQUEST BY CALIFORNIA  
DEPARTMENT OF PARKS AND  
RECREATION, DIVISION OF OFF-  
HIGHWAY MOTOR VEHICLE  
RECREATION, FOR  
CONTINUANCE OF ABATEMENT  
HEARING**

Date: November 13, 2017  
Time: 9:00 am  
Location: San Luis Obispo County  
Government Center  
Board of Supervisors Chambers  
1055 Monterey Street  
San Luis Obispo, California

TO THE HEARING BOARD OF THE SAN LUIS OBISPO AIR POLLUTION CONTROL  
DISTRICT:

The California Department of Parks and Recreation, Division of Off-Highway Motor  
Vehicle Recreation (“State Parks”), requests a continuance of the abatement hearing currently  
scheduled for November 13, 2017. State Parks makes this request in order to protect its  
constitutional right to due process. **Under District Rule 814, the Chairman or any two  
members of the Hearing Board may grant “any reasonable continuance.”**

1           The protections of procedural due process apply to administrative proceedings (*Richardson*  
2 *v. Perales* (1971) 402 U.S. 389, 401.) “Due process is the opportunity to be heard at a meaningful  
3 time and in a meaningful manner.” (*Southern Cal. Underground Contractors, Inc. v. City of San*  
4 *Diego* (2003) 108 Cal.App.4th 533, 543, citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 333.)  
5 Although due process in an administrative hearing does not require the full panoply of judicial  
6 trial procedures (*Stacy & Witbeck, Inc. v. City and County of San Francisco* (1995) 36  
7 Cal.App.4th 1074, 1087, as modified on denial of reh’g (Aug. 16, 1995)), it nonetheless requires  
8 “that the procedures be tailored, in light of the decision to be made, to ‘the capacities and  
9 circumstances of those who are to be heard,’ [citation] ... to insure that they are given a  
10 meaningful opportunity to present their case.” (*Mathews v. Eldridge, supra*, 424 U.S. at p. 349.)

11           The presently-scheduled abatement hearing does not provide State Parks with a  
12 “meaningful opportunity to present [its] case.” First, the pre-conference hearing, originally  
13 scheduled for October 25, 2017, was adjourned until November 1, 2017, due to the recusal of the  
14 then-chair Eileen Mackin-Getzoff, *which was made at the request of the Air Pollution Control*  
15 *Officer* (“APCO”) (State Parks subsequently joined that request). Thus, important matters  
16 involving the hearing were not discussed until November 1, 2017, less than two weeks before the  
17 hearing.

18           For instance, on October 24, 2017, the then-chair Ms. Mackin-Getzoff submitted a letter to  
19 the APCO requesting that he clarify certain matters for which the Petition for Abatement Order  
20 (“Petition”) was vague or undefined, including such fundamental matters as: (1) the “State Laws  
21 and District regulations the APCO and District claim that Respondent, [State Parks] has  
22 violated”; (2) the “activity, action, failure to act or other means by which [the APCO] claim[s]  
23 ODSVRA behavior constitutes a violation of California Health and Safety Code section 41700  
24 and San Luis Obispo County APCD Rule 401 [sic]”; and (3) the “specific orders or conditions ...  
25 APCD seek[s] that the Hearing Board include in an abatement order.” The APCO did not respond  
26 to the request for clarification until the continued pre-conference hearing on November 1, 2017.  
27 Thus, it was not until November 1 that the APCO’s attorney clarified that the Petition is *not* being  
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1 brought under District Rule 1001.<sup>1</sup> But although the APCO’s attorney clarified some issues,  
2 others remain unanswered. The APCO’s counsel would not identify the alleged “activity, action,  
3 [or] failure to act” that constitutes a violation, and stated he will not do so until the hearing itself.  
4 And although the APCO’s counsel reluctantly agreed to provide a proposed abatement order, to  
5 date he has not done so.

6 In addition, to date, the APCO still has not identified the witnesses it intends to call at the  
7 hearing or the documentary evidence that supports its petition, and will not do so until Monday,  
8 November 6, just one week before the hearing. Although the Air District’s rules provide that “the  
9 hearing need not be conducted according to technical rules relating to evidence and witnesses”  
10 (District Rule 812), the District still must afford State Parks an adequate opportunity to prepare  
11 for the hearing and to confront adverse witnesses. The APCO has afforded State Parks neither.

12 The APCO has also refused State Parks’ request to conduct discovery prior to the hearing,  
13 namely, to depose the witnesses the Air District intends to call at the hearing. (See *Mohilef v.*  
14 *Janovici* (1996) 51 Cal.App.4th 267, 302 [finding, in a nuisance abatement case, that “because the  
15 due process clause ensures that an administrative proceeding will be conducted fairly, ‘discovery  
16 must be granted if in the particular situation a refusal to do so would so prejudice a party as to  
17 deny him due process.’” (citation omitted)]; see also *Southern Cal. Underground Contractors,*  
18 *supra*, 108 Cal.App.4th at p. 544 [respondent’s right to due process satisfied because it “was  
19 afforded an effective opportunity to confront adverse witnesses at depositions”]; *Stacy & Witbeck,*  
20 *supra*, 36 Cal.App.4th at p. 1087, as modified on denial of reh’g (Aug. 16, 1995) [respondent’s  
21 right to due process satisfied because it “was afforded the opportunity to (and did) depose the  
22 City’s single witness prior to the hearing”].)

23 Here, the APCO has not and will not identify the alleged “activity, action, [or] failure to  
24 act” that constitutes a violation. As a result, State Parks does not presently know, and will not  
25 know until the hearing itself, the evidence that supports the Notice of Violation or the Petition.  
26 Due process considerations demand that State Parks understand the legal, factual, and evidentiary

27 <sup>1</sup> The APCO’s Petition for Abatement Order cites the legal ground for an abatement order  
28 as “Section 41700 of the Health and Safety Code and District Rules 402 and 1001” (emphasis  
added).

1 basis for the Petition in order to allow it to prepare a defense. Under the circumstances, denying  
2 State Parks' request to depose the APCO's witnesses "would so prejudice [State Parks] as to deny  
3 [it] due process." (*Mohilef v. Janovici, supra*, 51 Cal.App.4th at p. 302.) State Parks therefore  
4 requests a continuance of the hearing so that it can bring a motion to depose the APCO's  
5 witnesses.

6 Finally, State Parks has a right to a full review of its evidence by the Hearing Board, which  
7 the Hearing Board cannot reasonably perform in the limited time before the hearing. Dust  
8 pollution at Oceano Dunes State Vehicular Recreation Area (Oceano Dunes SVRA) is a complex  
9 issue. Over the decades there have been numerous studies documenting dust pollution at Oceano  
10 Dunes SVRA; the Air District embarked on a years' long process to study and then adopt a  
11 regulation (District Rule 1001) specifically to address particulate matter emissions at Oceano  
12 Dunes SVRA; State Parks, the Air District, and the California Air Resources Board have met  
13 regularly for years to plan, implement and analyze on-the-ground dust mitigation measures; State  
14 Parks recently certified an environmental impact report, and the Coastal Commission recently  
15 approved a coastal development permit, for State Parks' comprehensive plan to mitigate dust  
16 pollution at Oceano Dunes SVRA. The documentary record in this case is massive; however, due  
17 to the continuance of the pre-conference hearing, the parties will not submit their documentary  
18 evidence to the Hearing Board until Monday, November 6. State Parks has a due process right to  
19 have its evidence considered by the Hearing Board. (*Southern Cal. Underground Contractors,*  
20 *supra*, 108 Cal.App.4th at p. 548.) Although the Hearing Board is entitled to a presumption that it  
21 has properly performed its official duty to review all the evidence before it (Evid. Code, § 664),  
22 that presumption will be lost if the Hearing Board cannot reasonably review the evidence in  
23 advance of the hearing. The only way to insure that State Parks' due process rights are protected,  
24 is to continue the hearing to give the Hearing Board ample time to review the parties'  
25 documentary evidence.

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For the foregoing reasons, State Parks respectfully requests a reasonable continuance of the abatement hearing.

Dated: November 3, 2017

Respectfully Submitted,  
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JOHN SAURENMAN  
Senior Assistant Attorney General



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