

April 26, 2018

APCD Hearing Board
c/o Clerk of the Board
3433 Roberto Court
San Luis Obispo, CA 93401

SUBJECT: April 30, 2018 Proposed Stipulated Order of Abatement

Dear Hearing Board Members,

As the former Air Pollution Control Officer who initiated these Abatement Proceedings with your Board, I have carefully reviewed the latest version of the Proposed Stipulated Order of Abatement (SAO), dated April 30, 2018. I believe this proposal offers a conceptual outline of a dust mitigation process that could be effective in protecting public health while facilitating continuing operation of the ODSVRA. To ensure public health protection occurs in a timely manner, it is vital that the Hearing Board approve an SAO today to allow work to proceed immediately.

Unfortunately, the currently proposed SAO before you is far too vague in describing the actual requirements being placed on State Parks, actual intended outcome, the timelines for implementation, the incremental milestones for evaluating progress toward the intended outcome, and consequences for failure to meet those milestones or otherwise abide by the SAO. As a result, as currently written, the SAO is quite open to interpretation in a number of critical areas and will be very difficult to enforce.

I have the following comments and suggestions for your consideration to help refine the document today and ensure that all parties are on the same page moving forward.

Section 1: Initial Particulate Matter Reduction Actions

The mitigation measures proposed for installation this year (2018) should be approved now so State Parks can immediately begin installation. As it is, they will not be installed in time to provide much benefit for this spring wind season, but they will provide important mitigation for the shorter wind season that typically occurs during September and October.

Section 2: Particulate Matter Reduction Plan (PMRP)

This is really the heart of the proposal and an area where additional detail and specificity is critical. For example, Section 2, subpoints a, b, c & d seem to imply that the PMRP will be designed to achieve a 50% reduction in emissions from the ODSVRA, and that those reductions will occur within the defined term of the PMRP, which would culminate 5 years from now. Such an outcome would comply with the direction given by the Hearing Board to the parties at the March hearing.

Unfortunately, that outcome is never specifically required anywhere in the SAO. Rather, it identifies the “term” of the plan as 4 years (2.a), that it will be designed to attain state and federal air quality standards (2.b), and that it will have an initial goal of reducing emissions by 50% (2.c) to “meet the objective of 2b”, which is stated to be attainment of the standards. However, Section 2.g. states that the draft plan will demonstrate

attainment of the standards “*as expeditiously as practicable*”. So what exactly is the timeframe for achieving the stated goals?

This language is confusing, contradictory and highly subject to varying interpretations, which will significantly hinder all aspects of implementation. In addition, it sets an infeasible expectation in describing attainment of state and federal standards as the goal of the Plan, because it does not account for natural dust emissions that would still occur in the absence of vehicle activity. That natural component is the entire rationale behind the performance standard in Rule 1001, which requires comparison between PM10 measurements at the CDF riding area site and the Oso nonriding area site to account for the natural component that State Parks cannot control. The proposed 50% emission reduction goal described in 2.c is also based on this same premise; it was calculated to determine the level of emission reductions needed to bring the number of state standard exceedances measured annually at CDF down to the average annual number of exceedances measured at the Oso control site. This is a reasonable and feasible outcome, but it is stated nowhere in the document.

Clearly, this language needs substantial revision and clarification to make the intentions clear to the Hearing Board and the public, and to aid implementation for all affected parties.

Recommendations for Section 2 Clarification:

- Section 2.a - Revise to read as follows:
 - *“The term of the Plan shall be ~~for four (4) years~~ from the date of approval by the APCO through December 31, 2022.”*
- Section 2.b – Replace entirely with the following language:
 - *“The plan shall be designed to reduce the average number of state standard exceedances measured at the CDF monitoring site over the past 3 calendar years to the equivalent average number of exceedances measured at the Oso control site for the same 3-year period, by December 31, 2022. To achieve this result, the PMRP shall include the following:*
 - *Sufficient emission reduction measures proposed for implementation in 2019 to achieve at least a 25% reduction in the total emission reductions needed to comply with Objective 2b above; and,*
 - *Sufficient emission reduction measures proposed for implementation in 2020 to cumulatively achieve at least a 50% reduction in the total emission reductions needed to comply with Objective 2b above; and,*
 - *Sufficient emission reduction measures proposed for implementation in 2021 to cumulatively achieve at least a 75% reduction in the total emission reductions needed to comply with Objective 2b above; and,*
 - *Sufficient emission reduction measures proposed for implementation in 2022 to cumulatively achieve compliance with Objective 2b above by December 31, 2022.*
- Section 2.c - Revise to read as follows:
 - *“To meet the objective of 2b, development of the Plan shall establish an initial target of reducing the maximum 24-hour PM10 baseline emissions by fifty percent (50%) by December 31, 2022. The predicted effectiveness of this target to the meet the objective of 2b shall be verified through air quality modeling based on a modeling scenario for the period May 1 through August 31, 2013. This modeling shall be carried out by the California Air Resources Board (CARB), or other modeling groups subject to the review of the Scientific Advisory Group (SAG), as defined in paragraph 3, below;”*

- Section 2.d - Revise to read as follows:
 - *“The estimate of emissions reductions identified in 2c may be revised up or down based on air quality modeling conducted by CARB or other modeling subject to the review of the SAG required by 3a and 3b, to ensure the objective of 2b is met;”*
- Section 2.f - Revise to read as follows:
 - *“The Respondent shall ~~use its best efforts to~~ increase the current rate of native plant seed production, plant yield, dune planting, and take any other actions needed to maximize plant survival to the level needed to meet the rate of dune revegetation identified in the Plan (e.g. application of mulch, watering and fertilization);*
- Section 2.g - Revise to read as follows:
 - *A draft Plan demonstrating attainment of ~~state and federal ambient PM10 air quality standards as expeditiously as practicable~~ objective 2.b above by December 31, 2022 shall be submitted to the APCO and the SAG by Respondent no later than February 1, 2019 for the APCO’s approval;*

Section 3: Scientific Advisory Group

I understand the rationale behind proposing the establishment of the SAG, but it introduces an extensive layer of bureaucracy into an already complex process, which seems likely to result in process delays. Nonetheless, if this remains part of the SAO, then I would urge additional language that ensures no bias will be introduced into that group.

Recommendations for Section 3 Clarification:

- Section 3.b - Revise to read as follows:
 - *“By consensus, Respondent and the APCO, with consultation with the Special Master, shall appoint members of the SAG no later than July 1, 2018. The SAG shall be a completely independent body, and no current or former employees or contractors of State Parks or APCD shall be appointed to, or serve informally, on the SAG;”*

Section 4: Annual Report and Work Plan

This section is well-crafted and will provide important data and information for improving the effectiveness of the mitigation effort. However, there are a few areas needing more specificity and clarification:

Recommendations for Section 4 Clarification:

- Section 4.a - Revise to read as follows:
 - *“Reports shall review the dust controls implemented over the previous year, and, using metrics specified in the approved Plan, compare achievements to the increments of progress requirements specified under 2b above and those approved in the previous Report.”*
- Section 4.d - Revise to read as follows:
 - *“Reports shall propose dust control activities to be undertaken or completed in the next year together with analyses of expected outcomes, mitigation effectiveness, and potential emissions reductions relative to the increments of progress specified in 2.b for that year;”*

- Section 4.i - Revise to read as follows:
 - *“Failure to meet any increments of progress, or deadlines associated with report and work plan submittals, or the physical deployment of the mitigation specified in approved Reports except under conditions specified in 6(d) or (e), shall constitute a violation of this Order*
- Section 4.k - Revise to read as follows:
 - *“Annual Reports will include specific metrics and indicators to assess progress achieved toward Objective 2.b above and other planning objectives;”*

Section 6: General Conditions

My only comment on this section is that item 6.f is entirely redundant to the APCO’s existing authority to use his enforcement discretion in determining the nature and potential consequences of any failure by State Parks to meet its responsibilities under this SAO. As a result, it unnecessarily obfuscates appropriate and timely resolution of such issues. Item 6.f should be eliminated.

Attachment 1 to the SAO

The second paragraph on page 2 of the Attachment states the following:

“In order to ensure that steady progress is made toward mitigating nuisance PM10 emissions, the Draft Order of Abatement also requires additional emissions reductions after 2018. Specifically, emissions from the ODSVRA shall be reduced by an additional 5% each year. It is envisioned that some of these additional mitigations will come from converting arrays of fences to vegetation.”

This language is a mistaken holdover from the previously proposed SAO presented to and rejected by your Board at the March meeting; it is not referenced anywhere else in the actual body of the current SAO and would not be sufficient to achieve the 50% reduction goal within 5 years. This language should either be eliminated from the Attachment or replaced with the recommended incremental progress language for 2.b. above.

SUMMARY

As mentioned earlier, I believe it is essential that the Hearing Board approve an effective SAO today to ensure public health protection efforts begin immediately. The proposal before you provides an appropriate outline to work from, but is far too vague to ensure effective results. I believe the revisions I’ve suggested above provide the clarification and specificity necessary to put everyone on the same page. Incorporating these changes now and approving a revised SAO will allow for timely implementation of a plan and program to substantially reduce the particulate emissions caused by vehicle activity at the ODSVRA while allowing such activity to continue in a reconfigured form into the future.

Thank you for the opportunity to comment on this vitally important process.

Respectfully,



Larry R. Allen
Former Air Pollution Control Officer, Retired