

## APCD\_slocleanair

---

**From:** Michael C. Normoyle <m.normoyle@mcnlegal.com>  
**Sent:** Monday, October 10, 2022 8:40 AM  
**To:** boardclerk@slocleanair.org  
**Subject:** [EXT]Public Comment for October 14, 2022 Workshop and Hearing - Stipulated Order of Abatement Case No. 17-01

**ATTENTION:** This email originated from outside the County's network. Use caution when opening attachments or links.

October 10, 2022

To: San Luis Obispo Air Pollution Control District Hearing Board and Counsel

From: Michael C. Normoyle ([m.normoyle@mcnlegal.com](mailto:m.normoyle@mcnlegal.com))

Re: Public Comment for October 14, 2022 Hearing on Proposed/Revised 2022-2023 Annual Report and Work Plan (ARWP) under Stipulated Order of Abatement 17-01 (Oceano Dunes State Vehicular Recreation Area-ODSVRA); Public Comment on APCO's Application to Modify the Terms and Conditions of Stipulated Order of Abatement in Case 17-01 Dated October 5, 2022 and [Proposed] Order to Modify Existing Stipulated Order of Abatement

Dear Hearing Board Members and Board Counsel,

I urge you, please, to back away from the palaver and re-focus on the basics. BEFORE CONSIDERING ANY AMENDMENT, take heed of what the terms and conditions of the **Stipulated** Order of Abatement 17-01 ("the SOA") have stated and required since 2018.

The reality is that **all** parties involved – State Parks, the SAG, and the APCO – know very well that the aims and requirements of the original SOA **can** be accomplished within the existing, **stipulated** timeframe. What's missing are the will to follow through and a sense of urgency about doing so. That's where you come in.

The aim of these comments is to make the case for your REJECTION of the APCO's application and proposed order.

The SOA basics:

- (1) Federal (NAAQS) and State (CAAQS) Air Quality Standards for Particulate Matter (PM-10) pollution exist for a reason. Namely, to protect public health. Pg. 6, Para. 5.<sup>[1]</sup>
- (2) The Air Pollution Control District and its Air Pollution Control District Officer (the APCO) are charged with the responsibility of enforcing compliance with air quality standards that, at their core, exist to protect public health.<sup>[2]</sup> SOA Recitals and Pg. 2, Para. 1.
- (3) This Hearing Board has the authority to abate nuisances. Pgs. 4-5.
- (4) State Parks and the OHMVR Division that operates and manages the ODSVRA are subject to the jurisdiction and enforcement authority of the

- APCD, the APCO, and the APCD's Hearing Board. Pg. 2, Para. 4 and Pg. 16, Para. 6a.
- (5) In 2017 a petition was filed by the APCO, charging State Parks and specifically the OHMVR Division, with the creation and continuation of a public nuisance condition and failure to comply with applicable air quality standards relating to PM-10. Page 1, Recitals.
  - (6) In 2018, to avoid a finding of public nuisance and certain imposition of more stringent requirements, Stipulated Order of Abatement 17-01 was negotiated and approved. Pg. 7, Para. 7. The parties to the SOA agreed that it was in their best interests to resolve the matter "promptly" and to "immediately implement meaningful dust mitigation measures..." Pg. 7, Paras. 7,8. State Parks and the OHMVR Division have never directly challenged the Hearing Board's authority to assert jurisdiction and approve (and modify) the SOA.
  - (7) The documentary engine required to describe and govern implementation of SOA terms and provisions was a Particulate Matter Reduction Plan (PMRP). Pg. 9, Para. 2. The PMRP had a set term of four (4) years after approval and "The Plan shall be designed to achieve state and federal ambient air quality standards." Pg. 9, Para. 2b. Respondent agreed to submit by February 2019 "A draft Plan demonstrating attainment of state and federal ambient PM10 air quality standards, as expeditiously as possible." Pg. 10, Para. 2g.
  - (8) "An "initial target" was set "to meet the objective of 2b" (Pg. 9, Para. 2c) but the initial target – with an emphasis on reduction of emissions, not concentrations -- was never intended to supplant the primary objective of the SOA to attain compliance with ambient air quality standards for PM-10.
  - (9) The SOA (once modified in 2019) gave State Parks/OHMVR Division more than five (5) years to come into compliance, setting up an "iterative and adaptive" process for ensuring that the stipulated goal of compliance with applicable law (i.e., air quality standards for PM-10) would be accomplished within the stipulated time period.
  - (10) It has been known to all involved since the SOA was approved in 2018 that the three (3) preferred, "natural" mitigation measures to be used for achieving SOA goals would be, in combination: (a) re-establishing a re-vegetative foredune area, (b) installing other forms of permanent vegetation or re-vegetation, and (c) "severely restricting rider activity" and "reducing the areal extent of rider activity." Performance would be achieved by determining how much of each would be needed within the agreed timeframe.
  - (11) The SOA essentially acted as an injunction and a "cease and desist" order against State Parks; the alternative was for State Parks to "comply with the following conditions and increments of progress throughout the terms of this Stipulated Order for Abatement." Pg. 8, first paragraph of Stipulated Order of Abatement.
  - (12) The SOA provides that "failure to meet any increments of progress or deadlines associated with the deployment of mitigation .... shall constitute a violation of this Order." Pg. 14, Para. 4i.
  - (13) The SOA also requires that "....if Respondent cannot satisfy any increment of progress or deadline set forth in this Order due to any other circumstances beyond Respondent's control, Respondent may submit evidence to the APCO regarding the circumstances and explaining why they prevented Respondent from satisfying the increment of progress or deadline." Pg. 17, Para. 6f.
  - (14) The parties stipulated – and this Hearing Board ordered -- that full compliance (i.e., compliance with what applicable law has required since 2018) must/shall be achieved by December 1, 2023. See, e.g., Pg. 14, Para. 4k. Under the current terms of the SOA, the 2022-2023 ARWP would be the last opportunity State Parks/OHMVR Division would have to

demonstrate that compliance with what the law requires – the very aim of the SOA – would be achieved by the stipulated date. Pg. 15, Para. 5a.

Between 2018 and 2022, several key developments have occurred that also should inform your consideration of the application for changes to and extension of the SOA:

More meaningful information has developed about the seriously adverse impacts of PM-2.5 and PM-10 on human health. Message: act now; don't delay.

Experience under the SOA demonstrates that dust mitigation measures (particularly the three preferred forms of natural mitigation) do work.

Experience under the SOA regime -- and otherwise -- demonstrates that cessation or prohibition of OHV activity at the ODSVRA has a positive impact on both emissions and measured concentrations of PM-10.

In March and August 2021, the California Coastal Commission made key decisions in connection with amendments to CDP 4- 82-300 which, if legally upheld, will result in the cessation of OHV activity at ODSVRA by January 2024. State Parks has already, purportedly, decided as an operations matter to permanently close the approximately 300-acre Snowy Plover Exclosure to OHV activity.

**CONSIDER THE CURRENT APPLICATION, WITH THAT BACKGROUND IN MIND:**

Rather than do what applicable law, the provisions of the 2019 Particulate Matter Reduction Plan (PMRP), and the SOA require, State Parks/OHMVR Division – with the SAG as an active endorser – are now attempting to use the 2022-2023 ARWP as what amounts to a huge head-fake, to divert attention away from where SOA end-stage attention should be laser-focused. It also appears from the APCO's application that, despite numerous continuing concerns and qualifications that should give pause, the APCO may be at least acquiescing to kick-the-can, diversionary tactics that serve neither the APCD's nor the public's true interests.

What's being done, and how's it being done?

What's being attempted is a sophisticated but readily discernible effort to focus the Hearing Board's attention on the proposed adoption of a different "management objective" and a modified initial target and *away from* the real elephant in the room: identifying the steps necessary to ensure that State Parks/OHMVR Division will comply by December 2023 with the core "air quality standards compliance" requirement forth in Section 2b of the SOA.

In terms of the "how it's being done," State Parks/OHMVR Division and the SAG are essentially attempting to use the 2022-2023 ARWP to shift away from reliance on real-life conditions and exceedance levels at the "undisturbed" Oso Flaco monitoring location – levels that are observable and measurable as "*concentrations*" in real time -- to favor a set of assumptions about "pre-disturbance" conditions being posited for time periods 40-60 years in the past and admittedly based on "unquantifiable uncertainties" about key elements of an *revised emissions-based modeling* exercise. Indeed, the term "concentrations," essential to any determination relating to exceedances of air quality standards, is found NOWHERE in the APCO's proposed Order to Modify Existing Stipulated Order of Abatement.

Since the parties to the SOA, including the SAG and the APCO, appear unable or unwilling to undertake/recommend/require necessary mitigation within the context of agreed timeframes, timely achievement of the real task at hand may very well require the expertise, input, and more robust heft of the California Air Resources Board (CARB). What needs to be done, and can be done within current SOA timeframes, is to figure out, for an acknowledged naturally windy area, a level of “acceptable” exceedances of air quality standards for PM-10 that would be reflective of naturally windy conditions.

As a possible template to advance that work, why not take observed and measured conditions (including annual exceedances for PM-10) at the Oso Flaco monitoring station since (and including) 2015, determine an average number of annual PM-10 exceedances, apply a safety multiplier of 1.2 to 1.5, and then identify and insist on further (and preferred) dust mitigation measures (e.g., a combination of vegetation, re-vegetation, and restrictions on OHV activity) to assure compliance with that standard by December 2023? Under this more easily explainable, understandable, doable, and clearly more “real-world” scenario, the end-goal would become something like no more than 11-13 exceedances for PM-10 per year at CDF.<sup>[3]</sup> Most importantly, this approach focuses on actual attainment whereas shifting an emissions target from 50% to 40.7% (or any other evolving emissions reduction target) would not.

If there’s interest in pursuing a path like this, key questions the Hearing Board should insist on being addressed and answered should be: What’s the process for making this happen within the context of the SOA? How quickly can proposals be developed to achieve this more meaningful result? and Who needs to be involved?

The Hearing Board, the parties to the SOA, and the health interests of the public would be far better served if rigorous effort is devoted in short order to address the real issue that has become more and more evident, and clamoring for attention but not getting it. What is not needed at this critical 11<sup>th</sup> hour is mis-directed emphasis on inconsequential (or worse) re-arranging of deck chairs.

**Until this work is done, the Hearing Board:**

SHOULD NOT APPROVE THE APPLICATION TO AMEND THE SOA;

SHOULD NOT APPROVE ANY APPLICATION TO EXTEND THE SOA;

SHOULD NOT APPROVE ANY CHANGE TO THE EXISTING 50% “TARGET”;

SHOULD NOT APPROVE ANY EFFORT TO ELIMINATE REFERENCES IN THE SOA TO THE INTEGRAL ROLE OF THE COASTAL COMMISSION;

SHOULD GIVE CLEAR DIRECTION TO THE PARTIES ABOUT WHAT THE HEARING BOARD DEEMS MOST CRITICAL TO ACHIEVING THE TRUE AIM OF THE SOA.

SHOULD INSIST ON SUBMISSION OF AT LEAST AN ANNUAL REPORT ON OVERALL SOA COMPLIANCE BY JULY 1, 2023, OR EARLIER.

**Until this work is done, the APCO:**

SHOULD, AS AN INTERIM MEASURE, REQUIRE STATE PARKS/OHMRV DIVISION TO PROCEED WITH FURTHER DUST MITIGATION MEASURES, INCLUDING BUT NOT LIMITED TO THOSE IN THE SECONDARY WORK PLAN IN THE REVISED ARWP -- EXCEPT FOR VEGETATING AREAS WITHIN THE PERMANENT SNOWY PLOVER ENCLOSURE WHICH LIKELY WILL NOT BE ACCEPTABLE TO THE COASTAL COMMISSION. THIS WILL REQUIRE THE ADDITION OF OTHER MEASURES TO COMPENSATE.

SHOULD INSIST ON STATE PARKS SUBMITTING AT LEAST AN ANNUAL REPORT ON OVERALL SOA COMPLIANCE BY JULY 1, 2023 OR EARLIER.

Protecting and preserving the integrity of the SOA and your authority over the abatement of public health nuisances ultimately rests with you. With it appearing that no one else is prepared to keep a foot on the accelerator, you are the ones with every reason to do so.

Thank you for considering my comments.

<sup>[1]</sup> References are to pages and paragraphs of Stipulated Order of Abatement Case No. 17-01.

<sup>2</sup> Remember too, that the CAAQS and NAAQS are mass-*concentration*, not mass-emissions based standards. Concentrations are measured at air quality monitoring stations. Why is the word “concentration” is not found anywhere in the APCO’s proposed Order to Modify Existing Stipulated Order of Abatement?

<sup>3</sup> Regardless of what original or revised, measured or modeled, emission reductions show, they are insufficient to establish necessary reductions in PM-10 exceedances when averaged, objectively measured exceedances at Oso Flaco are about 9.5, versus 66 at CDF (2013-2022) and 44 at Mesa2 (2013-2022)

---

<sup>[1]</sup> References are to pages and paragraphs of Stipulated Order of Abatement Case No. 17-01.

<sup>[2]</sup> Remember too, that the CAAQS and NAAQS are mass-*concentration*, not mass-emissions based standards. Concentrations are measured at air quality monitoring stations. The word “concentration” is not found anywhere in the APCO’s proposed Order to Modify Existing Stipulated Order of Abatement.

<sup>[3]</sup> Regardless of what original or revised, measured or modeled, emission reductions show, they are insufficient to establish necessary reductions in PM-10 exceedances when average, objectively measured exceedances at Oso Flaco are about 9.5, at CDF 66, and at Mesa2 44.