

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of

SAN LUIS OBISPO COUNTY AIR
POLLUTION CONTROL DISTRICT,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION OFF-HIGHWAY
MOTOR VEHICLE RECREATION
DIVISION,

Respondent.

Case No. 17-01

**[PROPOSED] ORDER TO MODIFY
EXISTING STIPULATED ORDER OF
ABATEMENT AND/OR ISSUE A NEW
ORDER OF ABATEMENT**

Hearing Date: November 18, 2019
Time: 9:00 am
Location: South County Regional Center
800 West Branch St., Arroyo Grande,
California 93420

The Petition to Modify the Existing Stipulated Order of Abatement and/or Issue a New Order of Abatement came on for hearing on November 18, 2019 at South County Regional Center, 800 West Branch Street, Arroyo Grande, California 93420.

On proof made to the satisfaction of the Hearing Board that Good Cause exists to modify the existing Stipulated Order of Abatement (“Original Stipulated Order”) in Case 17-01, between San Luis Obispo County Air Pollution Control District (“District”, “APCD”, or “Petitioner”) and the California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division (“Parks”, “OHMVR”, or “Respondent”), **the Hearing Board issues**

1 **the following modification of the Original Stipulated Order of Abatement requiring**
2 **Respondent to:**

3 1. Complete installation of perimeter fencing for the 48-acre vegetated foredune
4 project described in Section 3.1.6 of the Third Draft Work Plan, and shown in its Exhibit 9, by
5 January 1, 2020, with the planting of native vegetation begun by April 1, 2020. Table 5-5 of
6 the Third Draft Work Plan shall be updated to reflect these deadlines. With regard to the
7 CEQA and Coastal Commission approvals discussed in Section 3.1.6 and Table 5-5 of the
8 Third Draft Work Plan, Respondent shall work as expeditiously as possible to obtain those
9 approvals. Until the foredune project is approved by the California Coastal Commission and
10 mitigation measures are fully implemented, non-motorized public access to the vegetated
11 foredune proposed project area may be permitted as long as plantings are protected, but off-
12 highway vehicle activity and camping is prohibited after January 1, 2020.

13 2. Complete all other elements of the Third Draft Work Plan dated October 15,
14 2019, and submitted by Respondent to the APCO, by the timelines proposed in that document,
15 except as noted below and in compliance with any conditional approval of the Work Plan by
16 the District. A true and correct copy of the Third Draft Work Plan is attached hereto as Exhibit
17 A and incorporated herein by this reference.

18 3. Implement the 40 acres of season dust controls as discussed in Section 3.1.5 of
19 the Third Draft Work Plan, with the following modifications:

- 20 i. The dust controls must be undertaken within areas of the ODSVRA where
21 off-highway vehicular activity is currently allowed.
- 22 ii. By January 1, 2020, Respondent shall submit a proposal that shall include
23 the specific season dust control measures that will be utilized, and proposed
24 locations of the specific measures, to the APCO and Advisory Group. This
25 proposal shall include an implementation plan schedule, including, but not
26 limited to, an increment of progress schedule and a final completion date
- 27 iii. Within 10 business days of receipt of Respondent's proposal, the Advisory
28 Group shall evaluate the proposed measures and locations and recommend

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

to the APCO whether to approve the proposals. If requested by the Advisory Group, the APCO may extend the 10-day business day deadline by up to an additional 10 business days.

- iv. Within 5 business days of receipt of the Advisory Group’s evaluation the APCO shall either approve the measures and locations or provide Respondent with comments explaining why the proposal is not approvable.
- v. If the initial proposal is not approved, Respondent shall submit a new proposal by February 1, 2020, which addresses the deficiencies identified by Advisory Group and the District.
- vi. Within 10 business days of receipt of Respondent’s proposal, the Advisory Group shall evaluate the proposal and recommend to the APCO whether to approve the measures and locations. If requested by the Advisory Group, the APCO may extend the 10-day business day deadline by up to an additional 10 business days.
- vii. Within 5 business days of receipt of the Advisory Group’s evaluation, the APCO shall either approve the measures and locations or impose a 40-acre season dust control measures project for the Respondent to implement.
- viii. By March 15, 2020, Respondent shall begin implementation of the approved plan, or imposed 40-acre project, and Respondent shall comply with the implementation plan schedule, including, but not limited to, an increment of progress schedule and a final completion date, as approved, or imposed, by the APCO.
- ix. Respondent must fully fence the 40 acres of season dust controls project perimeter to exclude off-highway vehicular activity by March 15, 2020, and the Respondent shall complete the project by April 1, 2020.
- x. This project shall be maintained until at least October 31, 2020.

4. Complete an additional 4.2 acres of permanent dust controls within the high emissions area just south of the western edge of the “Pavilion Hill” vegetation island shown in

1 Attachment 1 of the Original Stipulated Order. The Original Stipulated Order specified this as
2 one of the areas to be fenced off and revegetated or implement an alternate mitigation measure
3 as approved the APCO, as part of the Initial Particulate Matter Reduction Actions.
4 Alternatively, Respondent may establish this additional acreage in a different location within
5 the ODSVRA upon approval by the Advisory Group and APCO. The Respondent must comply
6 with the following mitigations:

- 7 i. The Respondent shall establish a perimeter fence around the additional 4.2
8 acres of permanent dust control area by March 15, 2020. Off-highway
9 vehicular activity and camping is prohibited within the fenced area.
- 10 ii. The Respondent shall complete internal controls by June 1, 2020. Internal
11 controls may be fence arrays, strawbales, or revegetation.
- 12 iii. The Respondent shall maintain the area as specified in Section 1.b of the
13 Original Stipulated Order.
- 14 iv. If Respondent chooses to seek Advisory Group approval for a different
15 location, the selection and approval process shall follow the same timeline
16 as that established above for the selection and approval of the 40-acres of
17 season dust control measures, paragraphs 1.c.ii thru 1.c.x, above.

18 5. Conduct the field calibration of MetOne Particulate Profiler Equipment, which
19 is described in Section 3.1.19 and Attachment 4 of the Third Draft Work Plan, using equipment
20 other than the "APCD Portable BAM station." In discussions between the District and
21 Respondent, it has now been determined that the District's equipment is not suitable for this
22 purpose.

23 6. Complete conditions 2 through 5 of Advisory Group's October 23rd response to
24 Respondent's Third Draft Work Plan (Exhibit B):

25 2. The 2019 [Work Plan] "Implementation Schedule" (Sec. 5) shall
26 include a table specifying a detailed process for [Advisory Group]
27 consultation and evaluation, including submission of interim reports and
28 work plans ["Interim Work Plans"] as follow-on updates to the 2019
[Work Plan]. This table shall include the following tasks and schedules for
completion:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- a. Determine processes for obtaining values for all evaluation metrics contained in Attachment 8 of the [Particulate Matter Reduction Plan] (Oct 2019 - Nov 2019).
- b. Obtain and report final values for all evaluation metrics for the 2019 [Work Plan] reporting period (Dec 2019).
- c. Prepare and submit [Interim Work Plans] ([First Interim Work Plan]: Dec 2019, [Second Interim Work Plan]: Mar 2020).
- d. [Advisory Group] reviews [Interim Work Plans], including evaluation metrics, to determine progress toward the [Particulate Matter Reduction Plan] goals. Based on its review [Advisory Group] submits adaptive management recommendations to inform creation of subsequent [Interim Work Plans] and [Work Plans] ([First Interim Work Plan]: Jan 2020, [Second Interim Work Plan]: Apr 2020).
- e. [Respondent] prepares an outline 2020 [Work Plan] for consideration by [Advisory Group]. This outline [Work Plan] shall include tables specifying proposed implementation schedules for the 2020 [Work Plan] (May 2020).
- f. [Advisory Group] reviews outline 2020 [Work Plan] and provides initial feedback to [Respondent] on elements to be included in the full 2020 [Work Plan] (June 2020).
- g. [Respondent] prepares the full 2020 [Work Plan], which shall include values for all evaluation metrics for the associated reporting period (July 2020).

3. The 2019 [Work Plan] "Implementation Schedule" (Sec. 5) shall provide a more detailed planting schedule, either through amendments to Tables 5-1, 5-3, and 5-5, or through inclusion of a new table. In Appendix A to this letter, [Advisory Group] offers recommendations for elements to be included in this detailed planting schedule.

4. Each task listed above shall be completed by the last day of the final month for performance of the task. Thus, the first and second [Interim Work Plans] shall be submitted no later than December 31, 2019, and March 30, 2020, respectively, and the outline 2020 [Work Plan] shall be submitted by May 31, 2020. To ensure timely completion of these and all other tasks included in the 2019 [Work Plan], we encourage [Respondent] to consult early and often with [Advisory Group].

5. As indicated in the above schedule of tasks, going forward [Advisory Group] shall be given a minimum of 30 days to review and comment on all [Interim Work Plans] and [Work Plans]. Exceptions to this 30-day review period shall be granted only by written consent of [Advisory Group] and APCO. For all other tasks requiring [Advisory Group] consultation and review, [Advisory Group] requests at least 10 business days for completion of [Advisory Group] reviews. It is expected that [Respondent] will adhere to these review periods to maintain effective communication and due process toward the requirements of the [Order for Abatement] and [Particulate Matter Reduction Plan].

///
///
///

1 **This Hearing Board further orders the following additional modifications to the Original**
2 **Stipulated Order:**

3 7. For each year from 2020 through 2022, the approval process for the Work
4 Plans, specified in Section 5 of the Original Stipulated Order, shall be modified as follows:

- 5 i. The Respondent shall submit a draft Work Plan to the Advisory Group for
6 their review and recommendations by July 1 of each year. The deadline for
7 submittal of the draft Work Plan to the APCO shall remain August 1 of each
8 year, but Respondent is encouraged to submit earlier. The draft Work Plan
9 submitted to the APCO shall have incorporated the Advisory Group's
10 recommendations.
- 11 ii. Notwithstanding the deadlines in the previous sections, the Advisory
12 Group's review and recommendations of the draft Work Plan shall be
13 completed within 10 business days after the draft Work Plan is submitted. If
14 requested by the Advisory Group, the APCO may extend the 10 business
15 day deadline by up to an additional 10 business days.
- 16 iii. Upon receipt of the Advisory Group recommendations, the APCO shall
17 have 7 days to either return the Work Plan to Respondent with an
18 itemization of deficiencies for correction; or, if the draft Work Plan appears
19 provisionally approvable, the APCO shall schedule a public workshop
20 subject to the conditions described below.
- 21 iv. If the APCO deems the draft Work Plan deficient and returns it to
22 Respondent with an itemized list of deficiencies of correction, Respondent
23 shall have up to 21 days to submit a corrected Work Plan to the Advisory
24 Group for further review.
- 25 v. Subsequent reviews by the Advisory Group and the APCO will follow the
26 same timeline as noted in sections ii and iii, above, with Advisory Group
27 review and submittal of recommendations due 14 business days after receipt
28

1 of Respondent's next corrected Work Plan. APCO review and comments are
2 due 7 business days after receipt of the Advisory Group's recommendations.

3 vi. The iterative submit—review—revise process may repeat until October 1,
4 after which Respondent may submit no further drafts. If approval of the
5 draft Work Plan has not occurred prior to October 1 of each year, the
6 Advisory Group and APCO shall complete their reviews of the most
7 recently submitted draft by the timelines specified above if they have not
8 already done so. If the APCO determines that the draft Work Plan is
9 provisionally approvable, the APCO shall schedule a public workshop, as
10 described below. If the APCO determines the draft Work Plan is not
11 approvable, the APCO shall impose conditions on the draft Work Plan prior
12 to approval. Respondent must comply with the implementation of the
13 additional conditions imposed by the APCO and the schedule of increments
14 of progress associated with those conditions.

15 vii. Regardless of the number of revisions, a public workshop shall be held on
16 the draft Work Plan prior to APCO approval. The APCO shall publish a 15-
17 day notice of public workshop within 7 days of receipt of a provisionally
18 approvable plan. The notice shall announce the availability of the draft
19 Work Plan and Advisory Group recommendations, solicit public comments,
20 and solicit public participation at the workshop to review the draft Work
21 Plan and Advisory Group recommendations.

22 viii. Within 7 days of conclusion of the public workshop, the APCO shall either
23 approve the draft Work Plan or return the draft Work Plan to Respondent
24 with an itemization of deficiencies for correction. Respondent shall have 21
25 days to submit a revised Work Plan to the Advisory Group. The Advisory
26 Group shall have 14 days to review the revised Work Plan and issue its
27 recommendations, and the APCO shall have 7 days to schedule a subsequent
28 public workshop (subject to the same 15-day notice as above) or return the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

revised Work Plan to Respondent for another revision, at which point the revise-review cycle continues, subject to the previously enumerated deadlines.

8. Section 5.e. of the Original Stipulated Order is modified to read: “If a disagreement arises between Respondent and APCO regarding the approval of the [Work Plan], **either Party** may request a hearing before the Hearing Board to resolve the disagreement.”

9. Unless specifically modified by this Order, all other provisions of the Original Stipulated Order shall remain in full force and effect.

Dated this ___ day of November, 2019

Dr. Yarrow Nelson,
Vice-Chair
San Luis Obispo County
APCD Hearing Board