

**FILED**

December 9, 2019

Hearing Board  
San Luis Obispo County Air  
Pollution Control District

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

**ORDER TO MODIFY EXISTING  
STIPULATED 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**

1 **issues the following modification of the Original Stipulated Order of Abatement**  
2 **requiring 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, as  
5 expeditiously as possible given the CEQA and Coastal Commission approvals discussed in  
6 Section 3.1.6 and Table 5-5 of the Third Draft Work Plan, with the planting of native  
7 vegetation begun by April 1, 2020. Table 5-5 of the Third Draft Work Plan shall be updated to  
8 reflect these deadlines. With regard to the CEQA and Coastal Commission approvals discussed  
9 in Section 3.1.6 and Table 5-5 of the Third Draft Work Plan, Respondent shall work as  
10 expeditiously as possible to obtain those approvals. Until the foredune project is approved by  
11 the California Coastal Commission and mitigation measures are fully implemented, non-  
12 motorized public access to the vegetated foredune proposed project area may be permitted as  
13 long as plantings are protected, but off-highway vehicle activity and camping is prohibited  
14 after January 1, 2020.

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

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

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



1           4.       Complete an additional 4.2 acres of permanent dust controls within the high  
2 emissions area just south of the western edge of the “Pavilion Hill” vegetation island shown in  
3 Attachment 1 of the Original Stipulated Order. The Original Stipulated Order specified this as  
4 one of the areas to be fenced off and revegetated or implement an alternate mitigation measure  
5 as approved the APCO, as part of the Initial Particulate Matter Reduction Actions.  
6 Alternatively, Respondent may establish this additional acreage in a different location within  
7 the ODSVRA upon approval by the Advisory Group and APCO. The Respondent must comply  
8 with the following mitigations:

- 9           i.       The Respondent shall establish a perimeter fence around the additional 4.2  
10 acres of permanent dust control area by March 15, 2020. Off-highway  
11 vehicular activity and camping is prohibited within the fenced area.
- 12           ii.       The Respondent shall complete internal controls by June 1, 2020. Internal  
13 controls may be fence arrays, strawbales, or revegetation.
- 14           iii.       The Respondent shall maintain the area as specified in Section 1.b of the  
15 Original Stipulated Order.
- 16           iv.       If Respondent chooses to seek Advisory Group approval for a different  
17 location, the selection and approval process shall follow the same timeline  
18 as that established above for the selection and approval of the 40-acres of  
19 season dust control measures, paragraphs 3.ii thru 3.x, above.

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

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

- 27                   2. The 2019 [Work Plan] "Implementation Schedule" (Sec. 5) shall  
28 include a table specifying a detailed process for [Advisory Group]  
consultation and evaluation, including submission of interim reports and

1 work plans [“Interim Work Plans”] as follow-on updates to the 2019  
2 [Work Plan]. This table shall include the following tasks and schedules for  
completion:

3 a. Determine processes for obtaining values for all evaluation  
metrics contained in Attachment 8 of the [Particulate Matter Reduction  
Plan] (Oct 2019 - Nov 2019).

4 b. Obtain and report final values for all evaluation metrics for the  
2019 [Work Plan] reporting period (Dec 2019).

5 c. By December 31, 2019, Respondent and Advisory Group will  
develop a mutually agreeable schedule for regular updates and  
6 communication regarding progress towards the Particulate Matter  
Reduction Plan goals.

7 d. [Respondent] prepares an outline 2020 [Work Plan] for  
consideration by [Advisory Group]. This outline [Work Plan] shall include  
8 tables specifying proposed implementation schedules for the 2020 [Work  
Plan] (May 2020).

9 e. [Advisory Group] reviews outline 2020 [Work Plan] and  
provides initial feedback to [Respondent] on elements to be included in  
10 the full 2020 [Work Plan] (June 2020).

11 f. [Respondent] prepares the full 2020 [Work Plan], which shall  
include values for all evaluation metrics for the associated reporting period  
(July 2020).

12 3. The 2019 [Work Plan] “Implementation Schedule” (Sec. 5) shall  
13 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  
14 A to this letter, [Advisory Group] offers recommendations for elements to  
be included in this detailed planting schedule.

15 4. Each task listed above shall be completed by the last day of the final  
16 month for performance of the task. Thus, the outline 2020 [Work Plan]  
shall be submitted by May 31, 2020. To ensure timely completion of these  
17 and all other tasks included in the 2019 [Work Plan], we encourage  
[Respondent] to consult early and often with [Advisory Group].

18 5. As indicated in the above schedule of tasks, going forward [Advisory  
19 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  
20 review period shall be granted only by written consent of [Advisory  
Group] and APCO. For all other tasks requiring [Advisory Group]  
21 consultation and review, [Advisory Group] requests at least 10 business  
days for completion of [Advisory Group] reviews. It is expected that  
22 [Respondent] will adhere to these review periods to maintain effective  
communication and due process toward the requirements of the [Order for  
23 Abatement] and [Particulate Matter Reduction Plan].

24 ///

25 ///

26 ///

27 ///

28 ///

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  
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

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

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

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

viii. Within 7 days of conclusion of the public workshop, the APCO shall approve the draft Work Plan with or without additional conditions.

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.”

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

3           10.       To the extent the terms of the Original Stipulated Order of Abatement conflict  
4 with the terms modified by this Order, the terms modified by this Order shall take effect.

5           11.       In October of each year from 2019 through 2022, the Hearing Board, upon  
6 request by the Chair or any two members, may convene a meeting to receive an informational  
7 update on the Report. If a hearing is also requested as set forth in section 5(e) above, this  
8 meeting shall also include that hearing.

9           12.       The Hearing Board, upon request by the Chair or any two members, may  
10 convene a public hearing to review the progress of the Respondent in carrying out the  
11 requirements of this order. The Hearing Board may also revoke the APCO's approval of any  
12 conditions or modifications.

13           13.       The California Department of State Parks shall identify a project manager by  
14 December 31, 2019 and provide the APCO with that person's contact information.

15

16 Moved By:   **Mr. Paul Ready**

17 Seconded By: **Dr. Thomas Richards**

18 Ayes: **Mr. Paul Ready, Mr. William Johnson, Dr. Thomas Richards, Dr. Yarrow Nelson**  
19 **- Acting Chair**

20 Noes: **Mr. Robert Carr**

21 Abstentions: **None**

22

23 Dated this 18 day of November 2019

24

25

26

27

28

  
\_\_\_\_\_  
*Dr. Yarrow Nelson*  
Vice-Chair  
San Luis Obispo County  
APCD Hearing Board