

FILED

October 21, 2024

**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: October 15, 2024
Time: 9:00 am

Location: San Luis Obispo County Board of
Supervisors Chambers, 1055 Monterey St.,
San Luis Obispo, California 93401

RECITALS

WHEREAS, on September 10, 2017, the San Luis Obispo County Air Pollution Control District (hereinafter referred to as “Petitioner,” the “District” or “APCD”) filed with this Hearing Board a Petition for Abatement Order (“Petition”), Case No. 17-01, pursuant to California Health and Safety Code Section 42451, against respondents California Department of Parks and Recreation Off-Highway Motor Vehicle Recreation Division (hereinafter referred to as “Respondent,” “State Parks” or “OHMVR”) with regard to alleged nuisances defined pursuant

1 to District Rule 402 and California Health and Safety Code Section 41700, beginning on or about
2 May 20, 2010, and for violating District Rule 1001 and on all certain occasions thereafter, as a
3 result of particulate matter emissions from the Oceano Dunes State Vehicular Recreation Area
4 (“ODSVRA”). Petitioner and Respondent are referred to collectively herein as the “Parties.”

5 **WHEREAS**, the San Luis Obispo County Air Pollution Control District Hearing Board
6 (Hearing Board) issued Stipulated Order of Abatement #17-01 (SOA) on April 30, 2018 and
7 under Condition 6.a of the SOA, either the Respondent or the San Luis Obispo County Air
8 Pollution Control District Air Pollution Control Officer (APCO) may apply to modify the terms
9 or conditions of the SOA.

10 **WHEREAS**, on November 1, 2019, the APCO filed a Petition to Modify the Existing
11 Stipulated Order of Abatement and on November 18, 2019, the Hearing Board issued the first
12 modification to the SOA.

13 **WHEREAS**, on October 5, 2022, the APCO filed a Petition to Modify the Existing
14 Stipulated Order of Abatement and on October 14, 2022, the Hearing Board issued the second
15 modification to the SOA.

16 **WHEREAS**, as allowed under Condition 6.a, the APCO seeks to further modify the
17 terms or conditions of the SOA.

18 **WHEREAS**, the APCO has utilized the SOA in lieu of taking enforcement action
19 pursuant to applicable provisions of the Health & Safety Code for violations of Rule 1001.

20 **WHEREAS**, Respondent intends to transition to long-term dust-mitigation maintenance
21 operations based on principles of adaptive management supported by scientific evidence that
22 informs the state of PM₁₀ emissions within the ODSVRA.

23 **WHEREAS**, the APCO and Respondent agree to such modifications as described herein.

24 25 **FINDING AND DECISION OF THE HEARING BOARD**

26 The Hearing Board approves the final excess emissions goal proposed by the
27 Respondent, which was developed in consultation with the Scientific Advisory Group (“SAG”)
28 and California Air Resources Board (“CARB”) and agreed to by the APCO and is described in

1 the conditionally-approved 2024 Annual Report and Work Plan (ARWP). In general, that
2 approved excess emissions goal is to reduce PM₁₀ emissions from the ODSVRA to a level at or
3 below a pre-disturbance condition, initially identified by the SAG in the document “Scientific
4 Basis for Possible Revision of the Stipulated Order of Abatement,” dated February 7, 2022,
5 and subsequently modified as detailed in the 2024 ARWP. The details of the modeling
6 protocol and the underlying data may continue to be refined; any changes beyond those
7 proposed in the conditionally approved 2024 ARWP are subject to SAG review and the
8 approval of the APCO.

9 The initial modeling results in the 2024 ARWP indicate that ODSVRA is not in excess
10 of naturally occurring emissions and therefore it may be appropriate for State Parks to move
11 towards a long-term maintenance and adaptive management program to remain in compliance
12 with the Stipulated Order of Abatement as modified.

13 14 PUBLIC HEARING

15 On proof made to the satisfaction of the Hearing Board that Good Cause exists to modify
16 the existing Stipulated Order of Abatement (“Original Stipulated Order”) in Case 17-01,
17 between San Luis Obispo County Air Pollution Control District and the California Department
18 of Parks and Recreation Off-Highway Motor Vehicle Recreation Division, **the Hearing Board**
19 **issues the following modification of the conditions to the Original Stipulated Order of**
20 **Abatement and its subsequent November 18, 2019 and October 14, 2022 modifications:**

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- 22 1. The Hearing Board shall retain jurisdiction over this matter until December 1, 2028,
23 during which period either Respondent or the APCO may apply to modify the terms and
24 conditions of this Stipulated Order, including this deadline, or to terminate this Stipulated
25 Order. At the conclusion of this period, as it may be modified, this Stipulated Order shall
26 expire.
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- 1 2. Sections 2a-2b of the Original Stipulated Order of Abatement are modified to read:
- 2 a. The term of the Plan shall be for nine (9) years from the date of approval by the
- 3 APCO;
- 4 b. The Plan shall be designed to eliminate emissions in excess of naturally occurring
- 5 emissions from the ODSVRA that contribute to downwind violations of the state
- 6 and federal PM₁₀ air quality standards. By October 16, 2028, in consultation with
- 7 the SAG and CARB, the Respondent shall obtain Hearing Board approval that the
- 8 approved excess emissions goal has been met;
- 9 3. Annual Reports and Work Plans (ARWPs). Respondent shall prepare ARWPs annually
- 10 subject to the following:
- 11 a. The ARWPs shall satisfy the requirements listed in Sections 4.a through 4.l.ii of
- 12 the Original Stipulated Order of Abatement.
- 13 b. The approval process for the ARWPs shall be the process described in Section 7.i
- 14 through 7.viii in the Order To Modify Existing Stipulated Order Of Abatement
- 15 dated November 18, 2019.
- 16 c. The ARWPs shall be designed to achieve the requirements of Section 2 above and
- 17 of the Original Stipulated Order of Abatement and its subsequent modifications.
- 18 d. The ARWPs shall address all of the items noted in the APCO's conditional
- 19 approval of the previous year's ARWP.
- 20 4. Section 11 of the Order To Modify Existing Stipulated Order Of Abatement is modified
- 21 to read "In the fall of each year through 2028, the Hearing Board, upon request by the
- 22 Chair or any two members, may convene a meeting to receive an informational update on
- 23 the Report. If a hearing is also requested by Respondent or APCO as set forth in Section
- 24 5(e) above, this meeting shall also include that hearing."
- 25 5. The Scientific Advisory Group created pursuant to Section 3 of the Original Stipulated
- 26 Order of Abatement shall be maintained by mutual agreement of the Respondent and
- 27 APCO, taking into advisement the recommendations of CARB. By consensus, the
- 28 Respondent and the APCO, in consultation with CARB and the SAG chair, may replace,
- remove, or add members as needed during the adaptive management process. The SAG shall select a Chair to help coordinate their activities. The SAG may have one in person meeting at ODSVRA per year. Any additional in person meetings must be approved by consensus of the APCO and the Respondent.
6. Unless specifically modified by this Order, all other provisions of the Original Stipulated Order and all other Orders to modify the Existing Stipulated Order Of Abatement shall remain in full force and effect

1 7. To the extent the terms of the Original Stipulated Order of Abatement or any
2 modification thereafter conflict with the terms modified by this Order, the terms modified
3 by this Order shall take precedence.

4 Moved By: **Dr. Robert Lapidus**

5 Seconded By: **Mr. Paul Ready**

6 Ayes: **Mr. William Johnson, Mr. Paul Ready, Dr. Robert Lapidus, Mr. Chuck Anders**

7 Noes: **Mr. Robert Vessely**

8 Abstentions:

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10 Dated this **15th** day of **October** 2024.

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14 *Mr. William Johnson,*
15 Chair
16 San Luis Obispo County
17 APCD Hearing Board
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