

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

FILED

October 18, 2022

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 14, 2022

Time: 9:00 am

Location: REMOTE VIRTUAL public
hearing via Zoom Webinar teleconference at
<https://us02web.zoom.us/j/81331654308>
and broadcast via YouTube Livestream at
<https://youtu.be/Pd9dhAWrUag>.

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, the Hearing Board retains jurisdiction over the matter until
8 December 1, 2023 and during that time either the Respondent or the San Luis Obispo County
9 Air Pollution Control District Air Pollution Control Officer (APCO) may apply to modify the
10 terms or conditions of the SOA.

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

14 **WHEREAS**, on October 14, 2021, during a public hearing concerning the SOA, the
15 Hearing Board voted to hold a future hearing on possible modifications to SOA which was
16 ultimately scheduled for June 17, 2022.

17 **WHEREAS**, on June 17, 2022, during a public hearing concerning the SOA, the Hearing
18 Board voted to hold a future hearing on possible modifications to SOA which was ultimately
19 scheduled for October 14, 2022.

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

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

24 **PUBLIC HEARING**

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

1 **issues the following modification of the conditions to the Original Stipulated Order of**
2 **Abatement and its subsequent November 18, 2019 modification:**

- 3 1. The Hearing Board shall retain jurisdiction over this matter until December 1, 2025,
4 during which period either Respondent or the APCO may apply to modify the terms and
5 conditions of this Stipulated Order, including this deadline, or to terminate this Stipulated
6 Order. At the conclusion of this period, as it may be modified, this Stipulated Order shall
7 expire.
- 8 2. The first paragraph of Section 2 of the Original Stipulated Order of Abatement is
9 modified to read: “Particulate Matter Reduction Plan and Requirements: Respondent
10 shall prepare a Particulate Matter Reduction Plan (Plan) and satisfy the requirements
11 listed below. In lieu of preparing a new Plan, the Respondent may prepare subsequent
12 Annual Report and Work Plans to meet these requirements.”
- 13 3. Sections 2a-2d of the Original Stipulated Order of Abatement are modified to read:
- 14 a. “The term of the Plan shall be for six (6) years from the date of approval by the
15 APCO
- 16 b. The plan shall be designed to eliminate emissions in excess of naturally occurring
17 emissions from the ODSVRA that contribute to downwind violations of the state
18 and federal PM10 air quality standards. By October 16, 2024, in consultation with
19 the SAG and CARB, the Respondent shall obtain Hearing Board approval of a
20 final excess emissions goal.
- 21 c. To meet the objective of 2b, the Respondent shall initially reduce mass-based
22 PM10 emissions within the ODSVRA to a level consistent with the pre-
23 disturbance scenario identified by the SAG in their “Scientific Basis for Possible
24 Revision of the Stipulated Order of Abatement,” dated February 7, 2022.
25 Emissions shall be calculated using the meteorology of the 10 highest emissions
26 days for the period May 1 through August 31, 2013, and a representative
27 emissivity grid derived from PI-SWERL measurements as recommended by the
28 SAG, and as determined by air quality modeling carried out by the California Air
Resources Board (CARB), or other modeling groups subject to the review of the
Scientific Advisory Group (SAG).
- d. The emission reductions identified in 2c may be modified subject to Hearing
Board approval, based on
- i. Air quality modeling conducted by CARB or other modeling subject to the
review of the SAG required by 3a and 3b, or
- ii. Analysis of air quality data by the APCO or CARB and subject to
concurrence of the SAG.”

- 1 4. The Scientific Advisory Group created pursuant to Section 3 of the Original Stipulated
2 Order of Abatement shall be maintained by mutual agreement of the Respondent and
3 APCO, taking into advisement the recommendations of CARB. By consensus, the
4 Respondent and the APCO, in consultation with CARB, may replace or add members.
5 The SAG shall select a Chair and Vice-Chair to help coordinate their activities.
- 6 5. As the California Coastal Commission is not a Party to this Order, Paragraph 1.iii in
7 Section 4 of the Original Stipulated Order of Abatement is struck.
- 8 6. Annual Reports and Work Plans (ARWPs). Respondent shall prepare ARWPs in 2023
9 and 2024 subject to the following:
 - 10 a. The ARWPs shall satisfy the requirements listed in Sections 4.a through 4.1.ii of
11 the Original Stipulated Order of Abatement.
 - 12 b. The approval process for the ARWPs shall be the process described in Section 7.i
13 through 7.viii in the Order To Modify Existing Stipulated Order Of Abatement
14 dated November 18, 2019.
 - 15 c. The ARWPs shall be designed to achieve the requirements of Section 3, above.
 - 16 d. The 2023 ARWP shall fully address all of the items noted in the APCO’s
17 conditional approval of the 2022 ARWP.
- 18 7. Section 11 of the Order To Modify Existing Stipulated Order Of Abatement is modified
19 to read “In October of each year through 2025, the Hearing Board, upon request by the
20 Chair or any two members, may convene a meeting to receive an informational update on
21 the Report. If a hearing is also requested by Respondent or APCO as set forth in Section
22 8 above, this meeting shall also include that hearing.”
- 23 8. Within 60 days of invoicing, the Respondent shall reimburse the District for all
24 reasonable costs incurred by the District related to implementation of the SOA including
25 monitoring, inspection, plan and related document reviews, holding public hearings and
26 meetings, attending meetings of the OHV Commission, Coastal Commission or other
27 entities related to the SOA management. The parties agree to meet as needed to discuss
28 the District’s anticipated upcoming costs. Respondent’s approval of the District’s costs
shall not be unreasonably withheld. If Respondent disputes the reasonableness of a
particular cost, the APCO (or their designee) and the Director of the Department of Parks
and Recreation (Director) (or their designee) agree to meet to resolve the dispute.
- 9. Unless specifically modified by this Order, all other provisions of the Original Stipulated
Order and the Order To Modify Existing Stipulated Order Of Abatement shall remain in
full force and effect.
- 10. To the extent the terms of the Original Stipulated Order of Abatement or any
modification thereafter conflict with the terms modified by this Order, the terms modified
by this Order shall take effect.

1 Moved By: **Member Paul Ready**
2 Seconded By: **Member Jim Anderson**
3 Ayes: **Members Paul Ready, Jim Anderson, William Johnson, Chair**
4 Noes: **Members Dr. Robert Lapidus, Robert Carr**
5 Abstentions:

6
7 Dated this **14th** day of **October** 2022.

8
9
10 _____
11 William Johnson
12 Chair
13 San Luis Obispo County
14 APCD Hearing Board
15
16
17
18
19
20
21
22
23
24
25
26
27
28