

**FILED**

**May 4, 2018**

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

**STIPULATED ORDER OF  
ABATEMENT**

Health & Safety Code §41700 and  
District Rule 402

Hearing Date: April 30, 2018  
Time: 9:00 am

Location: San Luis Obispo County  
Government Center, Board of Supervisors  
Chambers, 1055 Monterey Street, California

**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

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

## 5 6 **PARTIES AND THE FACILITY**

7 1. The District was and is organized and exists pursuant to Division 26, Part 3 of  
8 the California Health and Safety Code, and is the sole and exclusive local agency with the  
9 responsibility for comprehensive air pollution control in San Luis Obispo County.

10 2. The Parties agree that State Parks is a California State Agency chartered with  
11 managing park units within California, including the Oceano Dunes State Vehicular Recreation  
12 Area (ODSVRA), which is managed by the Off-Highway Motor Vehicle Recreation Division  
13 (OHMVR), and that OHMVR is responsible for all activities that occur within the ODSVRA,  
14 including management and control of beach and dune riding areas, resource management  
15 including revegetation and erosion control, and public safety.

16 3. ODSVRA is located in the area known as the Oceano Dunes in southern San  
17 Luis Obispo County, three (3) miles south of Pismo Beach and west of Highway 1 (“facility”).  
18 The property on which the facility is located is comprised of five-and-one-half (5 ½) square  
19 miles of open beach and sand dunes, bordered on the west by the Pacific Ocean, and on the  
20 east, north and south by other privately held lands. A portion of the facility’s lands known as  
21 the La Grande tract is owned by numerous owners, including fifty-two (52) privately-owned  
22 lots, four-thousand-two-hundred-sixteen (4,216) lots owned by the County of San Luis Obispo,  
23 and two-hundred-twenty-five (225) lots owned by State Parks. The facility is within the  
24 jurisdiction of the San Luis Obispo County Air Pollution Control District and subject to  
25 District Rules and Regulations. The Parties agree that numerous private homes, businesses,  
26 schools and other entities are located directly downwind of the ODSVRA facility.

27 4. ODSVRA is subject to California Health and Safety Code section 41700, which  
28 prohibits the discharge from any source whatsoever quantities of air contaminants or other

1 material that cause injury, detriment, nuisance, or annoyance to any considerable number of  
2 persons or to the public or that endanger the comfort, repose, health or safety of any of those  
3 persons or the public, or that cause or have a natural tendency to cause, injury or damage to  
4 business or property, and District Rule 402, Nuisance, (which contains language substantially  
5 similar to California Health and Safety Code section 41700).

6  
7 **BACKGROUND/STATEMENTS OF THE PARTIES**

8 **WHEREAS**, following initiation of this action, the Parties agreed on the need for a  
9 comprehensive planning effort to effect a global solution to particulate matter emissions that  
10 addresses all the various interests, including: the surrounding and downwind communities, the  
11 ODSVRA user base, and the various regulatory and permitting agencies, as well as State  
12 Parks' mission to operate ODSVRA for a variety of recreational uses, including off-highway  
13 motor vehicle recreation.

14 **WHEREAS**, APCD endorses State Parks' strategy to develop and implement a Public  
15 Works Plan as the process for a comprehensive ODSVRA planning document that will affect  
16 the type and location of mitigation strategies.

17 **WHEREAS**, to that end, the Parties agree that State Parks shall develop and implement  
18 a Particulate Mitigation Plan (PMP), to address and resolve the allegations in the Petition. The  
19 PMP includes a restoration and emission reduction component that simulates the historic  
20 foredune complex, as determined by a 1930's aerial photograph of the dune complex (APCD  
21 Exhibit 23), and that will provide critical information to inform the development of the Public  
22 Works Plan and a redesigned park.

23 **WHEREAS**, State Parks also agrees to:

- 24 a. Work with ODSVRA user groups to enhance the camping experience in front of  
25 the foredunes that will work in concert with the restoration of the foredunes;  
26 and  
27  
28

- b. Additional monitoring within and downwind of the ODSVRA during the stipulated timeframe to assist modeling the emissions reduction, as well as informing State Park's Public Works Plan; and
- c. Conduct an education campaign for the purposes of making the public aware of the air quality issues at ODSVRA and how they can be a part of the solution; and
- d. Continue crystalline silica testing downwind of the SVRA and publish results as part of a comprehensive report on crystalline silica as it relates to Oceano Dunes emissions; and
- e. Consider disbursal of use appropriate as a method to reduce density-related emissions which may include the need to open operational corridors; and
- f. Consider a southern entrance and southern camping opportunities outside of the dunes proper to replace any lost foredune camping; and
- g. Optimize operational mitigations that prove to enhance the air quality mitigation measures.

**PUBLIC HEARING**

**WHEREAS**, the Clerk assigned this matter Case No. 17-01, set a public hearing on the Petition for November 13, 2017, and provided public notice of the public hearing in accordance with the provisions of California Health and Safety Code section 40823. The Hearing Board commenced the hearing on November 13, 2017, which it continued to January 30, 2018 and thereafter to March 21, 2018 and April 30, 2018, all of which continued hearings were similarly properly-noticed. A quorum of the Hearing Board was present on each day of the hearing. Except the initial day of the hearing, November 13, 2017, when Dr. Thomas Richards was absent, five (5) members of the Hearing Board were present: Dr. Yarrow Nelson, Acting Chair; Mr. Robert Carr; Mr. William Johnson; Dr. Thomas Richards; and Mr. Paul Ready. Petitioner District Air Pollution Control Officer was represented by District Counsel Raymond Biering. Respondent OHMVR was represented by Deputy Attorney General Mitchell Rishe. In advance of and throughout the hearing process, the Hearing Board

1 provided the opportunity for the public to submit written comments. During the public  
2 hearing, the Hearing Board provided the opportunity for members of the public to submit oral  
3 comments and to testify. The Hearing Board's Acting Chair Yarrow Nelson swore in all those  
4 interested members of the public who sought to speak or testify. Each Party stipulated to the  
5 other Party's proposed exhibits; the Hearing Board admitted all exhibits submitted by the  
6 Parties into the evidence and took those exhibits and the public's testimony and comments into  
7 consideration during its deliberations and in its decision.

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9 **WRITTEN EXPLANATION IN SUPPORT ITS DECISION/FINDINGS AND DECISION**  
10 **OF THE HEARING BOARD:**

11 Health and Safety Code Section 42451(b) provides that the Hearing Board may issue a  
12 stipulated conditional order for abatement without making the requisite findings set forth in  
13 Health and Safety Code Section 42451(a), but the Hearing Board must include a written  
14 explanation of its action to issue such an order. The Hearing Board issues the following  
15 determination of its action: The Hearing Board finds that GOOD CAUSE exists to approve this  
16 Stipulated Order for Abatement. This finding of good cause is based on the following:

17 1. The District reported that from May 29, 2012 through October 19, 2017, the  
18 District received one-hundred-thirty-three (133) complaints from residents downwind of  
19 ODSVRA. (See APCD Exhibit 7.)

20 2. The District monitors air quality throughout San Luis Obispo County, with  
21 multiple monitoring sites on the Nipomo Mesa located directly downwind of ODSVRA. These  
22 sites include CDF – Arroyo Grande; Mesa2 – Nipomo/Guadalupe Road; and NRP – Nipomo  
23 Regional Park. During the period between May 1, 2012 and March 31, 2017, there were three-  
24 hundred-sixty-three (363) days when the District observed violations of the state PM<sub>10</sub> standard  
25 at one or more of these sites. More specifically, the state standard was exceeded three-  
26 hundred-fifty-six (356) times at CDF, one-hundred-ninety (190) times at Mesa2, and fifty-nine  
27 (59) times at NRP measured during this period at monitoring sites downwind of ODSVRA  
28 riding areas. Seven (7) of the state standard exceedances recorded at CDF during this

1 timeframe also exceeded the federal PM<sub>10</sub> standard. The primary source of these exceedances  
2 and violations was determined by the District after examining the wind speed and wind  
3 direction under which they occurred, using data from the extensive air monitoring network  
4 located downwind of ODSVRA (APCD Exhibits 6 & 16). Recent computer modeling of  
5 particulate matter emissions from ODSVRA by the California Air Resources Board supports  
6 the finding of excessive levels of particulate matter in areas where complaints originated  
7 (APCD Exhibit 24).

8 3. The Environmental Protection Agency and the California Air Resources Board  
9 (“CARB”) have set standards for particulate matter to protect human health and the  
10 environment (Title 40, Code of Federal Regulations, Part 50; and Title 17, California Code of  
11 Regulations, section 70200).

12 4. Numerous scientific studies and analyses conducted by APCD, State Parks, and  
13 CARB (APCD Exhibits 1, 2, 3, 4, 5 & 24) have documented emissions from ODSVRA off-  
14 highway vehicle riding areas upwind of the Nipomo Mesa as the main source of particulate  
15 matter causing the dust and air pollution that is the subject of the complaints received, and the  
16 associated public health concerns that are the subject of this proceeding. Those studies show  
17 the Le Grande tract, where most of the camping and a large portion of the riding activity  
18 occurs, contains some of the most emissive areas in ODSVRA and is a significant contributor  
19 to the particulate matter emissions impacting downwind residents. Like everywhere else in the  
20 county, the Nipomo Mesa is also impacted by other natural and manmade sources of  
21 particulate emissions, and those sources will always have some contribution to particulate  
22 concentrations. APCD, OHMVR and CARB will continue to refine all source contributions of  
23 emissions affecting the Nipomo Mesa.

24 5. The Parties agree that sand fencing closed to riding with an array of fencing  
25 within the perimeter has been used at ODSVRA with a demonstrated effectiveness in reducing  
26 dust generation of approximately seventy-five (75) percent. The Parties agree that there is  
27 scientific consensus that vegetation is the most effective in reducing dust generation with an  
28 effectiveness of nearly one hundred (100) percent within the vegetated area.



1           2.       If the issuance of this Order for Abatement results in the closing or elimination  
2 of an otherwise lawful business, such closing would not be without a corresponding benefit in  
3 reducing air contaminants.

4           3.       This Order for Abatement is not intended to be, nor does it have the effect of  
5 permitting, a variance.  
6

## 7                                 **STIPULATED ORDER FOR ABATEMENT**

8 Pursuant to Health and Safety Code Sections 42451(b) and 42452, subject to the aforesaid  
9 statements and good cause appearing therein, the Hearing Board of the San Luis Obispo County  
10 Air Pollution Control District (District) hereby orders Respondent to immediately cease and  
11 desist from violating California Health & Safety Code section 41700 and District Rule 402, or in  
12 the alternative comply with the following conditions and increments of progress throughout the  
13 term of this Stipulated Order for Abatement (Stipulated Order):

- 14           1.   Initial Particulate Matter Reduction Actions: As of the Effective Date of this Stipulated  
15 Order, Respondent shall undertake and complete all of the following actions by the  
16 specific deadlines herein, unless otherwise modified in accordance with the terms of this  
17 Stipulated Order, and in accordance with any otherwise-applicable requirements  
18 associated with undertaking such actions:
- 19                 a.   Respondent shall begin fencing off the foredune areas with a perimeter fence with  
20                     an internal fence array as shown in **Map 1 of Attachment 1** no later than June 1,  
21                     2018 and finish as soon as possible, but no later than September 15, 2018. The  
22                     fenced areas shall conform as closely as possible to diagrammed plots while  
23                     considering public safety constraints. Riding, driving, and camping within those  
24                     areas shall be prohibited.
  - 25                 b.   All fencing shall remain in place and be maintained as internal fenced arrays until  
26                     being replaced by vegetation or until the APCO approves alternate mitigation  
27                     measures. Respondent shall prioritize the fenced areas as shown in **Map 1 of**  
28



1                   **Attachment 1** for vegetation to increase the dust mitigation effectiveness in years  
2                   after 2018.

- 3                   c. By June 30, 2019, install APCO-approved sand track-out control devices at the  
4                   Grand and Pier Avenue entrances to the Oceano Dunes State Vehicle Recreation  
5                   Area (ODSVRA).

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7                   2. Particulate Matter Reduction Plan: Respondent shall prepare a Particulate Matter  
8                   Reduction Plan (Plan) that satisfies the following requirements:

- 9                   a. The term of the Plan shall be for four (4) years from the date of approval by the  
10                  APCO;
- 11                  b. The Plan shall be designed to achieve state and federal ambient PM<sub>10</sub> air quality  
12                  standards;
- 13                  c. To meet the objective of 2b, development of the Plan shall begin by establishing  
14                  an initial target of reducing the maximum 24-hour PM<sub>10</sub> baseline emissions by  
15                  fifty percent (50%), based on air quality modeling based on a modeling scenario  
16                  for the period May 1 through August 31, 2013, and shall be carried out by the  
17                  California Air Resources Board (CARB), or other modeling groups subject to the  
18                  review of the Scientific Advisory Group (SAG), as defined in paragraph 3,  
19                  below;
- 20                  d. The estimate of emission reductions identified in 2c may be modified based on air  
21                  quality modeling conducted by CARB or other modeling subject to the review of  
22                  the SAG required by 3a and 3b;
- 23                  e. Subject to permitting agency approval, the Plan shall include feasibility and  
24                  effectiveness analyses of alternative mitigation measures or mitigation-support  
25                  measures including, but not limited to, construction of a continuous foredune  
26                  structure within the OSDVRA near the high water line to reduce wind shear on  
27                  downwind high-emissivity areas; the vegetation of exposed sand sheet to reduce  
28                  sand flux by stabilizing the dune surface and support the development of

1 biophysical sand crust formation; the introduction/reintroduction of straw bales or  
2 other roughness elements within the ODSVRA to reduce sand flux and downwind  
3 dust concentrations; and installation of temporary irrigation system(s) to ensure  
4 substantive plant growth and vigor in areas of the ODSVRA identified for  
5 revegetation and the application of liquid fertilizer through the irrigation water;

- 6 f. The Respondent shall use its best efforts to increase the current rate of native  
7 plant seed production, plant yield, dune planting, and take actions needed to  
8 maximize plant survival to the level needed to meet the rate of dune revegetation  
9 identified in the Plan (e.g. application of mulch, watering and fertilization;
- 10 g. A draft Plan demonstrating attainment of state and federal ambient PM<sub>10</sub> air  
11 quality standards, as expeditiously as practicable, shall be submitted to the APCO  
12 and the SAG by Respondent no later than February 1, 2019 for the APCO's  
13 approval;
- 14 h. The SAG will review the draft Plan and submit comments to the APCO on the  
15 completeness, adequacy, and efficacy of proposed control activities, and  
16 recommendations for modifications, additions, or deletions to proposed control  
17 activities no later than February 15, 2019;
- 18 i. The APCO shall publish a 30-day notice of public workshop no later than 10 days  
19 following receipt of SAG recommendations to announce the availability of the  
20 draft Work Plan and SAG recommendations, solicit public comments, and solicit  
21 public participation at a workshop to review the draft Plan and SAG  
22 recommendations;
- 23 j. At the conclusion of the workshop, the APCO shall consider the SAG  
24 recommendations and all public comments, and either approve the Plan or return  
25 the Plan to Respondent with an itemization of specific deficiencies for correction  
26 and reconsideration;
- 27 k. If the APCO's approval of the Plan precedes completion of the Public Works Plan  
28 (PWP) public review process, Respondent shall integrate elements of the Plan,

1 upon approval by the APCO, into the PWP public review and comment process to  
2 facilitate public input on non-air quality impacts of the Plan;

3  
4 3. Scientific Advisory Group: A Scientific Advisory Group (SAG) shall be created by  
5 mutual agreement of Respondent and the APCO, taking into advisement the  
6 recommendations of the Special Master as designated in that certain agreement between  
7 the District and Respondent dated March 26, 2014. The SAG will evaluate, assess, and  
8 provide recommendations on the mitigation of windblown PM<sub>10</sub> emissions from  
9 ODSVRA and on the development of the Particulate Matter Reduction Plan (Plan) and  
10 annual Report and Work Plan (Report). The process for selection and responsibilities of  
11 the SAG shall include:

12 a. Respondent, APCO, and Special Master shall offer recommendations of experts in  
13 the fields of dune geomorphology; aolian erosion control; soil ecology; shoreline  
14 botany; biophysical sand crust formation; and air quality modeling, among other  
15 disciplines, to each other by June 1, 2018 for consideration of appointment to the  
16 SAG;

17 b. By consensus, Respondent and the APCO, with consultation with the Special  
18 Master, shall appoint members of the SAG no later than July 1, 2018;

19 c. The SAG will review scientific and technical issues related to the research,  
20 development and implementation of windblown PM<sub>10</sub> controls and prepare  
21 technical specifications and analyses of proposed mitigation measures.

22 Respondent, APCO, and Special Master shall intend for the SAG to foster  
23 communication and understanding of the scientific and technical aspects of PM<sub>10</sub>  
24 emission control approaches, provide scientific analysis and recommendations to  
25 the Respondent for the development of the Plan, provide critical analyses of  
26 Respondent's Plan for APCO's use, provide critical analyses of Respondent's  
27 annual Reports and Work Plans for use by the APCO, and become a vehicle for  
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1 increased cooperation and collaboration between the Respondent, APCO, and  
2 affected stakeholders;

- 3 d. The SAG will meet in person at least once annually to discuss the Plan and  
4 Reports including, but not limited to, increments of progress, timelines for  
5 increments of progress, and amendments to the Plan, and annual Reports based on  
6 new learnings. The SAG may meet more often telephonically or by other  
7 networked conferencing means as needed;
- 8 e. The duties of the SAG are both administrative and advisory in nature and in no  
9 way alter the authority and responsibility of the Respondent, District, District  
10 Board, Hearing Board, APCO, or CARB. The SAG does not have any powers of  
11 the Respondent, District, District Board, Hearing Board, APCO, or CARB. As  
12 such, it is not a sub-committee of the Respondent, District, District Board,  
13 Hearing Board, or CARB.

14  
15 4. Annual Report and Work Plan: Respondent shall develop with assistance from the SAG,  
16 on an annual basis, a Report and Work Plan (Report or Work Plan) for each year of the 4-  
17 year term of the Particulate Matter Reduction Plan for APCO approval. Reports shall  
18 satisfy the following requirements:

- 19 a. Reports shall review the dust controls implemented over the previous year, and,  
20 using metrics specified in the approved Plan, compare achievements to increment  
21 of progress requirements approved in the previous Report;
- 22 b. Reports shall include increments of progress, using tracking metrics specified in  
23 the approved Plan, for each dust control and related action included in the  
24 proposals for mitigation to be undertaken in the upcoming year including, but not  
25 limited to foredune development, mitigation of foredune loss due to natural or  
26 anthropogenic impacts, quantities of seeds and plants produced on-site and by any  
27 contracted entities, the extent of new and replacement vegetation, plant survival  
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1 rates, new and replacement fencing installed, quantities of other groundcover  
2 applied in new and replacement areas and the extent of areas covered;

- 3 c. Additional metrics to assess mitigation progress may be added each year with  
4 input from the SAG;
- 5 d. Reports shall propose dust control activities to be undertaken or completed in the  
6 next year together with analyses of expected outcomes, mitigation effectiveness,  
7 and potential emissions reductions;
- 8 e. The SAG shall prepare and/or recommend and approve pertinent technical  
9 specifications of the mitigation techniques proposed in the annual Report,  
10 including the type, effectiveness, and geographical extent of applied mitigation.  
11 Mitigation will be considered both in riding and non-riding areas of the ODSVRA  
12 and in areas outside of the ODSVRA. The Respondent will obtain an evaluation  
13 by the SAG for all mitigation prior to seeking approval of each Report by the  
14 APCO;
- 15 f. Each Report will estimate, using air quality modeling, the benefits downwind of  
16 the ODSVRA and, specifically, the anticipated reduction in PM<sub>10</sub> concentrations  
17 in populated areas due east of the ODSVRA on the Nipomo Mesa. These  
18 estimates will include a sensitivity analysis on emissions rates of increasing the  
19 level of effort for each mitigation technique in subsequent years;
- 20 g. Budgetary considerations for development and implementation of the mitigations  
21 shall be described in the Report and shall detail the total funding for the one-year  
22 period, amount of funding assigned by mitigation type, the source of funding, and  
23 the availability of reserve funds in the event of cost increases prior to  
24 implementation of a given year's mitigation;
- 25 h. Each Report shall include a detailed implementation schedule with deadlines  
26 associated with physical deployment of the mitigation, e.g., wind fencing set-up,  
27 emission measurements of the dune surface, in-situ mitigation, and replacement of  
28 any temporary mitigation;

- 1 i. Failure to meet any increments of progress or deadlines associated with the  
2 physical deployment of the mitigation specified in approved Reports except under  
3 conditions specified in 6(e) or (f) shall constitute a violation of this Order;
- 4 j. Implementation schedules will also specify the duration for each mitigation  
5 activity and the anticipated impact on emission reductions. The SAG will review  
6 and advise on the schedule included in each annual Report;
- 7 k. Annual Reports will include specific metrics and indicators to assess progress  
8 achieved toward planning objectives;
- 9 l. Agencies involved in development and implementation of the annual mitigation  
10 plans will have the defined roles and responsibilities identified below:
- 11 i. District – Conduct public review processes and approve the Particulate  
12 Matter Reduction Plan and annual Work Plans; enforce increment of  
13 progress schedules and required action; evaluate and implement, as  
14 needed, emission controls on sources external to the ODSVRA that may  
15 impact PM<sub>10</sub> levels on the Nipomo Mesa; conduct all ambient monitoring  
16 at CDF, Oso Flaco, and other sites within the district outside ODSVRA.
- 17 ii. State Parks – Develop and, if necessary, revise annual Work Plans in  
18 collaboration with the SAG; implement near-term and future mitigation  
19 efforts within ODSVRA that are specified in this Order or approved Work  
20 Plans, including establishment of seed production targets to ensure  
21 continuous supply of vegetation; provide funding for implementation of  
22 approved mitigation and monitoring efforts including reasonable costs  
23 incurred by the District; and conduct field emissions testing of dune  
24 surface as needed.
- 25 iii. California Coastal Commission – Review and approve proposed annual  
26 Work Plans before any mitigation may commence for each year, pursuant  
27 to Special Condition 2 of Coastal Development Permit 3-12-050, for  
28 proposed mitigation within the scope of that permit; and issue new or

1 amended Coastal Development Permits for any work not within the scope  
2 of Coastal Development Permit 3-12-050.  
3

4 5. Report Review: The APCO shall determine the approvability of the Annual Reports and  
5 Work Plans (Reports). The process by which the APCO considers Reports for approval  
6 will include the following:

- 7 a. Draft Reports shall be submitted by Respondent to the APCO and SAG by August  
8 1 of each year from 2019 through 2022;
- 9 b. The SAG will review each annual Report and submit comments to the APCO on  
10 the completeness, adequacy, and efficacy of proposed control activities, and  
11 recommendations for modifications, additions, or deletions to proposed control  
12 activities no later than September 1 of each affective year;
- 13 c. The APCO shall publish a 30-day notice of public workshop no later than 10 days  
14 following receipt of SAG recommendations to announce the availability of the  
15 draft Work Plan and SAG recommendations, solicit public comments, and solicit  
16 public participation at a workshop to review the draft Work Plan and SAG  
17 recommendations;
- 18 d. Within 10 days of the conclusion of the public workshop, the APCO shall either  
19 approve the draft Work Plan or return the Work Plan to Respondent with an  
20 itemization of specific deficiencies for correction and reconsideration subsequent  
21 to the solicitation of public comments using the same public process described in  
22 5(c);
- 23 e. If a disagreement arises between Respondent and the APCO regarding the  
24 approval of the Report, the Respondent may request a hearing before the Hearing  
25 Board to resolve the disagreement;
- 26 f. Upon approval of the Work Plan by the APCO, Respondent shall immediately  
27 commence implementation of the Work Plan;  
28

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

6 **6. General Conditions:**

- 7 a. The Hearing Board shall retain jurisdiction over this matter until December 1,  
8 2023, during which period either Respondent or the APCO may apply to modify  
9 the terms and conditions of this Stipulated Order, including this deadline, or to  
10 terminate this Stipulated Order. At the conclusion of this period, as it may be  
11 modified, this Stipulated Order shall expire.
- 12 b. This Stipulated Order for Abatement does not act as a variance, and Respondent is  
13 subject to all rules and regulations of the District, and with all applicable  
14 provisions of California law.
- 15 c. Nothing herein shall be deemed or construed to limit authority of the APCO to  
16 issue Notices of Violation or to seek civil penalties for the allegations alleged in  
17 the Petition, or to seek injunctive relief, or to initiate abatement actions or seek  
18 other administrative or judicial relief for violations that are not the subject of this  
19 proceeding.
- 20 d. Nothing herein constitutes a determination by the Hearing Board that ODSVRA  
21 constitutes a nuisance as defined by Health and Safety Code section 42451 or Air  
22 District Rule 402, which Respondent expressly denies.
- 23 e. Notwithstanding Condition 6(c) above, if any part of Respondent's failure to  
24 satisfy any increment of progress or deadline set forth in this Order results from  
25 force majeure, then that specific part only of Respondent's failure shall not be  
26 considered a violation. "Force Majeure" as used in this section means any of the  
27 following events that prevents the Respondent's performance of the specified act  
28 by the deadline set forth in this Order: (a) any act of God, war, fire, earthquake,



1 windstorm, flood, severe drought that is declared as an official state of emergency  
2 by the Governor of the State of California, or natural catastrophe; (b) unexpected  
3 and unintended accidents (excluding those caused by Respondent or the  
4 negligence of its agents or employees); civil disturbance, vandalism, sabotage or  
5 terrorism; (c) restraint by court order or public authority or agency; (d) action or  
6 non-action by, or inability to obtain the necessary authorizations or approvals  
7 from any governmental agency, provided that Respondent demonstrates it has  
8 made a timely and complete application to the agency and used its best efforts to  
9 obtain that approval; or (e) the inability to obtain private property owner access,  
10 provided that Respondent demonstrates it has made a timely and complete request  
11 to the owner, and used its best efforts to obtain that access. Force Majeure shall  
12 not include normal inclement weather, economic hardship or inability to pay.

13 f. Also, notwithstanding Condition 6(c) above, and in addition to Condition 6(d)  
14 above, if Respondent cannot satisfy any increment of progress or deadline set  
15 forth in this Order due to any other circumstances beyond Respondent's control,  
16 Respondent may submit evidence to the APCO regarding the circumstances and  
17 explaining why they prevented Respondent from satisfying the increment of  
18 progress or deadline. The APCO shall have the authority to determine that either  
19 (i) the circumstances were beyond Respondent's control and excuse the failure to  
20 satisfy the increment of progress or deadline; or (ii) the circumstances were within  
21 Respondent's control, and do not excuse the failure to satisfy the increment of  
22 progress or deadline.

23 g. The Hearing Board, upon request by the Chair or any two members, may convene  
24 a public hearing to review the APCO's approval of any condition of this order or  
25 modification of a deadline. The Hearing Board may revoke the APCO approval  
26 of any condition or modification to a timeline.

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Moved By: Mr. Paul Ready

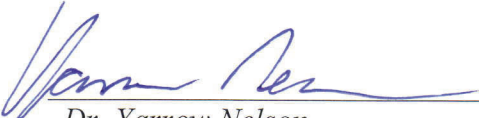
Seconded By: Dr. Thomas Richards

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

Noes: Mr. Robert Carr

Abstentions: None

Dated this 30th day of April 2018.



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