

1 SOMACH SIMMONS & DUNN
2 A Professional Corporation
3 Michael E. Vergara (SBN 137689)
4 mvergara@somachlaw.com
5 Alyson E. Ackerman (SBN 315914)
6 aackerman@somachlaw.com
7 500 Capitol Mall, Suite 1000
8 Sacramento, CA 95814
9 Telephone: (916) 446-7979
10 Facsimile: (916) 446-8199

11 Attorneys for Respondent
12 CITY OF SAN BERNARDINO MUNICIPAL
13 WATER DEPARTMENT

14 BEFORE THE HEARING BOARD OF THE
15 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

16 In the Matter of

17 SOUTH COAST AIR QUALITY
18 MANAGEMENT DISTRICT,

19 Petitioner,

20 v.

21 CITY OF SAN BERNARDINO
22 MUNICIPAL WATER DEPARTMENT
23 (Facility No. 11301)

24 Respondent.

CASE NO. 6124-2

**[PROPOSED] FINDINGS AND DECISION
OF ORDER FOR THIRD REVISED
MODIFIED ORDER OF ABATEMENT
(STIPULATED)**

District Rule 1196

Date: May 4, 2023

Time: 9:00 a.m.

Place: 21865 Copley Drive
Diamond Bar, CA 91765

25 The annual status hearing for the Order for Abatement – Stipulated, required by the
26 Hearing Board for the South Coast Air Quality Management District’s (District) October 17,
27 2019 Order (Initial Order), was heard on May 4, 2023, in accordance with California Health and
28 Safety Code section 40823 and District Rule 812. The following members of the Hearing Board
were present: Cynthia Verdugo-Peralta, Chair; Robert Pearman, Esq., Vice Chair; Micah Ali;
Mohan Balagopalan; and Allan Bernstein, DPM, MBA. Petitioner District was represented by
Kathryn Roberts, Senior Deputy District Counsel. Respondent, the City of San Bernardino
Municipal Water Department (Department), was represented by Michael E. Vergara and

1 Alyson E. Ackerman, attorneys with Somach Simmons & Dunn. The matter was considered on
2 the Hearing Board’s Consent Calendar. Neither Petitioner District, nor Respondent Department
3 (collectively, “Parties”) appeared. The Hearing Board provided an opportunity for public
4 comment. The Hearing Board received the evidence ~~submitted~~provided by the Parties prior to
5 the hearing, and the matter was submitted. The Hearing Board finds and decides the following:

6 1. Petitioner District is a body corporate and politic established and existing pursuant
7 to Health and Safety Code section 40000 et seq. and section 40400 et seq., and is the sole and
8 exclusive local agency ~~with the responsibility~~responsible for comprehensive air pollution control
9 in the South Coast Basin.

10 2. Respondent Department is a semi-autonomous department of the City of San
11 Bernardino (hereinafter, “City”) created to provide the City and surrounding areas with the
12 essential public services of wastewater collection, wastewater treatment, and potable water
13 treatment and distribution. The Department owns and operates multiple heavy-duty vehicles to
14 ~~carry out~~provide these essential public services. The Department’s administrative offices are
15 located at 397 Chandler Place, San Bernardino, California 92498.

16 3. **District Rule 1196, subdivision (d)(1)** requires that beginning on July 1, 2002, for
17 public fleet operators operating 15 or more heavy-duty vehicles, all new additions to an existing
18 fleet shall be by purchase or lease of: (1) alternative-fuel heavy-duty engines or vehicles;
19 (2) dual-fuel heavy-duty vehicles; (3) dedicated gasoline heavy-duty vehicles; or (4) Technical
20 Infeasibility Certification Request-approved diesel-fueled vehicles.

21 4. **District Rule 1196, subdivision (f)(8)(a)** provides an exemption for public fleets
22 with greater than 15, but less than 100 heavy-duty vehicles, allowing no more than three of the
23 heavy-duty vehicles subject to Rule 1196 that do not meet the requirements of Rule 1196,
24 subdivision (d), to be part of the fleet at any given time.

25 5. The Department is subject to Rule 1196 when adding a fleet vehicle to its existing
26 fleet or forming a new fleet because it is within the District’s jurisdiction, is a public entity, and
27 operates more than 15 heavy-duty fleet vehicles. At the time of the Initial Order, the Department
28 operated 37 heavy-duty fleet vehicles and owned a cumulative total of 144 light-, medium-, and

1 heavy-duty vehicles of various fuel types to manage its service area's water and wastewater
2 needs.

3 A. INITIAL ORDER

4 6. On May 1, 2017, the City transferred to the Department the City's sewer collection
5 operations, during the pendency of the court's approval of the City's Third Amended Chapter 9
6 Bankruptcy Plan. This assignment included the transfer of vehicles used for the collection and
7 maintenance of approximately 470 miles of sewer mains, eight of which were subject to
8 Rule 1196 requirements.

9 7. On March 16, 2018, after completing an internal audit, the Department
10 self-reported to the District that it owned and operated fleet vehicles ~~failing to meet~~noncompliant
11 with Rule 1196 requirements.

12 8. On April 1, 2018, the Department submitted to the District a list of the
13 Department's noncompliant fleet vehicles ~~that did not comply with Rule 1196~~. At that time, the
14 Department operated 18 non-compliant vehicles. Of these, 15 remained in the Department's fleet
15 at the time of the Initial Order; however, three of the 15 vehicles would have been exempt from
16 the Rule 1196 requirements had the Department applied for the Rule 1196, subdivision (f)(8)(a),
17 exemption when the Department acquired the vehicles. Accordingly, the District agreed that only
18 12 of the Department's remaining 15 vehicles ~~needed to be required~~ replacedreplacement.

19 9. Each of the Department's Rule 1196 non-compliant fleet vehicles are necessary to
20 operate, maintain, and provide its water and wastewater services. Some of the Rule 1196
21 non-compliant fleet vehicles are used to haul heavy equipment and materials to sites requiring
22 maintenance, while others are specialized and cannot readily be replaced (e.g., vactor trucks,
23 personnel-lifts, and crane trucks). The Department's operations would have been jeopardized if it
24 was prevented from using any of its ~~Rule 1196~~-non-compliant fleet vehicles.

25 10. As a public entity, the Department is constrained by the resources it can commit to
26 replacing its fleet vehicles to achieve compliance with Rule 1196. The Department is funded
27 entirely by ratepayers in an economically disadvantaged area. The Department's annual budget
28 for replacing the fleet vehicles at issue is approximately \$192,000. The cost of replacing a

1 non-compliant fleet vehicle ranges from \$60,000 to \$700,000 per vehicle, depending upon model
2 and purpose of use.

3 11. All ~~of the~~ compliant vehicles replacing the non-compliant fleet vehicles require
4 long lead times due to the necessary customization and outfitting for the Department's intended
5 uses of ~~such the~~ vehicles, ranging from six to seven months for gasoline-fueled compliant
6 vehicles, and 10 to 12 months for compressed natural gas (CNG)-fueled compliant vehicles.
7 Replacing non-compliant vehicles with compliant vehicles is also subject to the respective vehicle
8 manufacturers' availability and pricing timelines. The Replacement Schedule, identifying the
9 12 vehicles the Department shall replace during the pendency of the Initial Order, as well as the
10 projected makes, models, model years, and fuel-types of the replacement vehicles, was developed
11 in good faith, in cooperation with District staff, and is based upon the Department's prior
12 experience with the vehicle manufacturers.

13 12. The Department and District negotiated for over a year to determine the actions the
14 Department ~~will~~ would take to achieve compliance with Rule 1196 as quickly as possible,
15 considering all currently known funding sources and the time necessary to acquire the
16 replacement vehicles. The Department will achieve compliance with Rule 1196 in accordance
17 with the Replacement Schedule, achieving full compliance no later than October 1, 2023.

18 13. The Department agreed to reasonably and in good faith research the availability of
19 alternative-fueled vehicles to be used in lieu of the compliant gasoline-fueled vehicles identified
20 in the Replacement Schedule. The Department also agreed that Available-available alternative-
21 fueled vehicles ~~will be~~ would be evaluated by the Department to determine whether such vehicles
22 meet the necessary specifications, such as torque and horsepower, as dictated by the Department's
23 uses of the equipment. Finally, The-the Department agreed to ~~will~~ research and demonstrate
24 alternative-fueled vehicles that may meet such specifications and Rule 1196 requirements to
25 determine whether any can be purchased as part of the replacement fleet.

26 14. On October 3, 2019, the Department appeared before the Hearing Board as
27 Respondent in the hearing to consider the Initial Order regarding its self-reported Rule 1196
28

1 non-compliance. At the time of the hearing, the Department owned and operated 15 vehicles
2 non-compliant with Rule 1196.

3 15. After finding good cause, the Hearing Board issued its Findings and Decision for
4 the Initial Order on October 17, 2019, which includes 10 conditions.

5 16. The estimated excess emissions associated with the Department's use of
6 non-compliant fleet vehicles during the pendency of the Initial Order, at the time of the hearing,
7 was approximately 0.6007 tons of oxides of nitrogen and 0.0022 tons of particulate matter.

8 17. Condition 1 of the Initial Order mandates compliance with the Replacement
9 Schedule included with the Initial Order as Attachment A. The Department must replace and
10 remove from service only 12 of the 15 Rule 1196 non-compliant vehicles because three
11 non-compliant vehicles are exempt under Rule 1196, subdivision (f)(8)(a). Compliance with the
12 Replacement Schedule and, thus the Initial Order, is based upon whether the Department
13 purchases the replacement vehicles by the close of the first quarter of the following fiscal year in
14 which the non-compliant vehicles are slated for replacement.

15 B. 2020 STATUS HEARING

16 18. On May 5, 2020, the Hearing Board heard on its Consent Calendar the
17 Department's annual status hearing, pursuant to the Initial Order. The Hearing Board received
18 testimony from the Department providing an update on the progress of compliance with the
19 conditions in the Initial Order. Neither the Department nor the District sought modifications to
20 the Initial Order, and neither Party appeared.

21 19. At the time of the 2020 status hearing, the Department had replaced six of the
22 12 non-compliant vehicles in accordance, and in compliance, with the Replacement Schedule.

23 20. On May 19, 2020, the Hearing Board issued a Minute Order approving the
24 Department's efforts regarding its compliance with the Initial Order and scheduling the
25 Department to appear for a second status hearing before the Hearing Board on May 5, 2021.

26 C. 2020 MODIFICATION TO INITIAL ORDER

27 21. On July 7, 2020, the Department filed a Petition for Modification of the Order
28 (Modification) with District staff and counsel's assent. The Modification sought to change the

1 model year of four (4) replacement service vehicles in the Replacement Schedule. Rather than
2 replacing Unit Nos. 303, 312, and 242 with model year 2021 gasoline-fueled vehicles and Unit
3 No. 311 with a model year 2022 gasoline-fueled vehicle, as prescribed in the Replacement
4 Schedule, the Department sought to replace all four vehicles with model year 2020 gasoline-
5 fueled vehicles.

6 22. The Department sought the Modification because on June 9, 2020, its governing
7 body – the City of San Bernardino Water Board – provided early funding approval for the
8 replacement of four service vehicles in the Department’s fleet in fiscal year 2020/2021. The
9 Modification enabled the Department to remove diesel-fueled service vehicles more quickly than
10 anticipated because the Department was able to order model year 2020 vehicles for assembly
11 through the dealer immediately, allowing them to be delivered and in service sooner. Moreover,
12 the Modification eliminated possible manufacturer delays or supply chain disruptions that could
13 have resulted at that time because of the novel Coronavirus Disease (COVID-19) pandemic.¹

14 23. On July 10, 2020, the Department submitted a letter of intent to the Commercial
15 Fleet Director of the Fairview Ford Dealership, agreeing to purchase four model year 2020
16 gasoline-fueled Ford F-550 vehicles. This letter of intent was expressly contingent upon the
17 Hearing Board granting the Modification to the Initial Order.

18 24. The Department ~~had~~ reasonably and in good faith researched the availability of
19 alternative-fueled vehicles to be used in lieu of the compliant gasoline-fueled vehicles identified
20 in the Replacement Schedule. At the time of the Modification, there was no California Air
21 Resources Board (CARB)-certified alternative-fueled engine that any chassis manufacturers were
22 using to produce service trucks. Thus, while there was a CARB-certified alternative-fueled
23 engine on the market at the time, it was not available in the proper chassis configuration to be of
24 use to, or meet the requirements of, the Department in providing its essential public services.
25 Therefore, the Parties agreed that there were no alternative-fueled Ford F-550 service vehicles
26 that the Department could substitute for the fiscal year 2020/2021 gasoline-fueled replacement

27 ¹ On March 13, 2020, President Donald J. Trump found and proclaimed the COVID-19 Outbreak a national
28 emergency that began on March 1, 2020. (Pres. Proc. Order No. 994 (Mar. 13, 2020), 85 Federal Register 15337
(Mar. 18, 2020).)

1 service vehicles (i.e., Unit Nos. 303, 312, and 242). It was unknown to the Parties whether over
2 the next 12 months there would be a CARB-certified, alternative-fueled engine available in the
3 necessary service truck chassis configuration that could have substituted Unit No. 311's gasoline-
4 fueled replacement, if the original Replacement Schedule was maintained. While it was possible
5 such a vehicle might become available over the following 12 months, the Department still needed
6 to assess the vehicle's performance to determine whether it met the Department's needs. Under
7 the original Replacement Schedule such performance testing must have been completed and
8 evaluated prior to June 30, 2021 – the latest date by which the Department's General Manager
9 may submit requests for approval from its governing body. However, the Parties believed there
10 was a low probability that such a vehicle, if even available, could be obtained under the original
11 Replacement Schedule. Despite the Department's survey efforts, it had yet to identify a dealer or
12 public agency with any alternative-fueled service vehicles available for demonstration or ride-
13 along testing. Thus, the Department and the District did not believe there would be a CARB-
14 certified, alternative-fueled engine available in the proper chassis configuration that could be
15 performance tested and determined suitable for the Department to substitute Unit No. 311's
16 gasoline-fueled replacement vehicle, given both the ~~forementioned~~ time constraints and the then
17 currently available CARB-certified engines and configurations.

18 25. The Parties did not believe that the Modification would result in a significant
19 source of excess emissions. The Replacement Schedule already specified replacing Unit
20 Nos. 303, 312, 242, and 311 with gasoline-fueled vehicles. The Parties did not believe that
21 changing the model year of the replacement vehicles by one model year (or two model years with
22 respect to Unit No. 311) would substantially impact emissions because of the ~~close~~
23 ~~proximity~~short period between the model years. The estimated excess emissions associated with
24 the Department's use of non-compliant fleet vehicles during the pendency of the Modification,
25 was approximately 0.5889 tons of oxides of nitrogen and 0.0022 tons of particulate matter.
26 Notably, these estimated excess emissions were less than and equal to, respectively, those
27 associated with the Department's use of non-compliant fleet vehicles during the pendency of the
28 Initial Order.

1 26. On July 23, 2020, the Hearing Board heard on its Consent Calendar the
2 Modification to change the model years of the four (4) replacement service vehicles in the
3 Replacement Schedule. At the time of the hearing, the Department owned and operated six (6)
4 vehicles not compliant with, and not exempt from, Rule 1196. After finding good cause, the
5 Hearing Board granted the Modification.

6 27. The Hearing Board issued its Findings and Decision for the Modified Order of
7 Abatement – Stipulated (Modified Order) on August 4, 2020, reflecting the accelerated
8 Replacement Schedule.

9 D. 2021 STATUS HEARING

10 28. On May 5, 2021, the Hearing Board heard on its Consent Calendar the
11 Department’s annual status hearing, ~~pursuant to~~ under the Modified Order. The Hearing Board
12 received testimony from the Department providing an update on the progress of compliance with
13 the conditions in the Modified Order. Neither ~~the Department nor the District~~ Party sought
14 modifications to the Modified Order, and neither Party appeared.

15 29. At the time of the 2021 status hearing, the Department had replaced 10 of the
16 12 non-compliant vehicles in accordance, and in compliance, with the Replacement Schedule.

17 30. On May 20, 2021, the Hearing Board issued a Minute Order approving the
18 Department’s efforts regarding its compliance with the Modified Order and scheduling the
19 Department to appear for a second status hearing ~~before the Hearing Board~~ on May 5, 2022.

20 E. 2022 ADMINISTRATIVE UPDATE TO MODIFIED ORDER

21 ~~30-31.~~ 31. On May 5, 2022, the Hearing Board heard on its Consent Calendar the
22 Department’s annual status hearing, pursuant to the Modified Order. The Hearing Board received
23 testimony from the Department providing an update on the progress of compliance with the
24 conditions in the Modified Order. Neither ~~the Department nor the District~~ Party sought
25 substantive modifications to the Modified Order, and neither Party appeared.

26 ~~31-32.~~ 32. The District proposed a ministerial modification to the Modified Order to update
27 the name and contact information of the District Planning and Rules Manager, who receives
28 notices and progress reports from the Department pursuant to various conditions under the

1 Modified Order. The requested ministerial modification ensured that the Department had the
2 correct contact information for the requisite District staff, and the District timely receives all
3 applicable notices/reports required under the Modified Order. The Parties stipulated to this
4 ministerial modification. The Parties further stipulated to amend Condition 5 setting a further
5 status hearing in one year, consistent with the Hearing Board’s past preference in this matter to
6 receive updates on an annual basis to ensure the Department’s continued compliance with the
7 Modified Order.

8 32-33. After finding good cause, the Hearing Board issued its Findings and Decision for
9 the Revised Modified Order for Abatement – Stipulated (Revised Modified Order) on May 11,
10 2022, reflecting the administrative update and setting a status hearing for May 4, 2023.

11 33-34. At the time of the 2022 status hearing, the Department had replaced 11 of the
12 non-compliant vehicles in accordance, and in compliance, with the Replacement Schedule.

13 F. 2023 STATUS HEARING & MODIFICATION TO REVISED MODIFIED ORDER

14 34-35. On May 4, 2023, the Hearing Board heard on its Consent Calendar the
15 Department’s annual status hearing, pursuant to the Revised Modified Order. The Hearing Board
16 received testimony from the Department providing an update on the progress of compliance with
17 the conditions in the Modified Order, including that the Department purchased the final
18 replacement vehicle in the Replacement Schedule achieving compliance with Condition 1 and
19 Rule 1196. Neither Party appeared.

20 36. The Department ~~and District stipulated to sought~~ four minor modifications to the
21 Revised Modified Order, which it proposed in the Proposed Second Revised Modified Order: (a)
22 to revise the model year for Unit No. 186’s replacement vehicle from 2023 to 2024; (b) deem
23 compliance with Condition 4 complete and, thus, eliminate the obligations associated with it; (c)
24 to extend the jurisdiction of the Hearing Board by one year (i.e., to December 15, 2024); and (d)
25 set a status hearing for mid-July 2024.

26 37. After finding good cause, the Hearing Board issued its Findings and Decision for
27 the second Revised Modified Order for Abatement – Stipulated (Second Revised Modified Order)
28

1 on May 11, 2023, reflecting the four minor modifications and setting a status hearing for July 18,
2 2024.

3 35.—~~The Parties stipulated to each of these modifications, and the need for each are~~
4 ~~discussed in the following four sub paragraphs (a)-(d).~~

5 a.—~~As detailed in the written testimony the Hearing Board received from the~~
6 ~~Department for the 2023 status hearing, the Department was unable to purchase a~~
7 ~~model year 2023 replacement vehicle for Unit No. 186, as provided in the~~
8 ~~Replacement Schedule, because the manufacturer limited the number of model~~
9 ~~year 2023 vehicles produced. The Department understands that the manufacturer~~
10 ~~did so due to continuing supply chain issues. The Department was able to~~
11 ~~purchase a model year 2024 replacement vehicle of the same make, model, and~~
12 ~~engine by September 1, 2022. Changing the model year of the replacement~~
13 ~~vehicle for Unit No. 186 allowed the Department to achieve compliance with~~
14 ~~Condition 1 of the Revised Modified Order and Rule 1196 over one year earlier~~
15 ~~than expected and required. In addition, the Parties agreed that the ministerial~~
16 ~~change in Unit No. 186 replacement vehicle's model year will not result in any~~
17 ~~changes to the excess emissions estimates because the engine in the model year~~
18 ~~2024 replacement vehicle is the same engine used in former model years (i.e.,~~
19 ~~2021—2023): a Cummins engine certified to meet CARB's optional Low NOx~~
20 ~~standard of 0.02 g/brake horsepower hour.~~

21 b.—~~All that remains for the Department to achieve complete final compliance with the~~
22 ~~Revised Modified Order is to decommission and dispose of Unit Nos. 591 and 186~~
23 ~~and take delivery of each Unit's respective replacement vehicle. However, the~~
24 ~~Department cannot decommission and dispose of Unit Nos. 591 and 186 prior to~~
25 ~~taking delivery of the replacement vehicles because of the unique purposes served~~
26 ~~by each Unit.² While the Department expects to take delivery Unit No. 591's~~
27 ~~replacement in August 2023 Unit No. 186's replacement vehicle until mid 2024,~~

28 ²Unit 591 is a personnel lift, and Unit No. 186 is a crane truck.

1 ~~Condition 4, if not deemed complete will require unnecessary effort and burden on~~
2 ~~the Department and SCAQMD staff. Condition 2 obligates the Department to~~
3 ~~provide the District notice of delivery, decommission, and disposal milestones, and~~
4 ~~Condition 6 obligates the Department to notify the District of final compliance.~~
5 ~~Accordingly, given the status of the outstanding milestones to achieve compliance~~
6 ~~with the Revised Modified Order, the Parties proposed the Hearing Board deem~~
7 ~~complete the Department's obligation to submit Quarterly Status reports under~~
8 ~~Condition 4 and strike it from the Department's remaining obligations.~~

9 ~~e. Condition 9 of the Revised Modified Order specifies the date on which the~~
10 ~~Hearing Board's jurisdiction over this matter concludes. As set forth in the~~
11 ~~testimony timely submitted for the 2023 status hearing, the Department is unable~~
12 ~~to take delivery of the replacement vehicle for Unit No. 186 until mid-2024~~
13 ~~because, according to the Freightliner dealer, production of the vehicle will not~~
14 ~~commence until the third quarter of 2023. To ensure that the Hearing Board~~
15 ~~retains jurisdiction over this matter until the Department achieves final compliance~~
16 ~~with all Conditions in the Revised Modified Order, the Parties sought to modify~~
17 ~~the termination of the Hearing Board's jurisdiction in Condition 9 from~~
18 ~~December 15, 2023 to December 15, 2024.~~

19 ~~d. Finally, the Parties requested the Hearing Board set an additional status hearing in~~
20 ~~mid July 2024, so that the Department may provide the Hearing Board with an~~
21 ~~update on the delivery of Unit No. 186's replacement vehicle and the resulting~~
22 ~~decommission and disposal of Unit No. 186.~~

23 FG. 2024 STATUS HEARING AND ADMINISTRATIVE REVISIONS TO SECOND
24 REVISED MODIFIED ORDER

25 38. The Hearing Board heard the 2024 annual status hearing on its Consent Calendar
26 on August 13, 2024. Due to a clerical error during the public notice process, the status hearing
27 was rescheduled from July 18, 2024 to August 13, 2023. Rescheduling the hearing was done at
28 the request of the Clerk of the Hearing Board and not the Parties.

1 39. The Hearing Board received testimony from the Department providing an update
2 on the status of compliance with the conditions of the Second Revised Order, as well as its
3 counsel providing the Hearing Board with information regarding the rescheduled hearing.
4 Neither the Department nor the District sought substantive changes to the Second Revised
5 Modified Order, and neither party appeared.

6 40. At the time of the August 13, 2024 status hearing, the Department’s final
7 compliance with the Second Revised Modified Order was imminent. The Department received
8 delivery of the replacement vehicle for Unit No. 591 on July 23, 2024, and awaited delivery of
9 the replacement vehicle for Unit No. 186, which was expected on or around August 16, 2024.
10 Thus, the only remaining obligations of the Department at the time of the hearing were to place
11 into service the replacement vehicle for Unit No. 591, receive delivery of the replacement vehicle
12 for Unit No. 186, decommission and dispose of Unit Nos. 591 and 186, and provide the requisite
13 notices to the District and the Clerk of the Hearing Board.

14 41. The Parties stipulated to four minor modifications to the Second Modified Revised
15 Order to address administrative concerns, which are as follows:

- 16 a. Revise the name of the South Coast AQMD Planning and Rules Manager who
17 receives notice under Conditions 2, 4, and 6 to read, “Eugene Kang
18 (EKang@aqmd.gov)” to reflect current South Coast AQMD staffing;
19 b. Revise the language of Condition 5 to include the following phrase after the status
20 hearing date “or as soon thereafter as the Hearing Board’s calendar can
21 accommodate,” to afford the Hearing Board and/or Clerk flexibility to move the
22 status hearing as may be necessary to accommodate calendaring changes or any
23 additional public notices; and
24 c. Correct minor typographical errors in the Second Revised Modified Order and
25 other non-substantive revisions to improve readability.

26 42. The Parties concurrently submitted an order titled “[Proposed] Third Revised
27 Modified Order,” as well as a redline comparison showing the changes between the Second
28 Revised Modified Order and Third Revised Modified Order.

1 **CONCLUSIONS**

2 1. The Parties stipulated to the issuance of this ~~Second-Third~~ Revised Modified Order
3 for Abatement – Stipulated (~~Second-Third~~ Revised Modified Order) pursuant to Health and
4 Safety Code section 42451, subdivision (b).

5 2. This ~~Second-Third~~ Revised Modified Order is not intended to be, nor will it act as,
6 a variance. However, nothing herein shall be deemed or construed to limit the authority of the
7 District to issue Notices of Violation, seek civil penalties or injunctive relief, or other
8 administrative or legal relief for violation of District Rules. The Findings of Fact are based upon
9 evidence presented by the Parties as of the date hereof.

10 **ORDER**

11 THEREFORE, in reliance on the stipulation of the Parties, the aforesaid statements, and
12 good cause appearing, Respondent is hereby ordered to cease and desist from operating all
13 Rule 1196 non-compliant vehicles, or in the alternative to comply with the following conditions,
14 which are the same conditions as those in the Second Revised Modified Order, save for the
15 discrete modifications discussed herein in paragraphs ~~36 – 40~~ 41, subparagraphs (a) – (d):

16 1. Respondent shall comply with the Revised Modified Replacement Schedule
17 attached as Attachment A to this ~~Second-Third~~ Revised Modified Order.

18 2. Within 10 days of any one of the following events, the Department shall submit
19 notice by email to District Planning and Rules Manager, Eugene Kang ~~Vicki White~~
20 (vwhite@agmd.gov ~~ekang@agmd.gov~~):

- 21 (i) Purchase of a compliant vehicle replacing a non-compliant fleet vehicle;
- 22 (ii) Delivery of a compliant vehicle replacing a non-compliant fleet vehicle;
- 23 (iii) Date of non-compliant fleet vehicle decommission and compliant vehicle
24 commission, respectively; and
- 25 (iv) Final disposition of a non-compliant fleet vehicle removed from
26 Respondent’s fleet.

27 3. Respondent shall reasonably and in good faith research the availability of
28 alternative-fueled vehicles to be used in lieu of the compliant gasoline-fueled vehicles identified

1 in the Revised Modified Replacement Schedule as Attachment A to this ~~Second-Third~~ Revised
2 Modified Order.

3 4. Respondent's submittal of progress reports to the District on a quarterly basis,
4 commencing on January 15, 2020, via email to District Planning and Rules Manager, ~~Vicki~~
5 ~~White~~ Eugene Kang (~~vwhite@aqmd.gov~~ ekang@aqmd.gov) to date satisfy this condition. The
6 written reports required by this condition presented evidence of ongoing compliance with the
7 Revised Modified Order and included a summary of the efforts and direct communications to
8 research and demonstrate the suitability of alternative-fueled compliant vehicles that meet the
9 Department's requirements and to bid on such vehicles, to the extent appropriate. The
10 Department is not obligated to submit quarterly status reports after the date of ~~the~~ is Second
11 Revised Modified Order (May 11, 2023) for the reasons set forth above herein.

12 5. Respondent shall appear at a status hearing before the Hearing Board on October
13 22, 2024 ~~July 13, 2024~~, or as soon thereafter as the Hearing Board's calendar can accommodate,
14 with additional status hearings scheduled thereafter at intervals determined to be necessary by the
15 Hearing Board until final compliance is achieved.

16 6. Respondent shall notify District Planning and Rules Manager, ~~Eugene Kang~~ Vicki
17 ~~White~~ (~~vwhite@aqmd.gov~~ ekang@aqmd.gov) when final compliance is achieved, including the
18 Vehicle Identification Numbers for each compliant vehicle acquired and the dates of purchase.

19 7. The Hearing Board may modify this ~~Second-Third~~ Revised Modified Order for
20 Abatement without the stipulation of the Parties upon a showing of good cause therefore and
21 upon making the findings required by California Health and Safety Code Section 42451,
22 subdivision (a), and District Rule 806, subdivision (a). Any such modification of this ~~Second~~
23 ~~Third~~ Revised Modified Order shall be made only at a public hearing held upon 10 days'
24 published notice and appropriate written notice to the Respondent and the District.

25 8. This ~~Second-Third~~ Revised Modified Order is not intended to be, nor will it act as,
26 a variance. Respondent is subject to all rules and regulations of the District and to all applicable
27 provisions of California law. However, nothing herein shall be deemed or construed to limit the
28

1 authority of the District to issue Notices of Violation, seek civil penalties or injunctive relief, or
2 other administrative or legal relief for violation of District rules.

3 9. The Hearing Board shall retain jurisdiction over this matter until December 15,
4 2024. If compliance has not yet been achieved prior to that date, this ~~Second~~Third Revised
5 Modified Order shall expire if not properly extended.

6 10. Respondent shall notify the Clerk of the Hearing Board in writing when final
7 compliance is achieved.

8 Good cause appearing, it is so ordered.

9
10 **FOR THE BOARD:** _____

11
12 **DATED:** _____

13
14
15 Attachment: Attachment A – City of San Bernardino Municipal Water Department Rule 1196
16 Revised Modified Replacement Schedule.

ATTACHMENT A

COMPARISON ONLY

**Attachment A: City of San Bernardino Municipal Water
Department Rule 1196 Revised Modified Replacement**

1196 Non-compliant Vehicle							Replacement Compliant Vehicle					
Fiscal Year of Replacement*	Dept. Unit No.	Year	Make and Model	Body Type	VIN	Fuel Type	Make and Model	Body Type2	Model Year	Fuel Type	Replacement Cost	Total Cost
2018/2019	178	2002	Ford F-550	Flat Bed W/ Tool Boxes	1FDAF56F02EB75216	D	Ford F-550	Crane	2020	G	\$ 77,000.00	
2018/2019	177	1999	Ford F-550	Flat Bed W/ Tool Boxes	1FDAF56F0XEB25956	D	Ford F-550	Crane	2020	G	\$ 77,000.00	\$ 154,000.00
2019/2020	723	2005	International 4300	Vactor Truck	1HTMMAAL25H688552	D	Kenworth T-880	Vactor	2020	CNG	\$ 700,000.00	
2019/2020	326	2004	Ford F-550	Flat Bed W/ Tool Boxes	1FDAF56P64EA58235	D	Ford F-550	Utility Bed W/Liftgate	2020	G	\$ 72,000.00	
2019/2020	355	2007	Ford F-550	Dump Truck - 2 yd.	1FDAF56P77EA14345	D	Ford F-550	Chassis Only	2020	G	\$ 60,000.00	
2019/2020	327	2003	Ford F-550	Flat Bed W/ Tool Boxes	1FDAF56P83EC43529	D	Ford F-550	Utility Bed	2020	G	\$ 68,000.00	\$ 900,000.00
2020/2021**	303	2004	Ford F-550	Flat Bed W/ Tool Boxes	1FDAF56P44EA58234	D	Ford F-550	Utility Bed	2020	G	\$ 85,000.00	
2020/2021**	312	2015	Ford F-450	Gate truck - Vac -	1FDUF4GT6FEB71575	D	Ford F-550	Chassis Only	2020	G	\$ 55,000.00	
2020/2021**	242	2006	Ford F-550 4x4	Lube Truck	1FDAF57P76EC86410	D	Ford F-550 4x4	Chassis Only	2020	G	\$ 60,000.00	
2020/2021**	311	2015	Ford F-450	Valve truck - Vac -	1FDUF4GT4FEB71574	D	Ford F-550	Chassis Only	2020	G	\$ 60,000.00	\$ 260,000.00
2021/2022	591	2011	Ford F-750	Personnel lift	3FRNF7FB9BV565737	D	Freightliner 114SD Conventional	Chassis Only	2022	CNG	\$ 200,000.00	\$ 200,000.00
2022/2023	186	1999	Volvo VE	Flat Bed Crane Truck	4V5JCBGF2XN865177	D	Freightliner 114SD Conventional	Chassis Only	2024	CNG	\$ 220,000.00	\$ 220,000.00
Exempt	384	2012	International 4400	5th Wheel Daycab	1HSMTAZR8CJ367976	D						
Exempt	361	2012	International 4400	Dump Truck - 5 yd.	1HSMTAZR5CJ367983	D						
Exempt	362	2012	International 4400	Dump Truck - 5 yd.	1HSMTAZR6CJ368074	D						

*The Department's fiscal year is July 1 to June 30. Compliance with this Replacement Schedule is determined by whether the Department purchases the replacement compliant vehicles by the close of the first quarter of the following fiscal year in which the non-compliant vehicle(s) is/are slated for replacement. For example, compliance in fiscal year 2018/2019 shall be based upon whether the Department purchases from the manufacturer compliant vehicles by the close of the first quarter of fiscal year 2019 (i.e., September 30, 2019).

**The Department will not purchase these vehicles in accordance with the note above; instead, the Department will submit purchase orders for these vehicles immediately, which shall be no later than July 31, 2020.