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6 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

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9 BEFORE THE HEARING BOARD OF THE  
10 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT  
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12 **In the Matter of**

13 SOUTH COAST AIR QUALITY  
14 MANAGEMENT DISTRICT,

15 Petitioner,

16 v.

17 CITY OF FONTANA  
[Facility ID No. 33088],

18 Respondent.  
19  
20

CASE NO. 5704-2

**PETITION FOR AN ORDER FOR  
ABATEMENT**

**Rule 1196**

Date: November 29, 2022  
Time: 9:00 a.m.  
Place: Hearing Board  
South Coast AQMD  
21865 Copley Drive  
Diamond Bar, CA 91765

21 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (hereinafter referred to as  
22 "South Coast AQMD" or "Petitioner") petitions the South Coast AQMD Hearing Board for an  
23 Order for Abatement directed to Respondent CITY OF FONTANA (hereinafter referred to as  
24 "Respondent") regarding its use of diesel-powered heavy-duty vehicles.

25 The South Coast AQMD alleges as follows:

- 26 1. Petitioner is a body corporate and politic established and existing pursuant to  
27 Health and Safety Code §§ 40000, *et seq.* and §§ 40400, *et seq.*, and is the sole and exclusive local  
28 agency with the responsibility for comprehensive air pollution control in the South Coast Basin.

1           2.       Respondent is a body corporate and politic existing pursuant to Government Code  
2 §§ 34000, *et seq.*, which, *inter alia*, owns and operates heavy-duty vehicles for use and provision  
3 of essential public services within the City of Fontana. Respondent's Public Works / Fleet  
4 Services Department is a division within the City of Fontana which oversees the procurement,  
5 maintenance, and allocation of heavy-duty vehicles for provision of public services. Respondent's  
6 fleet of heavy-duty vehicles includes vehicles for use in the City of Fontana in San Bernardino  
7 County, within the jurisdiction of the South Coast AQMD. Respondent's Public Works / Fleet  
8 Services is located at 16489 Orange Way, Fontana, CA 92335.

9           3.       South Coast AQMD is informed and believes that there are more than 15 heavy-  
10 duty vehicles owned and in use by Respondent. Currently, more than three of the heavy-duty  
11 vehicles within Respondent's fleet and in use are diesel powered, were purchased on or after July  
12 1, 2002, and were obtained without Technical Infeasibility Certification granted prior to purchase.

13           4.       **South Coast AQMD Rule 1196(d)(1)** requires that beginning on July 1, 2002, for  
14 public fleet operators that operate 15 or more heavy-duty vehicles, all new additions to an existing  
15 fleet shall be by purchase or lease of: (1) alternative-fuel heavy-duty engine or vehicles; (2) dual-  
16 fuel heavy-duty vehicles; (3) dedicated gasoline heavy-duty vehicles; or (4) Technical  
17 Infeasibility Certification Request-approved diesel vehicles.

18           5.       Respondent purchases and maintains a fleet of heavy-duty vehicles to provide  
19 public services throughout the City of Fontana. Since at least 2006, Respondent has purchased,  
20 and continues to maintain within its fleet, heavy-duty vehicles which do not meet the requirements  
21 set forth in South Coast AQMD Rule 1196(d)(1). At present, Respondent's heavy-duty fleet  
22 includes at least ten (10) heavy-duty vehicles which violate South Coast AQMD Rule 1196  
23 requirements.

24           6.       South Coast AQMD determined Respondent's heavy-duty fleet was subject to Rule  
25 1196 when Respondent responded to a survey from South Coast AQMD and discovered the  
26 violations noted above when Respondent provided information on in response to a Notice to  
27 Comply from South Coast AQMD.

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1 7. Petitioner and Respondent have been engaging in active negotiation since the Rule  
2 1196 violations were discovered by South Coast AQMD to determine appropriate actions for  
3 Respondent to take to achieve compliance with Rule 1196 within as reasonable a period of time as  
4 possible under the circumstances.

5 8. Respondent is and continues to be in violation of South Coast AQMD Rule  
6 1196(d)(1).

7 **Request for Order for Abatement**

8 9. South Coast AQMD by this Petition seeks an Order for Abatement to require  
9 Respondent to cease operations as described above, or in the alternative to comply with South  
10 Coast AQMD Rule 1196 through such conditions and increments of progress as determined  
11 necessary.

12 10. It is not unreasonable to require Respondent to comply with South Coast AQMD  
13 rules and regulations, including South Coast AQMD Rule 1196.

14 11. The issuance of an Order for Abatement upon a fully noticed hearing would not  
15 constitute a taking of property without due process of law.

16 12. The Order for Abatement is not intended to be, nor, will it act as variance.

17 13. The issuance of the requested Order for Abatement is not expected to result in the  
18 closing or elimination of an otherwise lawful business, but if it does result in such closure or  
19 elimination, it would not be without a corresponding benefit in reducing air contaminants.

20 14. The parties intend to submit to the Hearing Board, in advance of the hearing to be  
21 set in this matter, a proposed Stipulated Order for Abatement, drafted and approved by both  
22 parties.

23 THEREFORE, the South Coast AQMD prays for an Order for Abatement as follows:

24 1. That this Hearing Board issue an Order for Abatement requiring Respondent to  
25 cease and desist from operating in violation of South Coast AQMD Rule 1196, or, in the  
26 alternative, to comply with such increments of progress and conditions as the Board deems  
27 appropriate.

28 2. For such other and further relief that this Board deems just and proper.

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Dated: October 21, 2022

SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT  
OFFICE OF THE GENERAL COUNSEL  
Kathryn Roberts, Senior Deputy District Counsel

By   
KATHRYN ROBERTS  
Attorney for Petitioner