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**BEFORE THE HEARING BOARD OF THE
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

In the Matter of

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT,

Petitioner,

vs.

COUNTY OF SAN BERNARDINO,
[Facility ID No. 161551]

Respondent.

Case No. 6174-1

**FINDINGS AND DECISION FOR A
MODIFIED ORDER FOR ABATEMENT
(STIPULATED)**

District Rule: 1196

Hearing Date: **August 13, 2024**

Time: 9:30 am

Place: Hearing Board
South Coast Air Quality
Management District
21865 Copley Drive
Diamond Bar, CA 91765

A Stipulated Order for Abatement was issued on July 7, 2020. Pursuant to a notice and in accordance with the provisions of California Health and Safety Code § 40823 and SCAQMD Rule 812, a Status/Modification hearing for that Stipulated Order was held on August 13, 2024. The following members of the Hearing Board were present: Micah Ali, Chair; Robert Pearman, Esq., Vice Chair; Mohan Balagopalan; Jerry P. Abraham, MD, MPH, CMQ; and Cynthia Verdugo-Peralta. Petitioner, Executive Officer, represented by Kathryn Roberts, Sr. Deputy District Counsel did not appear. Respondent, County of San Bernardino, (hereinafter referred to as “Respondent” or “County”) represented by Lamar Allman, Public Works Equipment Superintendent, did not appear. The public was given an opportunity to testify. Evidence was received and the matter was submitted.

1 The Hearing Board finds and decides:

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

5 2. Respondent is a body corporate and politic existing pursuant to Government Code
6 §§ 23000, *et seq.*, which, *inter alia*, owns and operates heavy-duty vehicles for use and provision
7 of essential public services within the County of San Bernardino. Respondent's Fleet Management
8 is a department within the County which oversees the procurement, maintenance, and allocation of
9 heavy-duty vehicles to offices, departments and employees of the County for provision of public
10 services. Respondent's fleet of heavy-duty vehicles includes vehicles for use throughout San
11 Bernardino County, both within and without the jurisdiction of the South Coast AQMD.
12 Respondent's Government Center office is located at 385 N. Arrowhead Avenue, San Bernardino,
13 California 92415. Respondent's Fleet Management has administrative offices located at 210 North
14 Lena Road, San Bernardino, California 92415.

15 3. At present, Respondent is operating 27 non-compliant heavy-duty vehicles within
16 its heavy-duty fleet.

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

22 5. **South Coast AQMD Rule 1196(f)(8)(a)** provides an exemption for public fleets
23 with greater than 15 but less than 100 heavy-duty vehicles, allowing no more than three of the
24 heavy-duty vehicles subject to Rule 1196 that do not meet the requirement of Rule 1196(d)(1) to
25 be part of the fleet at any given time.

26 6. **South Coast AQMD Rule 1196(f)(10)** addresses public entities whose jurisdiction
27 includes areas outside the jurisdiction of the South Coast AQMD and creates an exemption for
28 heavy-duty vehicles which are garaged, housed, parked, stored or operated within the South Coast

1 AQMD's jurisdiction for no more than 180 days in any 12-month period.

2 7. Respondent is subject to Rule 1196 when adding a fleet vehicle to its existing fleet
3 or forming a new fleet because it is within the South Coast AQMD's jurisdiction, is a public entity,
4 and currently operates 47 total heavy-duty vehicles as part of its fleet, which are used to provide
5 essential public services in San Bernardino County. As of July 2020, Respondent had 27 heavy-
6 duty vehicles currently not in compliance with Rule 1196, as identified in **Attachment A**.

7 8. Since at least 2004, Respondent has purchased heavy-duty vehicles which do not
8 meet the requirements set forth in South Coast AQMD Rule 1196(d)(1).

9 9. Respondent hired Ron Lindsey in November of 2017 as Fleet Management Director
10 for San Bernardino County. Respondent hired Lauren Finwall in January of 2018 as a Regulatory
11 Environmental Specialist.

12 10. In July 2018, Respondent conducted an audit of heavy-duty vehicles in its fleet
13 operating within South Coast AQMD's jurisdiction to determine its fleet's compliance with South
14 Coast AQMD Rule 1196.

15 11. Following the audit, Respondent self-reported to South Coast AQMD that some
16 heavy-duty vehicles in its fleet failed to meet the requirements of South Coast AQMD Rule 1196.

17 12. Each of the County's Rule 1196 non-compliant vehicles is necessary to operate and
18 maintain the County's public services. These vehicles are utilized to provide essential services,
19 materials and equipment throughout the 20,000 square mile area of the county, maintaining 2,500
20 miles of roadway and various flood control facilities. Vehicles are regularly used in response to
21 disasters including major storm events, earthquakes and wind events to minimize the loss of life
22 and/or property, as well as keeping the roadways and flood control systems working as designed for
23 safety.

24 13. As a public entity, Respondent is constrained by the resources it can commit to
25 replacing its fleet vehicles to achieve compliance with Rule 1196. San Bernardino is funded entirely
26 by ratepayers in an economically disadvantaged area. The County's annual budget for replacing the
27 fleet vehicles comes from its Fleet Management Capital Expenditures appropriation, which for FY
28 2019-2020 was \$5.3 million. The cost of replacing a non-compliant fleet vehicle ranges from

1 \$130,000 to \$370,000 per vehicle, depending upon model and purpose of use.

2 14. Respondent has committed to allocating the necessary funds to acquire vehicles that
3 comply with Rule 1196 requirements in accordance with the heavy-duty vehicle schedule in
4 Attachment A.

5 15. The County and South Coast AQMD negotiated for approximately one year to
6 determine the necessary and appropriate actions the County will take to come into full compliance
7 with South Coast AQMD Rule 1196, while avoiding or minimizing any adverse impacts to the
8 provision of public services.

9 16. The estimated excess emissions associated with the use of non-compliant fleet
10 vehicles during the pendency of this Order is approximately 0.561 ton of oxides of nitrogen and
11 0.008 ton of particulate matter.

12 **July 7, 2021 Status Hearing**

13 17. The Hearing Board held a status conference on July 7, 2021. The Board received
14 evidence from the County that it had taken several actions to comply with the Order, including
15 purchasing replacements and removing several vehicles from within the boundaries of the South
16 Coast AQMD. No Party requested a modification and the Parties jointly requested the Hearing
17 Board to set a further status hearing in approximately one year. The Hearing Board received the
18 evidence and set a further status hearing.

19 **August 8, 2023 Status/Modification Hearing**

20 18. Since the 2021 status hearing, the County has continued to take actions to
21 implement the Order. However, prior to purchase of vehicles scheduled for the second half of
22 2023, Respondent learned that there was not a CNG-powered engine certified by the California Air
23 Resources Board (CARB) that could meet the needs of the County in terms of horsepower for the
24 diesel vehicle being replaced. Following South Coast AQMD's agreement that there was not
25 currently a CARB-certified engine, the Parties agreed to seek a short continuance to develop an
26 appropriate alternative. The Hearing Board continued the hearing to August 8 to enable the Parties
27 to develop a new compliance pathway.

28 19. The Parties met and considered multiple alternatives for the two vehicles scheduled

1 for replacement with CNG engines. At present, there is no CNG engine CARB-certified which is
2 capable of 600 horsepower, which applicable non-compliant diesel vehicles have. The County
3 considered if they could either retire these vehicles without replacement or move them entirely out
4 of the jurisdiction of the South Coast AQMD. The County determined that while one of the
5 vehicles could be moved entirely out of the South Coast AQMD, at least one vehicle with such
6 capabilities would need to operate within the South Coast AQMD portion of San Bernardino
7 County to ensure the County could carry out all needed public services, including using this
8 vehicle in emergencies to transport equipment. The County agreed that other vehicles, currently
9 used under exemption in the Rule could be replaced with CNG-fueled vehicles as a way to offset
10 emissions in the South Coast AQMD.

11 20. Additionally, the Parties looked at engines that are known to have been developed
12 but not yet certified by CARB, and thus not currently available for purchase. The Parties agree
13 there is at least one 15 liter CNG engine that has been produced and is currently undergoing CARB
14 certification. It is possible that this engine, if certified, could be configured to be able to serve
15 instead of the noncompliant diesel engine, but not certain. The Parties agree that a Pilot Study
16 assessing the 15 liter CNG once it is CARB-certified would enable Respondent to determine if a
17 CNG replacement can be procured in the near future. The South Coast AQMD agreed that a short
18 delay in replacement to consider CNG, would be preferable to replacing the non-compliant diesel
19 with another diesel vehicle under an infeasibility certificate under Rule 1196(e).

20 21. The Parties jointly submitted a stipulated modification that captured these changes
21 at the August 8, 2023 hearing.

22 **August 13, 2024 Status Hearing**

23 22. The County has taken steps to comply with the Order for Abatement. Specifically,
24 the County sought approval from its Board of Supervisors for the purchase of two CNG vehicles in
25 October 2023 ,which was granted in January 2024. However, due to difficulties arising from
26 CARB certification, the County was forced to delay procurement until it had worked out
27 specifications with vendors using the certified L9 Cummins CNG engine. This unfortunately
28 delayed procurement until July 2024. Bid responses are due to the County on August 8, 2024. The

1 County has confirmed with its vendors that delivery by 2026 is still on track, consistent with the
2 Order.

3 23. The County has complied with all other terms of the Order, and will continue to do
4 so.

5 24. The Parties requested the Board to set a further status hearing for September 2025
6 in this matter, pursuant to Condition 4.

7 CONCLUSIONS

8 1. The parties have stipulated to the issuance of this Order for Abatement pursuant to
9 Health and Safety Code Section 42451(b).

10 2. This Order for Abatement (Stipulated) is not intended to be, nor will it act as, a
11 variance. Nothing herein, however, shall be deemed or construed to limit the authority of the
12 South Coast AQMD to issue Notices of Violation, to seek civil penalties or injunctive relief, or to
13 other administrative or legal relief for violation of South Coast AQMD rules. The Findings of Fact
14 are based on evidence presented by Petitioner and Respondent as of the date hereof.

15 ORDER

16 THEREFORE, subject to and based on the aforesaid Findings of Fact, Conclusions, and
17 additional evidence and testimony, and good cause appearing, this Board orders Respondent to
18 refrain from any operation of heavy-duty vehicles except as in compliance with South Coast
19 AQMD Rule 1196, or in the alternative comply with the conditions as set forth below:

20 1. Respondent shall comply with the heavy-duty vehicle schedule outlined in
21 Attachment A as follows:

- 22 a. Vehicles in Category 1 shall be redeployed such that they will not be garaged,
23 housed, parked, stored or operated within the South Coast AQMD's jurisdiction for
24 more than 180 days per calendar year, beginning with the calendar year 2020;
- 25 b. Vehicles in Category 2 shall be replaced with a Rule 1196 compliant compressed
26 natural gas (CNG) vehicle within the designated time listed on Attachment A,
27 where "first half" of a calendar year means to January 1 through June 30 inclusive
28 and "second half" of a calendar year means July 1 through December 31 inclusive;

- 1 c. Vehicles in Category 3 shall be considered exempted under Rule 1196(f)(8)(a);
- 2 d. Vehicle in Category 4 shall not be replaced until after the conclusion of a real-world
- 3 test of a 15 liter or larger CNG engine (the “Pilot Study”) as follows:
- 4 i. Respondent shall monitor the progress of any manufacturer seeking and
- 5 achieving certification from the California Air Resources Board (CARB)
- 6 for a 15 liter or larger CNG engine within the calendar year 2024. Not
- 7 later than 60 days after any manufacturer has received final certification
- 8 from CARB for such engine, Respondent shall reach out to that
- 9 manufacturer and any applicable truck chassis manufacturers to inquire
- 10 about and set up a Pilot Study of that engine. Respondent shall make all
- 11 reasonable efforts to ensure such Pilot Study is started as soon as
- 12 practicable. If Respondent is not able to ensure the start of the Pilot
- 13 Study by July 15, 2025, Respondent shall notify South Coast AQMD via
- 14 email (attn: Brian Choe, bchoe@aqmd.gov; Kathryn Roberts,
- 15 kroberts@aqmd.gov) not later than July 31, 2025.
- 16 ii. During the Pilot Study, Respondent shall assess the capabilities of the 15
- 17 liter (or larger) CNG engine, particularly in meeting the County’s fleet
- 18 vehicle needs as a potential replacement for Vehicle Unit No. 29805.
- 19 Respondent shall work with the manufacturer regarding the appropriate
- 20 length of the Pilot Study, but in no case shall the Pilot Study exceed 120
- 21 days.
- 22 iii. Following conclusion of the Pilot Study, Respondent shall prepare a
- 23 report summarizing the findings from the Pilot Study, including a
- 24 conclusion that determines if a 15 liter CNG engine is a suitable
- 25 replacement for Vehicle Unit No. 29805. Respondent shall submit the
- 26 report to the South Coast AQMD via email (attn: Brian Choe,
- 27 bchoe@aqmd.gov; Kathryn Roberts, kroberts@aqmd.gov) not later than
- 28 30 days past the conclusion of the Pilot Study.

1 2. Respondent shall submit progress reports on an annual basis, beginning January 31,
2 2021 reporting on the immediately preceding calendar year, via email to South Coast AQMD via
3 email (attn: Brian Choe, bchoe@aqmd.gov; Kathryn Roberts, kroberts@aqmd.gov). The written
4 report shall present evidence of ongoing compliance with this Order, including summarizing actions
5 and dates relating to purchase and/or delivery of compliant heavy-duty vehicles, and liquidation,
6 decommissioning and/or retirement of noncompliant heavy-duty vehicles. The written report shall
7 further include evidence verifying the redeployment status for all Category 1 vehicles listed in
8 Attachment A, including GPS location data, that all Category 1 vehicles are garaged, housed, parked,
9 stored and operated within the South Coast AQMD jurisdiction no more than 180 days per calendar
10 year.

11 3. Within 10 days of any one of the following events, Respondent shall submit notice
12 by email to South Coast AQMD (attn: Brian Choe, bchoe@aqmd.gov):

- 13 a. Purchase of a compliant vehicle replacing a non-compliant fleet vehicle;
- 14 b. Delivery of a compliant vehicle replacing a non-compliant fleet vehicle;
- 15 c. Certification by CARB of any 15 liter or larger CNG engine that Respondent
16 becomes aware of; and
- 17 d. Beginning of a Pilot Study pursuant to Condition 1 above.

18 4. Respondent shall appear at a status hearing before the Hearing Board on August 6,
19 2024, with additional status hearings being scheduled thereafter at intervals determined to be
20 necessary by the Hearing Board until final compliance is achieved.

21 5. Respondent shall notify South Coast AQMD via email (attn: Brian Choe,
22 bchoe@aqmd.gov), when final compliance is achieved, including the Vehicle Identification
23 Numbers for each compliant vehicle acquired and the dates of purchase.

24 6. The Hearing Board may modify this Order for Abatement without the stipulation of
25 the parties upon a showing of good cause therefore, and upon making the findings required Health
26 and Safety Code Section 42451(a) and South Coast AQMD Rule 806(a). Such modification of the
27 Order shall be made only at a public hearing held upon 10 days published notice and appropriate
28 written notice to the Respondent and the South Coast AQMD.

1 7. This Order for Abatement (Stipulated) is not intended to be, nor will it act as, a
2 variance. Respondent is subject to all rules and regulations of the South Coast AQMD and to all
3 applicable provisions of California law. Nothing herein, however, shall be deemed or construed to
4 limit the authority of the South Coast AQMD to issue Notices of Violation, to seek civil penalties or
5 injunctive relief, or to other administrative or legal relief for violation of South Coast AQMD rules.

6 8. The Hearing Board shall retain jurisdiction over this matter until January 31, 2027.

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

9 Good cause appearing, it is so ordered.

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FOR THE BOARD:

DATE SIGNED:

SO STIPULATED:

August 7, 2024



Kathryn Roberts,
Sr. Deputy District Counsel
South Coast Air Quality Management District

SO STIPULATED:

Lamar Allman
Public Works Equipment Superintendent
Department of Public Works
San Bernardino County

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2 written notice to the Respondent and the South Coast AQMD.

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4 variance. Respondent is subject to all rules and regulations of the South Coast AQMD and to all
5 applicable provisions of California law. Nothing herein, however, shall be deemed or construed to
6 limit the authority of the South Coast AQMD to issue Notices of Violation, to seek civil penalties or
7 injunctive relief, or to other administrative or legal relief for violation of South Coast AQMD rules.

8 8. The Hearing Board shall retain jurisdiction over this matter until January 31, 2027.

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

11 Good cause appearing, it is so ordered.

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13 **FOR THE BOARD:** _____

14 **DATE SIGNED:** _____

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16 **SO STIPULATED:**

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20 Kathryn Roberts,
21 Sr. Deputy District Counsel
22 South Coast Air Quality Management District

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24 **SO STIPULATED:**

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28 Noel Castillo Lamar Allman
Assistant Director, Public Works Equipment

29 Superintendent

30 Department of Public Works
31 San Bernardino County

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