

**STATEMENT OF PROCEEDINGS**  
**SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT HEARING BOARD**  
**Regular Meeting, Thursday, November 10, 2022**  
**9:00 a.m.**

**ORDER OF BUSINESS**

**ROLL CALL**

Members present: Vilmarie Rodriguez, Chair; Alison Schlick, Vice Chair, Jose Gonzalez and Daniel Spencer

Members absent: William Powers

Staff present: Julie Byford, APCD Civil Actions Investigator; Mary Mahoney, APCD Civil Actions Investigator; William Jacques, APCD Chief Departmental Operations Compliance; Veera Tyagi, Senior Deputy County Counsel APCD; Emily Helms, Senior Deputy County Counsel APCD; and Mia Ruffier, APCD Clerk of the Hearing Board

**SWORN OATH OF WITNESSES BY CLERK**

All witnesses providing public testimony during the meeting were sworn-in by the Clerk of the APCD Hearing Board.

**ADMINISTRATIVE ITEM:**

A. Public Communication

*Nicholas Paul, Environmental Health Coalition spoke to the Board regarding progress update for Petition 4527 scheduled to come before the Board on for November 17, 2022.*

B. Approval of Statement of Proceedings for October 27, 2022.

**ACTION:**

ON MOTION of Chair Rodriguez, seconded by Vice Chair Schlick, the Air Pollution Control District Hearing Board continued approval the Statement of Proceedings for the meeting of October 27, 2022 to the next regularly scheduled Hearing Board meeting on December 8, 2022.

AYES: Rodriguez, Schlick, Gonzalez, Spencer

ABSENT: Powers

C. Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

**ACTION:**

ON MOTION Vice Chair Schlick, seconded by Member Spencer, the Air Pollution Control District Hearing Board approved the Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

AYES: Rodriguez, Schlick, Gonzalez, Spencer

ABSENT: Powers

**PETITION(S) BEFORE THE BOARD:**

**4529 DS, Inc.** – Petitioner requests a 90-Day Variance filed on October 25, 2022, from APCD Rule 21 and Permit Condition 1 as related to Permit Nos. APCD2022-APP-007183 and APCD2022-APP-007184, due to a service failure condition of two engine gen-sets associated with onsite crushed rock operation used in grading projects located at 130 S. Twin Oaks Valley Road, San Marcos, CA 92078.

**ACTION:**

ON MOTION of Vice Chair Schlick, seconded by Chair Rodriguez, the Air Pollution Control District Hearing Board granted Petitioner's request for a 90-Day Variance.

AYES: Rodriguez, Schlick, Gonzalez, Spencer

ABSENT: Powers

**ADJOURNMENT:**

The APCD Hearing Board adjourned the November 10, 2022 meeting at 10:26 a.m.

**ASSISTANCE FOR THE DISABLED:**

Agendas and records are available in alternative formats upon request. Contact the APCD Hearing Board Clerk at 858-586-2600 with questions or to request a disability-related accommodation including sign language interpretation. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 72 hours in advance of the meeting so that arrangements may be made.

Pursuant to Government Code 54957.5, written materials distributed to the Hearing Board in connection with this agenda less than 72 hours before the meeting will be available to the public at the San Diego County Air Pollution Control District, 10124 Old Grove Road, San Diego, CA 92131.

*The statements contained in this draft document are subject to change until they are approved in their final form by the Air Pollution Control District Hearing Board at a subsequent public meeting.*

**ADMINISTRATIVE ITEM:**

A. Public Communication

**ACTION:**

*Nicholas Paul, Environmental Health Coalition spoke to the Board regarding progress update for Petition 4527 scheduled to come before the Board on for November 17, 2022.*



MIA RUFFIER

Clerk of the San Diego County Air Pollution Control District Hearing Board

**ADMINISTRATIVE ITEM:**

B. Approval of Statement of Proceedings for October 27, 2022.

**ACTION:**

ON MOTION of Chair Rodriguez, seconded by Vice Chair Schlick, the Air Pollution Control District Hearing Board continued approval the Statement of Proceedings for the meeting of October 27, 2022 to the next regularly scheduled Hearing Board meeting on December 8, 2022.

AYES: Rodriguez, Schlick, Gonzalez, Spencer

ABSENT: Powers



MIA RUFFIER

Clerk of the San Diego County Air Pollution Control District Hearing Board

**ADMINISTRATIVE ITEM:**

- C. Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

**ACTION:**

ON MOTION of Vice Chair Schlick, seconded by Member Spencer, the Air Pollution Control District Hearing Board approved the Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

AYES: Rodriguez, Schlick, Gonzalez, Spencer

ABSENT: Powers



MIA RUFFIER

Clerk of the San Diego County Air Pollution Control District Hearing Board

**RESOLUTION AUTHORIZING CONTINUANCE OF TELECONFERENCED PUBLIC MEETINGS  
PURSUANT TO GOVERNMENT CODE SECTION 54953**

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"); and

WHEREAS, on January 30, 2020, the World Health Organization ("WHO") declared a Public Health Emergency of International Concern as a result of the COVID-19 virus. On January 31, 2020, the United States Secretary of Health and Human Services also declared a Public Health Emergency of the COVID-19 virus; and

WHEREAS, on February 14, 2020, the San Diego County Health Officer declared a Local Health Emergency as a result of the COVID-19 virus, which was subsequently ratified by the Board of Supervisors on February 19, 2020; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency ("State of Emergency") pursuant to section 8625 of the California Emergency Services Act, in response to the COVID-19 pandemic; and,

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the "Brown Act"), provided certain requirements were met and followed; and,

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21 that clarified the suspension of the teleconferencing rules set forth in the Brown Act, and further provided that those provisions would remain suspended through September 30, 2021; and,

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 which provides that a legislative body subject to the Brown Act may use revised teleconference rules provided under section 53593(e) if the legislative body makes certain findings and those findings are reconsidered every thirty (30) days, as applicable; and,

WHEREAS, on September 20, 2021, Governor Newsom issued Executive Order N-15-21 that suspended AB 361 through September 30, 2021; and,

WHEREAS, the proclaimed State of Emergency remains in effect; and,

WHEREAS, the California Occupational Safety and Health Standards Board adopted California Code of Regulations, Title 8, Section 3205 which states, "particles containing the virus can travel more than six feet, especially indoors, so physical distancing, face coverings, increased ventilation indoors, and respiratory protection decrease the spread of COVID-19, but are most effective when used in combination;" and

WHEREAS, on or about September 23, 2021, Dr. Wilma Wooten, the County of San Diego's Public Health Officer issued a letter recommending the utilization of teleconferencing options for public meetings as an effective and recommended social distancing measure to facilitate participation in public affairs and encourage participants to protect themselves and others from the COVID-19 virus (the "Teleconferencing Recommendation"); and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, this legislative body deems it necessary to take action for purposes of utilizing the provisions of AB 361 related to teleconferencing;

NOW, THEREFORE, BE IT RESOLVED, by the San Diego County Air Pollution Control District Hearing Board (Board) as follows:

1. The recitals set forth above are true and correct and form the basis for the finding of this Resolution.
2. On November 10, 2022, this legislative body found that there is an existing proclaimed State of Emergency and state and local officials have imposed or recommended measures to promote social distancing, including but not limited to the Teleconferencing Recommendation.
3. This legislative body has reconsidered the circumstances of the State of Emergency and state or local officials continue to impose or recommend measures to promote social distancing.
4. In order to satisfy the requirements of Section 54953(e)(3) of the Brown Act, which allows local legislative bodies to continue utilizing simplified teleconferencing options under the Brown Act if certain findings are made no later than thirty (30) days after such simplified teleconferencing options are first used, Board staff is directed to return no later than thirty (30) days after the adoption of this Resolution with an item for this legislative body's reconsideration of these findings.
5. Board staff is directed to take any other necessary or appropriate actions to implement the intent and purposes of this Resolution.
6. This finding is intended to apply to all of the legislative body subcommittees this legislative body has created.
7. This Resolution shall take effect immediately upon its adoption.

ON MOTION of Vice Chair Schlick, seconded by Member Spencer, the above Resolution was passed and adopted by the San Diego County Air Pollution Control District Hearing Board, on this 10<sup>th</sup> day of November 2022, by the following vote:

AYES: Rodriguez, Schlick, Gonzalez, Spencer

ABSENT: Powers



MIA RUFFIER

Clerk of the San Diego County Air Pollution Control District Hearing Board

Meeting Date: 11/10/2022 (C)



**SAN DIEGO COUNTY  
AIR POLLUTION CONTROL DISTRICT HEARING BOARD  
BOARD ORDER**

**4529 DS, Inc.** – Petitioner requests a 90-Day Variance filed on October 25, 2022 from APCD Rule 21 and Permit Condition 1 as related to Permit Nos. APCD2022-APP-007183 and APCD2022-APP-007184, due to a service failure condition of two engine gen-sets associated with onsite crushed rock operation used in grading projects located at 130 S. Twin Oaks Valley Road, San Marcos, CA 92078.

Notice of time and place of hearing was given as required by law.

**ACTION:**

ON MOTION of Vice Chair Schlick, seconded by Chair Rodriguez, the Air Pollution Control District Hearing Board closed the hearing and made the following findings:

- A. The Petitioner will be violation of District Rule 21, Condition No. 1, as it applies to Permit No. APCD2022-APP-007183 and APCD2022-APP-007184.
- B. That due to conditions beyond the reasonable control of the Petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing of a lawful business.

Evidence to support finding:

Based on testimony provided, the Board finds that the closing of Petitioner’s operation would result in temporary layoffs of at least 6 personnel and the loss of approximately \$20,000 for fees paid toward rental equipment. Petitioner is using engines with controls that minimize the impact to air pollution and are cleaner than the inoperable engines. The health risk assessment preliminary review process passed for the engines identified in this order and have a minimal impact to any increase of emissions during this Variance period.

- C. That such closing or taking would be without a corresponding benefit in reducing air contaminants:

Evidence to support finding:

The Board finds that closing would be without corresponding benefit in reducing air contaminants. Petitioner is pending approval of permits for these modifications for additional operation hours. Approval is based on the completed application submitted prior to this hearing date but also based on the health risk assessment for both acute and chronic.

- D. That the Petitioner for the Variance has given consideration to curtailing operations of the source in lieu of obtaining a Variance:

Evidence to support finding:

Petitioner has accepted the District's logs of hours of operation maximum and voluntarily submitted a reduction of hours of operation for the period of the Variance prior to today's hearing and is taking a look on consistent basis on how to curtail the hours of operation.

- E. That during the period the Variance is in effect, the Petitioner will reduce excess emissions to the maximum extent feasible:

Evidence to support finding:

Petitioner agrees to limit daily operation to 10 hours per day and a total of 1700 logging hours.

- F. During the period the variance is in effect, the Petitioner will monitor or otherwise quantify emission levels from the source, and report these emissions levels to the District pursuant to a schedule established by the District.

Evidence to support finding:

The Petitioner has agreed to conditions set in this Variance and monthly reporting.

The Board thereby granted the Petitioner's request for a 90-Day Variance from District Rule 21, Condition No. 1, as it applies to Permit No. APCD2022-APP-007183 and APCD2022-APP-007184. The Variance will begin November 10, 2022, and expire January 1, 2023, subject to the following conditions:

1. The variance will expire the sooner of Jan 1, 2023 or when the Authority to Construct is issued for APCD2022-APP-007482 permit modification of Condition #1 of APCD2022-APP-007183/7184 increased engine hours.
2. During calendar year 2022, Engines #1 and #2 respectively described by APCD2022-APP-007183 and 2022-APP-007184 shall not exceed 10hrs/day and 1,700 hours/year each.
3. Petitioner shall continue to record the daily hours of operation of each engine and submit a report of those records to Julie Byford at [Julie.Byford@sdapcd.org](mailto:Julie.Byford@sdapcd.org) by 4:30 pm on the 5<sup>th</sup> day of the following calendar month during the variance period.
4. Petitioner shall prepare and submit a report to Julie Byford at [Julie.Byford@sdapcd.org](mailto:Julie.Byford@sdapcd.org) by 4:30 pm on Friday, January 12, 2023, that summarizes the actual emissions during the variance period, as well as the actual excess emissions associated with operation of the engines past their 1,244 hours/year permitted operations.

5. District requests Petitioner to cancel APCD2022-APP-007182 because the previous location of the crushing plant is now under APCD2022-APP-007321 Authority to Construct and cancel APCD2022-APP-007306 because the inoperable engines have been sent back to the supplier with refund requested.
6. Petitioner will remain at the described location of the crushing plant and engines in Petition #4529 and APCD2022-APP-007482.
7. All other conditions found in the Authorities to Construct for APCD2022-APP-007183 and APCD2022-APP-007184 shall remain in effect for the period of the variance.

### **ADDITIONAL ENFORCEMENT CONDITIONS**

After a thorough investigation of all relevant facts, including public comments, it was determined that the schedule for compliance set forth in the Order is as expeditious as practicable, that the terms of this Order comply with applicable sections of the State Health and Safety Code and that the following additional provisions shall apply:

1. If you believe that you cannot meet a condition in this Order or in any accompanying Schedule of Increments of Progress, you may petition the Hearing Board to modify this Order or Schedule of Increments of Progress pursuant to Health & Safety Code 40825, 40826, 42351.5, and 42356-42357. Modifying the Increments of Progress generally requires the same notice as a 90-day variance, and extending the final compliance date requires the same notice as a regular variance; please consult the Hearing Board Calendar or Clerk for specific dates.
2. If you have any questions about how to comply with this Order, you may contact the District, attention Julie Byford, at (858) 229-0106. Unless otherwise stated, all submittals to the District pursuant to this Order shall be made to: San Diego Air Pollution Control District, Compliance Division, 10124 Old Grove Road, San Diego, CA 92131; or Email: [Julie.Byford@sdapcd.org](mailto:Julie.Byford@sdapcd.org).
3. The U.S. Environmental Protection Agency (EPA) does not recognize variances granted under California state law. A Variance Order granted by this Board does not preclude either the EPA or citizens from seeking penalties for violations of federal law.
4. Failure to comply with any condition in this Order or in any accompanying Increments of Progress schedule may result in any of the following actions:
  - a. Enforcement pursuant to California Health and Safety Code Section 42400, 42401, 42402 or 42403, including possible judicial action for an injunction and/or civil penalties, and, in appropriate cases, criminal prosecution.
  - b. Revocation or modification of this Order under California Health and Safety Code Section 42356 or 42362, after notice and opportunity for a public hearing.

**FAILURE TO COMPLY** with any of the foregoing is a violation of this Order.

AYES: Rodriguez, Schlick, Gonzalez, Spencer

ABSENT: Powers



MIA RUFFIER

Clerk of the San Diego County Air Pollution Control District Hearing Board