

STATEMENT OF PROCEEDINGS
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT HEARING BOARD
Regular Meeting, Thursday, May 25, 2023
9:00 a.m.

ORDER OF BUSINESS

ROLL CALL

Members present: Vilmarie Rodriguez, Steve Engleman, and Daniel Spencer

Members absent: Alison Schlick, Vice Chair; Jose Gonzalez, and William Powers

Staff present: Mary Mahoney, APCD Civil Actions Investigator; Scott Nester, APCD Civil Actions Investigator; Dan Plotner, APCD Program Coordinator; Veera Tyagi, Senior Deputy County Counsel for 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

No public testimony was provided to the Board.

B. Approval of Statement of Proceedings for April 13, 2023.

ACTION:

ON MOTION of Member Spencer, seconded by Alternate Member Engleman, the Air Pollution Control District Hearing Board approved the Statement of Proceedings for the meeting of April 13, 2023.

AYES: Rodriguez, Engleman, Spencer

ABSENT: Gonzalez, Schlick

C. Progress Update: Petition 4533 San Diego County Air Pollution Control District Abatement Order against Respondent OLYMPIC COATINGS.

ACTION:

ON MOTION of Alternate Member Engleman, seconded by Member Spencer, the Air Pollution Control District Hearing Board accepted the Progress Update: Petition 4533 San Diego County Air Pollution Control District Abatement Order against Respondent OLYMPIC COATINGS.

AYES: Rodriguez, Engleman, Spencer

ABSENT: Gonzalez, Schlick

D. Discussion: Revised Hearing Board Rules of Procedure.

ACTION:

ON MOTION of Chair Rodriguez, seconded by Alternate Member Engleman, the Air Pollution Control District Hearing Board continued the discussion of Revised Hearing Board Rules of Procedure for regularly scheduled meeting date June 22, 2023.

AYES: Rodriguez, Engleman, Spencer

ABSENT: Gonzalez, Schlick

PETITION(S) BEFORE THE BOARD:

4530 County of San Diego Department of Public Works – Palomar Airport Landfill – Petitioner requests a Modification of expiration date on Regular Variance (granted on January 12, 2023 and scheduled to expire on May 31, 2023) due to continued need for investigation and repair activities of damaged components in the LFG Collection and Control System equipment associated with the Inactive Municipal Solid Waste Landfill (Palomar Airport Landfill) located at 2016 Palomar Airport Road, Carlsbad, CA 92008.

ACTION:

ON MOTION Chair Rodriguez, seconded by Alternate Member Engleman, the Air Pollution Control District Hearing Board granted Petitioner request for Modification of expiration date on Regular Variance.

AYES: Rodriguez, Engleman, Spencer

ABSENT: Gonzalez, Schlick

ADJOURNMENT:

The APCD Hearing Board adjourned the May 25, 2023 meeting at 11:00 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:

No public testimony was provided to the Board.



MIA RUFFIER

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

ADMINISTRATIVE ITEM:

B. Approval of Statement of Proceedings/Minutes for April 13, 2023

ACTION:

ON MOTION of Member Spencer, seconded by Alternate Member Engleman, the Air Pollution Control District Hearing Board approved the Statement of Proceedings for the meeting of April 13, 2023.

AYES: Rodriguez, Engleman, Spencer

ABSENT: Gonzalez, Schlick



MIA RUFFIER

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

ADMINISTRATIVE ITEM:

- C. Progress Update: Petition 4533 San Diego County Air Pollution Control District Abatement Order against Respondent OLYMPIC COATINGS

ACTION:

ON MOTION of Alternate Member Engleman, seconded by Member Spencer, the Air Pollution Control District Hearing Board accepted the Progress Update: Petition 4533 San Diego County Air Pollution Control District Abatement Order against Respondent OLYMPIC COATINGS.

AYES: Rodriguez, Engleman, Spencer

ABSENT: Gonzalez, Schlick



MIA RUFFIER

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

**05.25.23 APCD HB
Speaker Slips**

Air Pollution Control District Hearing Board

DATE 5/24/23 Petition Number 4533 Admin C

SUBJECT Olympic Coatings

REQUEST TO SPEAK

PLEASE PRINT NAME LEGIBLY

Name Gregory Reinert
First Last

Organization Name Olympic Coatings

Please check below:

- Officer or Authorized Employee for Petitioner
- Agent or Legal Representation

PLEASE SEE GUIDE FOR SPEAKERS ON REVERSE

(FOR PETITIONER)
OTHER THAN APCD

ADMINISTRATIVE ITEM:

D. Discussion: Revised Hearing Board Rules of Procedure

ACTION:

ON MOTION of Chair Rodriguez, seconded by Alternate Member Engleman, the Air Pollution Control District Hearing Board continued the discussion of Revised Hearing Board Rules of Procedure for regularly scheduled meeting date June 22, 2023.

AYES: Rodriguez, Engleman, Spencer

ABSENT: Gonzalez, Schlick



MIA RUFFIER

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

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

4530 County of San Diego Department of Public Works – Palomar Airport Landfill – Petitioner requests the Regular portion of an Interim/Regular Variance (filed on November 10, 2022) from Conditions 7 and 8 of permit APCD1998-PTO-910733 Rule 59(d)(1)(ii)(A) and 59(d)(3), due to damaged components in the LFG Collection and Control System equipment associated with the Inactive Municipal Solid Waste Landfill (Palomar Airport Landfill) located at 2016 Palomar Airport Road, Carlsbad, CA 92008.

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

ACTION:

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

- A. The Petitioner is in violation of District Rules 59(d)(1)(ii)(A) and 59(d)(3), as it relates to Condition Nos. 7 and 8 of Permit to Operate APCD1998-PTO-910733.
- 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.

Petitioner operates an inactive landfill that continues generating landfill gases (LFG) from expected decomposition and are controlled and monitored for compliance. Despite regular maintenance, repair work and monitoring, Petitioner finds themselves with an inability to find the source of oxygen (O₂) production or the root cause of exceedances during excavation and corrective activities at Palomar Airport Landfill. The Petition is focused exclusively to repair activities in Area/Unit 3. In this instance the oxygen (O₂) levels are an indication of gas collection system integrity and effectiveness. Petitioner continues to work diligently with the APCD and communicating the status of repair on this project on their website. In addition, Petitioner is classified as an essential public service providing the necessary repairs to promptly come into compliance; requiring immediate compliance would be an unreasonable burden.

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

This inactive landfill is not accepting waste and there is a need for continuous control of landfill gases and emissions, which are continuously monitored. At the Hearing, Petitioner provided data on monitoring which confirms there have been no reports of exceedances of oxygen levels or other noxious gases according to the permit requirements. However, there

is an expectation that one or both of those gases (ie, O₂ or surface gases) could be in exceedance with the continued project. There is no gain in closing this operation.

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

Petitioner will operate on repair activities only in Area/Unit 3 and has accepted conditions to the Variance for controlling emissions and environmental impacts to the maximum extent feasible.

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

Petitioner will focus on repair activities only and accepted conditions to the Variance for controlling emissions and environmental impacts to the maximum extent feasible. In addition, Petitioner will ensure to use cover caps and make gas monitors available to neighboring businesses to minimize impact to those neighbors.

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

Petitioner will focus on repair activities only and accepted conditions to the Variance for controlling emissions and environmental impacts to the maximum extent feasible. In addition, Petitioner will ensure to use cover caps and make gas monitors available to neighboring businesses.

The Board thereby granted the Petitioner's request for a Regular Variance from District Rules 59(d)(1)(ii)(A) and 59(d)(3), and Permit Condition No. 7, only for the time and place associated with excavation and repair to the gas collection system and Condition No. 8 of Permit to Operate APCD1998-PTO-910733. The Variance has begun January 12, 2023, and is set to expire on August 31, 2023, subject to the following conditions:

- A. Petitioner shall perform daily monitoring for Landfill Gases (LFG) Oxygen (O₂) concentration at the flare station.
- B. Petitioner shall perform daily surface emissions monitoring in the area(s) of excavation during any excavation and repair.
- C. Petitioner shall perform weekly surface emissions monitoring all areas of the landfill.
- D. Petitioner shall perform daily leak monitoring on GCCS components affected when the GCCS is shut off during any excavation and/or repair.
- E. Petitioner will provide a detailed timeline seven (7) working days from May 25, 2023 to the District attention Scott Nester via email to Scott.Nester@sdapcd.org and APCDcomp@sdapcd.org.

- F. Petitioner shall notify the District within 1 working day hours when exceedances of gasses are witnessed; to the attention of SDAPCD Civil Actions Investigator Scott Nester via email to Scott.Nester@sdapcd.org and APCDcomp@sdapcd.org.
- G. Petitioner will provide notification of the modification of Variance period to neighboring businesses located on Palomar Airport Property.
- H. Petitioner shall submit Weekly Reports that include the following:
 - a. Planned schedule for excavation and potholing events for the following week.
 - b. Description of all diagnostics, excavation, and repair activities.
 - c. Measurements recorded during monitoring of A, B, and C, above.
- I. Petitioner shall submit Weekly Reports every Wednesday by 4:00 PM to Scott.Nester@sdapcd.org and APCDcomp@sdapcd.org.
- J. Petitioner shall notify the District within 24 hours when repairs have been completed and compliance is achieved or on August 31, 2023.
- K. The Regular Variance shall terminate when compliance is achieved, or August 31, 2023, whichever is sooner.

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 Scott Nester, at (858) 945-1753. 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: scott.nester@sdapcd.org and APCDcomp@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, Engleman, Spencer

ABSENT: Gonzalez, Schlick



MIA RUFFIER

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



**05.25.23 APCD HB
Speaker Slips**

Air Pollution Control District Hearing Board

modification

DATE 5/25/23 Petition Number 4530

SUBJECT Palomar Airport Landfill

REQUEST TO SPEAK

PLEASE PRINT NAME LEGIBLY

Name Jen Winfrey
First Last

Organization Name County of San Diego

Please check below:

- Officer or Authorized Employee for Petitioner
- Agent or Legal Representation

Presentations to support
petition 4530

PLEASE SEE GUIDE FOR SPEAKERS ON REVERSE

(FOR PETITIONER)
OTHER THAN APCD

Air Pollution Control District Hearing Board

DATE 5/25/23 Petition Number 4530

SUBJECT PALOMAR AIRPORT VARIANCE

REQUEST TO SPEAK

PLEASE PRINT NAME LEGIBLY

Name Brian Duffy
First Last

Organization Name SCS ENGINEERS FOR
SDC DPW

Please check below:

- Officer or Authorized Employee for Petitioner
- Agent or Legal Representation

PLEASE SEE GUIDE FOR SPEAKERS ON REVERSE

(FOR PETITIONER)
OTHER THAN APCD