

SOMACH SIMMONS & DUNN  
A Professional Corporation  
Michael E. Vergara (SBN 137689)  
[mvergara@somachlaw.com](mailto:mvergara@somachlaw.com)  
Alyson E. Ackerman (SBN 315914)  
[aackerman@somachlaw.com](mailto:aackerman@somachlaw.com)  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814  
Telephone: (916) 446-7979  
Facsimile: (916) 446-8199

Attorneys for Respondent  
CITY OF SAN BERNARDINO MUNICIPAL  
WATER DEPARTMENT

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

In the Matter of

SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT,

Petitioner,

v.

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

Respondent.

CASE NO. 6124-2

**[PROPOSED] FINDINGS AND DECISION  
OF ORDER FOR 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

The annual status hearing for the Order for Abatement – Stipulated, required by the Hearing Board for the South Air Quality Management District’s (District) October 17, 2019 Order (Initial Order), was heard on May 4, 2023, in accordance with California Health and 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 Alyson E.

1 Ackerman, attorneys with Somach Simmons & Dunn. The matter was considered on the Hearing  
2 Board's Consent Calendar. Neither Petitioner District, nor Respondent Department (collectively,  
3 "Parties") appeared. The Hearing Board provided an opportunity for public comment. The  
4 Hearing Board received evidence submitted by the Parties, and the matter was submitted. The  
5 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 for comprehensive air pollution control in the South  
9 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 these essential public services. The Department's administrative offices are located at  
15 397 Chandler Place, San Bernardino, California 92498.

16 3. **District Rule 1196, subdivision (d)(l)** 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 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 Rule 1196  
11 requirements.

12 8. On April 1, 2018, the Department submitted to the District a list of the  
13 Department's fleet vehicles that did not comply with Rule 1196. At that time, the Department  
14 operated 18 non-compliant vehicles. Of these, 15 remained in the Department's fleet at the time  
15 of the Initial Order; however, three of the 15 vehicles would have been exempt from the  
16 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 replaced.

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 vehicles, ranging from six to seven months for gasoline-fueled compliant vehicles,  
6 and 10 to 12 months for compressed natural gas (CNG)-fueled compliant vehicles. Replacing  
7 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 take to achieve compliance with Rule 1196 as quickly as possible, considering  
15 all currently known funding sources and the time necessary to acquire the replacement vehicles.  
16 The Department will achieve compliance with Rule 1196 in accordance with the Replacement  
17 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. Available alternative-fueled vehicles will be evaluated by the  
21 Department to determine whether such vehicles meet the necessary specifications, such as torque  
22 and horsepower, as dictated by the Department's uses of the equipment. The Department will  
23 research and demonstrate alternative-fueled vehicles that may meet such specifications and  
24 Rule 1196 requirements to determine whether any can be purchased as part of the replacement  
25 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 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 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.<sup>1</sup>

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 <sup>1</sup> 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 may  
9 submit requests for approval from its governing body. However, the Parties believed there was a  
10 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 aforementioned 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 proximity  
23 between the model years. The estimated excess emissions associated with the Department's use  
24 of non-compliant fleet vehicles during the pendency of the Modification, was approximately  
25 0.5889 tons of oxides of nitrogen and 0.0022 tons of particulate matter. Notably, these estimated  
26 excess emissions were less than and equal to, respectively, those associated with the  
27 Department's use of non-compliant fleet vehicles during the pendency of the Initial Order.  
28

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     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 the Modified Order. The Hearing Board received  
12     testimony from the Department providing an update on the progress of compliance with the  
13     conditions in the Modified Order. Neither the Department nor the District sought modifications  
14     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     2022 ADMINISTRATIVE UPDATE TO MODIFIED ORDER

21          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 sought substantive  
25     modifications to the Modified Order, and neither Party appeared.

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

13 2023 STATUS HEARING & MODIFICATION TO REVISED MODIFIED ORDER

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

27 a. As detailed in the written testimony the Hearing Board received from the

28 Department for the 2023 status hearing, the Department was unable to purchase a

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

- 15 b. All that remains for the Department to achieve complete final compliance with the  
16 Revised Modified Order is to decommission and dispose of Unit Nos. 591 and 186  
17 and take delivery of each Unit's respective replacement vehicle. However, the  
18 Department cannot decommission and dispose of Unit Nos. 591 and 186 prior to  
19 taking delivery of the replacement vehicles because of the unique purposes served  
20 by each Unit.<sup>2</sup> While the Department expects to take delivery Unit No. 591's  
21 replacement in August 2023 Unit No. 186's replacement vehicle until mid-2024,  
22 Condition 4, if not deemed complete will require unnecessary effort and burden on  
23 the Department and SCAQMD staff. Condition 2 obligates the Department to  
24 provide the District notice of delivery, decommission, and disposal milestones, and  
25 Condition 6 obligates the Department to notify the District of final compliance.  
26 Accordingly, given the status of the outstanding milestones to achieve compliance  
27 with the Revised Modified Order, the Parties proposed the Hearing Board deem

28 <sup>2</sup> Unit 591 is a personnel lift, and Unit No. 186 is a crane truck.

complete the Department's obligation to submit Quarterly Status reports under Condition 4 and strike it from the Department's remaining obligations.

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

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

### CONCLUSIONS

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

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

### ORDER

THEREFORE, in reliance on the stipulation of the Parties, the aforesaid statements, and good cause appearing, Respondent is hereby ordered to cease and desist from operating all

1 Rule 1196 non-compliant vehicles, or in the alternative to comply with the following conditions,  
2 which are the same conditions as those in the Second Revised Modified Order, save for the  
3 discrete modifications discussed in paragraphs 36 - 40:

4 1. Respondent shall comply with the Revised Modified Replacement Schedule  
5 attached as Attachment A to this Second Revised Modified Order.

6 2. Within 10 days of any one of the following events, the Department shall submit  
7 notice by email to District Planning and Rules Manager, Vicki White ([vwhite@agmd.gov](mailto:vwhite@agmd.gov)):

- 8 (i) Purchase of a compliant vehicle replacing a non-compliant fleet vehicle;
- 9 (ii) Delivery of a compliant vehicle replacing a non-compliant fleet vehicle;
- 10 (iii) Date of non-compliant fleet vehicle decommission and compliant vehicle  
11 commission, respectively; and
- 12 (iv) Final disposition of a non-compliant fleet vehicle removed from  
13 Respondent's fleet.

14 3. Respondent shall reasonably and in good faith research the availability of  
15 alternative-fueled vehicles to be used in lieu of the compliant gasoline-fueled vehicles identified  
16 in the Revised Modified Replacement Schedule as Attachment A to this Second Revised  
17 Modified Order.

18 4. Respondent's submittal of progress reports to the District on a quarterly basis,  
19 commencing on January 15, 2020, via email to District Planning and Rules Manager, Vicki White  
20 ([vwhite@agmd.gov](mailto:vwhite@agmd.gov)) to date satisfy this condition. The written reports required by this condition  
21 presented evidence of ongoing compliance with the Revised Modified Order and included a  
22 summary of the efforts and direct communications to research and demonstrate the suitability of  
23 alternative-fueled compliant vehicles that meet the Department's requirements and to bid on such  
24 vehicles, to the extent appropriate. The Department is not obligated to submit quarterly status  
25 reports after the date of this Second Revised Modified Order for the reasons set forth above  
26 herein.

5. Respondent shall appear at a status hearing before the Hearing Board on July 13, 2024, with additional status hearings scheduled thereafter at intervals determined to be necessary by the Hearing Board until final compliance is achieved.

6. Respondent shall notify District Planning and Rules Manager, Vicki White ([vwhite@agmd.gov](mailto:vwhite@agmd.gov)) when final compliance is achieved, including the Vehicle Identification Numbers for each compliant vehicle acquired and the dates of purchase.

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

8. This Second Revised Modified Order is not intended to be, nor will it act as, a variance. Respondent is subject to all rules and regulations of the District and to all applicable provisions of California law. However, nothing herein shall be deemed or construed to limit the authority of the District to issue Notices of Violation, seek civil penalties or injunctive relief, or other administrative or legal relief for violation of District rules.

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

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

Good cause appearing, it is so ordered.

**FOR THE BOARD:** \_\_\_\_\_

**DATED:** \_\_\_\_\_

1 **So Stipulated:**

SOMACH SIMMONS & DUNN  
A Professional Corporation

2  
3  
4 DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Michael E. Vergara  
Alyson E. Ackerman  
Attorneys for Respondent City of San  
Bernardino Municipal Water Department

5  
6  
7  
8  
9 SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT  
OFFICE OF THE GENERAL COUNSEL

10  
11 DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Kathryn Roberts, Sr. Deputy District Counsel  
Attorney for Petitioner South Coast Air Quality  
Management District

12  
13  
14 Attachment: Attachment A – City of San Bernardino Municipal Water Department Rule 1196  
15 Revised Modified Replacement Schedule.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **ATTACHMENT A**

**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.