

SOUTH COAST AIR QUALITY
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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.

CHIQUITA CANYON, LLC, a Delaware
Corporation,
[Facility ID No. 119219]

Respondent.

Case No. 6177-4

**CHIQUITA'S REPLY IN SUPPORT OF
MOTION FOR HEARING BOARD SITE
VISIT**

Hearing Date: January 29, 2025

Time: 9:30 A.M.

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

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1 **I. INTRODUCTION**

2 The Hearing Board is entrusted with a major public responsibility to evaluate and protect
3 air quality and for years has worked diligently to hear and evaluate evidence regarding the
4 Chiquita Canyon Landfill. A site visit to the Landfill is a logical and appropriate step to support
5 the Board's mission and will provide the Board with vital context and information to inform their
6 assessment of air quality onsite and in the community, including the effectiveness of odor
7 mitigation measures. The Opposition to the visit filed by the South Coast Air Quality
8 Management District ("South Coast AQMD" or the "District") begs the question of why the
9 District does not want Board members to see and smell the Landfill and the surrounding
10 community firsthand.

11 The Hearing Board has previously acknowledged the benefits of a site visit, as well as
12 Board members' desire to visit the Landfill. (Duginski Decl. at ¶ 2, Ex. B [June 4, 2025, Hearing
13 Transcript], 226:13–19; Duginski Decl. at ¶ 3, Ex. C [June 24, 2025, Hearing Transcript],
14 213:25–214:3.) Instead of proposing or negotiating measures to satisfy the Board's desire to visit
15 the Landfill, the District catastrophizes the difficulty in making any such visit happen. South
16 Coast AQMD's arguments only suggest, as with the District's motion to quash Chiquita's
17 request for odor complaint data, a desire to prevent the Hearing Board from seeing the reality on
18 the ground.

19 Importantly, there is direct precedent for a Chiquita site visit by officials with authority
20 over the Landfill which demonstrates the value of this exercise. The judicial site visit last July by
21 federal Judge Frimpong to the Landfill and the surrounding community, which included
22 numerous staff and lawyers from both sides, was jointly organized, went smoothly, and was
23 hailed as productive. Among other observations, Judge Frimpong said that the odors the court
24 experienced while on the site visit were not of the same "nature or severity" described by
25 community members and "the air quality data indicates that the air quality is the same there as
26 everywhere." (Opp. at p. 4; Duginski Decl. at ¶ 1, Ex. A [July 17, 2025 Hearing
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1 Transcript], 19:6–17; 67:1–2.) Of course, the Hearing Board might have a different experience,
2 but the Board should have a similar opportunity to experience the circumstances onsite at the
3 Landfill and offsite in the community.

4 Further, a site visit conducted by the Hearing Board to familiarize itself with the facility
5 does not constitute evidence unless the Board treats it as such—and, as the District admits, the
6 Board has the right to admit any relevant evidence during a hearing. (Hearing Board Rule 9(b)(3)
7 “[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible
8 persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of
9 any common law or statutory rule which might make improper the admission of such evidence
10 over objection in civil actions”.) A site visit is a well-established adjudicative tool used to aid
11 the trier of fact in understanding the record. Chiquita requests the Hearing Board grant the site
12 visit, subject to a protocol that the parties can jointly negotiate for the Board’s approval.

13 **II. ARGUMENT**

14 **A. Chiquita’s proposed site visit is permissible.**

15 Chiquita’s proposed site visit does not constitute a “meeting” under the Brown Act, and
16 preserves public access and participation through the noticed hearing process.

17 **1. The site visit is not a “meeting” under the Brown Act.**

18 The District’s Brown Act and “serial meeting” rhetoric is incorrect and provides no basis
19 to bar a site visit. Contrary to the District’s claims, Chiquita agrees fully that any site visit must
20 adhere to the Brown Act, and sought as much in its motion. Rather than circumventing the
21 Brown Act, Chiquita’s proposal allows the Hearing Board to comply with the Brown Act and
22 provide a valuable opportunity for Hearing Board members to visit the site.

23 To eliminate South Coast AQMD’s concerns of a “serial meeting,” the Hearing Board
24 members could simply wait until the following status and modification hearing to discuss any
25 site visit that takes place. That way, there would be no violation of the Government Code’s
26 prohibition on a “majority of the members of a legislative body . . . us[ing] a series of
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1 communications . . . to discuss, deliberate, or take action on any item of business that is within
2 the subject matter jurisdiction of the legislative body.” (Gov. Code, § 54952.2, subd. (b)(1).)
3 Under these circumstances, a staggered site visit does not implicate the Brown Act so long as
4 there is no “meeting” and no deliberation of a legislative body outside a proper hearing. (Gov.
5 Code, § 54953, subd. (a).) Moreover, Chiquita has proposed an alternative in which the Hearing
6 Board conducts a singular site visit composed of the one to two Board members most interested
7 in visiting the Landfill. (See Mot. at p. 3.) As described in Chiquita’s Motion, by limiting
8 attendance to less than a majority of the Hearing Board, Chiquita’s proposed site visit is not a
9 “meeting” or “serial meeting” under the Brown Act since the visits would be limited to less than
10 a majority and those Board members would not “discuss, deliberate...take action” or
11 communicate on the experiences from the site visit until an authorized meeting. (See Mot. at pp.
12 2-3.; Gov. Code, § 54952.2, subd. (b)(1).)

13 **2. Public participation is preserved through the hearing process.**

14 Public participation is preserved because the attending Hearing Board members will only
15 present or consider their impressions and observations from the site visit during the next,
16 publicly noticed hearing. The Health and Safety Code requires that any *hearing* be held in a
17 location “readily accessible to the public.” (Health & Saf. Code, § 40822.) The site visit is not a
18 hearing. So long as the site visit doesn’t constitute a “meeting” under the Brown Act—which it
19 doesn’t—there is no obligation for the site visit itself to be open to the public. (See Mot. at pp. 2-
20 3.) Under Chiquita’s proposal, any report out from the Hearing Board will occur at a noticed
21 hearing that is open to the public. (Gov. Code, § 54954.2, subd. (a)(1).) Accordingly, the
22 proposed site visit will uphold the Brown Act’s requirements for public participation.

23 **B. The site visit can be considered by the Board during subsequent hearings.**

24 The District attempts to deny the Hearing Board its ability to familiarize itself with the
25 facility by arguing that the site visit is “evidence” that the Board would receive outside of a
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1 proper hearing and that the Board's report on the site visit would be impermissible. (Opp. at pp.
2 9-10.) The District's arguments fail.

3 The Hearing Board's site visit does not need to be independent evidence that the Board
4 receives and weighs during a hearing. The Hearing Board is the trier of fact, and California has
5 long-recognized that viewing the actual subject of the issues assists in evaluating the issues. (See,
6 e.g., Code Civ. Proc. § 651, subd. (a)(1) [authorizing "a view" where "[it] would be proper and
7 would aid the trier of fact in its determination of the case," including a view of "[t]he property
8 which is the subject of litigation"].) Board members are not offering sworn testimony, factual
9 assertions, or expert opinions when they report that they conducted a site visit. Instead, they are
10 simply acknowledging observations that they made in their adjudicative capacity.

11 If needed, the Board could order that the site visit be conducted solely to aid in the
12 comprehension of record evidence, that the Board will not receive new evidence during the site
13 visit itself, that no party statements or demonstrations will occur unless agreed to by both parties,
14 and that any reference to the site visit during Board deliberations or a decision will be limited to
15 general orientation and context, not factual findings independent of the record.

16 Further, as the District admits in its Opposition, the Hearing Board has the right to admit
17 the site visit as evidence should it choose to do so during a future status and modification
18 hearing. (Opp. at p. 8 [citing Hearing Board Rule 9(b)(3); South Coast AQMD Rule 511].) Thus,
19 while Chiquita is content with the Hearing Board simply using the site visit to aid in their
20 understanding and evaluation of the evidence—and not admitting it as evidence itself—the
21 Hearing Board has the right to consider the site visit as evidence and enter it into the record
22 during a properly noticed hearing should it desire to do so.

23 **C. The site visit is both necessary and appropriate.**

24 While Chiquita disputes that the Hearing Board must find that the site visit is "necessary
25 and appropriate," as the District contends, Chiquita's proposed site visit nonetheless meets that
26 standard.

1 1. A site visit would aid the Hearing Board’s ongoing consideration of
2 this matter.

3 The fact that the Board has heard extensive evidence regarding the Landfill, the reaction,
4 and Chiquita’s mitigation efforts does not mean that a site visit is unnecessary. Plainly, a site
5 visit will strengthen the Board’s understanding and perspective on the large record of documents
6 and testimony about the site. The District also ignores that Board members themselves have
7 requested just such a visit. (Duginski Decl. at ¶ 2, Ex. B [June 4, 2025, Hearing Transcript],
8 226:13–19; Duginski Decl. at ¶ 3, Ex. C [June 24, 2025, Hearing Transcript], 213:25–214:3.)
9 Rather than working collaboratively with Chiquita to assist the Board in fulfilling this reasonable
10 request, the District wrongly concludes that a site visit is impossible, or at least not worth the
11 effort.

12 South Coast AQMD’s premise that a site visit cannot “aid the trier of fact” because there
13 is “no pending modification or any requested decision before the Board” disregards the Board’s
14 ongoing, broad jurisdiction over air quality and site conditions at the Chiquita Canyon Landfill.
15 (Opp. at p. 3.) The District acknowledges the scope of the Board’s jurisdiction and
16 responsibilities: the Hearing Board has structured this matter for “regular—and lengthy—status
17 hearings” so it can remain “abreast of the matter.” (Opp. at 4.) Moreover, the Stipulated Order
18 states that the Board’s jurisdiction over this matter is ongoing until at least October 31, 2026—
19 and may be further extended in future hearings. The Chiquita proceedings are not a single, closed
20 event; the Board exercises continuing oversight which requires the Board to repeatedly evaluate
21 feasibility, progress, and compliance in a dynamic operational setting. Chiquita’s proposed site
22 visit directly assists that function by giving the Board direct baseline spatial and operational
23 context that cannot be replicated by paper, photos, video, or testimony alone. The visit will
24 materially improve the Board’s ability to evaluate and efficiently resolve issues that arise at
25 upcoming status and modification hearings.

1 South Coast AQMD's reliance on *Akins v. County of Sonoma*, which upheld a court's
2 denial of a site visit where photographs in evidence were adequate, does not support denial on
3 this record. (*Akins v. County of Sonoma* (1967) 67 Cal.2d 185, 201.) The photographs currently
4 in evidence provide nowhere near the same value as in-person observations and impressions
5 given the size of the Landfill in comparison to the limited scope of any photos in evidence, and
6 the sheer amount of work that has been completed to date onsite. Nothing can match a first-hand
7 inspection of the site by the Board.

8 A video tour shot by Chiquita alone and submitted on the record is similarly deficient.
9 The Hearing Board needs to be on the site, in person, in order to experience and witness the state
10 of the Landfill and air quality in the community. As of now, the Board's thoughts and
11 impressions of the Landfill are limited to second-hand evidence of testimony, reports, and
12 opinions from both parties. The Hearing Board, as the finder of fact in these proceedings, should
13 draw its own, first-hand conclusions about the nature and severity of the alleged odors and
14 Chiquita's response to them, as Judge Frimpong did. (Duginski Decl. at ¶ 1, Ex. A [July 17, 2025
15 Hearing Transcript], 19:6–17.) Judge Frimpong's statements regarding odors highlight the
16 importance of the fact finders experiencing the Landfill for themselves. Unlike the static "scene"
17 in *Akins*, the Landfill is a large, evolving operational facility with multiple mitigation
18 components, precisely the kind of setting where a site visit can prevent misunderstandings and
19 assist with evaluating feasible mitigation measures.

20 2. Chiquita's proposal is also appropriate.

21 While Chiquita does not dispute that planning is required for a site visit, the value of a
22 visit far outweighs any such burden. The District's Opposition suggests that Chiquita's proposal
23 is for the District to arrange all logistics for the visit. (See Opp. at p. 5.) Not so. Chiquita
24 proposes that the parties jointly prepare a protocol for the visit—with Chiquita taking on most of
25 the burden for logistics as the host. Indeed, Chiquita was able to organize Judge Frimpong's visit
26 to the site last July on a few weeks' notice. Just because the District has had to arrange logistics
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1 for public meetings of the Boards before, including the in-person community hearing, that does
2 not mean it would need to do so here. Further, as described above and in Chiquita's Motion, the
3 benefit of such a site visit is vast. (Mot. at pp. 1-2.)

4 South Coast AQMD also argues that because the Landfill is experiencing an underground
5 elevated temperature event, "the underlying cause could [not] be observed by a site visit." (Opp.
6 at p. 5.) The District misconstrues the purpose of the visit. Chiquita does not contend the Board
7 will "see" the underground reaction. The value of the visit lies in observing the surface-level
8 conditions and mitigation infrastructure and understanding the facility's configuration,
9 constraints, and modifications. This is precisely the "scale and scope of the mitigation measures
10 implemented at the Landfill" that the Motion identifies as central to these proceedings. (Mot. at
11 p. 1.)

12 The District's concerns over safety are unfounded and smack of desperation to block the
13 Board from seeing Chiquita first-hand. South Coast AQMD contends a site visit entails "high
14 safety risks," requiring fit-tested respirators and other specialized equipment, and "multiple
15 days" of advanced safety training for personnel whose normal functions do not require field
16 visits. (Opp. at pp. 5-6.) There is no legal or factual basis for these fears. During the July 1,
17 2025, judicial site visit, which was agreed to by private plaintiffs and Los Angeles County, no
18 one was required to wear a respirator. The judge, staff, plaintiffs, and defendants in attendance
19 (approximately 20 attendees) did not wear respirators. Additionally, the Hearing Board's site
20 visit would be structured to follow the Landfill's reaction-related Health and Safety Plan, and
21 participants would only be taken to areas that are safe to visit without specialized personal
22 protective equipment ("PPE"), such as a respirator, and without specialized health and safety
23 training.

24 Regardless, Chiquita's proposal allows for full consideration of South Coast AQMD's
25 identified safety concerns. Once the Hearing Board grants Chiquita's request, the parties can
26 negotiate a protocol for the site visit that sufficiently addresses the District's safety concerns,
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1 ensures that site visit participants only visit areas of the Landfill where specialized PPE or
2 training is unnecessary, and ensures that site participants are led by knowledgeable Landfill staff
3 who will provide a formal safety briefing at the start of the visit and personally guide participants
4 safely across the site.

5 Any alleged burden to the Hearing Board can similarly be ameliorated by a joint protocol
6 for the site visit. If the Hearing Board attendees do not wish to report out on the site visit
7 themselves, Chiquita could video the site visit—as it did for the judicial site visit—and introduce
8 that video as a demonstrative. In that way, the Hearing Board would not be burdened with the
9 report out, and the site visit would not be evidence unless the Hearing Board opted to admit it as
10 such. Similarly, if the Board decides to admit the evidence, it has discretion to do so. The District
11 could then seek to exclude it under the standard of Hearing Board Rule 9(b)(4).

12 Chiquita has no issues with ensuring that any protocol complies with the Health and
13 Safety Code. With respect to the site visit narration, Chiquita is not proposing that any narration
14 itself be evidence. The evidence would be any video or other recording taken of the site visit, and
15 the attending Board members' impressions and observations made during the site visit, should
16 they choose to share such thoughts. Any narration will simply be descriptive such that the site
17 visit attendees could understand what it is they are looking at. The script for any such narrative
18 will be agreed upon in advance by both parties to ensure it is neutral in tone—and that it is not
19 itself used as evidence in the hearing. Other such concerns from the District can be addressed by
20 the parties in preparing the joint protocol.

21 Finally, Chiquita's proposal to include a visit to a neighboring community as part of the
22 site visit is neither half-hearted nor burdensome on the community. (See Opp. at pp. 7-8.) This
23 community visit will be very similar, if not identical, to the community visit that was included as
24 part of the judicial site visit. Again, the District's concerns over which community and where
25 would be addressed in a joint protocol.

1 For these reasons, the District's nitpickings over Chiquita's proposal are meritless. These
2 concerns can easily be addressed by requiring the parties to jointly prepare a protocol for the site
3 visit that addresses the District's concerns and clarifies the District's purported uncertainties.
4 While there may be some minor work required of the parties and the Hearing Board to plan and
5 execute a site visit, the benefits to the Hearing Board—and ultimately to the public—far
6 outweigh the logistical and administrative tasks.

7 **III. CONCLUSION**

8 South Coast AQMD asks the Hearing Board to deny itself a practical tool that would
9 materially improve its ability to discharge its ongoing oversight responsibilities—and something
10 that the Hearing Board itself has requested. The Board has already recognized that seeing the
11 Landfill would “be very useful,” and this case is set for “regular—and lengthy—status hearings”
12 in which the Board must repeatedly evaluate feasibility, progress, and compliance in a dynamic
13 operational setting. (Duginski Decl. at ¶ 2, Ex. B [June 4, 2025, Hearing Transcript], 226:13–19;
14 Duginski Decl. at ¶ 3, Ex. C [June 24, 2025, Hearing Transcript], 213:25–214:3.) A site visit will
15 aid the Board by providing baseline spatial and operational context that cannot be fully conveyed
16 through documents and testimony alone.

17 The District's objections do not establish that a site visit is unlawful, improper, or
18 unnecessary; at most, they identify guardrails that are readily satisfied through a site visit
19 protocol that the parties could jointly prepare in advance of the visit. Chiquita's proposal is
20 structured to meet the requirements of the Brown Act. A site visit with a jointly negotiated
21 protocol that meets the requirements of the Health and Safety Code will aid the Board in
22 overseeing the Stipulated Order and any future modifications. Denying Chiquita's motion, by
23 contrast, risks greater burdens on the Board and the public through longer hearings, continued
24 disputes driven by competing characterizations of site conditions, and avoidable
25 misunderstandings about what is feasible and effective on the ground.

1 For these reasons, Chiquita requests that the Hearing Board grant Chiquita's motion for a
2 site visit.

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4 Dated: January 23, 2026

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