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DISTRICT PROSECUTOR, SOUTH COAST
AIR QUALITY MANAGEMENT DISTRICT
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SOUTH COAST AQMD
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Attorney for Petitioner
South Coast Air Quality Management District

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

In the Matter of

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT,

Petitioner,

METROPOLITAN STEVEDORE
COMPANY, a California corporation,
(Facility ID# 8073)

Respondent.

Case No. 5266-2

DISTRICT'S CLOSING STATEMENT
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR ORDER FOR
ABATEMENT

**[Documents submitted herewith: Proposed
Findings and Decision]**

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, (hereinafter referred
to as "District"), Petitioner in the above-specified matter, submits this closing statement and
memorandum of points and authorities in support of its petition for an Order for Abatement
("Petition").

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1 **CLOSING STATEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 *A. Background of this Petition.*

4 The District has brought this Petition seeking an Order for Abatement directed at
5 Respondent, Metropolitan Stevedore Company (hereinafter “Metro”). Metro is involved in
6 the handling, storage, and transfer of bulk materials, including petroleum coke. The Petition
7 alleges that Metro violates various sections of District Rule 1158 when it conducts certain
8 activities:

- 9 (1) Placing coke into open “temporary dewatering bed” storage areas
10 (hereinafter “TDBs”) outside of enclosed storage (violation of paragraph
11 (d)(2));
- 12 (2) Loading coke into railcars using front-end loaders without a (d)(10)
13 compliance option (violation of paragraph (d)(10));
- 14 (3) Allowing coke to remain in railcars outside of enclosed storage (violation
15 of paragraph (d)(2)).

16 *B. Rule sections at issue in this Petition.*

17 **District Rule 1158 (c)(32)** reads: “TRANSFER POINT is the point in the storage,
18 handling or transport process where conveyed material is dropped.”

19 **District Rule 1158 (c)(24)** reads: “PILE means any amount of coke, coal or sulfur
20 material which attains a height of three feet or more, or a total surface area of
21 150 square feet or more.”

22 **District Rule 1158 (d)(2)** reads: “The operator shall maintain all piles in
23 enclosed storage.

24 * * *

25 (B) Any entrance or exits for material or vehicles shall have overlapping flaps,
26 sliding doors or other devices(s) approved by the Executive Officer, which shall
27 remain closed except to allow vehicles to enter and leave or when people are
28

1 inside.”

2 **District Rule 1158 (d)(10)** reads: “(10) The operator shall, except for prilled sulfur,

3 maintain all material transfer points in compliance with one of the following:

4 (A) Total enclosure;

5 (B) Water spray system sufficient to control fugitive dust emissions during
6 operations to comply with paragraph (d)(1);

7 (C) vented to permitted air pollution control equipment which is in full
8 operation;

9 (D) Transfer only moist material and conduct such transfer only in an overhead
10 truck trailer loader or chute with a hopper such that the exposed drop does not
11 exceed four feet from the top of the truck; or,

12 (E) Controlled by another equivalent method approved, in writing, by the
13 Executive Officer.”

14 **District Rule 1158 (k)(4)** reads: “The provisions of paragraph (d)(2) shall not apply

15 to the deposit of coke that has a moisture content of at least 12% in coker pits,
16 slurry bins, coke dewatering truck loading bins, and separation ponds.”

17
18 **II. THERE IS GOOD CAUSE FOR THE HEARING BOARD TO ORDER**
19 **METRO TO PLACE ITS TEMPORARY DEWATERING BEDS (TDBs) INTO**
20 **ENCLOSED STORAGE.**

21 *A. Metro violated paragraph (d)(2) by placing coke material into the TDBs, and the*
22 *(k)(4) exemption does not apply.*

23 It is clear from the evidence that Metro caused coke material to be placed into the
24 TDB. (10/25/07, p.91, line 2.)¹ It is also clear from the photos that the material was not in
25 enclosed storage (cf. Exhibits 3, 4, and 5). In fact, the material in the TDB was observed by

26
27

¹ This document will reference the transcript from the hearing by giving the date of the hearing, page number
28 of the transcript from that hearing, and the beginning line number at which the cited testimony appears.

1 Inspector Rooney to be visibly dry and blowing away during small gusts of wind.
2 (10/23/07, p.67, line 9.) These actions, by themselves, would violate Rule 1158(d)(2),
3 because the material in the TDB is a “pile” that is not in enclosed storage. Inspector Rooney
4 testified that the beds measured approximately 29 feet by 80 feet (10/23/07, p.65, line 4),
5 which is far more than the 150 square feet in the definition of “pile.”

6 Thus, the only remaining issue left before the Hearing Board is whether the Rule 1158
7 (k)(4) exemption applies, as Metro claims. That exemption reads: “The provisions of
8 paragraph (d)(2) shall not apply to the deposit of coke that has a moisture content of at least
9 12% in coker pits, slurry bins, coke dewatering truck loading bins, and separation ponds.
10 Metro claims that its TDB was a “separation pond.” However, all of the evidence in the
11 record shows that a “separation pond” has a liquid water surface, which this TDB did not.

12 Most significantly, the District’s own staff report includes a contemporary statement
13 of reasons why the Governing Board enacted the Rule 1158 amendments in 1999. The staff
14 report explains that several companies faced a dilemma when the enclosed storage
15 requirement was proposed: they were operating ponds of water as part of their coke handling
16 processes, but the ponds were not enclosed as the proposed (d)(2) would require.
17 Obviously, a water-filled pond does not present a dust hazard, so enclosing the ponds would
18 not be necessary. Accordingly, the staff report states, an exception was made for separation
19 ponds. The text of the comment responses, page VII-3 of the staff report (exhibit A), clearly
20 states that the coke in separation ponds is submersed in water.

21 The staff report’s comment response should be the Hearing Board’s guiding source
22 when interpreting the meaning of “separation pond.” Read the justification for the
23 exemption: “Coke in ... separation ponds are negligible sources of air emissions or
24 nuisances *because the coke is submersed in water.*” (Emphasis added.) Then look at
25 Petitioner’s Exhibit 5. There is no logical way to square the Governing Board’s intent, as
26 described on page VII-3, with the dusty mess that Metro created and consider the TDB to be
27 in compliance.

1 It isn't clear what Metro thinks a "separation pond" could be. At one point, Mr. Joe
2 Hower said that it was "a pond used to separate material," (10/24/07 p.34 line 15) whereas at
3 a later point he said that a "pond" was anything that had moisture in it. In fact, Metro has
4 not introduced any authority whatsoever in favor of any definition of "separation pond."
5 This is most likely because they realize that a bone-dry TDB, whose top surface of coke dust
6 is blowing away in the wind, cannot logically be a "pond." Indeed, the American Heritage
7 Dictionary, Fourth Edition, defines "pond" as "a still body of water smaller than a lake."

8 Mr. Hower himself admitted that, if dust is blowing off of the surface of a pile, it
9 must not be a "pond":

10 Q: Isn't it true, then, that if you see dust blowing off of the
11 surface, then it's not submersed in water and it's not a pond?

12 Mr. Hower: If it was from the entire surface, I would agree. If it's a small
13 part, you could have something like a mound where a small
14 amount of dust blew off.

15 Q: Like an island in the middle of a pond?

16 Mr. Hower: Yes.

17 Q: But that's not part of the pond, then, is it?

18 Mr. Hower: That little part of it, probably not at that point in time.

19 Thus, the fact that there was dust blowing off of the surface of Metro's TDB, as observed by
20 Inspector Rooney, necessarily means that the TDB was not a "pond" and could not have fit
21 the (k)(4) exemption.

22 Metro's other anecdotes and guesswork regarding the TDB is irrelevant. Mr. Hower
23 speculated in his testimony that "[the coke material] has to be in a pretty liquid state," or
24 else it would not have flowed into the TDB. (10/23/07, p.166, line 10.) In fact, on page
25 165, line 13, he wildly speculates that the material going into [the TDBs] is probably more
26 than 50% water. (This, despite the fact that Mr. Garnier called the material "lava" at
27 10/25/07, page 149, line 25.) The viscosity of the material has nothing to do with the issue
28 at hand, which is the definition of a separation pond. It is well established that materials
other than liquid water can "flow" as a fluid; the fact that the coke material might have
"flowed" down a slope does not indicate that it ever had a liquid water surface. Besides, the

1 issue is not what the consistency or moisture content of the material was when it was first
2 placed into the TDB. The District's concern has to do with the emissions potential of the
3 coke material throughout the entire period of time that it remains to dry in the TDB.

4 Even if the TDB could somehow be considered a "separation pond" for purposes of
5 (k)(4), Metro's operation of it did not meet the 12% moisture requirement. Metro alleges
6 that it conducted moisture tests of coke material in the TDB, but it has provided no evidence
7 of this in the record. It offered no chain of custody documents, and it did not explain how
8 deeply it had to dig in order to get the moisture results that were alleged. The high moisture
9 numbers on the test documents could not have been from the obviously dry material shown
10 in Exhibit 5 or from the gusts of dust blowing away in the wind that were observed by
11 Inspector Rooney. It is of no use to show that the middle or bottom portion of the material,
12 buried beneath the surface in the TDB, had 12% moisture, or 28% moisture, or anything
13 else. What matters is the portion of the material that was exposed to the atmosphere and
14 subject to gusts of wind.

15 Arguably, the top 1 inch of material in the TDB, by itself, meets the definition of a
16 "pile." That portion of the material, measuring 1 inch high by 29 feet by 80 feet, is greater
17 than 150 square feet and must thus be in enclosed storage per (d)(2). That portion was also
18 visibly dry and blowing away in the wind. It is not possible that the coke material could be
19 visibly dry and blowing away in the wind, and yet have a moisture content greater than 12%
20 under ordinary conditions. (10/25/07, p.112, line 15.)

21
22 *B. Metro should be ordered to stop violating paragraph (d)(2) by using the TDBs*
23 *outside of enclosed storage.*

24 Metro should be ordered to stop placing material into a TDB outside of enclosed
25 storage. First of all, the emissions potential of Metro's current practice has already been
26 demonstrated: Inspector Rooney observed bits of dust blowing away when gusts of wind
27 were present. Petitioner's Exhibit 5 is most clearly demonstrative of the potential for wind-

1 entrained coke dust. Metro seeks to dry this coke material in the sun, for weeks at a time,
2 without covers or controls of any kind. This is exactly the sort of scenario that was intended
3 to be eliminated by the 1999 rule amendments.

4 Metro is able to place the TDB into enclosed storage. There has been no evidence or
5 testimony asserting that they cannot perform the tank unloading operations in one of the
6 coke barns, or even inside a purpose-built structure. During his testimony, Mr. Al Garnier
7 described one (extraordinarily complex) design for waste coke drying and handling that
8 could be used at the facility. (10/25/07, p.104, line 18.) There are certainly other concepts
9 available, especially given that solid waste processing and handling is a low-tech task that
10 can be performed in a number of ways. Metro could envision a “greenhouse” design, but
11 has dismissed such a design without conducting any tests at all. (10/25/07, p.105, line 19,
12 and p.106, line 8.)

13 It should also be emphasized that Metro must redesign and rework its waste coke
14 handling facility in the near future anyway, so incorporating a new coke dry-out system at
15 the same time should minimize the disruption. Mr. Garnier testified that the water quality
16 board required that Metro design a waste handling tank with a 900,000 gallon capacity.
17 (10/25/07, p.98, line 7.)² At 1,000,000 gallons, the tank is undersized if it is to be expected
18 to remain 30 to 50 percent full of waste coke, on average. (10/25/07, p.100, line 20.) Thus,
19 the Pier G facility fails to have the design capacity that was originally required of it by the
20 water quality board – the capacity to handle a 25-year rainfall. (10/25/07, p.100, line 4.)
21 The million-gallon tank is also used differently now than when it was originally constructed;
22 it needs to be cleaned out more frequently, partly because it collects more rainfall and partly
23 due to a “general change in the business.” (10/25/07, p.92, line 13, through p.93, line 8.)
24 Metro’s coke handling volume has also increased with the shutdown of the LAXT terminal.
25 (10/25/07, p.97, line 13.) When the wastewater handling system on Pier G is thus updated,
26 Metro can more easily update its waste coke systems as well.

27 _____
28 ² Page 98, line 7, should read “gallons,” not “tons.” Mr. Garnier corrected himself on page 100, line 14.

1 Metro has not suggested that placing the TDB in enclosed storage is cost prohibitive
2 or even inconvenient. In fact, Mr. Garnier even sounded enthusiastic about spending money
3 on capital improvements in order to fix the problem. (10/25/07, page 145, lines 14-21.) The
4 District suggests that it should not be prohibitively expensive to either hire a series of dump
5 trucks for transporting the coke sludge to an existing coke barn for drying or to design a
6 system or structure for the drying process.

7
8 **III. THERE IS GOOD CAUSE FOR THE HEARING BOARD TO ORDER**
9 **METRO TO STOP USING FRONT-END LOADERS TO DROP COKE MATERIAL**
10 **WITHOUT A (d)(10) COMPLIANCE OPTION.**

11 *A. Metro violates paragraph (d)(10) when it causes front-end loaders to drop coke*
12 *material into railcars.*

13 It is clear that Metro caused front-end loaders to be used to load coke material into
14 railcars during at least September, 2006. This was confirmed by Mr. Garnier during his
15 testimony (10/25/07, page 125, line 19), and statements to that effect were communicated to
16 Inspector Rooney. The issue before the Hearing Board is whether the use of a front-end
17 loader to load coke material constitutes a “transfer point” pursuant to Rule (d)(10).

18 The Hearing Board should find that the use of a front-end loader constitutes a
19 “transfer point,” because it is a “point ... where conveyed material is dropped.” Rule 1158
20 (c)(32).

21 The term “conveyed material” means much more than simply “material moved on a
22 conveyor belt.” “Conveyed” is commonly understood to mean “moved.” The American
23 Heritage Dictionary, Fourth Edition, defines “convey” as “to take or carry from one place to
24 another; transport.” The use of the word “conveyed” is completely different from “conveyor
25 belt”; the former is a verb, while the latter is a noun. In fact, “conveyed” is no more similar
26 to “conveyor belt” than it is to the word “conveyance,” which is itself often understood to
27 refer to a transportation vehicle.

1 There is nothing in Rule 1158 that limits the term “conveyed material” to conveyor
2 belts. In fact, there are numerous kinds of “conveyors” that do not use a belt configuration,
3 including screw conveyors, tray conveyors, and bucket conveyors. Of these, a bucket
4 conveyor is similar in design and function to a front-end loader. In fact, the bucket of a
5 front-end loader will usually have a similar shape of a bucket conveyor; it is simply one
6 portion of a large bucket conveyor. Given that the two types of buckets could both drop
7 coke and produce emissions, it makes little sense to suppose that the Governing Board
8 would have intended to regulate one and not the other.

9 In fact, there is ample evidence that the Governing Board actually intended to
10 enclose all coke storage and handling operations. The scope and context of Rule 1158
11 shows that it was intended to enclose all coke handling activities. Paragraph (d)(2) requires
12 that “the operator shall keep all piles in enclosed storage.” Accumulations of coke shall be
13 removed, per (d)(7) and (d)(8), conveyors shall be enclosed, per (d)(9), trucks shall be
14 cleaned per (d)(15), and so forth. (See also Coy testimony, 9/27/07, p.47, line 4.) In light of
15 the comprehensive nature of the Rule, it would make no sense to fail to require that front-
16 end loaders be considered a “transfer point” which must use a (d)(10) compliance measure
17 along with everything else.

18 The Rule 1158 staff report makes clear the District’s concern about emissions from
19 frt-end loader handling. Exhibit A, page I-13, notes that “at many facilities, end loaders
20 moved the piles around causing significant emissions.”

21 The District has previously acted consistently with its interpretation that a front-end
22 loader could constitute a “transfer point” that requires a (d)(10)(E) compliance measure. A
23 previous permit issued to Metro contained a requirement that front-end loaders use sprays
24 for wetting material prior to dropping it. This use of sprays is a (d)(10) compliance
25 measure. The District previously required LAXT to discontinue the use of its “ready pile”
26 after concerns were raised that the front-end loaders were causing emissions. (9/27/07, p.59,
27 line 9.)

1 Most significantly, Metro previously asserted to the District that it believed that
2 front-end loaders were not subject to (d)(10), and the District's actions show that it refused
3 to accept that interpretation. In its December 21, 2001 presentation to Dave Schwien, then a
4 senior engineering manager at the District, Metro asserted that "front-end loaders are not
5 conveyors and therefore [front-end loaders are] not material transfer point[s]." There is no
6 evidence that Mr. Schwien, or anyone else at the District, ever agreed with this assertion. In
7 fact, Exhibit H is a detailed statement of the parties' understanding as to actual coke
8 handling practices at Metro's facility as a result of the December 21 meeting. Exhibit H
9 does not contain any statement that the District agreed or approved of Metro's assertions.
10 The letter is extremely detailed in the rest of its content – it sets forth the factual details of
11 the facility; and its purpose is clear: "to confirm what was discussed and agreed upon during
12 the [December 21] meeting." The letter states that the District "had no objections" to
13 Metro's proposed coke handling activities. However, it is telling that the letter does not
14 make any mention at all of Metro's unusual interpretations of Rule 1158, despite the fact
15 that they were so prominently featured on Metro's powerpoint presentation (pages 3 and 4
16 of Exhibit H).

17 Significantly, Exhibit H also contains paragraph number 2 at the bottom of the first
18 page. That paragraph reads: "For the future load out operations ... the District expressed
19 concerns that the waste coke may dry out while being stored...." This paragraph clearly
20 shows that the District, through Mr. Schwien, requested that Metro take additional steps in
21 order to control dust emissions from the front-end loaders that handled coke in and around
22 the coke palace. Metro has done this, in the form of sprays inside the "coke palace" and the
23 like. (10/25/07, page 123, line 19.) This, in essence, is a (d)(10)(E) control plan, proposed
24 by Metro and approved, with edits, by the District. Thus, exhibit H shows that Metro is
25 already complying with paragraph (d)(10) with respect to the front-end loaders at the coke
26 palace.

1 *B. Metro should be ordered to use a (d)(10) compliance measure for its front-end*
2 *loaders in the future when handling coke.*

3 First of all, Metro is able to comply with Rule 1158 (d)(10) for its front-end loaders.
4 Mr. Garnier has admitted that Metro is able to have a spray system in place for the front-end
5 loaders. He has admitted that Metro has used them in the past. (10/25/07, page 120, line 1.)
6 There is no evidence or testimony that states that a spray system would require anything
7 more substantial than a simple hand sprayer or misting system and piping mounted off of the
8 ground in the path of the front-end loaders. Besides, Metro only constructs the TDBs once
9 or twice per year, so there would be a negligible amount of spraying required to comply.
10 Mr. Garnier also stated that an air pollution control device or modified loading chute could
11 be constructed. (10/25/07, page 131, lines 13, 20). All of the evidence points to one
12 conclusion: complying with section (d)(10) is not only operationally feasible, but it would
13 be relatively simple and easy. Metro just doesn't want to bother with it.

14 Requiring Metro to use basic spray devices (or some other (d)(10) compliance
15 option, if it so wishes) is consistent with the requirements placed on other industries when
16 handling of dusty bulk materials are involved. District Rule 403 requires the use of water
17 sprayers and/or other dust suppressant techniques, known as "reasonably achievable control
18 measures," for earthmoving activities. Rule 1156 requires the use of water sprays for dust
19 control at cement processing operations, and Rule 1157 requires the use of water sprays at
20 rock crushing facilities.

21 If the Hearing Board does not order Metro to use a (d)(10) compliance method for its
22 front-end loader transfer points, it will place other compliant facilities at a competitive
23 disadvantage. Other facilities in the District have enclosed their railcar-loading transfer
24 points, or are in the process of doing so. (10/23/07, p.11, line 21, through p.12, line 13.) If
25 a company like Metro can avoid having to install a railcar-loading conveyor (with controls)
26 by simply using a front-end loader (without controls) instead, then there will be a "race to
27 the bottom" among coke handlers. Instead of this undesirable outcome, all railcar loading

1 operations should be treated in a similar fashion, and front-end loaders should be subject to
2 (d)(10) just like other loading devices.

3
4 **IV. THERE IS GOOD CAUSE TO ORDER METRO TO COMPLY WITH**
5 **PARAGRAPH (d)(2) WITH REGARD TO COKE IN RAILCARS.**

6 *A. Metro violated District Rule 1158(d)(2) when it allowed coke to remain in a rail car*
7 *outside of enclosed storage.*

8 It is clear that Metro allowed coke material to remain in a railcar outside of enclosed
9 storage. (10/25/07, passim.) It is also clear that coke in a railcar has a surface area greater
10 than 150 square feet, because a railcar measures 8 feet by 40 feet (320 square feet). This fits
11 the definition of “pile” in the rule. Therefore, the only issue remaining is whether Metro
12 violated paragraph (d)(2) by allowing the pile to remain outside of an enclosure.

13 Statutes are to be literally applied according to their plain language unless to do so
14 would produce absurd results or would defeat the manifest intention of the Legislature.
15 (Brown v. Superior Court (1984) 37 Cal.3d 477, 485; California Highway Patrol v. Worker's
16 Compensation Appeals Board (1986) 178 Cal.App.3d 1016, 1024.)

17 The language at issue here is clear. Paragraph (d)(2) reads: “The operator shall
18 maintain all piles in enclosed storage.” All piles shall be enclosed. Not some of the piles;
19 not just the piles where an enclosure is convenient; not just stationary piles. There is no hint
20 in the text of the rule, and there is no evidence presented at this hearing, that suggests that
21 paragraph (d)(2) should not be applied to railcars. Metro has not pointed to any authority
22 whatsoever for its position that coke in a railcar does not need to be in enclosed storage.

23 Metro has, however, attempted to focus on other sections of the rule, perhaps as a
24 distraction from the weakness of its arguments. For example, Mr. Hower has suggested that
25 coke in vehicles do not need to be covered unless the coke is in “storage.” (10/24/07, p.67,
26 line 6.) This was apparently a reference to the word “storage” in paragraph (d)(2), which
27 requires that “the operator shall maintain all piles in enclosed storage.” Moreover, Mr.

1 Hower was unable to state what “storage” means, nor was he able to point to an authority
2 that holds how long coke would have to remain in one place for it to be in “storage.”
3 However, Metro’s argument transposes the trigger and requirement of paragraph (d)(2). The
4 existence of a “pile” triggers the requirement that the pile be in “enclosed storage.” The
5 definition of pile does not hinge on whether the material comprising the pile is in “storage.”
6 Thus, unless Metro can articulate some real significance and authority for the “storage”
7 distinction, the Hearing Board should ignore it.

8 The definition of “enclosed storage” is easily applicable to railcars, including those
9 with an open top design. “Enclosed storage” is defined as “any completely roofed and walled
10 structure or building surrounding an entire coke, coal or sulfur pile.” An enclosed boxcar
11 meets this definition. And for an open-top railcar, subparagraph (d)(2)(B) provides that an
12 entrance or exit for material such as the open top of a railcar shall be covered with
13 “overlapping flaps, sliding doors or other devices(s) approved by the Executive Officer.”
14 Accordingly, the top of an open-top railcar should be covered with a District-approved device
15 when the car is not being loaded or unloaded. The District has previously approved certain
16 kinds of cloth covers for this purpose, and could approve other devices.

17 Metro will surely expound at length about perceived incongruities in the rule
18 language when paragraph (d)(2) is applied to railcars. For example, Metro will point out the
19 language in (d)(2)(B) that allows for “vehicles” to enter the enclosure, whereas of course no
20 such vehicles would enter a covered railcar. But that is only one possibility because the
21 definition refers to an entrance “for material or vehicles.” Even if those kinds of artificial
22 concerns were significant, they would not affect the enforceability of paragraph (d)(2). This
23 is because, as stated above, the plain meaning of (d)(2) is not ambiguous: all piles shall be in
24 enclosed storage.

1 *B. Metro should be ordered to comply with paragraph (d)(2), either by covering the*
2 *railcars after loading or by seeking to use its surface preparation material as a (d)(2)(B)*
3 *device.*

4 Metro is able to comply with paragraph (d)(2) at its facility. Mr. Garnier confirmed
5 that Metro has the ability to place soft covers over the tops of railcars after they are loaded.
6 (10/25/07, page 140, line 15.) In addition, Metro affixed lids to the tops of its railcars on a
7 regular basis between approximately 2002 through 2004. (10/25/07, page 133, lines 13-20.)
8 There is no evidence in the record that the use of covers would present any more than a
9 negligible additional cost. Metro has shown that it already knows how to make railcar
10 covers work, and it still has the lid-attachment equipment at its facility. (10/25/07, page
11 136, line 11.)

12 More significantly, Metro is currently using a surface preparation agent to seal the
13 surface of the coke in railcars before they are shipped out of the facility. (10/25/07, page
14 139, line 2.) The surfactant is acceptable for both coke product and for waste coke
15 (10/25/07, page 140, lines 6-8), and is a “viable alternative to covering,” according to Mr.
16 Garnier. (10/25/07, page 139, line 9.) This surface preparation agent could potentially be
17 approved by the District as a (d)(2)(B) “device” that would allow railcars to comply with
18 paragraph (d)(2). If that were the case, of course, then Metro could comply with paragraph
19 (d)(2) without any operational changes or additional expenses at all. Metro has refused,
20 however, to even ask the District to approve the use of the surface preparation agent as a
21 (d)(2)(B) device. (10/25/07, page 137, line 24.)

22 Open-top railcars full of coke are an obvious source of emissions. When the railcars
23 are moving throughout the District’s jurisdiction and elsewhere in the country, the
24 movement of the cars will surely cause significant amounts of coke to blow off of the
25 surface and onto adjacent schools, homes, businesses, and public areas. When this
26 potentially significant emissions source could be completely eliminated with a negligible
27 amount of additional labor and materials (or, in the case of the surface preparation agent,

1 when the control device's usefulness could be verified by the District), it makes no sense to
2 fail to require the operator to do so.

3
4 **IV. CONCLUSION.**

5 Based on the foregoing, there is good cause for the Hearing Board to issue an Order
6 for Abatement, directed at Respondent, requiring that it either cease operation or otherwise
7 comply with District Rule 1158 as set forth above. Accordingly, the District prays that the
8 Hearing Board issue an Order for Abatement in the form of the proposed Findings and
9 Decision submitted herewith.

10 DATED: November 30, 2007

11 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
12 DISTRICT PROSECUTOR

Peter C. Mieras, District Prosecutor

13 Bryan K. Theis, Senior Deputy District Prosecutor

14 By: 

15 BRYAN K. THEIS

16 Attorney for Petitioner
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