



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

AGENDA: 3

Election of Community Advisory Council Co-Chair

**Community Advisory Council Meeting
January 18, 2024**

**Miriam Torres
Senior Advanced Policy Advisor, Executive Office
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Presentation Outcome



- Election of the third Community Advisory Council Co-Chair

Requested Action



- Vote on preferred candidate to fill third Co-Chair seat

Presentation Outline



- Presentation Outcome
- Requested Action
- Duties of Leadership
- Election
- Results

1.3.1 Duties of Leadership (select)



- The Co-Chairs shall preside over bi-monthly meetings of the CAC in rotation.
- The Co-Chairs shall work with Air District staff and the CAC meeting facilitator to plan, structure, and coordinate CAC meetings.
- The Co-Chairs shall attend and provide updates to the Air District Board of Directors as needed and/or requested and interact with the Air District Board of Directors in representation of overburdened communities within the nine Bay Area counties, and on behalf of the CAC members.

1.3.1 Duties of Leadership (select – cont.)



- The Co-Chairs shall oversee activities of the ad hoc committees.
- The Co-Chairs shall perform all other necessary and incidental duties as prescribed by the CAC Charter.
- The Co-Chairs shall ensure that CAC decisions are made in a democratic, equitable, and timely manner.
- The Co-Chairs shall understand and adhere to the Brown Act and Robert's Rules of Order.



Election



Results



BAY AREA
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AGENDA: 4

Funding Community Benefits from Penalty Funds

Community Advisory Council Meeting
January 18, 2024

Greg Nudd
Deputy Executive Officer, Science and Policy
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Potential Presentation Outcomes



- Vote to make a recommendation to the Air District Board of Directors regarding a policy for penalty funds to be set aside for community benefits.

Background



- The Air District collects penalties from facilities that violate our regulations.
- In the past, these funds have varied from year-to-year but typically exceeded \$3M per year.
- Penalty collections are expected to increase in 2024.
- The penalty funds are currently used to help fund our enforcement program consisting of 77 full time employees with a total direct costs of roughly \$16M per year.

Proposal



Develop a policy to automatically set aside a portion of penalty funds for community benefits. If approved by the Board, we would be the first Air District to implement this as a routine policy.

Policy could be retroactive to the beginning of 2023, which would include \$1.15M settlement with Chemtrade in Richmond from July 2023.

About the Penalties



- Most individual penalties are between \$10-\$50k (58%).
- But most of the penalty dollars collected are from a few large penalty agreements exceeding \$1M (65%).
- Penalties > \$1M are paid primarily by petroleum refineries and related industry. Over 85% of the penalties collected in recent years are from this sector.

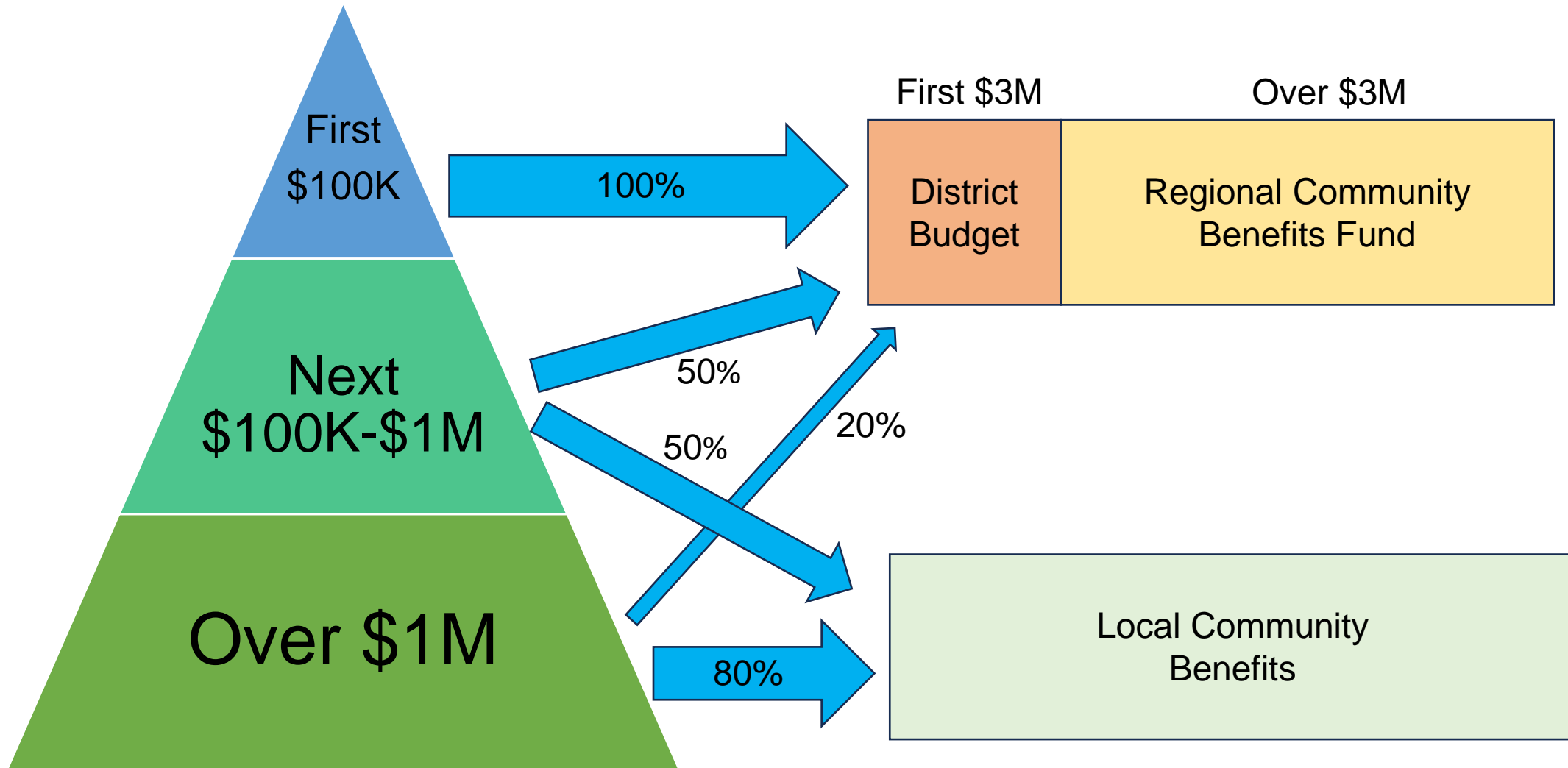
Example Method for Allocation



Lower Break Point	Upper Break Point	% to Local Benefit Fund	% to Air District or Regional Benefit Fund
\$0	\$100,000		100%
\$100,000	\$1,000,000	50%	50%
\$1,000,000		80%	20%

- The first \$100,000 of each penalty payment would go to offset the Air District's expenses in enforcing regulations. After the budget target is met (\$3,000,000 for this year), those funds would go into a regional benefit fund.
- Between \$100,000 and \$1,000,000, 50% of the penalties would go to a fund to benefit the community impacted by the violation. The balance would go either to the Air District or the regional benefit fund (depending if budget target has been met).
- Above \$1,000,000, 80% of the penalties would be reserved for local benefits programs, with 20% to the Air District/Regional Fund (depending if budget target has been met).

Example Method for Allocation (cont'd)



Results



- Using penalty data from fiscal year ending 2022, the Example Allocation would have had the following results:
 - Local benefit fund for Martinez area: \$1,598,100
 - Local benefit fund for Benicia area: \$168,200
 - Regional Benefit fund: \$0 (budget target was not met)
- We expect larger penalties in 2024. Here's how the Sample Allocation would work for a \$10M penalty, if the budget target had already been met:

Penalty	Local Fund	Regional Fund	Air District
\$10,000,000	\$7,650,000	\$2,350,00	\$0

Finance and Administration Committee (Dec. 20, 2023)



- Generally very supportive of the concept and proud to be leaders on this issue
- Support for the general allocation structure and the inclusion of a regional community benefits fund
- Hands would not be tied to make adjustments for a specific case
- Support for the idea of a one year pilot and commitment to check back in to evaluate the allocations and consider adjustments
- Seeking recommendations from CAC and other community groups (including Richmond/San Pablo CSC)
- Referred to CEHJ Committee for next committee discussion, and back to FAC for update on budget impacts.

Council Feedback



Focusing now only on allocation policy; how the funds are programmed and spent would be the subject of extensive discussion, outreach and program development

- General approach?
 - Local Benefit Fund
 - Regional Benefit Fund
- Thoughts on the proposed allocation idea?
 - Structure
 - Percentages and \$ tiers

Action Part 1:



- Consider recommending that the Air District Board of Directors take the following actions:
 - Create a policy that automatically sets aside a portion of penalties for regional and local benefits.
 - Review the results after one year to ensure that the process is equitable and effective.

Action Part 2:



- Consider recommending that the Air District Board of Directors take the following action:
 - Ensure community outreach and oversight of any local or regional benefit fund spending programs.

Action Part 3:



- Consider recommending that the Air District Board of Directors take the following action:
 - Create a policy that automatically sets aside a portion of penalties for regional and local benefits according to the following allocation scheme:

Lower Break Point	Upper Break Point	% to Local Benefit Fund	% to Air District or Regional Benefit Fund
\$0	\$100,000		100%
\$100,000	\$1,000,000	50%	50%
\$1,000,000		80%	20%



Questions?



BAY AREA
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AGENDA: 5

Enforcement Case Study Green Sage Cannabis Cultivating Facility

Community Advisory Council Meeting
January 18, 2024

Tanya Boyce
Executive Director
Environmental
Democracy Project
tanya.edpcal@gmail.com

Brian Case
Assistant Counsel
Air District
bcase@baaqmd.gov

Paul Grazzini
Supervising Air Quality
Specialist, Air District
pgrazzini@baaqmd.gov

Presentation Outcome



- Air District staff will provide an overview of how the Green Sage cannabis facility, by using diesel generators illegally as their power source, defied an Air District notice of violation (NOV) for six months before the operation halted
- Tanya Boyce of the Environmental Democracy Project will present community actions on this case and suggestions for future improvements to the Air District's compliance and enforcement procedures

Presentation Requested Action



No Action Required – Informational Presentation

Presentation Overview



- Review the Green Sage case violations and enforcement steps
- Explain the amount of energy and pollution produced by illegal generators
- Describe the various community members and agencies involved
- Highlight the community efforts of the Environmental Democracy Project
- Review the acts of defiance by the violators in this case
- Describe lessons learned by both the Air District and community members

Before Telling The Story, A Moment to Reflect on the Health and Safety of Our Communities



"Air District staff were saddened to learn that a resident [David Smith] of The Cannery building near the Green Sage complex [died on August 23, 2022] of complications of pneumonia after months of exposure to diesel exhaust emissions. While no one can say with certainty that this exposure caused that specific death, we can assert that many epidemiological studies, like those summarized in the US EPA Science Assessment, do find a causal link between this type of exposure and mortality."

Quote From 9/2/2022 Air District "Report Evaluating Harms From Diesel Generator Use at 5601/5733 San Leandro

Green Sage Management



Location and History:

5601 & 5733 San Leandro Street

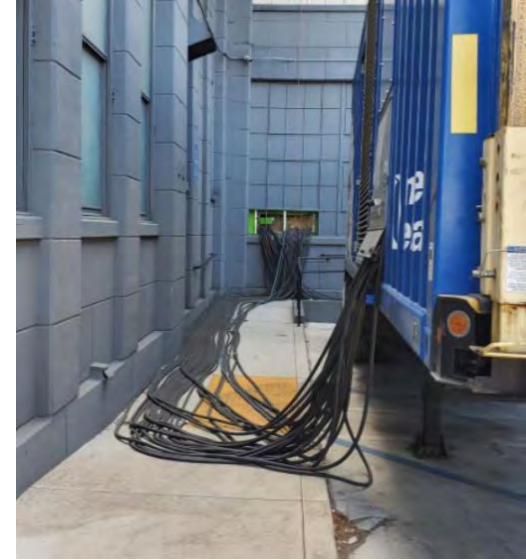
- 1930s fruit cannery converted to an Artist live/work space in 1975
- Bought by Green Sage in 2017 to develop property for the cannabis industry



The Scale of The Violation



- As buildout of cannabis growing progressed, operations exceeded existing PG&E power to buildings
- 9 diesel engines were used to generate ~11 MW of power (enough for 9,000 homes)
- Multiple engines of this type emit diesel particulate matter at a rate that is on par with all the heavy-duty trucks operating in West Oakland. This is a serious health concern for nearby residents.



Violations at Green Sage



- The CA Air Resources Board (CARB) Portable Equipment Registration Program (PERP) regulations prohibit generator use for primary power except for very limited applications.
- Generators did not have an Air District Permit to Operate, nor would qualify for one for primary use.



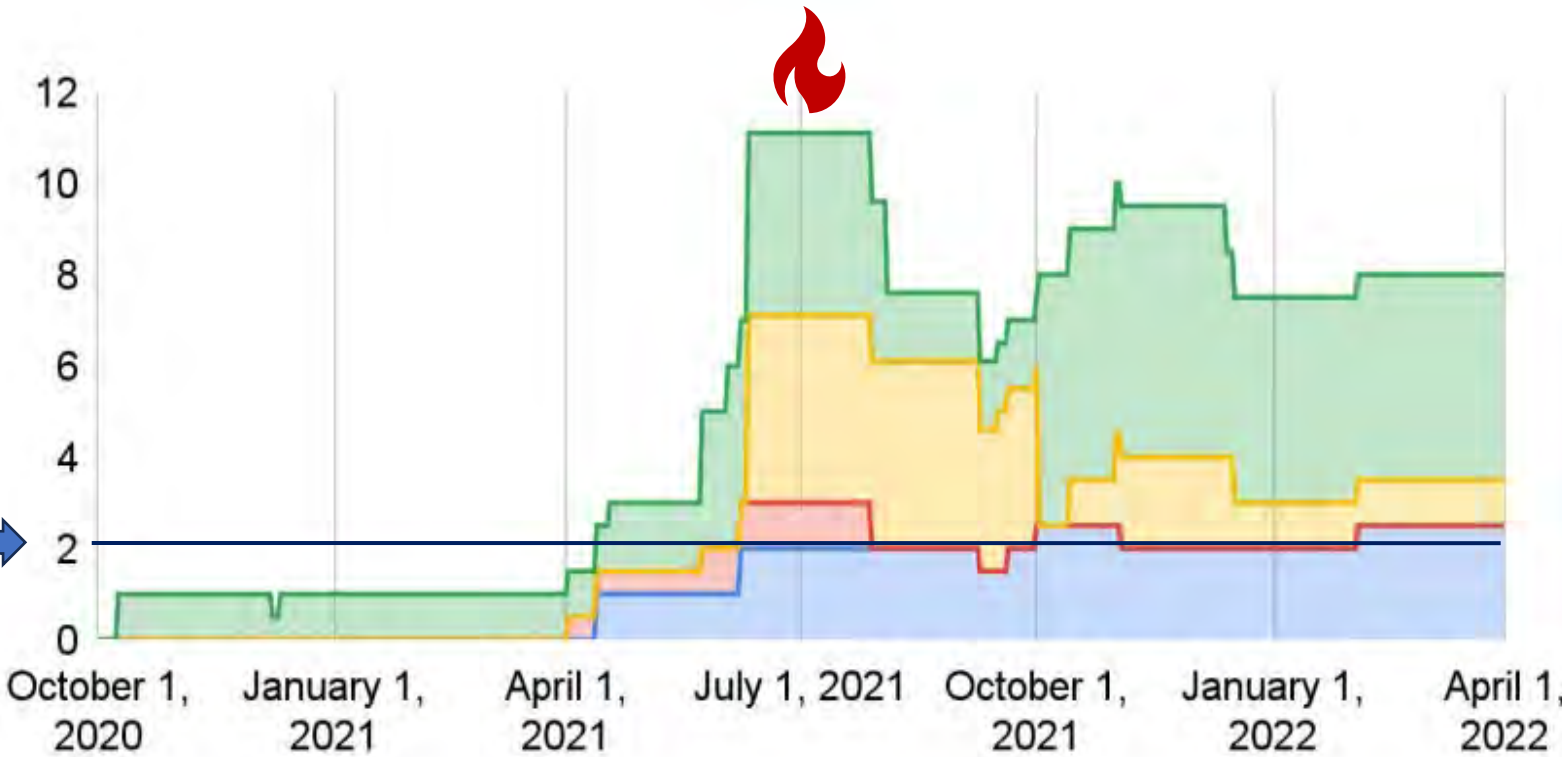
Duration of the Violation



Generator Use Timeline – Oct. 2020, through April 2022

Amount of Power (megawatts)

Available grid power (2 MW) →



- Peak use = 11.1 MW (enough for 9,000 homes)
- Generators on site for 628 days
- Max number of generators at one time: 12
- Green Sage wanted to upgrade PG&E power to 16 MW

Legend of Cannabis Grower Companies:

- RNK
- Magic Bowl
- XYZ
- Legion of Bloom

Date

Who Were The Advocates and Agencies?



Community: residents & elementary school alerted the Environmental Democracy Project

City of Oakland: Code Enforcement, Fire Dept, Police Dept, Zoning

Bay Area Air Quality Management District

California Dept of Cannabis Control

Environmental Democracy Project

EDP's Three-Pronged Approach



Litigation

(On our own behalf/ On behalf of the Community)



Advocacy/Agency

(Demystifying Bureaucracy)



Education

(Community/Decision Makers)

EDP utilizes the 3-pronged approach of education, advocacy, and litigation to ensure compliance with environmental laws, and protection of community health, and an open and democratic process is at the core of every economic development decision impacted the underrepresented communities of California with specific focus on East Oakland.

Awareness:	Define the Problem
Data:	Know the Research
Visit:	Contact your Legislatures
Optimism:	Solution-Oriented Thinking
Communicate:	Convey your Purpose
Audience:	Be Relevant to the Listener
Challenge:	Question the Norm
You:	Be the Role Model

Community efforts and collaboration



Community Work Started in August 2020:

- First with a complaint to Oakland Fire
- Cannery residents next voiced complaints to City of Oakland and CA Cannabis Commission.
 - Residents took photos of pollution and spoke at public meetings
- Elementary school and residents contacted Environmental Democracy Project (EDP) who:
 - Filed Public Records Act Request with the City of Oakland
 - Filed a federal lawsuit against Green Sage under the Clean Air Act and obtained a court order that generator use must cease
 - Testified in the abatement hearing as an expert witness



Tanya Boyce, Executive Director of the Environmental Democracy Project

EDP's suggestions for improvements



1. Conduct background checks on industries applying for permits and/or getting Notices of Violation
 - This bad actor from Green Sage had previous violations across the country
 - BAAQMD could have been more aggressive with them and not delayed the hearing board due to their no-show
2. More cross-agency training and collaboration for proactive enforcement
 - Many agency staff did not understand the matrix of all the government agencies and how they should be working more together
3. Hearing board should be representative of heavily impacted communities
4. Businesses don't need the protection of government agencies worrying about their bottom line; the focus should be on the community's health

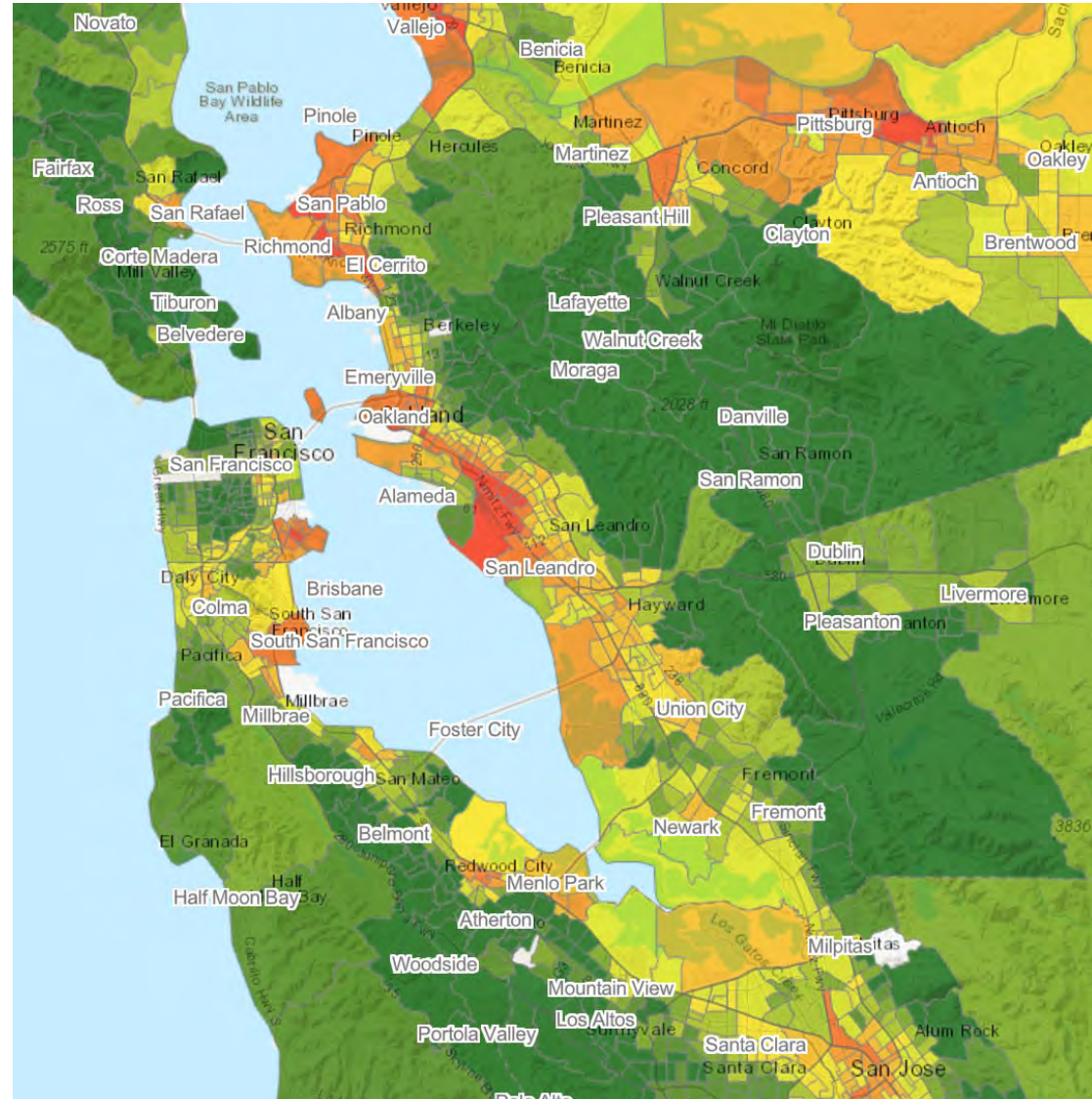
CalEnviroScreen 4.0 Bay Area Regional Map

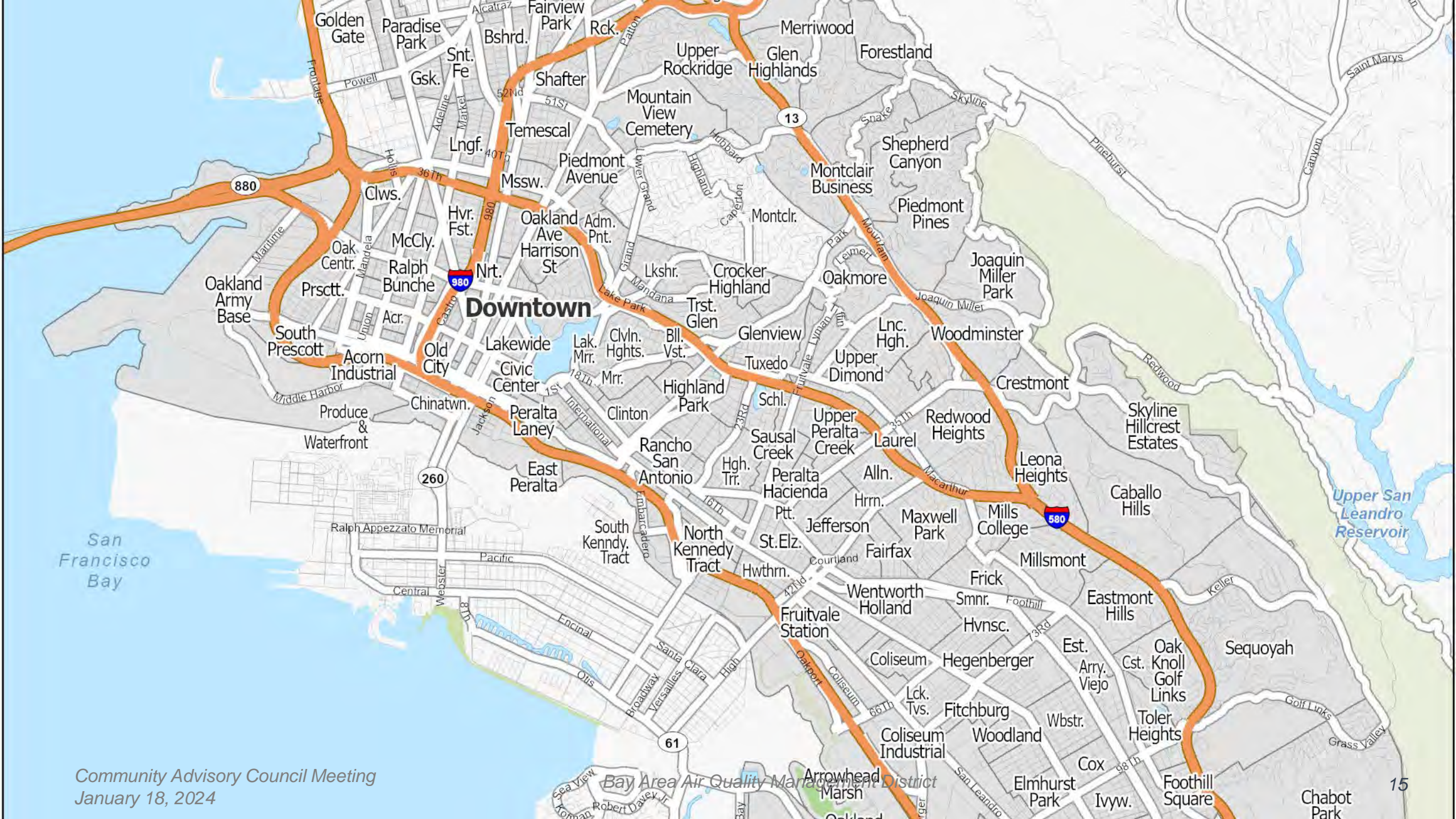


■ (Highest Scores) = Unhealthy environment
■ (Lowest Scores) = Healthier environment

Overall Percentile

- >90 - 100 (Highest Scores)
- >80 - 90
- >70 - 80
- >60 - 70
- >50 - 60
- >40 - 50
- >30 - 40
- >20 - 30
- >10 - 20
- 0 - 10 (Lowest Scores)





Downtown

Community Advisory Council Meeting
January 18, 2024

Bay Area Air Quality Management District
Arrowhead Marsh

Green Sage's Defiance of Enforcement Efforts



- **Notice of Violation (NOV) to Green Sage**
 - **Feb. 16, 2022** – For operating 9 generators without an Authority to Construct or Permit to Operate
 - **LESSON LEARNED:** Issue NOV sooner to get facility's written response sooner to cut through false "defenses". The complaint to the Air District was received in Sept. 2021.
 - NOV is not the last step when there is defiance
- **Notice of Violation to United Rentals**
 - **July 28, 2022** - For operating Portable Equipment Registration Program (PERP) generators for primary power, prohibited by PERP regulations

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
 375 Beale Street, Suite 600, San Francisco, CA 94105
 (415) 749-5000

NOTICE OF VIOLATION No. **A60654**

ISSUED TO: Green Sage Management, LLC P G N# N/A
 ADDRESS: 100 Fillmore Street, 5th Floor
 CITY: Denver STATE: Colorado ZIP: 80206
 PHONE: (786) 290-4363
 N# Mailing Address on F61

OCCURRENCE
 NAME: Green Sage Management, LLC
 ADDRESS: 5601 San Leandro Street & 5733 San Leandro Street Same As Above
 CITY: Oakland ZIP: 94621
 SOURCE: S# -- NAME: _____
 EMISSION PT: P# -- NAME: _____
 DATE: 9/30/21 - Present TIME: 0800 HRS

REG 2 RULE 1 SEC 301 No Authority to Construct REG 2 RULE 1 SEC 302 No Permit to Operate
 REG 1 SEC 301 H & S CODE - 41700 Public Nuisance REG 2 RULE SEC 307 Failure to Meet Permit Condition
 REG 5 SEC 301 Prohibited Open Burning REG 6 RULE 1 SEC 301 Excessive Visible Emissions
 REG _____ RULE _____ SECTION _____ CODE _____
 REG _____ RULE _____ SECTION _____ CODE _____

Details: portable diesel generators (9) operated w/out District permit

RECIPIENT NAME: Martín L. Espinosa
 TITLE: Consultant, Crystal Construction Consulting

SIGNING THIS NOTICE IS NOT AN ADMISSION OF GUILT X _____

→ WITHIN 10 DAYS, RETURN A COPY OF THIS NOTICE WITH A WRITTEN DESCRIPTION OF THE IMMEDIATE CORRECTIVE ACTION YOU HAVE TAKEN TO PREVENT CONTINUED OR RECURRENT VIOLATION. **THIS VIOLATION IS SUBJECT TO SUBSTANTIAL PENALTY.** YOUR RESPONSE DOES NOT PRECLUDE FURTHER LEGAL ACTION.

ISSUED BY: Patricia Barnes INSP # 557
 DATE: 2/16/22 TIME: 1240 HRS MAILED

PLEASE PRESS HARD

Green Sage's Defiance of Enforcement Efforts (cont.)



- **Hearing Board Order**

- **Apr. 20, 2022** - Filed for an Abatement Order
 - **July 29, 2022** - Filed a Complaint for Injunction and Civil Penalties
 - **Aug. 25, 2022** - Filed a Temporary Restraining Order in Superior Court to enforce Hearing Board Order
- Sometimes you get defiance of Air District Notices of Violation and even Air District Hearing Board Orders – this was one such case
 - In those situations, you have to think strategically about creating as many pressure points as possible to put the conduct to an end

Green Sage's Defiance of Enforcement Efforts (cont.)



Cannery Resident Alistair Monroe summed this all up perfectly:

"Shortly after, the air district's attorney worked with the Oakland City Attorney's Office to contact the generator rental company, United Rentals, to take a back-end approach to removing the power source off the property. Monroe said the rental company would be included in fines if they knowingly defied an abatement order. 'And then next thing you know, after two hours, all of the generators disappeared,' [Alistair] Monroe said. 'The city agencies all started communicating and working together in alignment.'"

Quote from "Green Sage cannabis firm removes diesel generators from East Oakland facility following judge's ruling," CBS News Bay Area, published 9/23/2022

Air District Compliance and Enforcement Division Perspective



ASSESSMENT

1. Size up the big picture as early as possible and determine what intervention strategy is going to realistically work.
 - *Are we dealing with an entity that is going to respect regulatory authority?*
 - *Are these rational business actors, or is something different at play?*
2. Identify and uncover lies and misrepresentations about the nature of the violation as early as possible to determine who is responsible as early as possible
 - Identify shell games at sites where there are multiple persons/businesses involved
 - Be mindful of the importance of "bringing everyone to the table" as the case evolves at the Hearing Board and beyond

Air District Compliance and Enforcement Division Perspective (cont.)



COLLABORATION

1. Seize the opportunity to learn facts about the violation from community members as early as possible
 - o Maintain contact with the community as the "eyes and ears" on the site
2. Work with other government agencies and citizen groups to create multiple pressure points as early as possible
3. Do more community outreach to make sure people know how to file a complaint with the Air District



Questions?