

FILED

JUL 21 2022

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

**BEFORE THE HEARING BOARD OF THE
BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

AIR POLLUTION CONTROL OFFICER of the
BAY AREA AIR QUALITY MANAGEMENT
DISTRICT

Complainant,

vs.

GREEN SAGE MANAGEMENT, LLC, a Colorado
Limited Liability Corporation; OAKLAND CANNERY
REAL ESTATE, LLC, a California Limited Liability
Corporation; 5601 SLOCA, LLC, a California Limited
Liability Corporation; 5733 SLOCA, LLC, a California
Limited Liability Corporation; 5601-A LLC, a
California Limited Liability Corporation; 5601-B LLC,
a California Limited Liability Corporation; and DOES 1
- 25, inclusive,

Respondents,

ROMSPEN CALIFORNIA MORTGAGE LIMITED
PARTNERSHIP, an Ontario Limited Partnership,

Intervenor.

) DOCKET NO. 3733

) **ORDER FOR ABATEMENT**

The AIR POLLUTION CONTROL OFFICER OF THE BAY AREA AIR QUALITY
MANAGEMENT DISTRICT's ("Complainant") requested an Order for Abatement to require that
GREEN SAGE MANAGEMENT, LLC, a Colorado Limited Liability Corporation; OAKLAND
CANNERY REAL ESTATE, LLC, a California Limited Liability Corporation; 5601 SLOCA, LLC, a
California Limited Liability Corporation; and 5733 SLOCA, LLC, a California Limited Liability

1 Corporation (“Landlord Respondents”) and 5601-A LLC, a California Limited Liability Corporation;
2 and 5601-B LLC, a California Limited Liability Corporation (“Cultivator Respondents”) stop violating
3 District Regulation 2, Rule 1, Sections 301 and 302 at 5601 and 5733 San Leandro Street, Oakland,
4 California (the “Site”), by immediately ceasing operation of any and all portable diesel generators at the
5 Site unless and until they obtain a current and valid permit to do so.

6 PROCEDURAL BACKGROUND AND HEARING

7 Procedural Background: Complainant’s Accusation

8 Complainant, the Bay Area Air Quality Management District’s (the “District”) Air Pollution
9 Control Officer, initiated this matter by filing an accusation against Respondents on April 20, 2022
10 (“Accusation”), alleging that Landlord Respondents, at all times relevant to the Accusation, are owners
11 or operators¹ of a 10+ acre floor area mixed-use (indoor cannabis cultivation, live-work residential lofts,
12 and other uses) warehouse complex located at 5601 and 5733 San Leandro Street, Oakland, California.
13 The Site principally consists of two large buildings historically known as “The Oakland Cannery” and
14 “The Oakland Tinnery.” Cultivator Respondents, at all times relevant to the Accusation, are owners or
15 operators of expansive indoor cannabis cultivation facilities within the Site. Since at least July 2, 2021 –
16 and possibly as early as mid-2020 – a number of PERP-registered² portable diesel generators stationed
17 within the Site’s loading docks and other exterior spaces have supplied power to the Site without
18 District-required permits. The Clerk of the Hearing Board assigned this matter Docket No. 3733 and
19 set a public hearing for June 28, 2022. The Clerk of the Hearing Board provided notice of the hearing
20 on the Accusation in accordance with the requirements of Health and Safety Code section 40823 to the
21 Complainant and to the Respondents at the addresses provided by the Complainant.

22 The District may serve its Accusation on a person by certified mail and by a means of service
23 authorized in civil actions. *Hearing Board Rule 4.4c*. The District filed a Certificate of Service for each
24

25 ¹ As used herein, the term “owner or operator” has the same meaning as the defined term in District
26 Regulation 1-241. Specifically, District Regulation 1-241 provides that an “owner or operator” is “[a]ny
27 person who owns, leases, operates, controls, or supervises a facility, building, structure, installation, or
28 source which directly or indirectly results or may result in emissions of any air pollutant.”

² The California Air Resources Board’s Portable Equipment Registration Program is set forth at 13 Cal.
Code Regs. § 2450, et seq.

1 of the seven named respondents. In addition to filing a Certificate of Service for 5601-B LLC, the
2 District filed a “Certificate of Service – Evidence of Actual Receipt by Agent of Service of Process for
3 5601-B LLC,” attaching a true and correct copy of a May 5, 2022 email from Mr. Russel Weissman.

4 Upon the stipulated request of the District and ROMSPEN CALIFORNIA MORTGAGE
5 LIMITED PARTNERSHIP, an Ontario Limited Partnership (“Romspen”), the Hearing Board issued a
6 June 21, 2022 Order dismissing Romspen as a Respondent and allowed Romspen to intervene in the
7 action.

8 Public Hearing: June 28, 2022, July 5, 2022, and July 12, 2022

9 The Hearing Board conducted a public hearing over three days on June 28, 2022, July 5,
10 2022, and July 12, 2022. Brian Case, Assistant Counsel; and Adan Schwartz, Senior Assistant
11 Counsel, appeared on behalf of the Complainant. Darrin Gambelin appeared on behalf of Respondent
12 Green Sage Management LLC (“Green Sage”).

13 Aside from Green Sage, no other Respondent filed a notice of defense. Those Respondents’
14 express admissions may be used as evidence without any notice thereof, and the Hearing Board may
15 upon its own motion decide the matter or dismiss the action at the public hearing. *Hearing Board Rule*
16 *6.9(b)*. Further, having not filed a notice of defense, Respondents waived their right to a hearing
17 pursuant to California Government Code section 11506(c). The hearing occurred as scheduled, with
18 Green Sage as the only participating Respondent.

19 At the outset, Green Sage objected to the over 1500 pages of proposed District Exhibits and
20 requested a continuance. Although the District complied with *Hearing Board Rule 9.3.b.1.* and
21 provided all Exhibits to the Hearing Board Clerk before 9:00 a.m. on Monday June 27th, the Hearing
22 Board Chair acknowledged the volume of Exhibits and decided Green Sage would be allowed to
23 cross-examine District witnesses at a continued hearing date.

24 The District commenced its case on June 28th. Over the course of the three days of hearings,
25 the District called five witnesses: Air Quality Specialist Ms. Patricia Barnes (a District employee),
26 District Supervising Air Quality Specialist Mr. Paul Grazzini (a District employee), Ms. Tanya Boyce
27 (a percipient witness and urban planning professional), Dr. Evan Mills (a District consultant with
28 expertise in energy accounting with specialized knowledge of the cannabis cultivation industry), and

1 Air Quality Engineer Ms. Isis Virrueta (a District employee).

2 Between the second and third days of the hearing, the Hearing Board issued a subpoena to
3 PG&E for “persons most knowledgeable” to appear. Carla Kendall (a PG&E employee familiar with
4 the 5601 San Leandro property) and Paul Carr (a PG&E employee familiar with the 5733 San Leandro
5 property) provided testimony.

6 Respondent Green Sage called a single witness: Ken Greer (who identified himself as a
7 “principal” with Respondent Green Sage Management LLC).

8 Board members had the opportunity to ask question of each witness and Respondent Green
9 Sage and the District had an opportunity to cross examine each other’s witnesses.

10 Following the presentation of testimonial evidence, the Hearing Board admitted all of the
11 Complainant’s proposed Exhibits 1–16 into evidence; both of Respondent Green Sage’s Exhibits 1-2
12 into evidence; and the Hearing Board admitted 2 of Exhibits of material (a total of 216 pages)
13 provided by PG&E in response to the subpoena into evidence.

14 In addition to formal witnesses, over the course of the hearing the Board received comments
15 from at least a dozen different members of the public, many of whom were residents or former
16 residents of the buildings about the air quality and their health and safety concerns.

17 Following its deliberations, the Hearing Board unanimously approved issuance of an Order
18 for Abatement requiring Landlord Respondents and Cultivator Respondents to cease operation of the
19 generators from the date the Order is filed (i.e., the “Effective Date” of the Order).

20
21 **BASIC CHRONOLOGY**

22 Documents and testimony revealed the following basic chronology of events:

23

Date	Event
September 2016	Green Sage purchases 5601 San Leandro
November 2017	Green Sage purchases 5733 San Leandro
Early 2018	Green Sage contacts PG&E about power needs
June 2020	Added electrical load at 5733 San Leandro caused service wire to fail and fuses at the transformer to blow
September 29, 2020	PG&E (Kendall) advises Green Sage (Greer) contract sent via Docusign on 9/21/2020; cannot proceed without signed contract and payment; construction schedules booked to December 2020

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1	October 9, 2020	First invoice-verified use of United Rentals generator by tenant "RNK"
2	April 13, 2021	First invoice-verified use of United Rentals generators (2) by tenant "Legion of Bloom" (dba name for Respondents 5601-A, LLC & 5601-B LLC)
3	July 7, 2021	PG&E transformer overloaded resulting in loss of 3,000 Amp grid service at 5601 San Leandro
4	September 27, 2021	Complaint received by Air District related to use of diesel generators
5	November 4, 2021	District's first on-site inspection; 9 generators on site; Green Sage consultant and United Rentals account manager present
6	February 16, 2022	District issues Notice of Violation (NOV) to Green Sage, with 9/30/21 violation start date
7	March 24, 2022	District's second on-site inspection; 9 generators on site
8	April 18, 2022	District receives generator receipts from United Rentals
9	April 20, 2022	District files Accusation
10	May 13, 2022	Amended NOV Issued, with 10/9/20 violation start date
11	June 2, 2022	Hearing Notice issued

12 As of the dates of the hearing, the electrical upgrades to the two buildings were not
13 completed.

14
15 **STATEMENT OF DECISION**

16 The Hearing Board declined to make detailed or bright line findings regarding specific dates
17 when the generator use began on the properties, but found the diesel generators were being used 24/7 as
18 the primary source of power in excess of 12 months without District required permits. After a properly
19 made motion and second, it voted unanimously in favor of the APCO's request to issue an Order of
20 Abatement.

21 Board Member Dr. Chiu made the motion and then provided the following rationale³:

22 During the hearing, I think we established that the Portable Equipment Registration
23 Program – for the generator registration – is not a valid authorization to operate
24 where engines that are used to provide so called primary or supplemental power to
25 a building. So during the hearing, we have different witnesses [who testified that]
26 clearly the generators were used as supplemental power possibly or probably since

27 ³ Specifically, Board Member Dr. Chiu stated, "I would be happy to make the motion . . .and if the motion
28 is seconded I can give the rationale for the motion and give the justification similar to the findings of fact.
Chair Armento said, "That would be fine." (Audio Recording of July 12, 2022 proceedings at 5:51)

1 the year 2020⁴ – that is before July 2021 where the power outage occurred.⁵ So,
2 based on that, alone, the generators should not be . . . they should have gotten a
3 permit instead of just to get by with the CARB registration. Now, there are some
4 exceptions as you know, but, actually, the Respondents did not provide adequate
5 evidence to show that there were special, specific circumstances to allow generator
6 use. So, the specific circumstances/situations are not applicable in this particular
7 case, in my opinion. Also, even though we cannot pinpoint the exact time-period
8 for some of the generators for how long they have been on site, but it’s clearly
9 indicated that it should be one or more registered generators on site have been used
10 for more than twelve consecutive months or they replaced generators that
11 collectively or consecutively have been at the site for more than twelve months.
12 Even though we cannot pinpoint the months, there is a high likelihood it exceeded
13 the twelve-month period. Also, we clearly heard from the public -- the issue raised
14 is the effect of the exhaust from those engines. I can speak to that. As you know,
15 my background is in public health. I have a doctorate degree in public health and I
16 have a doctoral degree in medicine and specialize in environmental medicine and
17 occupational medicine. So, I can say, there is not much scientific debate about the
18 public health effect of exhaust from the generators. That is, the diesel engine or
19 diesel-powered generators. So, to make the matter worse, we know that the area is
20 already a very stressed environment in terms of the pollution load. So, it’s like
21 you’ve added more pollutants – specifically particulate matter – so I do believe that
22 it would make a difference in terms of the health effects for the local residence and
23 also the neighborhood.

24
25 **FINDING REGARDING INAPPLICABILITY OF THE 90-DAY GRACE PERIOD**

26 Assistant District Counsel Mr. Case requested the Board make a finding to resolve any ambiguity
27 in the record about whether or not Respondents were ever entitled to a 90-day grace period. The Board
28 found that while there is a limited 90-day exception to the general prohibition against using generators as
primary or supplemental power to a building for electrical upgrade operations, that exception never
applied to the situation presented. *See* 13 C.C.R. Section 2453(m)(4)(E)(3). Both 5601 and 5733 San
Leandro Street are old buildings with modest electrical capacity; cannabis operations by their very nature
are electrical energy intensive. The likely demands for power were foreseeable, as Dr. Mills emphasized
in his testimony, since several hundred thousand square feet of space were (and continue to be) leased for
cannabis operations.

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30 ⁴ Board Member Dr. Chui mistakenly said “the year 2000” when giving the verbal justification for his
31 motion.

32 ⁵ The Board did not address the question of whether or not Respondents were in violation of the District’s
33 permitting requirements months prior to July 7, 2021, when generator use *admittedly* began per APCO
34 Exhibit 9 and the testimony of Mr. Ken Greer.

1 **ORDER FOR ABATEMENT**

2 **Cause being found therefore, pursuant to Sections 42451(a) and 42452 of the California**
3 **Health and Safety Code, THE HEARING BOARD of the BAY AREA AIR QUALITY**
4 **MANAGEMENT DISTRICT hereby ORDERS:**

5 1. Immediately, Respondents and their agents, employees, successors and assigns shall
6 cease violation of District Regulation 2, Rule 1, Sections 301 and 302 at 5601 and 5733 San Leandro
7 Street, Oakland, California, by ceasing operation of any and all portable diesel generators at the Site
8 unless and until they obtain a current and valid permit to do so; and

9 2. Respondents shall demonstrate compliance with this Order by submitting to the Hearing
10 Board either (a) a copy of a current and valid District permit to operate the Facility, or (b) written
11 affirmation executed by Respondents that they have ceased operating all portable generators at The Site
12 and that they shall not recommence operating any generators, if ever, until they have met all applicable
13 requirements to obtain and maintain a valid District permit to operate pursuant to District Regulation 2,
14 Rule 1. Respondents shall deliver such documentation via electronic mail and certified mail to the Clerk
15 of the Hearing Board, by no later than fifteen (15) calendar days from the Effective Date, with a copy of
16 such documentation to Adan Schwartz, Senior Assistant District Counsel, also delivered via electronic
17 mail and certified mail; and

18 3. The Hearing Board shall retain jurisdiction over this matter for three years from the date
19 of conclusion of the hearing in this matter, pursuant to Hearing Board Rule 4.12, during which period
20 the parties may apply to modify or terminate this Order in accordance with the Rules of the Hearing
21 Board; and

22 4. Landlord Respondents shall provide actual notice of this Order to all prospective tenants,
23 buyers, lenders, and successors in interest in the Site for as long as the Hearing Board retains jurisdiction
24 over this matter; and

25 5. Cultivator Respondents shall provide actual notice of this Order to any prospective sub-
26 tenants or assignees with respect to their leasehold interest in the Site for as long as the Hearing Board
27 retains jurisdiction over this matter; and

1 6. Once the Order in this matter is finalized, that a copy of it be provided electronically to
2 the City of Oakland City Attorney, City Administrator, Building Division and Fire Prevention Bureau;
3 and

4 7. That a copy of the final Order be provided electronically to the United Rentals branch
5 manager and account manager; and

6 8. That a copy of the final Order be provided to the Compliance Division of the California
7 Department of Cannabis Control; and

8 9. That a copy of the final Order be posted by Green Sage, so that every page is readable, at
9 every entrance to both 5601 and 5733 San Leandro Street, Oakland; and that the Order remain posted
10 until all portable diesel generators are either removed from the properties or proper permits are obtained;
11 and

12 10. On a monthly basis through December 2022, due no later than the fifth of the month, that
13 Green Sage provides a list of all cannabis tenants with full contact information to the APCO.

14
15 **VIOLATION OF THIS ORDER MAY RESULT IN PENALTIES UP TO \$25,000 PER DAY**

16 As provided by Cal. Health and Safety Code Section 42401:

17 Any person who intentionally or negligently violates any order of abatement issued by a
18 district pursuant to Section 42450, by a hearing board pursuant to Section 42451, or by
19 the state board pursuant to Section 41505 is liable for a civil penalty of not more than
20 twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

21 **APPEAL RIGHTS**

22 Pursuant to Cal. Health and Safety Code Section 40864, Respondents may appeal this
23 Abatement Order by filing an action within 30 days of the Effective Date of this Abatement Order.

24
25 **Motion To (1) Adopt Order For Abatement Paragraphs 1-5 as Articulated By Board Member
26 Dr. Chiu and (2) Make a Finding Regarding Inapplicability of 90-Day Grace Period**

27 **Moved By:** Peter Y. Chiu, M.D., P.E.

28 **Seconded By:** Barbara Toole O'Neil, Ch.E., Q.E.P.

1 **Ayes:** Valerie J. Armento, Esq., Chair; Peter Y. Chiu, M.D., P.E.; Catherine Fortney, P.E.;
2 Barbara Toole O'Neil, Ch.E., Q.E.P.; and Amelia Timbers

3 **Noes:** None.

4

5 **Motion to Amend Requested Order For Abatement To Include Notification Items**
6 **(Adding Paragraphs 6-10 to Order For Abatement)**

7 **Moved By:** Valerie J. Armento, Esq., Chair

8 **Seconded By:** Barbara Toole O'Neil

9 **Ayes:** Valerie J. Armento, Esq., Chair; Peter Y. Chiu, M.D., P.E.; Catherine Fortney, P.E.;

10 Barbara Toole O'Neil, Ch.E., Q.E.P.; and Amelia Timbers

11 **Noes:** None.

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7/20/2022

14 Valerie J. Armento, Esq., Chair

Date

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1 BEFORE THE HEARING BOARD
2 OF THE
3 BAY AREA AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA

4 AIR POLLUTION CONTROL OFFICER of)
5 the BAY AREA AIR QUALITY)
6 MANAGEMENT DISTRICT,)

Docket No.: 3733

CERTIFICATE OF SERVICE

7 Complainant,

8 vs.

9 GREEN SAGE MANAGEMENT, LLC, a)
10 Colorado Limited Liability Corporation;)
11 OAKLAND CANNERY REAL ESTATE,)
12 LLC, a California Limited Liability)
13 Corporation; 5601 SLOCA, LLC, a California)
14 Limited Liability Corporation; 5733 SLOCA,)
15 LLC, a California Limited Liability)
16 Corporation; 5601-A LLC, a California)
17 Limited Liability Corporation; 5601-B LLC, a)
18 California Limited Liability Corporation; and)
19 DOES 1 - 25, inclusive,)

20 Respondents,

21 ROMSPEN CALIFORNIA MORTGAGE)
22 LIMITED PARTNERSHIP, an Ontario)
23 Limited Partnership,)

24 Intervenor.

FILED

JUL 21 2022

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

25 STATE OF CALIFORNIA)

26 City and County of San Francisco)

ss.

27 I, Marcy Hiratzka, do hereby certify under penalty of perjury as follows:

28 That I am a citizen of the United States, over the age of eighteen years and not a party to the
above-entitled actions; that I served true copies of the attached **Order for Abatement** on: (see
next page)

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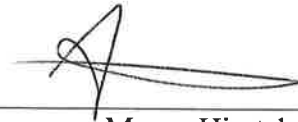
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Recipient	Method of Delivery
<i>Respondents Served</i>	
<p>Green Sage Management, LLC c/o 1505 Corporation 112 CT Corporation System 330 N. Brand Blvd, Ste. 700 Glendale, CA 91203-2326</p> <p>And to 1250 Humboldt St., Suite 1203 Denver, CO 80218</p>	<p>Electronic Mail (to D. Gambelin, K. Greer, J. Barnocky, M. Espinoza, and C. Thomas) & Certified Mail</p>
<p>Oakland Cannery Real Estate, LLC c/o 1505 Corporation 1567 Incorporating Services, Ltd. 7801 Folsom Blvd, # 202 Sacramento, CA 95826-2620</p>	<p>Certified Mail</p>
<p>5601 SLOCA, LLC 5601 San Leandro St Oakland, CA 94621-4432</p>	<p>Certified Mail</p>
<p>5601-A LLC c/o Marcos Morales 3440 Airway Drive Suite H200 Santa Rosa, CA 95403</p>	<p>Certified Mail</p>
<p>5733 SLOCA, LLC c/o Steve Goldblatt 22 Martin St Gilroy, CA 95020</p>	<p>Certified Mail</p>
<p>5601-B LLC c/o Russell Weisman 1720 River View Lane Colfax, CA 95713</p>	<p>Electronic Mail (to R. Weisman) & Certified Mail</p>
<i>Complainant Served</i>	
<p>Air District Legal Counsel Brian Case, Esq.</p>	<p>Electronic Mail (to B. Case, A. Schwartz, and M. Vinluan-Chan)</p>
<i>Intervenor Served</i>	
<p>Romspen California Mortgage Limited Partnership 515 Flower St, Fl 25 Los Angeles, CA 90071-2228</p>	<p>Electronic Mail (to T. Lee, K. Hirsch, and W. Roitman) & US Mail</p>
<i>Other Entities Served by Order of the Hearing Board Chair</i>	
<p>Barbara Parker, City Attorney City of Oakland bparker@oaklandca.gov</p>	<p>Electronic Mail</p>
<p>Gregory Minor Asst. to City Administrator City of Oakland gminor@oaklandca.gov</p>	<p>Electronic Mail</p>

Richard Fielding Planning & Building Dept. City of Oakland <u>rfielding@oaklandca.gov</u>	Electronic Mail
Felicia Bryant, Fire Marshall City of Oakland <u>fwanzobryant@oaklandca.gov</u>	Electronic Mail
Christophe Johns, Branch Manager United Rentals 2249 Davis Court Hayward 94545 <u>cjohns1@ur.com</u>	Electronic Mail
Justin McCaffery, Account Manager United Rentals 100 1 st Stamford Place, Stamford CT 06902 <u>jmccaffery@ur.com</u>	Electronic Mail
Compliance Division California Dept. of Cannabis Control <u>Renee.Hussar@cannabis.ca.gov</u> <u>Michael.Vella@cannabis.ca.gov</u> <u>Jennie.Wung@cannabis.ca.gov</u>	Electronic Mail

DATED: July 21, 2022



Marcy Hiratzka
Clerk of the Boards