

## BAY AREA AIR QUALITY MANAGEMENT DISTRICT

### Memorandum

To: Chairperson John J. Bauters and Members  
of the Administration Committee

From: Chairperson Valerie J. Armento, Esq., and  
Members of the Hearing Board

Date: July 5, 2022

Re: Hearing Board Quarterly Report: April – June 2022

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### RECOMMENDED ACTION

None; receive and file.

### DISCUSSION

This report covers the second calendar quarter (April – June) of 2022.

- Held two hearings;
- Processed three orders: and
- Collected a total of \$353.00 in Hearing Board filing fees.

Below is a detail of Hearing Board activity during the same period:

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### **Docket: 3732 – APCO vs. Chemtrade West US, LLC – Accusation and Stipulated Conditional Order for Abatement**

**Location:** Contra Costa County; City of Richmond

**Regulation(s):** Regulation 1, Rule 522 (General Provisions, Continuous Emission Monitoring and Recordkeeping Procedures)

**Synopsis:** Respondent operates the Chemtrade sulfuric acid manufacturing plant, a source of sulfur dioxide (“SO<sub>2</sub>”) emissions which are monitored, in part, by a Continuous Emissions Monitoring System (“CEMS”) on its Sulfuric Acid Manufacturing Plant (“S-1”). Air District staff determined the S-1 CEMS is improperly configured and cannot comply with applicable monitoring requirements without replacement and reconfiguration. The Stipulated Order requests the Hearing Board enter a Conditional Order for Abatement against Respondent requiring Respondent to refrain from operating its Plant after the deadlines unless Respondent has completed all Compliance Actions by their deadlines. All Compliance Actions refer specifically to the CEMS unit installed at S-1.

**Status:** Accusation filed by Complainant (Air District) on February 24, 2022; Notice of Defense filed by Respondent on March 10, 2022; Notice of Hearing (for April 5, 2022) filed/issued on March 15, 2022; Notice of Continued Hearing (for April 12, 2022) filed/issued on March 17, 2022; hearing held on April 12, 2022; Stipulated Conditional Order for Abatement filed/issued on April 12, 2022 (see language below).

***THE HEARING BOARD ORDERED:***

*Respondent Chemtrade West US, LLC shall refrain from operating its Plant after the compliance action deadlines stated below, unless Respondent has completed all compliance actions enumerated below by their indicated deadlines:*

**Compliance Actions**

*I.1 – Adequately heat and maintain sample line above moisture dew point of stack gas. Install new/used or rental sample line if necessary. (Reg. 1-522.10). Complete by 4/15/2022.*

*I.2 – Install calibration gas line to existing "T" on CEM probe and ensure daily calibrations challenge the entire CEM system. (Reg. 1-522.5, MOP Vol. V, Section 5.2) Complete by 4/15/2022.*

*I.3 – Ensure daily calibrations (O<sub>2</sub> and SO<sub>2</sub>) are being conducted and are passing performance criteria. This can be achieved manually or automatically through the use of software. (Reg. 1-522.5, MOP Vol. V, Section 5.2). Complete by 4/15/2022.*

*I.4 – Install new/used or rental sample conditioning system for removal of moisture or directly measure moisture content in real-time. Alternatively, indicate to the District that a default value of 3 percent moisture will be assumed for all periods. (SO<sub>2</sub> limit= 300 ppm dry). Complete by 4/15/2022.*

*I.5 – Install new/used or rental stack flow probe or develop an alternative approach to measure stack flow in dry standard cubic feet (dscf). (Reg. 1-522.10, MOP Vol. V, Section 3). Complete by 4/15/22.*

*I.6 – Ensure daily calibration records are being maintained and available upon request. (MOP Vol. V, Sec. 5.2, Reg. 1-522.9). Complete by 4/15/2022.*

*I.7 – Conduct 7-day calibration drift procedure and a Relative Accuracy Test Audit (RATA) on O<sub>2</sub>/SO<sub>2</sub> analyzers as detailed in EPA 40 CFR 60, App. B, Performance Specification 2. The final report for the RATA shall include: exhaust gas flow rate in standard cubic feet per minute (scfm), exhaust gas moisture content (%), percent oxygen content (%), raw sulfur dioxide concentration (ppm), sulfur dioxide concentration at 12 percent oxygen (ppm, dry basis), and sulfur dioxide mass emission rate (lb/hour). Complete by 5/2/2022.*

*I.8 – Submit 7-Day drift and RATA results to the recipients below within 45 days of testing. (Reg. 1-522.3). Submit by 6/16/2022.*

**Docket: 3733 – APCO vs. Green Sage Management, LLC, et al. – Accusation and Request for Order for Abatement**

**Location:** Alameda County; City of Oakland

**Regulation(s):** Regulation 2, Rule 1, Section 301 (Permits – Authority to Construct; and Regulation 2, Rule 1, Section 302 (Permits – Permit to Operate)

**Synopsis:** Seven (7) respondents were originally named by the Air District:

Referred to collectively as “Landlord Respondents”:

1. Green Sage Management, LLC, a Colorado Limited Liability Corporation;
2. Oakland Cannery Real Estate, LLC, a California Limited Liability Corporation;
3. 5601 SLOCA, LLC, a California Limited Liability Corporation;
4. 5733 SLOCA, LLC, a California Limited Liability Corporation;
5. Romspen California Mortgage Limited Partnership; an Ontario Limited Partnership;

AND

Referred to collectively as “Cultivator Residents”:

6. 5601-A LLC, a California Limited Liability Corporation; and
7. 5601-B LLC, a California Limited Liability Corporation

Landlord Respondents are owners or operators of a 10+ acre floor area mixed-use (indoor cannabis cultivation, live-work residential lofts, and other uses) warehouse complex located at 5601 and 5733 San Leandro Street, Oakland, California (hereinafter, the "Site"). The Site principally consists of two large buildings historically known as "The Oakland Cannery" and "The Oakland Tinnery." Cultivator Respondents are owners or operators of expansive indoor cannabis cultivation facilities within the Site. Since at least July 2, 2021 - and possibly as early as mid-2020 - a number of Portable Equipment Registration Program (PERP)-registered portable diesel generators stationed within the Site's loading docks and other exterior spaces have supplied power to the Site without District-required permits. These generators operate all day and all night. These generators are connected to transfer boxes within the Site's buildings, providing *primary power*. A PERP registration is not a valid authorization to operate where engines are "used to provide primary or supplemental power to a building, facility, stationary source, or stationary equipment," except, as the California Air Resources Board ("CARB") states, in "very specific circumstances." (*13 Cal. Code Regs. § 2453(m)(4)(E); CARB 's 2019 Portable Equipment --Frequently Asked Questions.*) According to the Air District, none of the "very specific circumstances" that might allow a business or landlord to use generators as primary power to buildings are present. Additionally, the Air District is informed and believes that at least one - and possibly all nine - of the PERP-registered generators currently on Site have either (1) been at the Site for more than 12 consecutive months; or (2) replaced generators that collectively and consecutively have been at the Site for more than 12 months. As such, the Air District believes there is a second reason why PERP registration is invalid for continuing operation (i.e., a second reason a District permit must now be obtained and an abatement order must issue). *13 CCR. Section 2452(d).*

*Note: On June 13, 2022, prior to the first hearing regarding this matter, one of the seven original respondents, Romspen California Mortgage Limited Partnership, submitted 1) a Stipulation to Dismiss Romspen as a Respondent and File Intervention Application, and 2) Application for Intervention to the Hearing Board. Within these two documents, Romspen asserted that it was not an “owner/operator” of the site, that Romspen did not review or approve of any of the leases for the Site, that Romspen did not approve or authorize the use of diesel generators at the site, and that the Air District consented to dismissing Romspen as a respondent and agreed to let Romspen participate instead as an intervenor. Based upon Romspen’s requests within these two documents, the Hearing Board Chairperson issued an Order of Dismissal of Respondent Romspen and Approval of Romspen as Intervenor, on June 22.*

**Status:** Accusation and Statement to Respondent filed by Complainant (Air District) on April 20, 2022; Notice of Defense & Objection to Accusation submitted by Green Sage Management, LLC on May 5, 2022; Notice of Defense filed by Romspen on May 5, 2022; Notice of Hearing (for June 28, 2022) filed/issued on June 2, 2022; Stipulation to Dismiss Romspen as a Respondent and File Intervention Application and Application for Intervention submitted by Romspen on June 13, 2022; Order of Dismissal of Respondent Romspen and Approval of Romspen as Intervenor filed on June 21, 2022; hearing held on June 28, 2022; Notice of Continued Hearing (for July 7, 2022) filed/issued on June 30, 2022.

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**Docket: 3734 – Cypress AMLOC Land Co. – Request for Emergency Variance**

**Location:** San Mateo County; City of Colma

**Regulation(s):** Regulation 8, Rule 34, Section 301.1 (Organic Compounds, Solid Waste Disposal Sites, Landfill Gas Collection and Emission Control System Requirements)

**Synopsis:** Applicant is a closed landfill operating a McGill Model EGF-26 enclosed flare with a flow range from 200 -850 scfm. The flare currently operates 24 hours a day with a reducing gas generation and methane quality. The site consists of 33 vertical wells and 8 horizontal collectors. The collection system piping consists of an above ground headers and laterals. The Applicant sought a variance for the McGill enclosed landfill gas flare, A2. On May 7th, the flare had become in-operable due to a failed HMI controller damaged by a PG&E electrical outage. The purpose of the HMI controller is to controls all flare functions, such as flare startup sequence, blower operation, maintain flare temperature, and emergency shut down. The flare operation is essential to the company to stay in compliance with its Permit to Operate, PTO#1364. The Applicant claimed that the malfunction of the HMI controller was unforeseen and identified as a sudden equipment failure, and that there were no symptoms which would have caused the technician to take corrective action during his visual inspection. Blue Flame has recommended to facility to install an electrical surge protection on the incoming power to help eliminate damage to the controls.

**Status:** Application for Emergency Variance filed by Applicant on May 12, 2022; Air District staff response received on May 19, 2022; Hearing Board response received on May 26, 2022; Order Granting Emergency Variance filed on June 3, 2022.

**Requested Period of Variance:** May 7, 2022 to May 13, 2022

**Estimated Excess Emissions:** None.

**Fees collected this quarter:** \$353.00.

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Respectfully submitted,

*/s/ Valerie J. Armento*

Valerie J. Armento, Esq.  
Chair, Hearing Board

Prepared by: Marcy Hiratzka  
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