

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: October 4, 2022

Re: Hearing Board Quarterly Report: July – September 2022

RECOMMENDED ACTION

None; receive and file.

DISCUSSION

This report covers the third calendar quarter (July – September) of 2022.

- Held three hearings;
- Processed three orders: and
- Collected a total of \$14,088.00 in Hearing Board filing fees.

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

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 had supplied power to the Site without District-required permits. These generators operated all day and all night. These generators were 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 were present. Additionally, the Air District was informed, and believes that at least one - and possibly all nine - of the PERP-registered generators on Site were either (1) at the Site for more than 12 consecutive months; or (2) replaced generators that collectively and consecutively had been at the Site for more than 12 months. As such, the Air District believed there was a second reason why PERP registration was invalid for continuing operation (i.e., a second reason a District permit must 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 5, 2022) filed/issued on June 30, 2022; both parties submitted their chronology of significant dates

regarding this matter, as well as their Pacific Gas & Electric (PG&E) contacts, per the Hearing Board, by July 1, 2022; second hearing held on July 5, 2022; Notice of Continued Hearing (for July 12, 2022) filed/issued on July 5, 2022; Hearing Board issued subpoena to PG&E representatives related to the matter, to be present at July 12, 2022 hearing; PG&E submitted documentation on July 11, 2022, and attended the third hearing, held July 12, 2022; Order for Abatement filed/issued on July 21, 2022 (see language below).

THE HEARING BOARD ORDERED:

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

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

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

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

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

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

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

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

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

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

AFTERMATH:

Following the abatement order issued by the Hearing Board on July 21, 2022, ordering that all nine generators be shut down, the Respondent continued to use five generators, in defiance of the order, through August. The Respondent argued, in a late July court filing, that it needed more power than PG&E could provide in order to meet the needs of cannabis cultivation, citing millions of dollars of crop lost if there was a sudden change in energy supply.

On September 13, 2022, the Air District received a ruling from an Alameda County Superior Court judge, finding that the abatement order to shut down diesel generators at the Green Sage cannabis facilities in Oakland was immediately enforceable, by further order of the court. The judge's ruling rejected technical arguments that the order was not immediately enforceable and ratified the Hearing Board's order to post the abatement order on the property. The judge also invited the Air District to apply for a temporary restraining order in the event there is any evidence of renewed interest in bringing diesel generators to the property in defiance of the Hearing Board's order.

The Air District worked with the Oakland City Attorney's Office to contact the generator rental company, United Rentals, and have the generators removed. After the Hearing Board inquired directly with United Rentals on September 6, 2022, United Rentals confirmed that all nine generators had been removed from the Site.

On September 27, 2022, the Respondent submitted a Request for Dismissal of its court filing.

Docket: 3735 – Waste Connections: Potrero Hills Landfill, Inc. – Request for Emergency Variance

Location: Solano County; City of Suisun City

Regulation(s): Regulation 2, Rule 1 (Permits, General Requirements), and Permit Condition #27218.

Synopsis: Applicant is a municipal solid waste landfill (the "Facility") located at 3675 Potrero Hills Lane, Suisun City, California, 94585. The Facility is considered an essential public service that serves as a critical public health function. The equipment that is the subject of the petition is two portable diesel tipper engines (S-38 and S-39) which are critical to the facility's waste disposal operations. These engines are 174 brake-horsepower [bhp], Tier 4F certified engines. The tippers

are mobile hydraulic platforms powered by a diesel engine and are used to tip cargo trailer truck containers vertically to empty the loads. On Friday, August 5, 2022, the Facility experienced a small, isolated fire in the active filling area, suspected to be caused by a hot load from a residential refuse hauling truck. The fire was centralized in the trash and caused damage to the two tippers, S-38 and S-39, rendering them inoperable. There was no damage caused to any other equipment or to the landfill gas system, nor were there any excess emissions as a result the event. The Tier 4F engines were not damaged by the fire. Applicant applied for an Emergency Variance for relief to temporarily operate two tippers that use a 174 bhp Tier 4 interim tipper engine and 156 bhp Tier 3 tipper engine.

Requested Period of Variance: 7:00 a.m. on August 15, 2022, to 7:00 a.m. on September 15, 2022.

Estimated Excess Emissions: (See below, provided by applicant)

Air Pollutant	Net Emissions Increase (Proposed Temp. Engines - Existing Tipper Engines)		
	lb/hr	tons/year	lbs - 30 days
VOCs	0.0462	0.0614	33.26
NOx	1.4514	1.9295	1,045.04
SO _x	0.0006	0.0210	0.44
CO	1.0185	1.3508	733.30
PM ₁₀	0.0040	0.0055	2.88
Total HAPs	7.88E-06	2.69E-04	0.01

Emissions estimates based on proposed operation of 5,304 hrs/yr combined for the two temporary engines (2,652 hrs each).

Fees collected this quarter: \$2,009.00.

Status: Application for Emergency Variance filed by Applicant on August 11, 2022; Air District staff response received on August 18, 2022; Hearing Board response received on August 22, 2022; Order Granting Emergency Variance filed/issued on August 23, 2022.

Docket: 3736 – Waste Connections: Potrero Hills Landfill, Inc. – Request for Interim and Regular Variances

Location: Solano County; City of Suisun City

Regulation(s): Regulation 2, Rule 1 (Permits, General Requirements), and Permit Condition #27218.

Synopsis: Applicant is a municipal solid waste landfill (the “Facility”) located at 3675 Potrero Hills Lane, Suisun City, California, 94585. The Facility is considered an essential public service

that serves as a critical public health function. The equipment that is the subject of the petition is two portable diesel tipper engines (S-38 and S-39) which are critical to the facility's waste disposal operations. These engines are 174 brake-horsepower [bhp], Tier 4F certified engines. The tippers are mobile hydraulic platforms powered by a diesel engine and are used to tip cargo trailer truck containers vertically to empty the loads. On Friday, August 5, 2022, the Facility experienced a small, isolated fire in the active filling area, suspected to be caused by a hot load from a residential refuse hauling truck. The fire was centralized in the trash and caused damage to the two tippers, S-38 and S-39, rendering them inoperable. There was no damage caused to any other equipment or to the landfill gas system, nor were there any excess emissions as a result the event. The Tier 4F engines were not damaged by the fire. Applicant applied for an Emergency Variance for relief to temporarily operate two tippers that use a 174 bhp Tier 4 interim tipper engine and 156 bhp Tier 3 tipper engine.

Following the issuance of the Order Granting Emergency Variance on August 23, 2022, the Applicant contacted the Clerk of the Hearing Board on September 1, 2022, seeking relief beyond that stipulated within the granted Emergency Variance, in the form of an Application for Interim and Regular Variances. The Applicant's plan for returning to compliance included repair, retrofitting, and replacement options, but all options were being impacted by either high workload demand or supply chain delays. Applicant represented that there were only two companies that made tippers appropriate for this facility; a repair quote and a replacement quote were obtained from Columbia Industries, but Columbia had not yet provided an estimated timeframe for implementation. The Applicant also represented that it had sought quotes from two companies for retrofitting the temporary tippers with the permitted Tier 4F engines. Some scenarios would have required an Air District permit application for Authority to Construct.

The Applicant promised to notify the Air District and provide a tentative schedule detailing the course of actions planned to return to compliance, once a decision has been made (whether to replace, retrofit, or repair the tippers.)

Requested Period of Variance: September 15, 2022, to September 15, 2023.

Estimated Excess Emissions: (See below, provided by applicant)

Air Pollutant	12-Month Net Emissions Increase ^[1] (Temporary - Existing Tipper Engines)		
	Existing Tippers S-38 & S-39	Temporary Tipper Engines	Net Emissions
	lbs - 12 Months	lbs - 12 Months	lbs - 12 Months
VOCs	15.18	136.89	121.71
NOx	455.38	4,281.06	3,825.68
SO _x	1,891.94	1,795.71	-96.23
CO	30.36	2,729.77	2,699.41
PM ₁₀	15.18	25.00	9.82
Total HAPs	24.49	23.24	-1.25

Permit Condition 27218 allows S-38 and S-39 tipper engines to operate up to 5,304 hours combined during any 12-month consecutive (approximately 2,652 hours per year per engine). Emissions estimate assumes each temporary engine will operate approximately 2,652 hours during the requested 12-month variance period, based on permitted annual operation.

Fees collected this quarter: \$12,079.00.

Status: Application for Interim and Regular Variances filed by Applicant on September 1, 2022; Notice of Hearings filed/issued on September 7, 2022; Interim Variance hearing held on September 13, 2022; Order Granting Interim Variance, granting relief from 10:30 a.m. on September 13, 2022 through the date the Hearing Board makes a determination on the regular variance application (anticipated to be October 18, 2022), filed/issued on September 22, 2022.

The Regular Variance hearing scheduled for October 18, 2022.

Respectfully submitted,

/s/ Valerie J. Armento

Valerie J. Armento, Esq.
Chair, Hearing Board

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