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**FILED**  
**APR 20 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; ROMSPEN  
CALIFORNIA MORTGAGE LIMITED  
PARTNERSHIP, an Ontario Limited Partnership; 5601-  
A LLC, a California Limited Liability Corporation;  
5601-B LLC, a California Limited Liability Corporation;  
and DOES 1 - 25, inclusive,

Respondents.

DOCKET NO. **3733**

**ACCUSATION AND REQUEST FOR  
ORDER FOR ABATEMENT**

**Regulation 2, Rule 1, Section 301 [No  
Permit to Construct]**

**Regulation 2, Rule 1, Section 302 [No  
Permit to Operate]**

Complainant, the Air Pollution Control Officer of the Bay Area Air Quality Management District (hereinafter the "Complainant" or "District"), brings this accusation in his official capacity against Green Sage Management, LLC; Oakland Cannery Real Estate, LLC; 5601 SLOCA, LLC; 5733 SLOCA, LLC; Romspen California Mortgage Limited Partnership (hereinafter referred to collectively as "Landlord Respondents"), 5601-A LLC, 5601-B LLC (hereinafter referred to collectively as "Cultivator Respondents"), and Does 1-25, seeking an order that both Landlord and Cultivator Respondents take

1 requisite action to abate their violation of District Regulation 2, Rule 1, Section 301; and District  
2 Regulation 2, Rule 1, Section 302 (“Accusation”). In support of this request, Complainant alleges as  
3 follows:

#### 4 INTRODUCTION

5 1. Landlord Respondents, at all times relevant to the Accusation, are owners or operators<sup>1</sup>  
6 of a 10+ acre floor area mixed-use (indoor cannabis cultivation, live-work residential lofts, and other  
7 uses) warehouse complex located at 5601 and 5733 San Leandro Street, Oakland, California  
8 (hereinafter, the “Site”). The Site principally consists of two large buildings historically known as “The  
9 Oakland Cannery” and “The Oakland Tinnery.” Cultivator Respondents, at all times relevant to the  
10 Accusation, are owners or operators<sup>2</sup> of expansive indoor cannabis cultivation facilities within the Site.  
11 Since at least July 2, 2021 – and possibly as early as mid-2020 – a number of PERP-registered<sup>3</sup> portable  
12 diesel generators stationed within the Site’s loading docks and other exterior spaces have supplied power  
13 to the Site without District-required permits. These generators operate all day, and all night. These  
14 generators are connected to transfer boxes within the Site’s buildings, providing *primary power*. A  
15 PERP registration is not a valid authorization to operate where engines are “used to provide primary or  
16 supplemental power to a building, facility, stationary source, or stationary equipment,” except, as the  
17 California Air Resources Board (“CARB”) states, in “very specific circumstances.” (*13 Cal. Code Regs.*  
18 *§ 2453(m)(4)(E); CARB’s 2019 Portable Equipment -- Frequently Asked Questions.*<sup>4</sup>) As the District  
19 will prove at hearing, none of the “very specific circumstances” that might allow a business or landlord  
20 to use generators as primary power to buildings are present here. Additionally, the District is informed  
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22 <sup>1</sup> As used herein, the term “owner or operator” has the same meaning as the defined term in District  
23 Regulation 1-241. Specifically, District Regulation 1-241 provides that an “owner or operator” is “[a]ny  
24 person who owns, leases, operates, controls, or supervises a facility, building, structure, installation, or  
25 source which directly or indirectly results or may result in emissions of any air pollutant.”

26 <sup>2</sup> Again, and as detailed in footnote 1, above, the term “owner or operator” has the same meaning as the  
27 defined term in District Regulation 1-241.

28 <sup>3</sup> The California Air Resources Board’s Portable Equipment Registration Program is set forth at 13 Cal.  
Code Regs. § 2450, et seq.

<sup>4</sup> Available at <https://ww2.arb.ca.gov/sites/default/files/2019-06/PERP%20FAQ.pdf> (Accessed April 15,  
2022).

1 and believes that at least one – and possibly all nine – of the PERP-registered generators currently on  
2 Site have either (1) been at the Site for more than 12 consecutive months; or (2) replaced generators that  
3 collectively and consecutively have been at the Site for more than 12 months. As such, there is a second  
4 reason why PERP registration is invalid for continuing operation (i.e., a second reason a District permit  
5 must now be obtained and an abatement order must issue). *13 C.C.R. Section 2452(d)*.

## 6 **PARTIES AND JURISDICTION**

### 7 **Complainant: The District APCO**

8 2. The District is and has been organized and existing under Chapter 4 of Part 3 of Division  
9 26 (sections 40200 to 40276) of the California Health and Safety Code. The District is a governmental  
10 agency charged with the primary responsibility for controlling air pollution from stationary sources in all  
11 or portions of the nine Bay Area counties, including all of Alameda County. The District's  
12 responsibility includes adopting and enforcing rules and regulations relating to air pollution and  
13 maintaining healthy air quality.

14 3. The District may establish by District rules and regulations a permit system in order to  
15 ensure, among its other purposes, that operating certain equipment will neither prevent nor interfere with  
16 the attainment or maintenance of any applicable air quality standard. Under its permit system, the  
17 District may require a permit to operate such equipment. *California Health and Safety ("Health &  
18 Saf.") Code § 42301(a); see generally, Health & Saf. Code §§ 42300 et seq., District Regulation 2, Rule  
19 1. The District's Air Pollution Control Officer ("APCO") may impose conditions on the permit that "he  
20 deems reasonably necessary to ensure compliance with federal or California law or District regulations."  
21 District Regulation 2-1-403.*

22 4. The APCO is authorized to enforce the District's rules and regulations and its permit  
23 system. *Health & Saf. Code § 40752*. The APCO is authorized to seek an order for abatement from the  
24 District's Hearing Board to stop a person from operating equipment that requires, but lacks a valid  
25 District permit to operate, which is a violation of District Regulation 2, Rule 1. *Health & Saf. Code  
26 §42451(a); Hearing Board Rules, Bay Area Air Quality Management District, §4.1 (June 2, 2011)*.

### 27 **Landlord Respondents**

28 5. Complainant is informed and believes and thereon alleges that Respondent Green Sage

1 Management, LLC (“Green Sage”) is, and has been at all times relevant to this Accusation, a limited  
2 liability corporation organized under the laws of the State of Colorado.

3 6. Complainant is informed and believes and thereon alleges that Green Sage has been at all  
4 times relevant to this Accusation, an owner or operator of the portable diesel generators under District  
5 Regulation 1-241.

6 7. Complainant is informed and believes that Green Sage filed an Application to Register a  
7 Foreign Limited Liability Company with the California Secretary of State on November 7, 2017, listing  
8 “CT CORPORATION SYSTEM (C0168406) as Green Sage’s Registered Corporate Agent for Service  
9 of Process. CT Corporation’s service address is 330 N Brand Blvd, Ste. 700, Glendale, CA 91203.

10 8. Complainant notes an address discrepancy between Green Sage’s California and  
11 Colorado Secretary of State corporate filings. While noting this discrepancy, District is informed and  
12 believes that Green Sage’s principal business address is 100 Fillmore St., Fifth Floor, Denver, Colorado  
13 80206.

14 9. Complainant is informed and believes and thereon alleges that Respondent OAKLAND  
15 CANNERY REAL ESTATE, LLC is, and has been at all times relevant to this Accusation, a limited  
16 liability corporation organized under the laws of the State of California.

17 10. Complainant is informed and believes and thereon alleges that OAKLAND CANNERY  
18 REAL ESTATE, LLC is, and has been at all times relevant to this Accusation, an owner or operator of  
19 the portable diesel generators under District Regulation 1-241.

20 11. Complainant is informed and believes that OAKLAND CANNERY REAL ESTATE,  
21 LLC filed Articles of Organization of a Limited Liability Company with the California Secretary of  
22 State on October 24, 2017. Complainant is informed and believes that OAKLAND CANNERY REAL  
23 ESTATE, LLC filed a Statement of Information with the California Secretary of State on September 16,  
24 2021, indicating the designated agent for service of process as “INCORPORATING SERVICES, LTD.  
25 (C2892002).” The service address for Incorporating Services, Ltd., is 7801 Folsom Blvd., #202  
26 Sacramento, CA 95826.

27 12. Complainant is informed and believes and thereon alleges that Respondent 5601 SLOCA,  
28 LLC is, and has been at all times relevant to this Accusation, a limited liability corporation organized

1 under the laws of the State of California.

2 13. Complainant is informed and believes and thereon alleges that 5601 SLOCA, LLC is, and  
3 has been at all times relevant to this Accusation, an owner or operator of the portable diesel generators  
4 under District Regulation 1-241.

5 14. Complainant is informed and believes that 5601 SLOCA, LLC filed Articles of  
6 Organization of a Limited Liability Company with the California Secretary of State on May 13, 2016.  
7 Complainant is informed and believes that 5601 SLOCA, LLC filed a Statement of Information with the  
8 California Secretary of State on November 16, 2021, listing “Kenneth Edward Greer, Jr.” as the  
9 Manager of 5601 SLOCA, LLC and indicating Mr. Greer is the designated agent for service of process,  
10 at 5601 San Leandro Street, Oakland, CA, 94621.

11 15. Complainant is informed and believes and thereon alleges that Respondent 5733 SLOCA,  
12 LLC is, and has been at all times relevant to this Accusation, a limited liability corporation organized  
13 under the laws of the State of California.

14 16. Complainant is informed and believes and thereon alleges that 5733 SLOCA is, and has  
15 been at all times relevant to this Accusation, an owner or operator of the portable diesel generators under  
16 District Regulation 1-241.

17 17. Complainant is informed and believes that 5733 SLOCA, LLC filed Articles of  
18 Organization of a Limited Liability Company with the California Secretary of State on December 14,  
19 2015, listing Steven Goldblatt as 5733 SLOCA, LLC’s Registered Agent for Service of Process and  
20 indicating a designated office address (and the address for service of process upon Mr. Goldblatt) as 22  
21 Martin Street, Gilroy, CA, 95020. Complainant is informed and believes that 5733 SLOCA, LLC filed a  
22 Statement of Information with the California Secretary of State on January 19, 2016, listing “Ken Greer”  
23 as the Manager of 5733 SLOCA, LLC.

24 18. Complainant is informed and believes and thereon alleges that Respondent ROMSPEN  
25 CALIFORNIA MORTGAGE LIMITED PATNERSHIP, AN ONTARIO LIMITED PATNERSHIP is,  
26 and has been at all times relevant to this Accusation, a limited partnership organized under the laws of  
27 Ontario, CA.

28 19. Complainant is informed and believes and thereon alleges that ROMSPEN

1 CALIFORNIA MORTGAGE LIMITED PARTNERSHIP is, and has been at all times relevant to this  
2 Accusation, an owner or operator of the portable diesel generators under District Regulation 1-241.  
3 Specifically, the Complainant is informed and believes that ROMSPEN CALIFORNIA MORTGAGE  
4 LIMITED PARTNERSHIP presently holds a beneficial ownership interest in the Site under a Deed of  
5 Trust, including an Assignment of Rents.

6 20. Based on public record, Complainant is informed and believes that ROMSPEN  
7 CALIFORNIA MORTGAGE LIMITED PARTNERSHIP issued a “Notice of Default and Election to  
8 Sell [the Site] Under Deed of Trust” on December 27, 2021 and that a Trustee sale is currently  
9 scheduled for May 4, 2022.

10 21. Complainant is informed and believes that ROMSPEN CALIFORNIA MORTGAGE  
11 LIMITED PARTNERSHIP filed a Foreign Limited Partnership Application for Registration with the  
12 California Secretary of State on June 23, 2014, listing Philip Feder as the partnership’s Registered Initial  
13 Agent for Service of Process in California and indicating a service address of 515 South Flower Street,  
14 25<sup>th</sup> Floor, Los Angeles, CA 90071.

15 22. Complainant is informed and believes and thereon alleges that all Landlord Respondents  
16 are “persons” under District Regulation 1-221.

17 **Cultivator Respondents**

18 23. Complainant is informed and believes and thereon alleges that Respondent 5601-A LLC  
19 is, and has been at all times relevant to this Accusation, a limited liability corporation organized under  
20 the laws of the State of California.

21 24. Complainant is informed and believes and thereon alleges that 5601-A LLC is, and has  
22 been at all times relevant to this Accusation, an owner or operator of the portable diesel generators under  
23 District Regulation 1-241. Specifically, the Complainant is informed and believes that 5601-A LLC is a  
24 business with State Bureau of Cannabis Control license # CCL19-0000077 to cultivate cannabis at 5601  
25 San Leandro Street, Oakland, CA 94621 (i.e. the “Oakland Tinnery”).

26 25. Complainant is informed and believes that 5601-A LLC filed Articles of Organization of  
27 a Limited Liability Company with the California Secretary of State on May 5, 2017. Complainant is  
28 informed and believes that 5601-A LLC filed a Statement of Information with the California Secretary

1 of State on July 3, 2018, listing “Marcos Morales” as the Manager of 5601-A LLC, with a service  
2 address of 3440 Airway Drive Suite H200, Santa Rosa, CA, 95403. The July 3, 2018 filing lists the  
3 business address as 5601 San Leandro St, Oakland, CA, 94621, and describes the business as  
4 “agriculture.” A Statement of No Change was filed with the Secretary of State on July 9, 2021.

5 26. Complainant is informed and believes and thereon alleges that 5601-B LLC is, and has  
6 been at all times relevant to this Accusation, an owner or operator of the portable diesel generators under  
7 District Regulation 1-241. Specifically, the District is informed and believes that 5601-B, LLC is a  
8 business with a State Bureau of Cannabis Control license CCL19-0000137 to cultivate cannabis at 5601  
9 San Leandro Street, Oakland CA 94621 (i.e. the “Oakland Tinnery”).

10 27. Complainant is informed and believes that 5601-B LLC filed Articles of Organization of  
11 a Limited Liability Company with the California Secretary of State on May 5, 2017. Complainant is  
12 informed and believes that 5601-B LLC filed a Statement of Information with the California Secretary  
13 of State on February 23, 2022 listing “Russell Weisman” as the Manager of 5601-B LLC, with a service  
14 address of 1720 River View Lane, Colfax, CA 95713. The February 23, 2022 filing lists the business  
15 address as 5601 San Leandro St., Suite 200, Oakland, CA, 94621, and describes the business as  
16 “cannabis cultivation.”

17 28. Complainant is informed and believes and thereon alleges that all Cultivator  
18 Respondents are “persons” under District Regulation 1-221.

19 **Does 1 through 25**

20 29. The District does not know the true names and capacities of Respondents Does 1 through  
21 25, inclusive, and therefore names them by the foregoing fictitious names. When the true names and  
22 capacities of these Doe Respondents are discovered, Complainant will seek leave of the Hearing Board  
23 to amend this Accusation to reflect their true names and capacities. Each of the fictitiously-named  
24 Respondents is responsible for the occurrences alleged herein.

25  
26 **The District Hearing Board Has Jurisdiction**

27 30. The District’s Hearing Board may, after notice and a hearing, issue an order for  
28 abatement against a person when the Hearing Board finds that the person is operating any equipment or

1 other contrivance without a permit to operate in violation of a District rule or regulation. *Health & Saf.*  
2 *Code § 42451(a)*. The Hearing Board’s order will require that the person either refrain from a particular  
3 act or refrain from a particular act unless certain conditions are met. *Health & Saf. Code §42452*.

4 **BACKGROUND**

5 **Portable Diesel Generators are a Source of Air Contaminants, Including Toxic Air Contaminants**

6 31. Portable diesel generator engines are a source of volatile organic compounds (VOCs),  
7 nitrogen oxides (NOx), diesel exhaust particulate matter (DPM), and carbon monoxide (CO) emissions.

8 32. VOCs, NOx, and CO are ozone precursors. *District Regulations 1-233, 2-1-208*; Bay  
9 Area Air Quality Management District, *Special Report: Volatile Organic Compounds*”<sup>5</sup> Ozone  
10 aggravates respiratory diseases and damages vegetation. Ground level ozone is the primary component  
11 of photochemical smog. *See e.g., Bay Area Air Quality Management District, 2017 Clean Air Plan*  
12 (*“CAP”*), adopted April 19, 2017, at Volume I, p. 2/13. *CAP*, at Volume I, at pp. 2/2, 2/10 – 2/15.

13 33. Ozone is a federal Clean Air Act criteria air pollutant and subject to federal and State  
14 ambient air quality standards. Currently, the Bay Area is not in attainment with either the federal eight-  
15 hour ambient air quality standard for ozone or the State’s one-hour or eight-hour ambient air quality  
16 standards for ozone. *See 2017 CAP, supra*, at Table 2-2, at p. 2/6.

17 34. More than 90% of DPM is less than 1 µm in diameter (about 1/70<sup>th</sup> the diameter of a  
18 human hair), and thus is a subset of particulate matter less than 2.5 microns in diameter (PM2.5). *See*  
19 *CARB, Overview: Diesel Exhaust & Health.*”<sup>6</sup> PM2.5, a diverse mixture of suspended particles and  
20 liquid droplets (aerosols), is the air pollutant most harmful to the health of Bay Area residents. Exposure  
21 to PM2.5, on either a short-term or long-term basis, can cause a wide range of respiratory and  
22 cardiovascular health effects, including strokes, heart attacks and premature deaths. Because it is part of  
23 PM2.5, DPM also contributes to the same non-cancer health effects as PM2.5 exposure. These effects  
24 include premature death, hospitalizations, and emergency department visits for exacerbated chronic

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26 <sup>5</sup> Available at <https://www.baaqmd.gov/about-air-quality/special-air-monitoring-projects/special-reports/volatile-organic-compounds> (Accessed 4/15/2022).

27 <sup>6</sup> Available at <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health> (Accessed  
28 4/10/2022).



1 heart and lung disease, including asthma, increased respiratory symptoms, and decreased lung function  
2 in children. *See* CARB, “*Overview: Diesel Exhaust & Health*,” *supra*.

3 35. The majority of DPM is small enough to be inhaled into the lungs. Most inhaled particles  
4 are subsequently exhaled, but some deposit on the lung surface. Although particles the size of DPM can  
5 deposit throughout the lung, the largest fraction deposits in the deepest regions of the lungs where the  
6 lung is most susceptible to injury. In 1998, CARB identified DPM as a toxic air contaminant based on  
7 published evidence of a relationship between diesel exhaust exposure and lung cancer and other adverse  
8 health effects. In 2012, additional studies on the cancer-causing potential of diesel exhaust published  
9 since CARB’s determination led the International Agency for Research on Cancer (IARC, a division of  
10 the World Health Organization) to list diesel engine exhaust as “carcinogenic to humans.” This  
11 determination is based primarily on evidence from occupational studies that show a link between  
12 exposure to DPM and lung cancer induction, as well as death from lung cancer. Several studies suggest  
13 that exposure to DPM may also facilitate development of new allergies. Those most vulnerable to non-  
14 cancer health effects are children whose lungs are still developing and the elderly who often have  
15 chronic health problems. *See* CARB, “*Overview: Diesel Exhaust & Health*,” *supra*.

16 36. DPM is classified as a toxic air contaminant (“TAC”) under the District’s Regulations.  
17 *District Regulation 2, Rule 5, Table 2-5-1.*

18 **District Regulation 2, Rule 1, Sections 301 and 302 [Failure to Obtain Authority to Construct and**  
19 **Permit to Operate]**

20 37. One of the District’s means to control VOCs, NO<sub>x</sub>, DPM, and CO emissions from  
21 portable diesel generators is to require that persons who operate portable diesel generators and connect  
22 them to buildings do so pursuant to a District-issued authority to construct and permit to operate.

23 38. District Regulation 2, Rule 1, Section 301 prohibits the erection or installation of any  
24 article, machine, equipment or other contrivance that causes or controls the issuance of air contaminants  
25 by any person (as defined in District Regulation 2, Rule 1, Section 401) without first obtaining written  
26 authority from the APCO in the form of an Authority to Construct.

27 39. District Regulation 2, Rule 1, Section 302 prohibits the use or operation of any article,  
28 machine, equipment or other contrivance that may cause emissions of air contaminants by any person

1 (as described in District Regulation 2, Rule 1, Section 401) without first obtaining a written  
2 authorization from the APCO in the form of a permit to operate. Issuance of a permit enables the  
3 District to ensure that only equipment meeting health-protective air quality standards is used and to  
4 impose any conditions, limitations, and restrictions to the operation of that equipment necessary to  
5 ensure compliance.

6 40. The District requires that the health impacts from new and modified sources that emit  
7 TACs (like the DPM that diesel generators produce) be evaluated before an Authority to Construct or  
8 Permit to Operate is issued, in order to ensure that a proposed project will not cause, or contribute  
9 significantly to, an unacceptable adverse health risk for persons who live or work nearby. This  
10 evaluation program is referred to as new source review of toxic air contaminants. The health impact  
11 review requirements and the criteria for an acceptable project are implemented through the District's  
12 Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants. See Bay Area Air Quality  
13 Management District, *New and Modified Sources of Toxic Air Contaminants – Manual of Procedures*,  
14 *Volume II, Part 4*.<sup>7</sup>

15 41. The District requires that persons who operate a diesel-fueled compression ignition  
16 engine must do so pursuant to a District permit to operate. CARB's Statewide Portable Equipment  
17 Registration Program ("PERP") program provides for limited exceptions to the District's permitting and  
18 authority to construct requirements. The District's regulatory framework, which expressly  
19 acknowledges and incorporates the exceptions found within the CARB PERP Regulations, is codified at  
20 *District Regulation 2-1-105*.<sup>8</sup>

21 42. CARB's PERP program establishes a statewide program for the registration and

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23 <sup>7</sup> Available at [https://www.baaqmd.gov/~media/files/records/mop/vol-2/vol2\\_pt4.pdf?la=en&rev=f27dd7ed079e49f9a10a4c8f6e301702](https://www.baaqmd.gov/~/media/files/records/mop/vol-2/vol2_pt4.pdf?la=en&rev=f27dd7ed079e49f9a10a4c8f6e301702) (Accessed 4/15/2022).

24 <sup>8</sup> District Regulation 2-1-105 provides: "**Exemption, Registered Statewide Portable Equipment:**  
25 Equipment that complies with all applicable requirements of and is registered under the Statewide  
26 Portable Equipment Registration Program (California Code of Regulations Title 13, Division 3, Chapter  
27 3, Article 5) is exempt from the requirements of Sections 2-1-301 and 302. If the equipment ceases to  
28 qualify for this exemption for any reason (for example, if it remains at any fixed location for more than  
twelve months or otherwise ceases to be portable as defined by the Program), the equipment shall be  
subject to the requirements of Regulation 2 as if it were a new source."

1 regulation of portable engines and allows portable engines and equipment units to operate throughout  
2 the State of California without authorization from air quality management or air pollution control  
3 districts, under certain circumstances and for limited periods of time. 13 CCR Section 2450, et seq.

4 43. CARB issues a set of “operating conditions” in connection with PERP registration  
5 (“Standard PERP Operating Conditions”). The Standard PERP Operating Conditions restate the  
6 governing rules for registrants in concise, numbered paragraphs. *See* Exhibit 1 to Accusation.

7 44. One such paragraph advises registrants that “This registration is not valid for the  
8 operation of a generator used to provide primary or supplemental power to a building, facility, stationary  
9 source, or stationary equipment except during the following scenarios: unforeseen interruptions of  
10 power from the serving utility; maintenance and repair operations to a building, facility, stationary  
11 source, or stationary equipment, including maintenance of stationary backup generators that have not  
12 experienced an engine failure; and electrical upgrade operations including startup, shutdown, and testing  
13 that do not exceed 90 calendar days, or a longer period as authorized in writing by the district.” *See*  
14 Exhibit 1, at page 2 ¶7 and Exhibit 2 to Accusation, at page 2 ¶6.

15 45. In a separate numbered paragraph, and tracking the text of CARB regulations<sup>9</sup>, the  
16 Standard PERP Operating Conditions typically provide: “The engine and any replacement engine shall  
17 not reside at the same location for more than 12 consecutive months.” *See* Exhibit 1 to Accusation, at  
18 page 2 ¶10 and Exhibit 2 to Accusation, at page 2 ¶9. There is no exception to this bright-line, 12-  
19 month, maximum-period-of-residing rule, either in the CARB regulations, or the text of the typical  
20 Standard PERP Operating Conditions that are sent to PERP registrants. Cal. Code Regs. Tit. 13, § 2452  
21 (dd). Importantly, the text of the PERP Operating Conditions advises operators that “replacement  
22 engines” are treated as if they are the same engine for purposes of the 12-month in situ limitation on  
23 PERP authorization. In other words, an owner/operator will not be allowed to circumvent the 12-month  
24 rule by swapping out different engines. The text of the Operating Conditions about counting  
25 “replacement engines” is directly supported by Cal. Code Regs. Tit. 13, § 2452 (dd)(1), which provides,  
26 in part:

27 \_\_\_\_\_  
28 <sup>9</sup> Cal. Code Regs. Tit. 13, § 2452(dd)

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2  
3 ... Any engine or equipment unit such as back-up or stand-by engines or  
4 equipment units, that replace engine(s) or equipment unit(s) at a location,  
5 and is intended to perform the same or similar function as the engine(s) or  
6 equipment unit(s) being replaced, will be *included in calculating* the  
7 consecutive time period. In that case, the cumulative time of all engine(s)  
8 or equipment unit(s), including the time between the removal of the original  
9 engine(s) or equipment unit(s) and installation of the replacement engine(s)  
10 or equipment unit(s), will be counted toward the consecutive time period  
11 [emphasis added] . . .

12 46. To obtain a District permit to operate a portable diesel generator, a person must submit an  
13 application with information sufficient to enable the APCO to render a decision or preliminary decision  
14 on the application and must pay all appropriate fees. Such fees include, at a minimum, a filing fee, an  
15 initial fee, and a permit to operate fee. *District Regulations 2-1-402, 2-1-303, and 3-302.*

16 47. If a person operated the portable diesel generator prior to having obtained a District  
17 permit to operate, that person must also pay “back fees,” covering up to five years of operation without  
18 the required permit, pursuant to *District Regulation 3-303.*

19 48. In accordance with its authority, the District may issue a notice of violation (“NOV”) to  
20 persons who operate equipment without a required District permit to operate. *District Regulation 3-415.*

21 Respondents’ Continuing Non-Compliance With District Regulation 2, Rule 1 Sections 301 And 302  
22 Supports Issuance Of An Order For Abatement

23 49. At all times since portable diesel generator use began, Respondents’ statewide PERP  
24 registrations have been invalid for the purposes of covering Respondents’ use scenario, because:

- 25 a. the generators were being used as primary power to buildings on the Site;
- 26 b. after analyzing information provided by Respondent Green Sage about the current  
27 total power draw of the Site and their stated future upgrade plans with PG&E, the  
28 District is informed and believes that the generators were not brought to the Site as  
mere replacement power for an unforeseen interruption of electrical power from  
PG&E within the meaning of 13 C.C.R. § 2453(m), but rather to serve as an  
expedient means of dramatically *self-upgrading* total available power to the Site  
without making costly and slow-to-build PG&E upgrades;
- c. to the extent any generators are operating at the Site to address an interruption in  
utility-supplied power, that interruption was foreseeable and was in fact caused by  
the high demand placed on utility power by Respondents; and
- d. the generators were not brought to the site for the purposes of electrical upgrade

operations within the meaning of 13 C.C.R. § 2453(m).

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3 50. On February 16, 2022, District Air Quality Specialist Patricia Barnes (“Barnes”) issued a  
4 Notice of Violation to “Green Sage Management, LLC” for “No Authority to Construct” and “No  
5 Permit to Operate.” Air Quality Specialist Barnes wrote “portable diesel generators (9) operated w/out  
6 District permit.” The Notice of Violation indicates that the occurrence of the violation began on  
7 November 30, 2021. Martin Espinosa signed the Notice of Violation, indicating his title as “Consultant,  
8 Crystal Construction Consulting.” *See* Exhibit 3 to Accusation.

9 51. The District is informed and believes that Barnes indicated that the violation began on  
10 November 30, 2021 because, at that point in time, (1) it was her understanding that generator use first  
11 began on July 2, 2021; and (2) Barnes decided to exclude the first 90-days of non-compliance from the  
12 Notice of Violation, giving Respondent Green Sage the benefit of the 90-day “electrical upgrade  
13 operations” exception at 13 C.C.R. § 2453(m) based on the information known to her on February 16,  
14 2021. Neither the Hearing Board nor the District are bound by Barnes’ initial judgment regarding the  
15 period of non-compliance.

16 52. In a February 25, 2022, letter from their legal counsel, Respondent Green Sage  
17 acknowledged that portable diesel generators were at the Site and operating on July 7, 2021 to supply  
18 power to the Site’s buildings after a “failure of PG&E equipment that is not the fault of Green Sage and,  
19 to date, has not been repaired” Respondents have further admitted that, in connection with the  
20 continuing lack of PG&E power, they began operating additional generators on October 1 and 2, 2021.  
21 (hereinafter, July 7, 2021 to present will be referred to as the “Admitted Period of Operation”). *See*  
22 Exhibit 4 to Accusation.

23 53. In that February 25, 2022, letter from their legal counsel, Respondent Green Sage further  
24 admitted the scale of the Site’s energy use, stating: “PG&E estimates that it will not have the additional  
25 6M of power needed for 5601 nor the 10MW of power needed for 5733 San Leandro Street until 2023  
26 or 2024.” *See* Exhibit 4 to Accusation.

27 54. The District is informed and believes that one or more of the PERP-registered generators  
28 currently on Site have either (1) been at the Site for more than 12 consecutive months; or (2) have

1 replaced generators that have been at the Site for more than 12 months. As such, there is a second  
2 reason why PERP registration for at least one generator is invalid for continuing operation (i.e., a second  
3 reason a District permit must now be obtained and an abatement order must issue). *13 C.C.R. Section*  
4 *2452(d)*. This allegation is based in part on facts contained in Fire Inspection Reports from the City of  
5 Oakland.

6 55. Because PERP registration is invalid for the current use scenario, the APCO is informed  
7 and believes and thereon alleges that Respondents are currently operating nine portable diesel generators  
8 for primary power to the Site, without any valid Permit to Operate, in violation of District Regulation 2,  
9 Rule 1, Section 302. The APCO is further informed and believes and thereon alleges that Respondents  
10 have never obtained an Authority to Construct for any of the nine generators currently in use nor for any  
11 generators that preceded these nine, in violation of District Regulation 2, Rule 1, Section 301. This  
12 allegation is based on the facts alleged in the paragraphs above.

13 **AN ORDER FOR ABATEMENT IS APPROPRIATE AND REASONABLE**

14 56. Because United Rentals (the non-party generator rental company who the District is  
15 informed and believes has supplied many – if not all – of the generators at issue in this Accusation  
16 pursuant to rental agreements with Respondent Green Sage) was required by law to provide them, the  
17 District believes that Respondent Green Sage received copies of the PERP registration certificate for  
18 each generator brought to the Site, including operating conditions, as part of its rental agreement with  
19 United Rentals. These registration certificates plainly spell out the general prohibition against using  
20 generators as primary power to a building with a PERP registration alone and the limited exceptions to  
21 that rule. *See, for example*, Exhibits 1 and 2 to Accusation.

22 57. Even if those operating conditions were not provided to either Landlord Respondents or  
23 Cultivator Respondents, a set of “Frequently Asked Questions” posted on CARB’s PERP website<sup>10</sup>  
24 plainly states the general rule that “Registered engines may not operate as stationary sources of air  
25 pollution”, for anyone looking into the legality of such a practice to see:

26  
27 \_\_\_\_\_  
28 <sup>10</sup> Available at <https://ww2.arb.ca.gov/sites/default/files/2019-06/PERP%20FAQ.pdf> (Accessed April 15, 2022).

1           **Can a portable generator register in PERP if it powers a building or**  
2           **stationary equipment?**

3           Registered engines may not operate as stationary sources of air pollution.  
4           Therefore, this type of operation is only allowed under very specific  
5           circumstances (e.g. electrical upgrades not exceeding 90 days, 72 hour  
6           district notification of stationary backup generator failure and 180 days for  
7           temporary replacement operation) which are listed in sections  
8           2453(m)(4)(D) and 2453(m)(4)(E) of the PERP Regulation. Facilities that  
9           have interruptible rate agreements with the utilities may not use PERP-  
10          registered generators under those circumstances to supply power during  
11          periods when utility service is interrupted.

12           58.       Similarly, CARB’s PERP website<sup>11</sup> plainly states “Statewide registration under PERP is  
13          not valid where engines are ‘used to provide primary or supplemental power to a building, facility,  
14          stationary source, or stationary equipment’ except during, ‘unforeseen interruptions of electrical power  
15          from the serving utility.’”

16           59.       Because of the highly regulated nature of their business, it is fair and reasonable to issue  
17          this order, in part, against the Cultivator Respondents. As alleged above, while the Cultivator  
18          Respondents do not directly contract to rent the at issue here, they are “owners or operators” of the  
19          generators under District Regulation 1-241 because they pay the Landlord Respondents to keep the  
20          generators running. Moreover, Cannabis Cultivators licensed in the City of Oakland should be aware  
21          of “2019-2020 Administrative Regulations and Performance Standards for City of Oakland Cannabis  
22          Operators,”<sup>12</sup> which provides that generators licensees must “comply with all applicable state and *local*  
23          *laws*, policies or regulations, including, but not limited to, the Health and Safety Code, the Business and  
24          Professions Code, the Medical and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) and  
25          any related regulations, the City of Oakland adopted Building Code, Plumbing Code, Electrical Code,  
26          Mechanical Code, Fire Code, and the Americans with Disabilities Act. [emphasis added]” or face  
27          potential revocation of their permit. In other words, such a business is on notice that it cannot simply  
28          rely on the lessor to assure compliance with the law.

          60.       Given Respondents’ actual, constructive, or imputed knowledge of the illegality of the

26           <sup>11</sup> Available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff#voluntary> (Accessed April 15, 2022).

27           <sup>12</sup> Available at <https://cao-94612.s3.amazonaws.com/documents/FINAL-2019-2020-admin-regs.pdf>  
28          (Accessed April 15, 2022).

1 generator use at issue here, and the significant amount of time that Respondents have operated  
2 knowingly and intentionally without a current or valid District Permit despite the knowledge that one is  
3 needed, Complainant alleges further that it is unlikely Respondents will bring their operations into  
4 compliance with District Regulation 2, Rule 1, Sections 301 and 302, without a Hearing Board order to  
5 abate their continuing violations.

6 61. The District acknowledges that, on or about February 22, 2022, Respondent Green Sage  
7 submitted application documents to obtain District permits to operate nine diesel generators, capable of  
8 producing 10MW of total power. These application materials indicate that generator use will occur 24  
9 hours per day, seven days a week, 52 weeks per year. That application was found to be incomplete by  
10 District Staff, and Respondent Green Sage was so notified on March 23, 2022. There is no District  
11 regulation, rule, or policy, that provides that an illegal operator can avoid or delay an Order for  
12 Abatement by virtue of the fact that there is a pending permit application to legalize operations. In any  
13 case, Respondent's incomplete application provides little or no assurance that the generators at the Site  
14 will be able to be permitted by the District.

15 **REQUEST FOR ORDER FOR ABATEMENT**

16 WHEREFORE, the APCO requests that this Hearing Board issue an Order for Abatement  
17 ("Order") that takes effect as of the date the Hearing Board causes the Order to be filed, pursuant to  
18 Hearing Board Rule 10.3 ("Effective Date"), and that provides as follows:

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

23 2. Respondents shall demonstrate compliance with this Order by submitting to the Hearing  
24 Board either (a) a copy of a current and valid District permit to operate the Facility, or (b) written  
25 affirmation executed by Respondents that they have ceased operating all portable generators at The Site  
26 and that they shall not recommence operating any generators, if ever, until they have met all applicable  
27 requirements to obtain and maintain a valid District permit to operate pursuant to District Regulation 2,  
28 Rule 1. Respondents shall deliver such documentation via electronic mail and certified mail to the Clerk



1 of the Hearing Board, by no later than fifteen (15) calendar days from the Effective Date, with a copy of  
2 such documentation to Adan Schwartz, Acting District Counsel, also delivered via electronic mail and  
3 certified mail; and

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

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

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

13 6. Such other and further relief as the Hearing Board deems just and proper.

14 Dated: April 20, 2022

ADAN SCHWARTZ, Acting District Counsel  
BRIAN CASE, Assistant Counsel  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Attorneys for  
ALEXANDER CROCKETT, Acting Interim Executive  
Officer/APCO  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

19  
20 By: \_\_\_\_\_  
BRIAN CASE, Assistant Counsel

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2 such documentation to Adan Schwartz, Acting District Counsel, also delivered via electronic mail and  
3 certified mail; and

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5 of hearing in this matter, pursuant to Hearing Board Rule 4.12, during which period the parties may  
6 apply to modify or terminate this Order in accordance with the Rules of the Hearing Board; and

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

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

13 6. Such other and further relief as the Hearing Board deems just and proper.

14 Dated: April 20, 2022

ADAN SCHWARTZ, Acting District Counsel  
BRIAN CASE, Assistant Counsel  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Attorneys for  
ALEXANDER CROCKETT, Acting Interim Executive  
Officer/APCO  
BAY AREA AIR QUALITY MANAGEMENT DISTRICT

19  
20 By:

  
BRIAN CASE, Assistant Counsel

# EXHIBIT 1

# Statewide Portable Equipment Registration

10506632  
19B  
PH

**Registration No: 174150**

Legal Owner or Operator:

United Rentals (North America), Inc.

Mailing Address:

400 E. North Avenue  
Streamwood, IL 60107

Engine Description:

Certified portable internal combustion engine, compression ignition, manufactured by Cummins, model QST30-G4, serial no. 37268160, (Unit Number: E160954692), rated at 1490 bhp, Diesel fueled.

Fleet's Compliance Path: Tier Phase-Out	Engine DPM Emission Factor: 0.067 g/bhp-hr
Engine Tier Phase-Out Date: 12-31-2033	Tier - Placard Color: Tier 2 - Brown

U.S. EPA Engine Family Name:

ACEXL060.AAD

Conditions:

see attached

Home District:

South Coast Air Quality Management District

Engine Inspection Discount:

No inspection discount claimed

**Expiration Date: September 30, 2022**



David J. Mallory  
Manager, Portable Equipment Registration Program  
Enforcement Division

## Statewide Portable Equipment Registration

### The following operating conditions apply for registration 174150

Engine Serial No.: 37268160

#### General Requirements

1. This engine may not operate in California after **December 31, 2033**.
2. Statewide registration does not relieve any obligations under any other applicable law.
3. The engine shall be properly maintained and kept in good operating condition at all times.
4. The registration identification sticker shall be affixed in a visible location on the registered portable engine at all times. The metal placard shall be securely affixed on a vertical surface of the portable engine in a location that is readily visible from a distance. A legible copy of the registration certificate and operating conditions shall be kept on site with the portable engine and shall be made accessible to the California Air Resources Board or district representative upon request.
5. Engines must use only CARB diesel fuel as defined in Title 17 California Code of Regulations Section 93116.2, or other fuels and/or additives that have been verified through the Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines.
6. This registration is not valid for operation of generators used to provide power into the grid, except during an emergency event or other unforeseen event that affects grid stability.
7. This registration is not valid for the operation of a generator used to provide primary or supplemental power to a building, facility, stationary source, or stationary equipment except during the following scenarios: unforeseen interruptions of power from the serving utility; maintenance and repair operations to a building, facility, stationary source, or stationary equipment, including maintenance of stationary backup generators that have not experienced an engine failure; and electrical upgrade operations including startup, shutdown, and testing that do not exceed 90 calendar days, or a longer period as authorized in writing by the district.
8. Upon approval from the local district, a generator may be used to temporarily replace a stationary backup generator permitted by a district that has experienced an engine failure as long as the conditions specified in Title 13 of the California Code of Regulations Section 2453(m)(4)(E)(4) are met.
9. This registration is not valid for any location where the permitted stationary engine has reached the operational limits on the permit, even during an emergency.
10. The engine and any replacement engine shall not reside at the same location for more than 12 consecutive months.
11. The operation of this engine shall not cause a public nuisance.
12. The portable engine shall not be operated under both statewide registration and a district permit at any specific location.
13. The engine shall be equipped with operational and properly maintained non-resettable hour time meter.
14. For each rental engine or an engine used in a third party rental transaction, the owner shall provide each person who rents the portable engine with a copy of the registration certificate, including operating conditions, as part of the rental agreement.
15. This registration is not valid for operation in State Territorial Waters without written authorization from the corresponding onshore district.
16. The operator of a portable engine or equipment unit shall obtain district authorization prior to operation at any specific location where the Statewide registration is not valid.
17. This registration is not valid for operation within the boundaries of the California Outer Continental Shelf.
18. This registration is not valid for operation of an engine that powers an equipment unit that has been determined by the California Air Resources Board or the district to qualify as part of a stationary source.
19. The owner/operator of this engine shall contact the local air district prior to operation at an agricultural source.
20. For each rental engine or an engine used in a third party rental transaction, a written copy of the rental agreement or a completed Form 50 must be kept onsite at all times.

## The following operating conditions apply for registration 174150

Engine Serial No.: 37268160

21. Except for projects that exclusively use Tier 4 engines or operate in remote locations, onshore projects as defined in California Code of Regulations Section 2452(ff) that operate in a district designated as extreme non-attainment for ozone, the person responsible for the project site must notify the district in writing if the total maximum rated horsepower of registered engines located simultaneously on the project exceeds 2,500 bhp.
  - a. For projects that exceed 2,500 bhp at startup, the notification must be done at least 14 days prior to commencing operations. Notification must be done within 72 hours of commencing operation for projects that provide relief to an emergency or projects that exceed 2,500 bhp after startup.
  - b. The notification shall include the registration number of each registered engine, the name and phone number of the contact person with information concerning the locations where the engines will be operated, estimated time the registered engines will be operating on the project, and the Final CEQA Document and Notice of Determination and, if requested, supporting information.
  - c. The district may perform an ambient air quality impact analysis (AQIA). The owner of engine(s) registered in the statewide registration program shall be required, at the request of the district, to submit any information deemed by the district to be necessary for performing the AQIA. Except for Tier 4 final engines, statewide registration shall not be valid at any location where the AQIA demonstrates that the operation of the registered engines will cause a violation of an ambient air quality standard.
22. No person shall sell or offer for sale this engine to an end user in California after **December 31, 2033**. The sale of this engine outside of California is not prohibited.
23. The statewide registration for this engine shall not be transferred to a new owner after **July 1, 2033**.
24. Any person selling a certified engine subject to Title 17 of the California Code of Regulations Section 93116 in California must provide the following disclosure in writing to the buyer as part of the sales transaction: "When operated in California, any portable diesel engine may be subject to the California Air Resources Board Airborne Toxic Control Measure For Diesel Particulate Matter From Portable Engines Rated At 50 Horsepower And Greater. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <https://www.arb.ca.gov/portable/portable.htm>"

### Emission Limitations

25. No air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than 3 minutes in any one hour which is as dark or darker than Ringelmann 1 or equivalent to 20% opacity.

### State Territorial Waters

26. Authorization from the corresponding onshore district is required prior to operating this engine in State Territorial Waters. If authorization is in the form of a district permit, the terms and conditions of the district permit supercede the statewide registration requirements for the project, except that the most stringent of the control technology requirements and emission concentration limits contained in either the district permit or statewide registration apply.
27. Prior to operating in State Territorial Waters, the operator shall notify the corresponding onshore district at least 14 days in advance of commencing operations in that district. Notification shall include the registration number of the engine, name and phone of the responsible official, estimated duration of project, and estimated emissions expected for the project.
28. The owner/operator of this engine shall submit any information deemed necessary by the corresponding onshore district to perform an air quality impact analysis (AQIA). This registration shall not be valid at any location where the AQIA demonstrates a potential violation of an ambient air quality standard.

### Recordkeeping

29. For a rental engine or an engine that is part of a third party rental transaction, the rental business shall provide a written log for recordkeeping purposes which is to be kept with the rental engine at all times. The rental business shall keep records of the company identification number that can be cross referenced with the registration number; date of the start and end of the rental transaction; and written (signed) acknowledgment by each renter of having received the registration certificate and operating conditions. Separate logs may be kept for each rental transaction, but the rental business must maintain the records contained in each log on a calendar year basis for each registered engine. All previous annual logs shall be maintained at a central location for a minimum of five years, and made accessible to the California Air Resources Board or districts upon request.
30. All records shall be maintained at a central place of business for a minimum of five years, and made accessible to the California Air Resources Board or district representative upon request.
31. For non-rental engines, the operator shall record the registration number and specific location of the engine (i.e. street address and city; or county and UTM coordinates; or other location indicator) no less than once a month.
32. While the engine is out on rent, the rental customer shall record no less than once a month the specific location of the engine (i.e. street address and city; or county and UTM coordinates; or other location indicator) in the written log provided by the owner.

**The following operating conditions apply for registration 174150**

Engine Serial No.: 37268160

**Reporting & Notification**

33. Registered diesel engines shall submit an hour meter reading with the renewal for each engine being renewed. The fleet owner must specify the date which the reading was taken, and the reading must be taken within 12 months prior to the expiration date of the registration.
34. The owner of a registered portable engine must notify the Executive Officer in writing within 30 days of replacing the registered portable engine with an identical replacement. The notification must include company name, the responsible official, phone number, registration number, make, rated brake horsepower, serial number of the identical replacement, and description of the engine failure. Applicable fees must be submitted as required in Title 13 of the California Code of Regulations Section 2461.
35. When this engine is sold, the new owner shall submit a change of ownership application within 30 days of the change in ownership. During the 30 day period the new owner is authorized to operate the registered engine. If an application is not received within 30 days of the ownership change, the existing registration is not valid for the new owner until the application has been filed and all applicable fees have been paid.

**Fleet Requirements**

36. A fleet shall not newly designate an engine to be low-use or emergency-use after the dates listed in the schedule in Title 17 of the California Code of Regulations Section 93116.3(b)(3). The schedule applies to flexibility engines according to the tier level to which the engine was built.

**Fleet Recordkeeping**

37. The responsible official of a fleet must keep records of annual operating hours for non-diesel fueled portable engines used as part of a company's fleet average, engines affected by the use of electrification, low-use engines, and emergency-use engines.
38. All records pertaining to the fleet shall be maintained at a central place of business for a minimum of five years, and made accessible to the California Air Resources Board or district representative upon request.

**Inspection Requirements**

39. Within 45 days after initial issuance or renewal of a registration, the owner or operator shall contact the home district to arrange for inspection to be completed within one year of the initial registration or renewal date. If the engine is operating in a district other than the home district, the owner or operator may request the home district to arrange an inspection by that other district.
40. The time for the arranged inspection shall be agreed upon in advance between the district and the company. To the extent that an arranged inspection does not fall within the district's normal workday, the district may charge for the off-hour time.
41. If an arranged inspection does not occur due to unforeseen circumstances, the inspection shall be rescheduled for no later than 90 days from the initially scheduled inspection.
42. For the purposes of scheduling inspections of multiple engines in order to qualify for an inspection fee discount, the owner or operator shall submit, within 45 days of initial registration issuance date or by January 30 of each year for renewals, a letter of intent to the home district that shall include an engine list with registration numbers of those to be inspected. If the fleet owner pays the discounted inspection fee and then fails to qualify for the discount during the actual arranged inspection, then the district may bill the fleet owner for the difference between the discounted inspection fee and the full inspection fee. Upon request of the district, the fleet shall not be eligible to use the discount in 2461(d) for any subsequent arranged inspections if the fleet failed to comply with the inspection fee discount requirements.
43. If the engine is out of California for one year or more following initial registration or renewal, the engine shall be excused from having the arranged inspection provided that within 45 days after the date of initial registration or renewal, the owner sends a letter to the district containing the registration number and a statement that the registered engine or equipment unit is out of California for the one-year period. Upon the return of the engine to California, the owner shall arrange to have the engine inspected within 30 days.

# EXHIBIT 2



## Statewide Portable Equipment

### Registration

15001401CU

Registration No: 187404

H84

Legal Owner or Operator:

United Rentals (North America), Inc.

005

Mailing Address:

400 E. North Avenue  
Streamwood, IL 60107

UT

PH

Engine Description:

Certified portable internal combustion engine, compression ignition, manufactured by Cummins, model QSK-50-G4, serial no. 25396015, (Unit Number: 15001401CU), rated at 2220 bhp, Diesel fueled.

Fleet's Compliance Path: Fleet Average Option		Engine DPM Emission Factor: 0.06 g/bhp-hr
Fleet's DPM Average: 0.058		Tier - Placard Color: Tier 2 - Brown
2020 DPM Std: 0.10 g/bhp-hr	2023 DPM Std: 0.06 g/bhp-hr	2027 DPM Std: 0.03 g/bhp-hr

U.S. EPA Engine Family Name:

ACEXL050.AAD

Conditions:

see attached

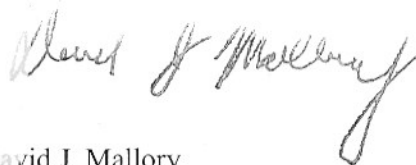
Home District:

Bay Area Air Quality Management District

Engine Inspection Discount:

No inspection discount claimed

**Expiration Date: March 31, 2023**

David J. Mallory  
Manager, Portable Equipment Registration Program  
Enforcement Division

## Statewide Portable Equipment Registration

### The following operating conditions apply for registration 187404

Engine Serial No.: 25396015

#### General Requirements

1. Statewide registration does not relieve any obligations under any other applicable law.
2. The engine shall be properly maintained and kept in good operating condition at all times.
3. The registration identification sticker shall be affixed in a visible location on the registered portable engine at all times. The metal placard shall be securely affixed on a vertical surface of the portable engine in a location that is readily visible from a distance. A legible copy of the registration certificate and operating conditions shall be kept on site with the portable engine and shall be made accessible to the California Air Resources Board or district representative upon request.
4. Engines must use only CARB diesel fuel as defined in Title 17 California Code of Regulations Section 93116.2, or other fuels and/or additives that have been verified through the Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines.
5. This registration is not valid for operation of generators used to provide power into the grid, except during an emergency event or other unforeseen event that affects grid stability.
6. This registration is not valid for the operation of a generator used to provide primary or supplemental power to a building, facility, stationary source, or stationary equipment except during the following scenarios: unforeseen interruptions of power from the serving utility; maintenance and repair operations to a building, facility, stationary source, or stationary equipment, including maintenance of stationary backup generators that have not experienced an engine failure; and electrical upgrade operations including startup, shutdown, and testing that do not exceed 90 calendar days, or a longer period as authorized in writing by the district.
7. Upon approval from the local district, a generator may be used to temporarily replace a stationary backup generator permitted by a district that has experienced an engine failure as long as the conditions specified in Title 13 of the California Code of Regulations Section 2453(m)(4)(E)(4) are met.
8. This registration is not valid for any location where the permitted stationary engine has reached the operational limits on the permit, even during an emergency.
9. The engine and any replacement engine shall not reside at the same location for more than 12 consecutive months.
10. The operation of this engine shall not cause a public nuisance.
11. The portable engine shall not be operated under both statewide registration and a district permit at any specific location.
12. The engine shall be equipped with operational and properly maintained non-resettable hour time meter.
13. For each rental engine or an engine used in a third party rental transaction, the owner shall provide each person who rents the portable engine with a copy of the registration certificate, including operating conditions, as part of the rental agreement.
14. This registration is not valid for operation in State Territorial Waters without written authorization from the corresponding onshore district.
15. The operator of a portable engine or equipment unit shall obtain district authorization prior to operation at any specific location where the Statewide registration is not valid.
16. This registration is not valid for operation within the boundaries of the California Outer Continental Shelf.
17. This registration is not valid for operation of an engine that powers an equipment unit that has been determined by the California Air Resources Board or the district to qualify as part of a stationary source.
18. The owner/operator of this engine shall contact the local air district prior to operation at an agricultural source.
19. For each rental engine or an engine used in a third party rental transaction, a written copy of the rental agreement or a completed Form 50 must be kept onsite at all times.

## The following operating conditions apply for registration 187404

Engine Serial No.: 25396015

20. Except for projects that exclusively use Tier 4 engines or operate in remote locations, onshore projects as defined in California Code of Regulations Section 2452(ff) that operate in a district designated as extreme non-attainment for ozone, the person responsible for the project site must notify the district in writing if the total maximum rated horsepower of registered engines located simultaneously on the project exceeds 2,500 bhp.
  - a. For projects that exceed 2,500 bhp at startup, the notification must be done at least 14 days prior to commencing operations. Notification must be done within 72 hours of commencing operation for projects that provide relief to an emergency or projects that exceed 2,500 bhp after startup.
  - b. The notification shall include the registration number of each registered engine, the name and phone number of the contact person with information concerning the locations where the engines will be operated, estimated time the registered engines will be operating on the project, and the Final CEQA Document and Notice of Determination and, if requested, supporting information.
  - c. The district may perform an ambient air quality impact analysis (AQIA). The owner of engine(s) registered in the statewide registration program shall be required, at the request of the district, to submit any information deemed by the district to be necessary for performing the AQIA. Except for Tier 4 final engines, statewide registration shall not be valid at any location where the AQIA demonstrates that the operation of the registered engines will cause a violation of an ambient air quality standard.
21. No person shall sell or offer for sale this engine to an end user in California after **December 31, 2030**. The sale of this engine outside of California is not prohibited.
22. The statewide registration for this engine shall not be transferred to a new owner after **July 1, 2030**.
23. Any person selling a certified engine subject to Title 17 of the California Code of Regulations Section 93116 in California must provide the following disclosure in writing to the buyer as part of the sales transaction: "When operated in California, any portable diesel engine may be subject to the California Air Resources Board Airborne Toxic Control Measure For Diesel Particulate Matter From Portable Engines Rated At 50 Horsepower And Greater. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board website at <https://www.arb.ca.gov/portable/portable.htm>"

### Emission Limitations

24. No air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than 3 minutes in any one hour which is as dark or darker than Ringelmann 1 or equivalent to 20% opacity.

### State Territorial Waters

25. Authorization from the corresponding onshore district is required prior to operating this engine in State Territorial Waters. If authorization is in the form of a district permit, the terms and conditions of the district permit supercede the statewide registration requirements for the project, except that the most stringent of the control technology requirements and emission concentration limits contained in either the district permit or statewide registration apply.
26. Prior to operating in State Territorial Waters, the operator shall notify the corresponding onshore district at least 14 days in advance of commencing operations in that district. Notification shall include the registration number of the engine, name and phone of the responsible official, estimated duration of project, and estimated emissions expected for the project.
27. The owner/operator of this engine shall submit any information deemed necessary by the corresponding onshore district to perform an air quality impact analysis (AQIA). This registration shall not be valid at any location where the AQIA demonstrates a potential violation of an ambient air quality standard.

### Recordkeeping

28. For a rental engine or an engine that is part of a third party rental transaction, the rental business shall provide a written log for recordkeeping purposes which is to be kept with the rental engine at all times. The rental business shall keep records of the company identification number that can be cross referenced with the registration number; date of the start and end of the rental transaction; and written (signed) acknowledgment by each renter of having received the registration certificate and operating conditions. Separate logs may be kept for each rental transaction, but the rental business must maintain the records contained in each log on a calendar year basis for each registered engine. All previous annual logs shall be maintained at a central location for a minimum of five years, and made accessible to the California Air Resources Board or districts upon request.
29. All records shall be maintained at a central place of business for a minimum of five years, and made accessible to the California Air Resources Board or district representative upon request.
30. For non-rental engines, the operator shall record the registration number and specific location of the engine (i.e. street address and city; or county and UTM coordinates; or other location indicator) no less than once a month.
31. While the engine is out on rent, the rental customer shall record no less than once a month the specific location of the engine (i.e. street address and city; or county and UTM coordinates; or other location indicator) in the written log provided by the owner.

## The following operating conditions apply for registration 187404

Engine Serial No.: 25396015

### Reporting & Notification

32. Registered diesel engines shall submit an hour meter reading with the renewal for each engine being renewed. The fleet owner must specify the date which the reading was taken, and the reading must be taken within 12 months prior to the expiration date of the registration.
33. The owner of a registered portable engine must notify the Executive Officer in writing within 30 days of replacing the registered portable engine with an identical replacement. The notification must include company name, the responsible official, phone number, registration number, make, rated brake horsepower, serial number of the identical replacement, and description of the engine failure. Applicable fees must be submitted as required in Title 13 of the California Code of Regulations Section 2461.
34. When this engine is sold, the new owner shall submit a change of ownership application within 30 days of the change in ownership. During the 30 day period the new owner is authorized to operate the registered engine. If an application is not received within 30 days of the ownership change, the existing registration is not valid for the new owner until the application has been filed and all applicable fees have been paid.

### Fleet Requirements

35. Except for low-use engines and engines used exclusively in emergency applications, for engines greater than 50 bhp, a weighted fleet average PM emission factor of 0.10 g/bhp-hr must be met by **January 1, 2020**, 0.06 g/bhp-hr must be met by **January 1, 2023**, and 0.03 g/bhp-hr must be met by **January 1, 2027**. Changes in the fleet, including engine additions and deletions, must not result in noncompliance with this standard.
36. A fleet shall not newly designate an engine to be low-use or emergency-use after the dates listed in the schedule in Title 17 of the California Code of Regulations Section 93116.3(b)(3). The schedule applies to flexibility engines according to the tier level to which the engine was built.
37. The weighted fleet average PM emission factor shall be calculated by taking the summation of the emission factor for each engine in the fleet multiplied by the bhp rating for each engine and then dividing that summation by the summation of the bhp ratings for all the engines in the fleet.
38. The weighted fleet average PM emission factor calculation shall use the test results from nonroad emission standard certification, test results from a verified emission control strategy as defined in Title 13 of the California Code of Regulations Section 93116.2. All test results shall be made available to the California Air Resources Board upon request.
39. Where equipment uses grid power for more than 200 hours in lieu of operating a portable diesel engine for a given project, the time period grid power is used may be used to reduce each affected engine's emission factor. The emission factor for each affected portable engine shall be reduced proportionally by the percentage of time the equipment uses grid power.
40. Where a fleet has chosen to replace an existing portable engine with electrification, the fleet may include the replaced engine in the fleet calculation with an emission factor of zero.
41. Where a fleet has chosen to install electrification in lieu of adding a diesel powered engine to the fleet, a fleet may include that engine in the fleet calculation with an emission factor of zero.
42. The weighted fleet average PM emission factor shall include all portable engines that are owned by a person, business, or government agency and are registered with the Statewide Portable Equipment Registration Program, operated within California, and meet the applicability listed in Title 17 of the California Code of Regulations Section 93116.1.
43. If certified non-diesel fueled engines are part of your fleet and have been operating 100 or more hours, they may be included toward determining compliance with the applicable fleet emission standards. A diesel PM emission rate of zero must be used in the fleet calculations for these engines. If the engine was added to the fleet prior to January 1, 2009, it may be counted twice in the company's fleet average determination toward compliance with the 2020 and 2023 fleet emission standards.
44. Tier 4 interim engines and Tier 4 final engines rated over 750 bhp that were permitted or registered prior to January 1, 2017 may be counted twice in the fleet average determination toward compliance with the 2020 and 2023 fleet emission standards.
45. In the event a fleet demonstrates compliance with Title 17 of the California Code of Regulations Section 93116.3(c)(8), the fleet may double count Tier 4 interim and Tier 4 final engines when demonstrating compliance with the 2020 and 2023 fleet emission standards for the applicable size category.

### Fleet Recordkeeping

46. The responsible official of a fleet must keep records of annual operating hours for non-diesel fueled portable engines used as part of a company's fleet average, engines affected by the use of electrification, low-use engines, and emergency-use engines.
47. All records pertaining to the fleet shall be maintained at a central place of business for a minimum of five years, and made accessible to the California Air Resources Board or district representative upon request.

## The following operating conditions apply for registration 187404

Engine Serial No.: 25396015

### Fleet Reporting and Notification

48. The Responsible Official of a fleet electing to use electrification in determining the fleet average must notify the Executive Officer of the affected engines prior to the start of the project as specified in Title 17 of the California Code of Regulations Section 93116.4(b)(3). In addition, the notification must clearly identify the electrification activity, including the amount of electricity used and the time period for the project as specified in Title 17 of the California Code of Regulations Sections 93116.3(d)(2)(A)(1), 93116.3(d)(2)(A)(2), and 93116.3(d)(2)(A)(3).
49. The Responsible Official of a fleet must submit to the California Air Resources Board by **March 1, 2020, March 1, 2023, and March 1, 2027** a signed statement of compliance that the fleet standards are being achieved. The statement of compliance must include for each engine in the fleet: serial number, brake horsepower rating, engine family name, fuel type, PM emission factor (g/bhp-hr), and State registration number. If compliance with the fleet average includes the use of electrification, the Responsible Official must provide documentation supporting the credit claimed for electrification.
50. The Responsible Official of a fleet must submit to the California Air Resources Board upon application to add any Tier 1, Tier 2, or Tier 3 engine to the fleet or upon request to remove a Tier 4 interim or Tier 4 final engine from a fleet, except for engine dealers and rental businesses, a signed statement of compliance that the fleet standards are being achieved. The statement of compliance must include for each engine in the fleet: serial number, brake horsepower rating, engine family name, fuel type, PM emission factor (g/bhp-hr), and district permit or State registration number. If compliance with the fleet average includes the use of electrification, the Responsible Official must provide documentation supporting the credit claimed for electrification.
51. As part of each statement of compliance, the Responsible Official must, if applicable, certify that all alternative-fueled engines included in the fleet average operated at least 100 hours during the previous 12 months prior to the fleet emission standard becoming effective.

### Inspection Requirements

52. Within 45 days after initial issuance or renewal of a registration, the owner or operator shall contact the home district to arrange for inspection to be completed within one year of the initial registration or renewal date. If the engine is operating in a district other than the home district, the owner or operator may request the home district to arrange an inspection by that other district.
53. The time for the arranged inspection shall be agreed upon in advance between the district and the company. To the extent that an arranged inspection does not fall within the district's normal workday, the district may charge for the off-hour time.
54. If an arranged inspection does not occur due to unforeseen circumstances, the inspection shall be rescheduled for no later than 90 days from the initially scheduled inspection.
55. For the purposes of scheduling inspections of multiple engines in order to qualify for an inspection fee discount, the owner or operator shall submit, within 45 days of initial registration issuance date or by January 30 of each year for renewals, a letter of intent to the home district that shall include an engine list with registration numbers of those to be inspected. If the fleet owner pays the discounted inspection fee and then fails to qualify for the discount during the actual arranged inspection, then the district may bill the fleet owner for the difference between the discounted inspection fee and the full inspection fee. Upon request of the district, the fleet shall not be eligible to use the discount in 2461(d) for any subsequent arranged inspections if the fleet failed to comply with the inspection fee discount requirements.
56. If the engine is out of California for one year or more following initial registration or renewal, the engine shall be excused from having the arranged inspection provided that within 45 days after the date of initial registration or renewal, the owner sends a letter to the district containing the registration number and a statement that the registered engine or equipment unit is out of California for the one-year period. Upon the return of the engine to California, the owner shall arrange to have the engine inspected within 30 days.

# EXHIBIT 3



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

**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

<input checked="" type="checkbox"/> REG 2 RULE 1 SEC 301 No Authority to Construct	<input checked="" type="checkbox"/> REG 2 RULE 1 SEC 302 No Permit to Operate
<input type="checkbox"/> REG 1 SEC 301 H & S CODE - 41700 Public Nuisance	<input type="checkbox"/> REG 2 RULE ___ SEC 307 Failure to Meet Permit Condition
<input type="checkbox"/> REG 5 SEC 301 Prohibited Open Burning	<input type="checkbox"/> REG 6 RULE 1 SEC 301 Excessive Visible Emissions
<input type="checkbox"/> REG _____ RULE _____ SECTION _____ CODE _____	<input type="checkbox"/> REG _____ RULE _____ SECTION _____ CODE _____

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

RECIPIENT NAME: Martin 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**

# INSTRUCTIONS

## PERMIT VIOLATIONS - (REG 2, RULE 1, SECTION 301 AND/OR 302)

Within 30 days, a permit application must be submitted to the District's Permit Division. The permit application must reference the Violation Notice Number Shown on the front of this notice. If either the Violation Notice Number is not referenced or no permit application is received, then this matter will be referred to the District's Legal Department for legal action. Your response does not preclude further legal action.

If there are any questions regarding the submission of a Permit Application, call the Permit Services Division at (415) 749-4990.

## ALL OTHER VIOLATIONS

Within 10 days, return a copy of this notice with a written description of the corrective action you have taken to prevent continued or recurrent violation. Immediate corrective action must be taken to stop the violation. This violation is subject to substantial penalty. Your response does not preclude further legal action.

A variance should be sought if it is necessary to continue to operate in violation of District Regulations. For information on eligibility for, or filing of, a variance, call (415) 749-5073.



# EXHIBIT 4

February 25, 2022

**VIA E-MAIL**

Mr. Jeff Gove  
Director of Compliance and Enforcement  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
E-Mail: jgove@baaqmd.gov

Re: Notice of Violation A60654; Green Sage Management, LLC

Dear Mr. Gove:

This letter is in response to Notice of Violation A60654 issued to Green Sage Management, LLC (Green Sage) on February 16, 2022. The Notice of Violation alleges Green Sage is operating portable diesel powered generators at 5601 and 5733 San Leandro Street, Oakland, (Properties) without Authorities to Construct or Permits to Operate.

The portable diesel powered generators at the Properties operate under registrations issued by the California Air Resources Board (“CARB”) under the Portable Equipment Registration Program. CARB issued registrations for portable diesel powered generators preempt local air district permitting requirements when the equipment are operated during an unforeseen interruption of electrical power from the local utility and for certain electrical upgrade operations. 17 C.C.R. § 2453(m)

**Background**

Portable diesel powered generators were initially brought to the Properties on July 7, 2021 to supply power to the buildings after a failure of PG&E equipment that is not the fault of Green Sage and, to date, has not been repaired. Due to the age of the PG&E equipment<sup>1</sup> and substandard work performed by contractors, one of the phases of the 3 phase power for 5601 San Leandro Street became unbalanced and overloaded, which caused the connection to the PG&E transformers to melt, in turn causing the large fuse on a PG&E power pole to explode. PG&E has not supplied power to 5601 San Leandro Street since July 7, 2021.

PG&E supplies approximately 100kw of power to 5733 San Leandro Street, however this is less than 1% of the power needed for this address, and even this power is unreliable. On or about

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<sup>1</sup> The PG&E equipment at 5601 San Leandro Street is over 80 years old.

October 27, 2021, a PG&E pole mounted transformer serving 5733 San Leandro Street was leaking oil and led to a significant power outage while PG&E repaired its equipment. This property suffered another PG&E related equipment outage as recently as last week.

To ensure an adequate supply of consistent power to the Properties, Green Sage brought additional portable diesel powered generators, registered with CARB, to the site on October 1 and 2, 2021.

Green Sage has received PG&E approval for an electrical service upgrade to 5601 San Leandro Street which will replace the PG&E equipment damaged on July 2, 2021 and provide additional power. A contractor was recently retained to complete Green Sage's portion of this work within a month, which includes a 400 foot trench along San Leandro Avenue. PG&E has indicated it will not complete its portion of the equipment replacement and upgrade until July or August 2022.

This permitted power upgrade, however, will not provide sufficient power for current operations at the Properties. PG&E estimates that it will not have the additional 6MW of power needed for 5601 nor the 10MW of power needed for 5733 San Leandro Street until 2023 or 2024.

### **Return to Compliance**

Because PG&E is unable to restore power to 5601 San Leandro Street for several months nor provide sufficient power to the Properties for several years, onsite power generation remains a necessity. Interruption of the power currently supplied by the generators would put \$50,000,000+ of cannabis product at risk, in addition to other uses at the Properties.

Based on this necessity, Green Sage is proposing a pathway to return to compliance with BAAQMD rules that will maintain power to the Properties, immediately reduce emissions and expeditiously install a permanent clean, renewable, net-negative carbon power source. Under this plan, Green Sage would replace the portable diesel powered generators with temporary portable gas-fired turbines within 90 days. These turbines are more efficient than the current portable diesel powered generators and will significantly reduce NOx and PM emissions. Permanent turbines, utilizing controls to meet BAAQMD BACT requirements would be available for install within 9 to 11 months. The permanent turbines will be powered by renewable compressed gas, produced by dairy digesters, resulting in a net-negative carbon energy solution.

At the request of BAAQMD, Green Sage has already submitted application materials for the portable diesel powered generators. It is working on completing submittals for the temporary portable turbines and the permanent turbines and should have these submitted within two weeks

We look forward to discussing a permanent solution to the power supply issues at the Properties with BAAQMD. Please do not hesitate to contact me.

Sincerely,

DOWNEY BRAND LLP



Darrin D. Gambelin

cc: Ken Greer, Green Sage  
Martin Espinosa, Crystal Construction

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