

1 ALEXANDER G. CROCKETT (SB #193910)
District Counsel
2 ADAN SCHWARTZ (SB #151815)
Senior Assistant Counsel
3 BRIAN CASE (SB #254218)
Assistant Counsel
4 BAY AREA AIR QUALITY MANAGEMENT DISTRICT
5 375 Beale Street, Suite 600
San Francisco, CA 94105
6 Telephone: (415) 749-4920; Facsimile: (415) 749-5103
7 Email: bcase@baaqmd.gov

California Public Entity
Fee Exempt
(Gov't C. § 6103)

8 Counsel for Plaintiff PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*
9 BAY AREA AIR QUALITY MANAGEMENT DISTRICT

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA

13 PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. BAY AREA AIR QUALITY
14 MANAGEMENT DISTRICT, a Public Entity,
15 Plaintiff,
16 vs.

17 GREEN SAGE MANAGEMENT, LLC, a
Colorado Limited Liability Corporation;
18 OAKLAND CANNERY REAL ESTATE,
LLC, a California Limited Liability
19 Corporation; 5601 SLOCA, LLC, a California
Limited Liability Corporation; 5733 SLOCA,
20 LLC, a California Limited Liability
Corporation; 5601-A LLC, a California
21 Limited Liability Corporation; 5601-B LLC, a
California Limited Liability Corporation; and
22 DOES 1 - 25, inclusive,
Defendants.

Case No.:
**COMPLAINT FOR CIVIL PENALTIES
AND PRELIMINARY AND
PERMANENT INJUNCTION**

[Health and Safety Code §§ 42401 through
42402.3 and Bay Area Air Quality
Management District Regulation 2, Rule 1,
§§ 301 and 302]

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24
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26 The People of the State of California, on the relation of the BAY AREA AIR QUALITY
27 MANAGEMENT DISTRICT, seek to recover civil penalties from Defendants, demand verified
28 answers pursuant to California Code of Civil Procedure § 446(a), and allege as follows:

COMMON ALLEGATIONS

1
2 1. At all times herein mentioned, Plaintiff Bay Area Air Quality Management
3 District (hereinafter referred to as “District,” “BAAQMD,” or “Plaintiff”), was and is organized
4 and existing pursuant to Division 26, Part 3, Chapter 4 of the California Health and Safety Code
5 (hereinafter “H&S Code”).

6 2. The District is responsible for regulating non-vehicular air pollution and
7 emissions in the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo,
8 and Santa Clara and those portions of the Counties of Solano and Sonoma within the boundaries
9 of the Bay Area Air Pollution Control District as it existed on January 1, 1976, as described in
10 H&S Code § 40200.

11 3. Pursuant to H&S Code § 40440, the BAAQMD is empowered and required to
12 promulgate rules to regulate non-vehicular air pollution so as to ensure federal and state air
13 pollution standards are attained within the District.

14 4. Pursuant to H&S Code § 41513, the BAAQMD may bring a civil action in the
15 name of the People of the State of California to enjoin any violation of District rules. Further,
16 under H&S Code § 42403, the BAAQMD may bring a civil suit in the name of the People of the
17 State of California for civil penalties under H&S Code §§ 42401, 42402, 42402.1, 42402.2, and
18 42402.3 for violation of District rules.

19 5. Pursuant to H&S Code § 42453, the District may bring a proceeding for a
20 mandatory or prohibitory injunction in the name of the people of the State of California in the
21 superior court of the county in which the violation occurs to enjoin any person to whom an order
22 for abatement pursuant to H&S Code § 42452 has been directed and who violates such order.

23 6. Plaintiff is informed and believes and thereon alleges that at all times herein
24 mentioned, Defendants Oakland Cannery Real Estate, LLC, 5601 SLOCA, LLC, 5733 SLOCA,
25 LLC (collectively, “Landlord Defendants”), 5601-A LLC, 5601-B LLC (collectively, “Cultivator
26 Defendants”), are California Limited Liability Corporations. Plaintiff is informed and believes
27 and thereon alleges that at all times herein mentioned Cultivator Defendants do business as
28 “Legion of Bloom.”

1 7. Plaintiff is informed and believes and thereon alleges that at all times herein
2 mentioned, Defendant Green Sage Management, LLC is a Colorado Limited Liability
3 Corporation.

4 8. At all times herein, all Defendants have been subject to the terms of a July 21,
5 2022, Order for Abatement issued by the BAAQMD Hearing Board (hereinafter “Hearing
6 Board”), which pertains to Defendants activities at 5601 and 5733 San Leandro Ave., Oakland,
7 CA.

8 9. All Defendants identified in Paragraph 5 are “persons” as defined in H&S Code
9 § 39047 pursuant to H&S Code § 19.

10 10. At all times relevant to the claims in this Complaint, Defendant was responsible
11 for compliance with District Regulation 2, Rule 1, Sections 301 and 302, as well as an Order for
12 Abatement issued by the Hearing Board and H&S Code §§ 42401, 42402, 42402.1, 42402.2, and
13 42402.3.

14 11. The true names and capacities, whether individual, corporate, associate, or
15 otherwise, of Defendants sued herein as Does 1 through 10 are unknown to the District. For that
16 reason, the Doe Defendants are sued by fictitious names. BAAQMD requests that when the true
17 names and capacities of the Doe Defendants are ascertained, this Complaint and all proceedings
18 herein be amended by inserting the true names and capacities of the Doe Defendants. BAAQMD
19 alleges on information and belief that each of the Doe Defendants is responsible in some manner
20 for the violations alleged herein and those violations were proximately caused by their conduct.

21 12. At all times material hereto, all Defendants are legal entities having adequate
22 contacts, and/or are authorized to do and is doing business with the jurisdiction of this Court.

23 13. For each day on which each Defendant failed to comply with any District Rule or
24 Order of the Hearing Board as herein alleged, each Defendant commits a separate violation
25 giving rise to civil penalties of up to \$10,000.00 for each and every day of noncompliance;
26 \$25,000.00 for knowing emission of an air contaminant and failing to take corrective action;
27 \$40,000.00 for each and every day of each knowing emission violation; and \$75,000.00 for each
28 and every day of each willful and intentional violation pursuant to California Health and Safety

1 Code §§ 42402.1 through 42402.3. Separately, and in addition to penalties under H&S Code §
2 42402.1 through § 42402.3, for civil penalties as prescribed in H&S Code § 42401 in the amount
3 of Twenty-Five Thousand Dollars (\$25,000) per violation for each and every day of intentional
4 or negligent violation of an Oder for Abatement

5 **JURISDICTION AND VENUE**

6 14. Venue is proper in this County pursuant to Health and Safety Code § 42403, in
7 that violations alleged in this Complaint occurred in the County of Alameda. The Court has
8 jurisdiction pursuant to Article 6; Section 10 of the California Constitution and Section 393 of
9 the Code of Civil Procedure.

10 **STATUTORY AND REGULATORY BACKGROUND**

11 15. The State of California (“State”) has enacted a comprehensive statutory and
12 regulatory framework designed to control air pollution and protect ambient air quality in the
13 State. This framework is contained in Division 26 of the H&S Code and the rules, regulations,
14 orders and permits adopted pursuant thereto by the State Board and by air pollution control
15 districts (“APCDs”); Title 17 of the CCR, Division 3; Title 13 of the CCR, Division 3; and other
16 miscellaneous provisions of law related to the control of air pollution in the State.

17 16. Pursuant to H&S Code § 40000, local and regional APCDs are responsible for
18 controlling air pollution from all sources within their jurisdiction, other than emissions from
19 motor vehicles which are regulated by the State Board.

20 17. Pursuant to H&S Code § 40001(a), APCDs are required to adopt and enforce rules
21 and regulations to achieve and maintain State and Federal ambient air quality standards in all
22 areas affected by emissions sources under their jurisdiction.

23 18. As set forth in paragraphs 1 and 2 above, the District is a state-created APCD.

24 19. Pursuant to H&S Code § 40001(a), the District has adopted the Rules and
25 Regulations, including District Regulation 2, Rule 1, Section 301 and 302.

26 20. District Regulation 2, Rule 1, Section 301 prohibits the erection or installation of
27 any article, machine, equipment or other contrivance that causes or controls the issuance of air
28 contaminants by any person (as defined in District Regulation 2, Rule 1, Section 401) without

1 first obtaining written authority from the APCO in the form of an Authority to Construct. (A
2 true and correct copy of District Regulation 2, Rule 1, Section 301 is attached as **Exhibit 1** and
3 incorporated herein.)

4 21. District Regulation 2, Rule 1, Section 302 prohibits the use or operation of any
5 article, machine, equipment or other contrivance that may cause emissions of air contaminants
6 by any person (as described in District Regulation 2, Rule 1, Section 401) without first obtaining
7 a written authorization from the APCO in the form of a Permit to Operate. Issuance of a permit
8 enables the District to ensure that only equipment meeting health-protective air quality standards
9 is used and to impose any conditions, limitations, and restrictions to the operation of that
10 equipment necessary to ensure compliance. (A true and correct copy of District Regulation 2,
11 Rule 1, Section 302 is attached as **Exhibit 2** and incorporated herein.)

12 22. At all times herein mentioned, Plaintiff had in full force and effect District
13 Regulation 2, Rule 1, Sections 301 and 302.

14 23. Title 13 of the CCR, Section 2454 requires an owner or operator of an engine or
15 equipment registered under the Statewide Portable Equipment Registration Program (“PERP”)
16 to comply with all conditions set forth in the issued registration. (A true and correct copy of 13
17 CCR § 2454 is attached as **Exhibit 3** and incorporated herein.)

18 24. District Regulation 2, Rule 1, Sections 301 and 302 require both an Authority to
19 Construct and a Permit to Operate equipment including, but not limited to, diesel generators such
20 as the ones used by Defendants.

21 GENERAL ALLEGATIONS

22 25. All Defendants have and continue to violate District Regulation 2, Rule 1,
23 Sections 301 and 302 and H&S Code §§ 42401–42402.3 by operating one or more diesel
24 generators without a Permit to Operate or Authority to Construct.

25 26. On November 4, 2021, BAAQMD conducted an inspection of the multi-use
26 complex (including live-work lofts, and cannabis cultivation facilities) at 5601 and 5733 San
27 Leandro Ave, Oakland, CA (hereinafter “Site”) and determined that nine diesel generators were
28 being used on site.

1 27. During the course of the inspection, the BAAQMD inspector determined that
2 PERP registered generators were being operated in violation of the operating conditions, which
3 stated the “registration is not valid for operation of generators used to provide primary or
4 supplemental power to a building, facility, stationary source, or stationary equipment” except for
5 limited circumstances. (For example, a true and correct copy of the operating conditions for
6 PERP Registration No. 174150 is attached as **Exhibit 4** and incorporated herein.)

7 28. On February 16, 2022, the District issued Defendant Notice of Violation No.
8 A60654, citing the lack of any Authority to Construct and/or Permit to Operate. A true and
9 correct copy of Notice of Violation No. A60654 is attached hereto as **Exhibit 5**.

10 29. Despite receiving a Notice of Violation, Defendant continued to operate the diesel
11 generators in violation of District Regulation 2, Rule 1, Sections 301 and 302.

12 30. On March 23, 2022, a BAAQMD inspector conducted an inspection of the Site
13 and determined that the nine diesel generators (or their replacements) had been repeatedly
14 operated since the prior Notice of Violation, still without an Authority to Construct or Permit to
15 Operate.

16 31. On April 20, 2022, Plaintiff petitioned the independent Hearing Board for an
17 Order for Abatement pursuant to Health and Safety Code § 42451 to require Defendant to cease
18 operation of the diesel generators at the Site without a permit as required by District Regulation
19 2, Rule 1, Sections 301 and 302. The Hearing Board assigned the matter Case No. 3733.

20 32. In April of 2022, a BAAQMD inspector obtained generator receipts from United
21 Rentals showing historic details of generator use at the Site. The generator receipts showed that
22 Cultivator Defendants began using diesel generators at the Site on or about April 13, 2021, and
23 that, Landlord Defendants began using diesel generators on or about October 9, 2020. This does
24 not rule out earlier use by Landlord Defendants and/or Cultivator Defendants which Plaintiff is
25 informed and believes took place.

26 33. On or before May 13, 2022, based on the generator receipts, BAAQMD
27 determined that, *separately and in addition to* being illegally used as prime power in violation of
28 the PERP operating conditions, the PERP registered generators were being operated in violation

1 of the operating conditions, which state: “the engine and any replacement engine shall not reside
2 at the same location for more than 12 consecutive months.” (For example, a true and correct copy
3 of the operating conditions for PERP Registration No. 174150 is attached as **Exhibit 4** and
4 incorporated herein.)

5 34. On May 13, 2022, BAAQMD sent a letter to Defendant Green Sage Management
6 LLC, modifying the NOV onset date to October 9, 2020 (the NOV had originally identified
7 September 30, 2021, as the onset date). The same generator receipts showed that Cultivator
8 Respondents began using diesel generators at the Site on or about April 13, 2021.

9 35. On July 21, 2022, issued an Order for Abatement against all Defendants. A true
10 and correct copy of the Order for Abatement is attached hereto as **Exhibit 6**.

11 36. Paragraph 1 of the Order for Abatement required that: “Immediately, [all
12 Defendants named in this Complaint] and their agents, employees, successors and assigns shall
13 cease violation of District Regulation 2, Rule 1, Sections 301 and 302 at 5601 and 5733 San
14 Leandro Street, Oakland, California, by ceasing operation of any and all portable diesel
15 generators at the Site unless and until they obtain a current and valid permit to do so.”

16 37. On July 22, 2022, a BAAQMD Inspector conducted an inspection of the Site and
17 determined that at least five generators were being operated at the Site.

18 38. As of the filing of this complaint, Plaintiff is informed and believes that Landlord
19 Defendants operated at least one diesel generator (and as many as nine or more at some times
20 relevant to the Complaint) to provide full-time, primary to the Site for a total of 655 days,
21 beginning October 9, 2020 and continuing to present.

22 39. As of the filing of this complaint, Plaintiff is informed and believes that Cultivator
23 Defendants operated at least one of the aforementioned diesel generators (and as many as three
24 at some times relevant to the Complaint) to provide full-time, primary to the Site for a total of
25 469 days, beginning April 13, 2021 and continuing to present.

26 40. At all times relevant to this Complaint, each Defendant’s actions and/or
27 omissions, as part of a continuing course of conduct and business practice, are or were the legal
28

1 cause of the violations alleged herein and each Defendant reasonably could have taken action to
2 prevent the unlawful actions and/or omissions.

3 41. Plaintiff is informed and believes, and thereon alleges, that Defendants' violations
4 have resulted in the emissions of regulated air contaminants, contributing to the production of air
5 pollution in the jurisdiction of the District and thereby threatening human health, safety and the
6 environment.

7 **FIRST CAUSE OF ACTION – AGAINST ALL DEFENDANTS FOR VIOLATION OF**
8 **HEALTH AND SAFETY CODE § 42402 – STRICT LIABILITY**

9 42. Plaintiff incorporates by reference paragraphs 1–42.

10 43. H&S Code § 42402 prohibits any person from violating any rule, regulation,
11 permit, or order of an air district, including District Regulation 2, Rule 1, Sections 301 and 302
12 and the order from the independent Hearing Board of the Bay Area Air Quality Management
13 District in Case No. 3722.

14 44. Each day or portion of a day during which Defendants, and each of them, operated
15 a diesel generator without a valid Authority to Construct or Permit to Operate constitutes a
16 separate violation of H&S Code § 42402.

17 **SECOND CAUSE OF ACTION – AGAINST ALL DEFENDANTS FOR VIOLATION**
18 **OF HEALTH AND SAFETY CODE § 42402.1 – NEGLIGENT EMISSION OF AIR**
19 **CONTAMINANTS**

20 45. Plaintiff incorporates by reference paragraphs 1–45 inclusive.

21 46. H&S Code § 42402.1(a) prohibits any person from negligently emitting air
22 contaminants in violation of any rule, regulation, permit or order of an air district, including a
23 district hearing board, including BAAQMD District Regulation 2, Rule 1, Sections 301 and 302.

24 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
25 operation of the aforesaid diesel generators without an Authority to Construct or Permit to
26 Operate as stated above resulted in the negligent emission of air contaminants.

27 48. Each day during any portion of which Defendants, and each of them, violated
28 BAAQMD District Regulation 2, Rule 1, Sections 301 and 302 and H&S Code § 42402.1(a) is a
separate violation.

1 **THIRD CAUSE OF ACTION – AGAINST ALL DEFENDANTS FOR VIOLATION OF**
2 **HEALTH AND SAFETY CODE § 42402.2(a) –KNOWING EMISSION OF AN AIR**
3 **CONTAMINANT AND FAILURE TO TAKE CORRECTIVE ACTION**

4 49. Plaintiff incorporates by reference paragraphs 1--49 inclusive.

5 50. H&S Code § 42402.2(a) prohibits any person from knowingly emitting air
6 contaminants in violation of any rule, regulation, permit or order of an air district, including a
7 district hearing board, including BAAQMD District Regulation 2, Rule 1, Sections 301 and 302
8 and failing to take corrective action within a reasonable period of time.

9 51. Plaintiff is informed and believes, and, based thereon alleges, that Defendants
10 operated the aforesaid diesel generators with knowledge of the emissions of air contaminants as
11 a result of the aforesaid violation of BAAQMD District Regulation 2, Rule 1, Sections 301 and
12 302 and each Defendant knew of said emissions and failed to take corrective action within a
13 reasonable period of time.

14 52. Each day during any portion of which Defendants, and each of them, violated
15 BAAQMD District Regulation 2, Rule 1, Sections 301 and 302 and H&S Code § 42402.2(a) is a
16 separate violation.

17 **FOURTH CAUSE OF ACTION – AGAINST ALL DEFENDANTS FOR VIOLATION**
18 **OF HEALTH AND SAFETY CODE § 42402.3(a) – WILLFUL AND INTENTIONAL**
19 **EMISSION OF AN AIR CONTAMINANT**

20 53. Plaintiff incorporates by reference paragraphs reference paragraphs 1-53
21 inclusive.

22 54. H&S Code § 42402.3(a) prohibits any person from willfully and intentionally
23 emitting air contaminants in violation of any rule, regulation, permit, or order of an air district,
24 including a district hearing board, and including BAAQMD District Regulation 2, Rule 1,
25 Sections 301 and 302.

26 55. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 willfully and intentionally emitted air contaminants through their operation of the aforesaid
28 unpermitted diesel generators.

1 56. Each day during any portion of which Defendants, and each of them, violated
2 BAAQMD District Regulation 2, Rule 1, Sections 301 and 302 and H&S Code § 42402.3(a) is a
3 separate violation.

4 **FIFTH CAUSE OF ACTION – AGAINST ALL DEFENDANTS FOR VIOLATION OF**
5 **HEALTH AND SAFETY CODE § 42401 – VIOLATION OF AN ORDER FOR**
6 **ABATEMENT**

7 57. Plaintiff incorporates by reference paragraphs 1–57 inclusive.

8 58. H&S Code § 42401 prohibits any person from negligently or intentionally
9 violating an order for abatement issued by a district hearing board, including the Order for
10 Abatement issued by the Hearing Board of the Bay Area Air Quality Management District in
11 Case No. 3733.

12 59. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
13 had negligently and/or intentionally violated the Order for Abatement issued by the Hearing
14 Board of the Bay Area Air Quality Management District in Case No. 3733 by continuing to
15 operate the aforesaid diesel generators without first obtaining an Authority to Construct and a
16 Permit to Operate.

17 60. Each day during any portion of which Defendants, and each of them, violated the
18 Order for Abatement and H&S Code § 42401 is a separate violation.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for the following relief as to each Defendant:

21 **ON PLAINTIFF’S FIRST CAUSE OF ACTION**

22 1. For civil penalties as prescribed in H&S Code § 42402 in the amount of Ten
23 Thousand Dollars (\$10,000) per violation for each and every day of violation, in an amount
24 according to proof;

25 **ON PLAINTIFF’S SECOND CAUSE OF ACTION**

26 2. For civil penalties as prescribed in H&S Code § 42402.1(a) in the amount of
27 Twenty-Five Thousand Dollars (\$25,000) per violation for each and every day of negligent
28 emission of air contaminants, in an amount according to proof;

1 **ON PLAINTIFF’S THIRD CAUSE OF ACTION**

2 3. For civil penalties as prescribed in H&S Code § 42402.2(a) in the amount of
3 Forty Thousand Dollars (\$40,000) per violation for each and every day of knowing violation, in
4 an amount according to proof;

5 **ON PLAINTIFF’S FOURTH CAUSE OF ACTION**

6 4. For civil penalties as prescribed in H&S Code § 42402.3(a) in the amount of
7 Seventy-Five Thousand Dollars (\$75,000) per violation for each and every day of willful and
8 intentional violation, in an amount according to proof;

9 **ON PLAINTIFF’S FIFTH CAUSE OF ACTION**

10 5. Separately, and in addition to penalties under H&S Code § 42402 through §
11 42402.3, for civil penalties as prescribed in H&S Code § 42401 in the amount of Twenty-Five
12 Thousand Dollars (\$25,000) per violation for each and every day of intentional or negligent
13 violation of an Oder for Abatement, in an amount according to proof;

14 6. For a preliminary and permanent injunction, issued pursuant to H&S Code §§
15 42453 and 42454, enjoining Defendant from violating the Order for Abatement issued by the
16 Hearing Board of the Bay Area Air Quality Management District in Case No. 3733;

17 **ON ALL CAUSES OF ACTION**

18 7. A preliminary and permanent injunction, issued pursuant to H&S Code § 41513,
19 requiring Defendants, and each of them, to comply with those provisions of H&S Code,
20 Division 26, Part 4 and implementing rules and regulations, which Defendants, and each of
21 them, are alleged to have violated;

22 8. For costs of suit incurred herein including, but not limited to, Plaintiff’s costs of
23 inspection, investigation, attorney’s fees, enforcement, prosecution, and suit herein; and,
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EXHIBIT 1

2-1-301 Authority to Construct: Any person who, after July, 1972, puts in place, builds, erects, installs, modifies, modernizes, alters or replaces any article, machine, equipment or other contrivance, the use of which may cause, reduce or control the emission of air contaminants, shall first secure written authorization from the APCO in the form of an authority to construct. Routine repairs, maintenance, or cyclic maintenance that includes replacement of components with identical components is not considered to be an alteration, modification or replacement for the purpose of this Section unless the APCO determines the changes to be non-routine. The use or operation of the source shall initiate the start-up period in accordance with Section 2-1-411.

EXHIBIT 2

(Amended 3/17/82; 10/19/83; 7/17/91; 5/17/00)

2-1-302 Permit to Operate: Before any person, as described in Section 2-1-401, uses or operates any article, machine, equipment or other contrivance, the use of which may cause, reduce or control the emission of air contaminants, such person shall first secure written authorization from the APCO in the form of a permit to operate.

302.1 Permit to Operate, MFR: Any facility subject to the requirements of Regulation 2, Rule 6, Major Facility Review, shall comply with the permitting requirements included in that Rule in addition to securing a permit to operate under this Rule.

302.2 Permit to Operate, Accelerated Permitting Program: Unless subject to any of the provisions of Sections 2-1-316 through 319, a temporary permit to operate may be obtained to authorize operation of a new source or a modification or alteration of an existing source under this Section pending full review for the following categories of operation:

2.1 A new source or a modification of an existing source if the following conditions are satisfied:

1.1 The source will not have the potential to emit POC, NPOC, NO_x, SO₂, PM_{2.5}, PM₁₀, or CO in an amount of 10 pounds or more on any day, determined without taking into account the effect of any abatement device or equipment; or the source has been pre-certified under Section 2-1-415; and

1.2 The source will not have the potential to emit toxic air contaminants in an amount that exceeds any of the trigger levels set forth in Table 2-5-1 of Regulation 2, Rule 5, determined without taking into account the effect of any abatement device or equipment; and

1.3 The source is not subject to the public notice requirements of Section 2-1-412.

2.2 An abatement device that is a replacement for an existing abatement device, provided that the replacement will not increase the potential to emit any regulated air pollutant from the abatement device and the source(s) whose emissions it abates.

2.3 An alteration of an existing source, as defined in Section 2-1-233. An applicant seeking a permit for a new, modified or altered source that is in any of the preceding categories may apply for a temporary permit to operate under the Accelerated Permitting Program by submitting (i) a permit application form and source data form(s) properly filled out with all required information; (ii) payment of applicable fees (the minimum permit fee required to install and operate each source); (iii) a statement explaining which of the categories in subsections 2.1 through 2.3 above the source is in; (iv) a

certification that the source meets all of the requirements of that category; (v) a certification that the source is not subject to Sections 2-1-316 through 2-1-319; and (vi) a certification that the applicant has reviewed all applicable New Source Performance Standards and has determined that the application will comply. The APCO shall issue a temporary Permit to Operate promptly upon determining that the application contains all of the elements required by (i)-(vi) of the preceding sentence. The owner or operator of the source may begin construction or operation of the source, or of the modification or alteration of the source, immediately upon receipt of the temporary Permit to Operate. The APCO shall complete a full review of the application and take final action in accordance with Section 2-1-408 within the time period provided for in that section. Any applicable offset requirements under Regulation 2, Rule 2, Sections 302 and 303 shall be satisfied before final permit issuance. The temporary Permit to Operate shall cease to be effective upon final action by the APCO under Section 2-1-408 (or if the permit application is canceled or withdrawn prior to such final action). During periods that the source is operating under the temporary Permit to Operate, the operator shall keep records sufficient to demonstrate that emissions do not exceed applicable qualifying levels for the Accelerated Permitting Program as set forth in subsections 2.1 through 2.3 above.

- 302.3 Permit to Operate, Temporary Operation: A temporary permit may be obtained to allow an operator to test equipment, processes, or new formulations. A temporary permit may also be obtained for a temporary source which replaces critical equipment during scheduled maintenance. The APCO may issue a non-renewable temporary Permit to Operate a temporary operation at any source, subject to the following:
- 3.1 The proposed operation will comply with all requirements of Regulation 1 and Regulations 5 through 12.
 - 3.2 The permit shall expire 3 months after issuance.
 - 3.3 The operator shall provide offsets, at a ratio of 1.15 to 1, for all increased emissions of NO_x, POC, SO₂, PM_{2.5}, and PM₁₀ resulting from the use of the temporary permit.
 - 3.4 The operator shall certify that the temporary operation is for one of the following purposes:
 - 4.1 Equipment testing
 - 4.2 Process testing, including new formulations
 - 4.3 Temporary replacement of an existing permitted source with an identical or functionally equivalent source
 - 3.5 The operator shall comply with the provisions of Regulation 2-2-301, except that the cost-effectiveness analysis shall consider the short duration of the operation.

(Amended 11/3/93; 6/7/95; 10/7/98; 11/15/00)

2-1-303 Fees: Persons subject to this Regulation shall pay the fees required, as set forth in Regulation 3.

2-1-304 Denial, Failure to Comply With Applicable Requirements: The APCO shall deny an authority to construct or a permit to operate if the APCO finds that the subject of the application would not or does not comply with any emission limitations or other regulations of the District (including but not limited to the BACT and offsets requirements in Regulations 2-2-301 through 2-2-303), or with applicable permit conditions or federal or California laws or regulations, or if any required fees have not

been paid. Such denial shall not be based solely on the type of construction or design of equipment.

(Amended March 17, 1982)

2-1-305 Conformance with Authority to Construct: A person shall not put in place, build, erect, install, modify, modernize, alter or replace any article, machine, equipment, or other contrivance for which an authority to construct has been issued except in a manner substantially in conformance with the authority to construct. If the APCO finds, prior to the issuance of a permit to operate, that the subject of the application was not built substantially in conformance with the authority to construct, the APCO shall deny the permit to operate.

(Amended December 21, 2004)

2-1-306 Mandated Reductions Not Applicable: Emission reductions resulting from requirements of federal, state or District laws, rules or regulations shall not be banked or allowed as emission offsets or emission reduction credits unless a complete application for such banking or emission reduction credits was filed with the District at least 90 days prior to the adoption date of such laws, rules or regulations. Only emission reduction credits exceeding the emission reductions required by measures described in the Air Quality Management Plan or required by permits or orders; and reductions achieved by measures not specified in the Air Quality Management Plan shall be banked or allowed as emission offsets or emission reduction credits.

(Amended 10/7/81; 7/17/91; 6/15/94)

2-1-307 Failure to Meet Permit Conditions: A person shall not operate any article, machine, equipment or other contrivance, for which an authority to construct or permit to operate has been issued, in violation of any permit condition imposed pursuant to Section 2-1-403.

(Adopted 3/17/82; Amended 7/17/91)

2-1-308 Fugitive Emissions: Fugitive emissions shall be included as emissions from a source or facility except as required under this Regulation.

(Adopted 10/19/83; Amended 7/17/91)

2-1-309 Canceled Application: The APCO may cancel an application for an authority to construct and a permit to operate if, within 90 days after the application was deemed incomplete, the applicant fails to furnish the requested information or pay all appropriate fees. The 90 day period may be extended for an additional 90 days upon receipt of a written request from the applicant and written approval thereof by the APCO. The APCO shall notify the applicant in writing of a cancellation, and the reasons therefore. A cancellation shall become effective 10 days after the applicant has been notified. The cancellation shall be without prejudice to any future applications.

(Adopted April 6, 1988)

2-1-310 Applicability of CEQA: Except for permit applications which will be reviewed as ministerial projects under Section 2-1-311 or which are exempt from CEQA pursuant to Section 2-1-312, all proposed new and modified sources for which an authority to construct must be obtained from the District shall be reviewed in accordance with the requirements of CEQA.

310.1 For those District permit applications which must be reviewed in accordance with the requirements of CEQA, the District will not normally be a Lead Agency under CEQA. Rather, pursuant to CEQA, the Lead Agency will normally be an agency with general governmental powers, such as a city or county, rather than a special purpose agency such as the District.

310.2 The issuance of an authority to construct and of a permit to operate for the same new or modified source or stationary source are considered to be parts of the same project for the purposes of CEQA.

310.3 The APCO shall not authorize, on an interim basis or otherwise, the installation or operation of any proposed new or modified source, the permitting of which is subject to the requirements of CEQA, until all of the requirements of CEQA have been satisfied.

(Adopted 7/17/91; Amended 10/21/92)

2-1-311 Ministerial Projects: An application for a proposed new or modified source or stationary source will be classified as ministerial and will accordingly be exempt from the CEQA requirement of Section 2-1-310 if the District's engineering evaluation and basis for approval or denial of the permit application for the project is limited to the criteria set forth in Section 2-1-428 of this rule and to the specific procedures, fixed standards and objective measurements set forth in the District's Permit Handbook and BACT/TBACT Workbook. The method for determining whether a given permit application will be classified as ministerial is set forth in Section 2-1-427.

(Adopted 7/17/91; Amended 10/7/98)

2-1-312 Other Categories of Exempt Projects: In addition to ministerial projects, the following categories of projects subject to permit review by the District will be exempt from the CEQA review, either because the category is exempted by the express terms of CEQA (subsections 2-1-312.1 through 312.9) or because the project has no potential for causing a significant adverse environmental impact (subsections 2-1-312.10 and 312.11). Any permit applicant wishing to qualify under any of the specific exemptions set forth in this Section 2-1-312 must include in its permit application CEQA-related information in accordance with subsection 2-1-426.1. In addition, the CEQA-related information submitted by any permit applicant wishing to qualify under subsection 2-1-312.11 must demonstrate to the satisfaction of the APCO that the proposed project has no potential for resulting in a significant environmental effect in connection with any of the environmental media or resources listed in Section II of Appendix I of the State CEQA Guidelines.

312.1 Applications to modify permit conditions for existing or permitted sources or facilities that do not involve any increases in emissions or physical modifications.

312.2 Permit applications to install air pollution control or abatement equipment.

312.3 Permit applications for projects undertaken for the sole purpose of bringing an existing facility into compliance with newly adopted regulatory requirements of the District or of any other local, state or federal agency.

312.4 Permit applications submitted by existing sources or facilities pursuant to a loss of a previously valid exemption from the District's permitting requirements.

312.5 Permit applications submitted pursuant to the requirements of an order for abatement issued by the District's Hearing Board or of a judicial enforcement order.

312.6 Permit applications relating exclusively to the repair, maintenance or minor alteration of existing facilities, equipment or sources involving negligible or no expansion of use beyond that previously existing.

312.7 Permit applications for the replacement or reconstruction of existing sources or facilities where the new source or facility will be located on the same site as the source or facility replaced and will have substantially the same purpose and capacity as the source or facility replaced.

EXHIBIT 3

13 CCR 2454

This document is current through Register 2022, No. 26, July 1, 2022

CA - Barclays Official California Code of Regulations > TITLE 13. MOTOR VEHICLES > DIVISION 3. AIR RESOURCES BOARD > CHAPTER 9. OFF-ROAD VEHICLES AND ENGINES POLLUTION CONTROL DEVICES > ARTICLE 5. PORTABLE ENGINE AND EQUIPMENT REGISTRATION

§ 2454. Registration Process

- (a) The Executive Officer shall make registration data available to the districts via the Internet.
- (b) The Executive Officer may conduct an inspection of an engine or equipment unit and/or require a source test in order to verify compliance with the requirements of this article prior to issuance of registration.
- (c) After obtaining registration in accordance with this article, an owner or operator of the registered engines or equipment units:
 - (1) shall comply with all conditions set forth in the issued registration. Failure to comply with such conditions shall be deemed a violation of this article; and
 - (2) may operate within the boundaries of the State of California so long as such registered engines or equipment units comply with all applicable requirements of this article and any other applicable federal or State law.
- (d) Districts shall provide the Executive Officer with written reports or electronic submittals via the Internet, describing any inspections and the nature and outcome of any violation of local, State or federal laws by the owner or operator of registered engines or equipment units. The Executive Officer shall make available to all districts such information via the Internet.

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections [39600](#), [39601](#), [41752](#), [41753](#), [41754](#), [41755](#), [43013\(b\)](#) and [43018](#), *Health and Safety Code*. Reference: Sections [41750](#), [41751](#), [41752](#), [41753](#), [41754](#) and [41755](#), *Health and Safety Code*.

History

HISTORY:

1. New section filed 9-17-97; operative 9-17-97 pursuant to [Government Code section 11343.4\(d\)](#) (Register 97, No. 38).
2. Amendment of Note filed 8-2-2005; operative 9-1-2005 (Register 2005, No. 31).
3. Amendment filed 4-26-2007; operative 4-27-2007 pursuant to [Government Code section 11343.4](#) (Register 2007, No. 17).

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End of Document

EXHIBIT 4

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 5



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 6

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

6 **PROCEDURAL BACKGROUND AND HEARING**

7 **Procedural Background: Complainant’s Accusation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20
21 **BASIC CHRONOLOGY**

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

23

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

24
25
26
27
28

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

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

14
15 **STATEMENT OF DECISION**

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

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

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

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

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

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

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

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

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

1 **ORDER FOR ABATEMENT**

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

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

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

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

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

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

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

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

3 **Noes:** None.

4

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

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

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

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

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

10 **Noes:** None.

11

12

13  7/20/2022

14 Valerie J. Armento, Esq., Chair

Date

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28

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

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

Docket No.: 3733

CERTIFICATE OF SERVICE

7 Complainant,

8 vs.

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

20 Respondents,

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

24 Intervenor.

FILED

JUL 21 2022

HEARING BOARD
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

25 STATE OF CALIFORNIA)
26)
27 City and County of San Francisco)

ss.

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

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

///

///

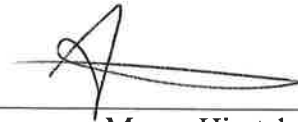
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Recipient	Method of Delivery
<i>Respondents Served</i>	
<p>Green Sage Management, LLC c/o 1505 Corporation 112 CT Corporation System 330 N. Brand Blvd, Ste. 700 Glendale, CA 91203-2326</p> <p>And to 1250 Humboldt St., Suite 1203 Denver, CO 80218</p>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

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

DATED: July 21, 2022



 Marcy Hiratzka
 Clerk of the Boards