Election of Community Advisory Council Co-Chair

Community Advisory Council Meeting
January 18, 2024

Miriam Torres
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Presentation Outcome

• Election of the third Community Advisory Council Co-Chair
Requested Action

• Vote on preferred candidate to fill third Co-Chair seat
Presentation Outline

• Presentation Outcome
• Requested Action
• Duties of Leadership
• Election
• Results
1.3.1 Duties of Leadership (select)

- The Co-Chairs shall preside over bi-monthly meetings of the CAC in rotation.
- The Co-Chairs shall work with Air District staff and the CAC meeting facilitator to plan, structure, and coordinate CAC meetings.
- The Co-Chairs shall attend and provide updates to the Air District Board of Directors as needed and/or requested and interact with the Air District Board of Directors in representation of overburdened communities within the nine Bay Area counties, and on behalf of the CAC members.
1.3.1 Duties of Leadership (select – cont.)

• The Co-Chairs shall oversee activities of the ad hoc committees.

• The Co-Chairs shall perform all other necessary and incidental duties as prescribed by the CAC Charter.

• The Co-Chairs shall ensure that CAC decisions are made in a democratic, equitable, and timely manner.

• The Co-Chairs shall understand and adhere to the Brown Act and Robert’s Rules of Order.
Election
Results
Funding Community Benefits from Penalty Funds

Community Advisory Council Meeting
January 18, 2024

Greg Nudd
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Potential Presentation Outcomes

- Vote to make a recommendation to the Air District Board of Directors regarding a policy for penalty funds to be set aside for community benefits.
The Air District collects penalties from facilities that violate our regulations.

In the past, these funds have varied from year-to-year but typically exceeded $3M per year.

Penalty collections are expected to increase in 2024.

The penalty funds are currently used to help fund our enforcement program consisting of 77 full time employees with a total direct costs of roughly $16M per year.
Develop a policy to automatically set aside a portion of penalty funds for community benefits. If approved by the Board, we would be the first Air District to implement this as a routine policy.

Policy could be retroactive to the beginning of 2023, which would include $1.15M settlement with Chemtrade in Richmond from July 2023.
About the Penalties

- Most individual penalties are between $10-$50k (58%).
- But most of the penalty dollars collected are from a few large penalty agreements exceeding $1M (65%).
- Penalties > $1M are paid primarily by petroleum refineries and related industry. Over 85% of the penalties collected in recent years are from this sector.
### Example Method for Allocation

<table>
<thead>
<tr>
<th>Lower Break Point</th>
<th>Upper Break Point</th>
<th>% to Local Benefit Fund</th>
<th>% to Air District or Regional Benefit Fund</th>
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<tr>
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- The first $100,000 of each penalty payment would go to offset the Air District’s expenses in enforcing regulations. After the budget target is met ($3,000,000 for this year), those funds would go into a regional benefit fund.
- Between $100,000 and $1,000,000, 50% of the penalties would go to a fund to benefit the community impacted by the violation. The balance would go either to the Air District or the regional benefit fund (depending if budget target has been met).
- Above $1,000,000, 80% of the penalties would be reserved for local benefits programs, with 20% to the Air District/Regional Fund (depending if budget target has been met).
Example Method for Allocation (cont’d)

First $100K
- 100%

Next $100K-$1M
- 50%
- 50%

Over $1M
- 80%

District Budget
- Over $3M
- Regional Community Benefits Fund

Local Community Benefits

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Results

• Using penalty data from fiscal year ending 2022, the Example Allocation would have had the following results:
  • Local benefit fund for Martinez area: $1,598,100
  • Local benefit fund for Benicia area: $168,200
  • Regional Benefit fund: $0 (budget target was not met)

• We expect larger penalties in 2024. Here’s how the Sample Allocation would work for a $10M penalty, if the budget target had already been met:

| Penalty £10,000,000 | Local Fund £7,650,000 | Regional Fund £2,350,000 | Air District £0 |
• Generally very supportive of the concept and proud to be leaders on this issue
• Support for the general allocation structure and the inclusion of a regional community benefits fund
• Hands would not be tied to make adjustments for a specific case
• Support for the idea of a one year pilot and commitment to check back in to evaluate the allocations and consider adjustments
• Seeking recommendations from CAC and other community groups (including Richmond/San Pablo CSC)
• Referred to CEHJ Committee for next committee discussion, and back to FAC for update on budget impacts.
Focusing now only on allocation policy; how the funds are programmed and spent would be the subject of extensive discussion, outreach and program development.

• General approach?
  • Local Benefit Fund
  • Regional Benefit Fund

• Thoughts on the proposed allocation idea?
  • Structure
  • Percentages and $ tiers
Action Part 1:

• Consider recommending that the Air District Board of Directors take the following actions:

  • Create a policy that automatically sets aside a portion of penalties for regional and local benefits.

  • Review the results after one year to ensure that the process is equitable and effective.
• Consider recommending that the Air District Board of Directors take the following action:

  • Ensure community outreach and oversight of any local or regional benefit fund spending programs.
Consider recommending that the Air District Board of Directors take the following action:

Create a policy that automatically sets aside a portion of penalties for regional and local benefits according to the following allocation scheme:

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Questions?
Enforcement Case Study
Green Sage
Cannabis Cultivating Facility

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Tanya Boyce
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Brian Case
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Paul Grazzini
Supervising Air Quality Specialist, Air District
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• Air District staff will provide an overview of how the Green Sage cannabis facility, by using diesel generators illegally as their power source, defied an Air District notice of violation (NOV) for six months before the operation halted.

• Tanya Boyce of the Environmental Democracy Project will present community actions on this case and suggestions for future improvements to the Air District's compliance and enforcement procedures.
No Action Required – Informational Presentation
Presentation Overview

• Review the Green Sage case violations and enforcement steps
• Explain the amount of energy and pollution produced by illegal generators
• Describe the various community members and agencies involved
• Highlight the community efforts of the Environmental Democracy Project
• Review the acts of defiance by the violators in this case
• Describe lessons learned by both the Air District and community members
"Air District staff were saddened to learn that a resident [David Smith] of The Cannery building near the Green Sage complex [died on August 23, 2022] of complications of pneumonia after months of exposure to diesel exhaust emissions. While no one can say with certainty that this exposure caused that specific death, we can assert that many epidemiological studies, like those summarized in the US EPA Science Assessment, do find a causal link between this type of exposure and mortality."

Quote From 9/2/2022 Air District “Report Evaluating Harms From Diesel Generator Use at 5601/5733 San Leandro
Green Sage Management

Location and History:
5601 & 5733 San Leandro Street

- 1930s fruit cannery converted to an Artist live/work space in 1975
- Bought by Green Sage in 2017 to develop property for the cannabis industry
The Scale of The Violation

• As buildout of cannabis growing progressed, operations exceeded existing PG&E power to buildings
• 9 diesel engines were used to generate ~11 MW of power (enough for 9,000 homes)
• Multiple engines of this type emit diesel particulate matter at a rate that is on par with all the heavy-duty trucks operating in West Oakland. This is a serious health concern for nearby residents.
Violations at Green Sage

• The CA Air Resources Board (CARB) Portable Equipment Registration Program (PERP) regulations prohibit generator use for primary power except for very limited applications.

• Generators did not have an Air District Permit to Operate, nor would qualify for one for primary use.
Duration of the Violation

Generator Use Timeline – Oct. 2020, through April 2022

- Peak use = 11.1 MW (enough for 9,000 homes)
- Generators on site for 628 days
- Max number of generators at one time: 12
- Green Sage wanted to upgrade PG&E power to 16 MW
Who Were The Advocates and Agencies?

**Community**: residents & elementary school alerted the Environmental Democracy Project

**City of Oakland**: Code Enforcement, Fire Dept, Police Dept, Zoning

**Bay Area Air Quality Management District**

**California Dept of Cannabis Control**
EDP utilizes the 3-pronged approach of education, advocacy, and litigation to ensure compliance with environmental laws, and protection of community health, and an open and democratic process is at the core of every economic development decision impacted the underrepresented communities of California with specific focus on East Oakland.

<table>
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<th>(On our own behalf/ On behalf of the Community)</th>
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<td>Advocacy/Agency</td>
<td>(Demystifying Bureaucracy)</td>
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<tr>
<td>Education</td>
<td>(Community/Decision Makers)</td>
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Community efforts and collaboration

Community Work Started in August 2020:

• First with a complaint to Oakland Fire
• Cannery residents next voiced complaints to City of Oakland and CA Cannabis Commission.
  ▪ Residents took photos of pollution and spoke at public meetings

• Elementary school and residents contacted Environmental Democracy Project (EDP) who:
  ▪ Filed Public Records Act Request with the City of Oakland
  ▪ Filed a federal lawsuit against Green Sage under the Clean Air Act and obtained a court order that generator use must cease
  ▪ Testified in the abatement hearing as an expert witness

Tanya Boyce, Executive Director of the Environmental Democracy Project
EDP's suggestions for improvements

1. Conduct background checks on industries applying for permits and/or getting Notices of Violation
   • This bad actor from Green Sage had previous violations across the country
   • BAAQMD could have been more aggressive with them and not delayed the hearing board due to their no-show

2. More cross-agency training and collaboration for proactive enforcement
   • Many agency staff did not understand the matrix of all the government agencies and how they should be working more together

3. Hearing board should be representative of heavily impacted communities

4. Businesses don't need the protection of government agencies worrying about their bottom line; the focus should be on the community's health
CalEnviroScreen 4.0 Bay Area Regional Map

(Highest Scores) = Unhealthy environment
(Lowest Scores) = Healthier environment

Overall Percentile

- >90 - 100 (Highest Scores)
- >80 - 90
- >70 - 80
- >60 - 70
- >50 - 60
- >40 - 50
- >30 - 40
- >20 - 30
- >10 - 20
- 0 - 10 (Lowest Scores)
Green Sage's Defiance of Enforcement Efforts

• Notice of Violation (NOV) to Green Sage
  ➢ Feb. 16, 2022 – For operating 9 generators without an Authority to Construct or Permit to Operate
  ➢ LESSON LEARNED: Issue NOV sooner to get facility's written response sooner to cut through false "defenses". The complaint to the Air District was received in Sept. 2021.
  ➢ NOV is not the last step when there is defiance

• Notice of Violation to United Rentals
  ➢ July 28, 2022 - For operating Portable Equipment Registration Program (PERP) generators for primary power, prohibited by PERP regulations
Green Sage's Defiance of Enforcement Efforts (cont.)

• Hearing Board Order
  ➢ Apr. 20, 2022 - Filed for an Abatement Order
  ➢ July 29, 2022 - Filed a Complaint for Injunction and Civil Penalties
  ➢ Aug. 25, 2022 - Filed a Temporary Restraining Order in Superior Court to enforce Hearing Board Order

• Sometimes you get defiance of Air District Notices of Violation and even Air District Hearing Board Orders – this was one such case

• In those situations, you have to think strategically about creating as many pressure points as possible to put the conduct to an end
Cannery Resident Alistair Monroe summed this all up perfectly:

"Shortly after, the air district's attorney worked with the Oakland City Attorney's Office to contact the generator rental company, United Rentals, to take a back-end approach to removing the power source off the property. Monroe said the rental company would be included in fines if they knowingly defied an abatement order. 'And then next thing you know, after two hours, all of the generators disappeared,' [Alistar] Monroe said. 'The city agencies all started communicating and working together in alignment.'"
ASSESSMENT

1. Size up the big picture as *early* as possible and determine what intervention strategy is going to realistically work.
   - Are we dealing with an entity that is going to respect regulatory authority?
   - Are these rational business actors, or is something different at play?

2. Identify and uncover lies and misrepresentations about the nature of the violation as *early* as possible to determine who is responsible as *early* as possible
   - Identify shell games at sites where there are multiple persons/businesses involved
   - Be mindful of the importance of "bringing everyone to the table" as the case evolves at the Hearing Board and beyond
COLLABORATION

1. Seize the opportunity to learn facts about the violation from community members as *early* as possible
   - Maintain contact with the community as the "eyes and ears" on the site
2. Work with other government agencies and citizen groups to create multiple pressure points as *early* as possible
3. Do more community outreach to make sure people know how to file a complaint with the Air District
Questions?