



1 assigned Docket No. 3659.

2 On February 13, 2014, Russell City filed a Notice of Defense responding to the  
3 allegations in the Accusation and requesting a hearing. The Parties subsequently discussed  
4 the most appropriate solution for addressing the non-compliance at the facility, and based  
5 on those discussions they agreed to a [Proposed] Stipulated Conditional Order for  
6 Abatement, which they submitted to the Hearing Board on March 4, 2014, along with a  
7 stipulation to and request for its entry.

8 The Hearing Board held a hearing on March 13, 2014, at which the APCO was  
9 represented by Assistant Counsel, Alexander G. Crockett, Esq., and Russell City was  
10 represented by Kevin Poloncarz, Esq. The hearing was duly noticed in accordance with  
11 applicable legal requirements and members of the public were afforded an opportunity to  
12 comment.

13 At the hearing on March 13, 2014, this Stipulated Conditional Order for Abatement  
14 (“Order”) was entered providing for Russell City to take certain actions within certain  
15 timeframes to bring the Facility into compliance at the earliest opportunity. The Hearing  
16 Board entered this Order effective immediately upon filing.

17 In addition, in a related proceeding, Russell City applied to the Hearing Board for an  
18 interim variance and regular variance for operation of the Facility. That application was  
19 assigned Docket No. 3657. Concurrently with Parties’ stipulation for entry of this Order on  
20 March 4, 2014, Russell City withdrew that variance application, and no further proceedings  
21 were held on that matter.

#### 22 **WRITTEN EXPLANATION OF ACTION**

23 Because the Parties have stipulated to the entry of this Order, the Hearing Board must  
24 include a written explanation of its action in this Order, but it is not required to make any  
25 factual findings to support the Order under Health and Safety Code Section 42451(a). To that  
26 end, the Hearing Board explains its action as follows.

27 This matter concerns mist emissions from the Cooling Tower at the Russell City Energy  
28 Center, which is identified as Source S-5 in Russell City’s permit. Part 44 of Condition No.

1 23763 of the Authority to Construct permit for the Facility requires the Cooling Tower to be  
2 “equip[ped] . . . with high-efficiency mist eliminators with a maximum guaranteed drift rate of  
3 0.0005%.” Part 45 of the condition requires Russell City to perform an initial performance test  
4 “to verify compliance with the vendor-guaranteed drift rate specified in condition 44.” The  
5 results of the initial performance test indicate a drift rate of 0.00491%, which exceeds the  
6 0.0005% drift rate requirement applicable under Condition No. 23763.

7 Since discovering the exceedance of the 0.0005% drift rate requirement, Russell City has  
8 been cooperating with the District to assess how it can achieve the required 0.0005% drift rate at  
9 the earliest opportunity. The District and Russell City have agreed to an appropriate course of  
10 action to address the problems identified in the Accusation and to ensure that the Facility comes  
11 into compliance with its permit requirements as soon as possible, and Russell City has  
12 voluntarily taken several of the initial steps of that course of action already. This course of  
13 action, along with interim milestones and deadlines for achieving them, is embodied in the  
14 requirements of Section II of this Order.

15 In addition, Russell City has committed to taking all feasible measures to minimize any  
16 particulate matter present within the Cooling Tower mist pending full compliance with Russell  
17 City’s permit, including keeping the amount of total dissolved solids in the cooling water to no  
18 more than 5,000 parts per million by volume, as required under Section III of this Order.

19 The Hearing Board therefore believes that the Parties’ agreed course of action is in the  
20 public interest and that entry of this Order is appropriate under the circumstances.

21 **ORDER**

22 WHEREFORE, pursuant to Sections 42451(b) and 42452 of the California Health &  
23 Safety Code, the HEARING BOARD of the BAY AREA AIR QUALITY MANAGEMENT  
24 DISTRICT hereby ORDERS as follows:

25 1. The Parties’ request for entry of this Stipulated Conditional Order For  
26 Abatement shall be and hereby is GRANTED.

27 2. Russell City is hereby ORDERED to cease and desist from operation of the  
28 Cooling Tower at the Russell City Energy Center (Source S-5) in violation of the

1 requirements of Part 44 and 45 of its Permit condition, unless it complies with the  
2 requirements set forth in Paragraphs 3 through 15, inclusive, below, or this Order is modified  
3 by the Hearing Board.

4 **I. DEVELOPMENT OF CORRECTIVE ACTION PLAN**

5 3. Russell City shall expeditiously develop a Corrective Action Plan to reduce  
6 Cooling Tower mist sufficiently to ensure compliance with the 0.0005% drift rate requirement in  
7 Part 44 of Russell City's Permit condition.

8 4. Russell City shall develop the Corrective Action Plan required under Paragraph 3  
9 by evaluating the feasibility and effectiveness of installing (i) static-type spray nozzles (i.e.,  
10 without impellers) and (ii) a second layer of drift eliminators as a means of reducing Cooling  
11 Tower mist. Russell City shall implement each of these two technologies at one separate cell of  
12 the Cooling Tower on a test basis in order to evaluate them. Russell City shall also consider  
13 associated mechanical and operational adjustments to the Cooling Tower design that may be  
14 instituted at the earliest opportunity to reduce Cooling Tower drift rate. Russell City shall  
15 evaluate each of these technologies and the associated mechanical and operational adjustments  
16 based on the following criteria:

- 17 a. effectiveness at ensuring compliance with the 0.0005% drift rate
- 18 requirement;
- 19 b. any ancillary or indirect positive or negative impacts on Russell City or on
- 20 the public health and welfare;
- 21 c. time required for implementation; and
- 22 d. any other relevant factors identified by Russell City or the APCO.

23 The evaluation of the effectiveness of each technology at reducing Cooling Tower mist pursuant  
24 to subparagraph 4.a. shall be conducted (i) qualitatively (i.e., by visual observation); and (ii)  
25 quantitatively, unless the qualitative evaluation clearly indicates that the technology is not  
26 effective. Quantitative testing shall be conducted such that final results are received by May 2,  
27 2014. Russell City shall provide a copy of such test results to the APCO immediately upon  
28 receipt.

1           5.       If the evaluation conducted pursuant to Paragraph 4 concludes that one of the two  
2 technologies evaluated by itself, along with any associated mechanical or operational  
3 adjustments, will be effective to reduce cooling tower mist sufficiently to ensure compliance with  
4 the 0.0005% drift rate requirement in Part 44 of Russell City's permit condition, Russell City  
5 shall submit a Corrective Action Plan to the APCO and the Hearing Board by May 9, 2014,  
6 proposing this technology as the proposed solution.

7           a.       The Corrective Action Plan submitted pursuant to this Paragraph 5 shall  
8 include: (i) a summary of the evaluation conducted pursuant to Paragraph 4; (ii) a description of  
9 the proposed technology and how it will be implemented; (iii) a description of any mechanical or  
10 operational adjustments that will also be implemented in association with the proposed  
11 technology; and (iv) evidence that demonstrates that the proposed technology and proposed  
12 mechanical or operational adjustments will be effective at reducing Cooling Tower mist  
13 sufficiently to ensure compliance with the 0.0005% drift rate requirement in Part 44 of Russell  
14 City's permit condition.

15           b.       The APCO may object to the Corrective Action Plan as the most  
16 appropriate solution to the non-compliance at the Facility by so notifying the Hearing Board and  
17 Russell City by May 16, 2014, and may request a further hearing by the Hearing Board to modify  
18 this Order as appropriate.

19           c.       If the APCO does not object pursuant to subparagraph 5.b. and the Hearing  
20 Board does not modify this Order, Russell City shall implement the Corrective Action Plan and  
21 install the selected corrective measures and implement any associated mechanical or operational  
22 adjustments to the Cooling Tower by July 18, 2014.

23           d.       Upon implementation of the Corrective Action Plan, Russell City shall  
24 submit a written report to the Hearing Board and the APCO documenting its completion. This  
25 Order shall terminate upon receipt of the written report required under this subsection 5.d,  
26 provided that the Corrective Action Plan has been fully implemented and all other requirements  
27 of Paragraphs 3-5 have otherwise been satisfied to the satisfaction of the APCO.

28           6.       If the evaluation conducted pursuant to Paragraph 4 concludes that neither of the

1 two technologies evaluated by itself, in association with the considered mechanical and  
2 operational adjustments, will be effective to reduce Cooling Tower mist sufficiently to ensure  
3 compliance with the 0.0005% drift rate requirement in Part 44 of Russell City's permit condition,  
4 Russell City shall notify the APCO and the Hearing Board of that conclusion by May 2, 2014,  
5 and shall provide written explanation to support the conclusion (e.g., test results showing that  
6 drift exceeds the 0.0005% requirement). In addition, Russell City shall comply with the  
7 requirements in either Paragraph 7 or Paragraph 8 below, as appropriate.

8 7. If Russell City determines that both of the technologies evaluated under Paragraph  
9 4 may, together, achieve the required drift rate, Russell City shall implement both technologies  
10 (static-type spray nozzles and a second layer of drift eliminators) together in a single cell of the  
11 Cooling Tower in order to evaluate their combined effectiveness.

12 a. Russell City shall evaluate the combined technologies, in association with  
13 any proposed mechanical and operational adjustments to the Cooling Tower, based on the criteria  
14 set forth in subparagraphs 4.a. through 4.d, with quantitative testing conducted such that final  
15 results are received by June 13, 2014, with a copy of such test results provided to the APCO  
16 immediately upon receipt.

17 b. If the two technologies in combination, along with any mechanical or  
18 operational adjustments to the Cooling Tower, will be effective Russell City to reduce Cooling  
19 Tower mist sufficiently to ensure compliance with the 0.0005% drift rate requirement in Part 44  
20 of Russell City's permit condition, Russell City shall submit a Corrective Action Plan to the  
21 APCO and the Hearing Board by June 20, 2014, proposing the combined technologies and  
22 associated mechanical and operational adjustments as the proposed solution.

23 1. The Corrective Action Plan submitted pursuant to this subparagraph  
24 7.b. shall include: (i) a summary of the evaluation of the combined technologies conducted  
25 pursuant to this Paragraph 7; (ii) a description of the proposed combined technologies and how  
26 they will be implemented; and (iii) a description of any mechanical or operational adjustments  
27 that will also be implemented in association with the proposed technology; and (iv) evidence that  
28 demonstrates that the proposed combined technologies and selected mechanical/operational

1 adjustments will be effective at reducing Cooling Tower mist sufficiently to ensure compliance  
2 with the 0.0005% drift rate requirement in Part 44 of Russell City's Authority to Construct permit  
3 condition.

4                   2.       The APCO may object to the Corrective Action Plan as the most  
5 appropriate solution to the non-compliance at the Facility by so notifying the Hearing Board  
6 Russell City by June 27, 2014, and may request a further hearing by the Hearing Board to modify  
7 this Order as appropriate.

8                   3.       If the APCO does not object pursuant to subparagraph 7.b.2., and  
9 the Hearing Board does not modify this Order, Russell City shall implement the Corrective  
10 Action Plan and install the selected corrective measures and institute the selected mechanical and  
11 operational adjustments to the Cooling Tower by August 1, 2014.

12                   4.       Upon implementation of the Corrective Action Plan, Russell City  
13 shall submit a written report to the Hearing Board and the APCO documenting its completion.  
14 This Order shall terminate upon receipt of the written report required under this subsection 7.b.4,  
15 provided that the Corrective Action Plan has been fully implemented and all other requirements  
16 of Paragraphs 3, 4, 6, 7.a. and 7.b. have otherwise been satisfied to the satisfaction of the APCO.

17                   c.       If Russell City determines, after evaluating the combined technologies in a  
18 single cell pursuant to subparagraph 7.a., that the two technologies in combination, along with  
19 any proposed mechanical or operational adjustments to the Cooling Tower, will not be effective  
20 to reduce the Cooling Tower mist sufficiently to ensure compliance with the 0.0005% drift rate  
21 requirement, Russell City shall submit a Status Report to the APCO and the Hearing Board by  
22 June 20, 2014. The Status Report submitted pursuant to this subparagraph 7.c. shall include (i) a  
23 summary of the evaluation of the combined technologies conducted pursuant to subparagraph  
24 7.a.; and (ii) a proposal for developing an alternative solution to be developed into a Corrective  
25 Action Plan, which may include further changes to the Cooling Tower design and/or operation,  
26 such as changes to the Cooling Tower mechanical equipment and/or water distribution system or  
27 other appropriate technical approaches. The Hearing Board shall hold a further hearing at its  
28 earliest opportunity to consider the Status Report and modify this Order appropriately.



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permitting a variance.

13. This Order is not intended to and shall not be construed to have any effect or bearing on the issue of whether Russell City is liable for penalties under the Health and Safety Code or other relevant legal provisions for the Cooling Tower mist violations address by this Order. Notwithstanding any provision in this Order, the APCO or any other governmental agency or person authorized to act on behalf of such an agency shall retain any and all rights to pursue any penalty or other claims that they may have under the Health & Safety code or other relevant provisions of law; and Russell City shall retain any and all rights to contest and/or deny liability for such claims, and/or to assert any defenses to such claims, under any applicable provisions of law. In particular, Russell City's withdrawal of its variance application and its stipulation for entry of this Order shall not be construed as an admission of, or a waiver or any defenses to, liability.

14. The Hearing Board shall retain jurisdiction of this matter.

15. This Order shall become effective immediately upon the filing of this Order.

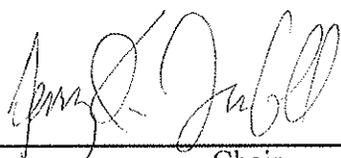
Moved by: MAGALHAES

Seconded by: CHIU

AYES: ARMENTO, BENDIX, CHIU, MAGALHAES AND TRUMBULL

NOES: NONE

NON-PARTICIPATING: NONE

  
\_\_\_\_\_, Chair

3/13/14  
\_\_\_\_\_  
Date

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

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

NO. 3659

Complainant, )

CERTIFICATE OF SERVICE

vs. )

RUSSELL CITY ENERGY COMPANY, LLC, )

Respondent. )

STATE OF CALIFORNIA )

City and County of San Francisco )

ss.

I, Sean Gallagher, 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 action; that I served a true copy of the attached Stipulated Conditional Order for Abatement on:

**Kevin Poloncarz  
Paul Hastings LLP  
55 Second Street, 24<sup>th</sup> Floor  
San Francisco, CA 94105**

by depositing same in the United States certified mail, return receipt requested, on March 19, 2014; and on

**Alexander G. Crockett  
Assistant Counsel  
Bay Area Air Quality Management District  
939 Ellis Street, 7<sup>th</sup> Floor  
San Francisco, CA 94109**

by hand-delivery deposit of same in the in-box of the District Counsel's office, on March 19, 2014.

DATED: March 19, 2014

  
\_\_\_\_\_  
Sean Gallagher  
Clerk of the Boards