

BEFORE THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA)	
)	
COUNTY OF WAKE)	
)	
IN THE MATTER OF:)	SPECIAL ORDER BY CONSENT
AUSTIN QUALITY FOODS, INC.)	
)	SOC 2021- <u>001</u>
)	
CARY, WAKE COUNTY)	
NORTH CAROLINA)	
[SITE NUMBER 9200504])	

This SPECIAL ORDER BY CONSENT (hereinafter referred to as the “ORDER”) is made and entered into pursuant to North Carolina General Statute 143-215.110 by and between AUSTIN QUALITY FOODS, INC. (hereafter referred to as the “COMPANY”) and the ENVIRONMENTAL MANAGEMENT COMMISSION, an agency of the State of North Carolina (hereinafter referred to as the “COMMISSION”).

WITNESSETH:

- I. The COMMISSION and the COMPANY do hereby stipulate and agree to the following:
 - A. The COMPANY operates a snack food bakery (hereafter referred to as the “FACILITY”) located at 1 Quality Lane in Cary, Wake County, North Carolina. The FACILITY currently operates under Title V Air Quality Permit No. 06816T18, issued on November 18, 2020.
 - B. “Affected sources” at the FACILITY include six natural gas direct-fired ovens (the “OVENS”), each of which is permitted to produce yeast and non-yeast leavened products. The manufacture of yeast leavened products at the OVENS has the potential to emit volatile organic compounds (“VOC”), including certain hazardous air pollutants (“HAP”) and toxic air pollutants (“TAP”), such as acetaldehyde (HAP and TAP) and acetic acid (TAP).
 - C. The FACILITY is classified a “minor source” under the Prevention of Significant Deterioration (“PSD”) regulations because the COMPANY has accepted enforceable, facility-wide emissions limit of 250 tons per year (“tpy”) for VOC,

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

which is a PSD-regulated pollutant, and the FACILITY has the potential to emit less than 250 tpy of all remaining PSD-regulated pollutants.

- D. The FACILITY is classified an “area source” under the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) regulations, including the Maximum Available Control Technology (“MACT”) standards pursuant to Title 40, Part 63 of the Code of Federal Regulations, because the COMPANY has accepted enforceable, facility-wide emissions limits of 10 tpy for all individual HAPs and 25 tpy for total, aggregated HAP.
- E. In prior permitting and compliance demonstrations, the COMPANY utilized a VOC emissions factor of 4.1 pounds per ton (“lbs/ton”) of manufactured yeast leavened product and an acetaldehyde emissions factor of 0.123 lbs/ton of manufactured yeast leavened product. These emissions factors were derived from prior stack testing at a facility with a similar process for the manufacture of yeast leavened products located in Kansas City, Kansas.
- F. Upon learning that these emissions factors were potentially underestimating VOC and acetaldehyde emissions for the manufacture of yeast leavened products at the FACILITY, the COMPANY notified the North Carolina Division of Air Quality (“DAQ”) on December 10, 2020 and proposed to conduct stack testing at the FACILITY to develop FACILITY-specific emissions factors.
- G. The COMPANY conducted an emissions stack test in accordance with a DAQ-approved stack test protocol on January 5-6, 2021 on one of the OVENS, Line 600 (Emission Source ID No. ES-8), while manufacturing yeast leavened product. Based on the results of this stack test, the COMPANY derived an actual VOC emissions factor of 8.68 lbs/ton of manufactured yeast leavened product and an actual acetaldehyde emissions factor of 0.494 lbs/ton of manufactured yeast leavened product.
- H. Using the VOC emissions factor developed from the January 5-6, 2021 emissions stack test, the FACILITY is exceeding the permitted VOC emissions limit of 250 tpy on a rolling 12-month basis. Estimated facility-wide VOC emissions from the FACILITY exceeded the permitted limit for the first time in April 2017, and have remained above 250 tpy on a rolling 12-month basis since that time.

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

1. The 250 tpy VOC emissions limit was first included in Permit No. 06816R13, issued by DAQ on July 30, 2014, when the FACILITY changed from a synthetic minor to a Title V fee class. The purpose of the 250 tpy VOC emissions limit was to maintain the FACILITY's "minor source" classification under the PSD regulations.
 2. DAQ has not issued any permit modifications with the potential to increase VOC emissions from the FACILITY since August 16, 2016 (*i.e.*, prior to April 2017, when the FACILITY first exceeded 250 tpy emissions limit). On August 16, 2016, DAQ issued Title V Air Quality Permit No. 06816T16 authorizing one OVEN, Line 100 (ID No. ES-1) to produce yeast leavened products (in addition to non-yeast leavened products). Using the updated VOC emissions factor, the estimated potential VOC emissions increase associated with this modification to Line 100 (ID No. ES-1) is less than 150 tpy, and well below the 250 tpy major modification threshold for existing minor sources under the PSD regulations.
 3. The COMPANY has not triggered major source or major modification permitting requirements under the PSD regulations.
- I. Using the updated acetaldehyde emissions factor developed from the January 5-6, 2021 emissions stack test, the FACILITY is exceeding the permitted individual HAP emissions limit of 10 tpy on a rolling 12-month basis. Estimated facility-wide acetaldehyde emissions from the FACILITY exceeded the permitted limit for the first time in July 2015, and have remained above 10 tpy on a rolling 12-month basis since that time.
1. The FACILITY has enforceable MACT-avoidance limits of 10 tpy for all individual HAPs and 25 tpy for total, aggregated HAP.
 2. The United States Environmental Protection Agency ("EPA") has not promulgated a MACT standard that applies to the FACILITY, which is a snack food bakery.¹

¹ The COMPANY owns and operates one 150 kW diesel-fired emergency generator at the FACILITY, which is listed on the Insignificant Activity List in Permit No. 06816T18, and is subject to the Generally Available Control Technology ("GACT") standards for Reciprocal Internal Combustion Engines for area sources of HAP. However, the GACT standards are substantively equivalent to the MACT standards for Reciprocal Internal Combustion Engines for major sources of HAP. *See* 40 C.F.R. Part 63, Subpart ZZZZ.

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

3. Using the updated acetaldehyde emissions factor, one OVEN, Line 700 (ID No. ES-7) has the potential to emit acetaldehyde at a rate of greater than 10 tpy. However, neither Line 700 (ID No. ES-7) nor any other individual emission source has actually emitted acetaldehyde or any other individual HAP at a rate of equal to or greater than 10 tpy on a rolling 12-month basis.
 4. The COMPANY has not triggered applicability of any NESHAP regulations, including any MACT standard for listed industrial source categories or the Case-by-Case MACT pursuant to Section 112(g) of the Clean Air Act.
- J. Using the updated acetaldehyde and acetic acid emissions factor developed from the January 5-6, 2021 emissions stack test, the FACILITY is exceeding the state-enforceable TAP Permitting Emission Rates (“TPERs”) for acetaldehyde and acetic acid without having first obtained an air permit to emit TAPs and demonstrated compliance with the acceptable ambient levels (“AALs”) pursuant to 15A NCAC 02D .1100.
- K. On May 18, 2021, DAQ issued a Notice of Violation / Notice of Recommendation of Enforcement to the COMPANY for exceedances of the permitted, facility-wide VOC emissions limit pursuant to 15A NCAC 02Q .0317 (Avoidance Condition) for 15A NCAC 02D .0530 (Prevention of Significant Deterioration) and exceedances of the permitted, facility-wide individual HAP emissions limit pursuant to 15A NCAC 02Q .0317 (Avoidance Condition) for 15A NCAC 02D .1111 (Limitation to Avoid Being Major for HAP) and exceedances of the TPERs for acetaldehyde and acetic acid prior to obtaining an air permit to emit TAPs and demonstrating compliance with the AALs pursuant to 15A NCAC 02D .1100.
- L. The COMPANY seeks to reduce facility-wide VOC, acetaldehyde, and acetic acid emissions by installing and operating a catalytic oxidizer (“CO”) on two OVENS, Line 700 (ID No. ES-7) and Line 600 (ID No. ES-8), which will control emissions from the production of yeast leavened products at those OVENS. The COMPANY also seeks to replace one existing OVEN, Line 200 (ID No. ES-2) and install and operate the CO on the Line 200 replacement. The COMPANY’s

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

installation and operation of the CO will allow for future compliance with the 250 tpy VOC emissions limit and the 10 tpy individual HAP limit so that the FACILITY may retain its minor source classification under the PSD regulations and area source classification under the NESHAP.

- M. On March 3, 2021, the COMPANY submitted an application to modify its existing Title V Air Quality Permit (Permit No. 06816T18, issued on November 18, 2020) to: (1) authorize the construction and operation of the CO on Line 700 (ID No. ES-7) and Line 600 (ID No. ES-8); (2) replace existing Line 200 (ID No. ES-2) with the CO installed to control emissions from the replacement Line 200 (ID No. ES-2); (3) provide a demonstration of compliance with the TPER for acetaldehyde pursuant to 15A NCAC 02Q .0711; and (4) provide a demonstration of compliance with the AAL for acetic acid pursuant to 15A NCAC 02D .1100. DAQ is currently reviewing the permit application.
- N. DAQ has determined that, due to the COMPANY's commitment to installing and operating a CO to control VOC, acetaldehyde, and acetic acid emissions and return the FACILITY to compliance with the facility-wide 12-month rolling emissions limits for VOC of 250 tpy and individual HAP of 10 tpy and the state-enforceable TAP regulations for acetaldehyde and acetic acid, this ORDER is a necessary and appropriate mechanism to ensure the COMPANY returns the FACILITY to compliance with the emissions limits.

THEREFORE, the COMMISSION and the COMPANY, desiring to resolve and settle the compliance issues between them, have agreed to enter into this ORDER with the following terms and conditions:

- II. The COMPANY, desiring to operate in a safe and environmentally sound manner during the period of this ORDER and thereafter in accordance with the rules and regulations of the COMMISSION does hereby agree to the following conditions to reduce VOC, acetaldehyde, and acetic acid emissions:
 - A. The COMPANY will use best commercial efforts to install the CO to control emissions from Line 700 (ID No. ES-7) and Line 600 (ID No. ES-8) within four

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

- (4) months, and in no event to exceed eight (8) months, of issuance of a permit by DAQ authorizing the construction and operation of the new CO for Line 700 (ID No. ES-7) and Line 600 (ID No. ES-8).
- B. The COMPANY will permanently shutdown existing Line 200 (ID No. ES-2) within 120 days of initial startup of the CO.
 - C. The COMPANY will install the CO on replacement Line 200 (ID No. ES-2) and will not commence operation of the replacement oven unless and until it is routed to and capable of controlling VOC, acetaldehyde and acetic acid emissions with the CO.
 - D. The COMPANY will perform inlet and outlet emissions testing on the CO to determine VOC, acetaldehyde, and acetic acid emissions and develop data to demonstrate compliance with the: (1) facility-wide 12-month rolling emissions limits for VOC; (2) facility-wide 12-month rolling emissions limits for HAP; (3) the TPER for acetaldehyde; and (4) the modelled emission rate for acetic acid that demonstrates compliance with the AAL, in accordance with the permit to be issued authorizing construction and operation of the CO.
 - E. The COMPANY will achieve compliance with the facility-wide 12-month rolling emissions limits for VOC of 250 tpy and individual HAP of 10 tpy within twelve (12) months of initial startup of the CO.
 - F. Within 30 days of returning to compliance with respect to all their permitted emission limits, the COMPANY will submit a written report certifying that the FACILITY has achieved compliance with the facility-wide 12-month rolling emissions limits for VOC of 250 tpy and individual HAP of 10 tpy.
- III. The COMPANY shall pay the following penalties:
- A. The COMPANY agrees to pay DAQ a civil penalty in the amount of \$54,500. This amount shall be paid within 30 days of the effective date of this ORDER.
 - B. In the event that the COMPANY fails to comply with any deadline as set out in this ORDER or fails to achieve final compliance with any applicable requirement in this ORDER, the COMPANY agrees that, unless excused under Paragraph IV, the COMPANY will pay stipulated penalties according to the following schedule:

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

<u>Deadlines and Requirements</u>	<u>Stipulated Penalties</u>
Failure to comply with any requirement or deadline in Paragraph II	\$500 per day for the first 5 days and \$1000 per day thereafter.

The COMPANY shall notify DAQ in writing of any violation of Paragraph II of this ORDER within ten (10) days of discovering such violation. Failure to pay the civil penalties within thirty (30) days of receipt of the Director's written demand will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether thirty (30) days has lapsed.

- IV. The COMPANY's obligation to comply with the requirements set forth in this ORDER for which a stipulated penalty may be assessed, may be delayed or excused only to the extent that noncompliance is caused by circumstances beyond control of the COMPANY, as determined by the DAQ Director. Contractor delays or failure to obtain funding will not be considered events beyond the COMPANY's control. If any such delaying event occurs, the COMPANY shall notify DAQ in writing within ten (10) days of encountering or discovering the delaying event, describing in detail the event or delay, the precise cause(s) of the event or delay, the measure(s) taken and to be taken by the COMPANY to prevent or minimize the event or delay, and the schedule by which those measures will be implemented.
- V. In addition to the stipulated penalties set forth in Paragraph III, in the event the COMPANY violates this ORDER, the COMPANY may be subject to an injunction action pursuant to N.C.G.S. § 143-215.114C for relief necessary to prevent or abate the violations described in Paragraph I. Except as authorized pursuant to this Paragraph and Paragraph III, the COMPANY shall not be issued any further Notices of Violation or be subject to enforcement action for the violations specified in Paragraph I. Any other violations for which the COMPANY is responsible, shall subject the COMPANY to appropriate enforcement action pursuant to N.C.G.S. §§ 143-215.114A, 143-215.114B and 143-215.114C.
- VI. The COMPANY agrees to waive any rights it may have to seek judicial review to challenge this ORDER.

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

VII. All notices and reports required by this ORDER shall be delivered to:

Regional Air Quality Supervisor
N.C. Dept. of Environmental Quality
3800 Barrett Drive
Raleigh, North Carolina 27609

All payments required from the COMPANY by this ORDER shall be delivered to:

Enforcement Group – Payments
NCDEQ – DAQ
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

- VIII. Final approval and entry into this ORDER are subject to the requirements that the COMMISSION give notice of proposed special orders to the public, and that the public have at least thirty (30) days within which to comment on the ORDER.
- IX. Should any provision of this ORDER be declared by a court of competent jurisdiction to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.
- X. The Parties may jointly stipulate and agree to modify this ORDER at any time subject to the requirements of 15A NCAC 02D .2203. Any modifications of this ORDER must be agreed to in writing signed by both parties.
- XI. Except as otherwise set forth herein, this ORDER is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the COMPANY of its obligations to comply in the future with any permit.
- XII. This ORDER is effective on execution by the COMMISSION and shall expire upon DAQ's written approval of a written report prepared, certified and submitted by the COMPANY in accordance with Paragraph II.F., or on March 31, 2023, whichever comes first.

Special Order By Consent
AUSTIN QUALITY FOODS, INC.

ATTESTED:

AUSTIN QUALITY FOODS, INC.

BY: 

Sergio Bosch
Plant Manager
Austin Quality Foods, Inc.

DATE: July 1, 2021

APPROVED AND ACCEPTED:

BY: 

For the Environmental Management Commission

DATE: 8/9/21