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8 **BON APPETIT BAKERY**

9 **BEFORE THE HEARING BOARD OF THE**
10 **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

11 In the Matter of

12 **BON APPETIT BAKERY**

13 Petitioner.

Case No.: 6280-1

Facility I.D.: 167755

**FINDINGS AND DECISION OF THE
HEARING BOARD AND [PROPOSED]
ORDER**

Section 42350 of the California Health and
Safety Code

Hearing Date: November 18, 2025

16 **FINDINGS AND DECISION OF THE HEARING BOARD**

17 This petition for an interim variance was heard on the Hearing Board's Consent
18 Calendar on **November 18, 2025**, pursuant to notice and in accordance with the provisions of
19 California Health and Safety Code Section 40826. The following members of the Hearing
20 Board were present: Micah Ali, Chair; Robert Pearman, Esq., Vice Chair; Mohan Balagopalan;
21 Cynthia Verdugo-Peralta; and Dr. Jerry P. Abraham, MD, MPH, CMQ. Petitioner, represented
22 by Maya Lopez Grasse, Alston & Bird LLP, did not appear. Respondent Executive Officer,
23 represented by Mary Reichert, did not appear. The joint Stipulation to Place Matter on Consent
24 Calendar, the Declarations of Sonny Cutwright and Robert MacDonald and the Proposed
25 Findings and Decision were received as evidence, and the case submitted. The public was
26 given the opportunity to testify. The Hearing Board finds and decides as follows:

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1 **Nature of Business and Location of Facility**

2 Petitioner operates a bakery at 4525 District Avenue in Vernon (Facility ID 167755;
3 the “Facility”) which produces individually-wrapped, single-serving bakery items for retail
4 sale.

5
6 **Equipment that is the Subject of the Variance Petition**

7 This Petition concerns two tunnel ovens, referred to as follows:

- 8 • Oven No. 1 is a Bakery Oven located in Building 4529 and referred to as the “4529
9 Oven,” (Permit no. G78618), which has three burners and is permitted to bake yeast-
10 containing products; and
11 • Oven No. 2 is a Food Oven located in Building 4525 and referred to as the “4525
12 Oven,” (Permit no. G78915), which has four burners and is permitted to bake
13 products containing cake batter.

14 The ovens typically operate approximately 20 hours per day, 5 days per week, though
15 may occasionally run 24 hours. All of Petitioner’s products are baked in one of these two
16 tunnel ovens.

17
18 **SUMMARY**

19 Petitioner is in violation of District Rule 1153.1 (Table 1) as it pertains to NOx
20 emissions limits and District Rule 203(b) as it pertains to Condition 7 on Permits G78915 and
21 G78618) as that condition relates to NOx limits. Additionally, Petitioner will be in violation
22 of 203(b) as it relates to Condition 8(b) of Permits G78915 and G78618 if it cannot complete
23 a successful source test on each oven prior to December 16, 2025. Petitioner is uncertain when
24 it will achieve compliance and seeks this Interim Variance to allow it to operate the ovens
25 while it continues efforts to achieve compliance. (A Regular Variance in this case has also
26 been noticed for January 15, 2025.)

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1 **FINDINGS OF FACT AND CONCLUSIONS**

2 Following are the facts and conclusions supporting the findings set forth in California
3 Health and Safety Code Section 42352 necessary to grant the variance. The Executive Officer
4 did not oppose the granting of the variance. The hearing was bifurcated to demonstrate that
5 "good cause" exists to justify the holding of a hearing on an interim variance petition in the
6 absence of notice to the public.

7
8 **I. Good Cause Findings**

9
10 **A. Petitioner is in violation of Section 41701, or of any rule, regulation or order of**
11 **the District, or that such violation is imminent.**

12 1. Petitioner's two tunnel ovens are currently in violation of South Coast AQMD
13 Rule 1153.1, Table 1, as it relates to NOx limits. Petitioner may be in violation of the Table
14 1 CO limits as it works to adjust NOx emissions. Petitioner's two ovens are also in violation
15 of Rule 203(b) as it relates to Condition 7 of Permits G78915 and G78618. Petitioner will be
16 in violation of Rule 203(b) as it relates to Condition 8(b) of Permits G78915 and G78618 if
17 it cannot successfully source test the ovens by December 16, 2025.

18 **B. The circumstances leading to the violation could not reasonably have been**
19 **avoided by Petitioner, or anticipated in sufficient time to provide for public**
20 **notice of the variance hearing.**

21 2. The circumstances leading to these violations could not reasonably have been
22 avoided by Petitioner nor anticipated in sufficient time to provide the public notice of the
23 variance hearing. Petitioner could not have foreseen that these newly installed ovens, ordered
24 with Low NOx burners, would fail to demonstrate compliance with the applicable rules and
25 conditions through source testing that was scheduled to begin on Monday, October 20.
26 Petitioner's two ovens typically operate 20 hours per day, 5 days per week, and it could not
27 reasonably have anticipated the need for a variance to continue operating the ovens in
28 sufficient time to provide for public notice of the variance hearing.

1 3. Petitioner does not currently know when it will achieve compliance as it
2 continues to investigate and resolve the unexpected issues. Accordingly, Petitioner sought a
3 Regular Variance. It could not have anticipated the problems encountered during source
4 testing with enough time to provide for public notice of a variance hearing.

5 **C. Petitioner exercised diligence in petitioning for the interim variance and**
6 **scheduling the interim variance hearing; "diligence in petitioning for the**
7 **variance" shall mean that Petitioner filed a variance petition as soon as feasible**
8 **after the time Petitioner knew or should have known that a variance would,**
9 **more likely than not, be needed.**

10 4. Petitioner exercised diligence by filing for an *ex parte* emergency, interim and
11 regular variance on October 23, 2025, within 48 hours of becoming aware that neither oven
12 could presently demonstrate compliance with District rules and permit conditions through
13 source testing.

14 5. Preliminary testing of the 4525 Oven on the previous Friday (October 17)
15 suggested adjustments were required to that oven; Petitioner sought weekend technical work
16 from the manufacturer's authorized service provider, but that provider was not available until
17 Monday, October 20. Petitioner hired a third-party expert, in addition to the manufacturer's
18 service provider, to assist with adjustments necessary to the 4525 Oven. Source testing for
19 both ovens was scheduled to begin on Monday, October 20, 2025, but due to the illness of
20 the source testing technician, source testing commenced the following day, on Tuesday,
21 October 21. During source testing on October 21, the 4529 Oven could not demonstrate
22 compliance with the NOx limits. Also on October 21, Petitioner continued efforts to inspect,
23 clean and adjust the 4525 Oven. Petitioner also retained a consultant, Mark Abramowitz of
24 Community Environmental Services, and considered whether a variance would be necessary.

25 6. By Wednesday, October 22, 2025, the source testing of Oven 4529 and
26 preliminary testing of Oven 4525 revealed that neither oven could demonstrate compliance
27 with the applicable NOx limits. That day, Petitioner began preparing the variance petition
28 and retained counsel to assist in the proceeding. The petition for an *ex parte*, interim, and

1 regular variance was filed the next afternoon, on Thursday October 23.

2 7. The Hearing Board granted the *ex parte* emergency variance on Friday, October
3 24, 2025.

4 **D. A denial of the interim variance will result in either:**

5 **(a) An increase in the emissions of air pollutants, an adverse impact to air**
6 **quality, and/or an adverse impact on public health or welfare; or**

7 **(b) An unreasonable and unavoidable adverse impact to Petitioner.**

8 8. Denial of the variance would cause significant harm to Petitioner, in that
9 Petitioner would be unable to operate its ovens and therefore would not be able to make any
10 product. This could cause Petitioner to suffer economic loss of approximately \$405,000 per
11 business day and cause the loss of over 152 jobs at the Facility.

12 9. In addition to the lost sales, failure to meet customer orders could result in a
13 long-term loss of retail shelf space that could equate to more than \$500 million in additional
14 losses over five years. Petitioner's 1800 independent distributors (including 50 in Southern
15 California) could be at risk of becoming insolvent if the supply chain was interrupted for an
16 extended period of time since Petitioner's products account for 50% to 80% of the products
17 they distribute.

18
19 10. Upon finding Good Cause the Board then proceeded to the merits of the
20 Interim Variance and the six (6) Findings.

21
22 **II. Interim Variance Findings**

23
24 **A. The petitioner for a variance is or will be in violation of 41701 or any rule,**
25 **regulation, or order of the District.**

26 11. Petitioner's two tunnel ovens are currently in violation of South Coast AQMD
27 Rule 1153.1, Table 1, as it relates to NOx limits. Petitioner may be in violation of the Table
28 1 CO limits as it works to adjust NOx emissions. Petitioner's two ovens are also in

1 violation of Rule 203(b) as it relates to Condition 7 of Permits G78915 and G78618.

2 Petitioner will be in violation of Rule 203(b) as it relates to Condition 8(b) of Permits
3 G78915 and G78618 if it cannot successfully source test the ovens by December 16, 2025.

4 12. titioner will be in violation of District Rule 401(b)(1)(B) and California Health
5 and Safety Code Section 41701 hhh for more than three minutes in any one hour.

6 **B. Non-compliance with District Rule(s) is due to conditions beyond the**
7 **reasonable control of the Petitioner.**

8 13. Petitioner was conducting initial source testing of two ovens that it ordered with
9 Low-NOx burners. Source testing was due to be completed by January and February of 2026
10 (within 12 months of issuance of the permits for the respective ovens). Petitioner's source
11 testing was scheduled to begin October 20, 2025.

12 14. Petitioner encountered unexpected problems with both ovens in that neither
13 could demonstrate compliance with applicable NOx limits, whether in the official source test
14 or in preliminary testing with handheld analyzers.

15 Petitioner retained several third-party experts in a short period of time in order to assist with
16 troubleshooting the ovens. Petitioner and its outside consultants have also been working with
17 the oven manufacturer to identify and remedy the potential causes of the noncompliance.
18 Petitioner is also working with a second source testing company in coordination with the
19 consultants.

20 15. Petitioner has made some progress suggested by preliminary testing with hand-
21 analyzers, but has not yet achieved compliance. Petitioner has identified potential pathways
22 toward compliance that include (A) continuing to make adjustments to the burners and ovens
23 that may allow them to pass source testing using the approved protocol; (B) exploring whether
24 changes are required to the approved source test protocols as additional facts are developed;
25 and (C) depending on the success of the above pathways, Petitioner may need to replace the
26 existing Low-NOx burners with another type of Low NOx burner which may entail a lead
27 time of approximately 6 to 8 months, and associated permit amendments.

28 16. Given this uncertainty, Petitioner has also requested a Regular Variance

(scheduled for January 15, 2026).

C. Requiring compliance would result in either (A) an arbitrary or unreasonable taking of property, or (B) the practical closing and elimination of a lawful business.

17. Denial of the variance would cause significant harm to Petitioner because it would require Petitioner to cease operating the tunnel ovens until source testing is completed. Because all of Petitioner's products are baked in one of these two tunnel ovens, Petitioner would be not be able to make any product. This could cause Petitioner to suffer economic loss of approximately \$405,000 per business day and cause the loss of over 152 jobs at the Facility.

18. In addition to the lost sales, failure to meet customer orders could result in a long-term loss of retail shelf space that could equate to more than \$500 million in additional losses over five years. Petitioner's 1800 independent distributors could be at risk of becoming insolvent if the supply chain was interrupted for an extended period of time since Petitioner's products account for 50% to 80% of the products they distribute.

D. The closing or taking would be without a corresponding benefit in reducing air contaminants.

19. The estimated excess emissions for the two tunnel ovens, when in use during the variance period, are as follows:

Pollutant	Total Estimated Excess Emissions (lbs/day)
NOx (Oven #1; 4529)	15.84
NOx (Oven #2; 4525)	21.12

20. The estimated excess emissions calculations are attached to the Declaration of Robert MacDonald. Actual excess emissions will be calculated during the variance period and reported at the conclusion of the variance period.

21. The Hearing Board determined that the significant harm to Petitioner outweighs the benefit to air quality if emissions associated with this request were eliminated as a result of denying the variance.

1 **E. The Petitioner has given consideration to curtailing operations of the source**
2 **in lieu of obtaining a variance.**

3 22. All of Petitioner's products require baking in of the two tunnel ovens.
4 Petitioner's baked products have a limited shelf life and need to be distributed fresh. There
5 is not feasible option to continue business without the ability to bake its products. Petitioner
6 evaluated its national inventory and demand to determine if it would be able to temporarily
7 lower production volume without a damaging impact to the supply chain. However, because
8 of Petitioner's product is perishable, with a 28-day shelf life, Petitioner was unable to identify
9 options for a throughput reduction that would not result in a substantial interruption to supply
10 and associated harm.

11 23. Petitioner does not have the ability shift its baking and packaging operations to
12 another facility or another company.

13 **F. During the period the variance is in effect, the petitioner will reduce excess**
14 **emissions to the maximum extent feasible.**

15 24. Petitioner will continue to work expeditiously to identify and remedy the non-
16 compliant ovens in order to reduce excess emissions. The ovens operate approximately 20
17 hours per day, 5 days per week, though may occasionally operate 24 hours per day.

18 **G. During the period the variance is in effect, the Petitioner will monitor or**
19 **otherwise quantify emission levels from the source, if requested to do so by**
20 **the District, and report these emission levels to the District pursuant to a**
21 **schedule established by the District.**

22 25. Petitioner will calculate, record and report all excess emissions during the
23 variance period by maintaining logs of operating hours and maximum heat input for each
24 oven.

25 **H. Regular Variance**

26 26. Petitioner has also petitioned for a regular variance, which is scheduled to be
27 heard January 15, 2026.
28

1
2 **[PROPOSED] ORDER**

3 THEREFORE, good cause appearing, the Hearing Board orders as follows:

4 A. Petitioner is granted an interim variance from South Coast AQMD Rule 1153.1,
5 Table 1, as it relates to NOx and CO limits; and Rule 203(b) as it relates to Conditions 7 and
6 8(b) of Permits G78915 and G78618, and Condition 8 if re-source testing is not completed
7 by December 16, 2025.

8 B. The variance granted herein is subject to the following conditions:

- 9 1. Petitioner shall operate Oven No. 1 such that it produces a maximum of 510
10 pounds per month of VOC emissions from the baking process as calculated in
11 Rule 1153.
- 12 2. Petitioner shall not process any dough containing yeast in Oven No. 2.
- 13 3. Petitioner shall keep and maintain daily records of both ovens' operations
14 including but not limited to the hourly usage, the type of product baked, the
15 amount of baking product processed, yeast percentage, and fermentation time,
16 for the entire variance period.
- 17 4. Petitioner shall make all records set forth above available to its inspector,
18 Michael Pua (Attn: mpua@aqmd.gov) upon request.
- 19 5. Petitioner shall conduct burner maintenance and services as expeditiously as
20 possible before re-source testing the ovens.
- 21 6. Petitioner shall provide progress reports detailing progress of the work that has
22 been conducted on the two (2) ovens to Inspector Michael Pua via email
23 (mpua@aqmd.gov) every other Friday commencing Friday, October 31, 2025,
24 for the duration of the variance period.
- 25 7. Petitioner shall notify the District via email to Mary Reichert (Attn:
26 mreichert@aqmd.gov), Michael Pua (Attn: mpua@aqmd.gov), and Christopher
27 Gill (Attn: cgill@aqmd.gov) at least 72 hours prior to re-source testing the
28 ovens.

- 1 8. Petitioner shall request expedited review and processing of the Source Test
2 Report to the South Coast AQMD by submitting the Expedited Evaluation
3 Request Form 222-XST.
- 4 9. Petitioner shall submit to the South Coast AQMD, the Rule 1153.1 Source Test
5 Reports for both ovens no later than 72 hours after receipt, with a copy to Mary
6 Reichert (Attn: mreichert@aqmd.gov), Michael Pua (Attn: mpua@aqmd.gov),
7 and Christopher Gill (Attn: cgill@aqmd.gov).
- 8 10. Petitioner shall calculate, record and report all excess emissions during the
9 variance period, and will report excess emissions to Mary Reichert (Attn:
10 mreichert@aqmd.gov), Michael Pua (Attn: mpua@aqmd.gov), Christopher Gill
11 (Attn: cgill@aqmd.gov), and the Clerk of the Hearing Board within fifteen (15)
12 days of the conclusion of the variance period.
- 13 11. Petitioner shall pay all applicable fees to the Clerk of the Board within fifteen
14 (15) days of notification in writing that the fees are due or the variance shall be
15 invalidated pursuant to Rule 303(k), unless otherwise ordered by the Hearing
16 Board.
- 17 12. Petitioner shall notify the District by telephone by calling 1-800-CUT-SMOG
18 and Mary Reichert (Attn: mreichert@aqmd.gov), Michael Pua (Attn:
19 mpua@aqmd.gov), Christopher Gill (Attn: cgill@aqmd.gov), and the Clerk of
20 the Hearing Board in writing that final compliance has been achieved within
21 twenty-four (24) hours of achieving compliance.

22
23 DATED: _____

24
25 BOARD MEMBER: _____

26
27
28 Prepared by Maya Lopez Grasse