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8 **BON APPETIT BAKERY**

9 In the Matter of

10 **BON APPETIT BAKERY**

11 Petitioner.

Case No.: 6280-1

Facility I.D.: 167755

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

15 Section 42350 of the California Health and
16 Safety Code

17 Hearing Date: January 21, 2026

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

19 This petition for a regular variance was heard on the Hearing Board's Consent Calendar
20 on **January 21, 2026**, pursuant to notice and in accordance with the provisions of California
21 Health and Safety Code Section 40826. The following members of the Hearing Board were
22 present: Micah Ali, Chair; Robert Pearman, Esq., Vice Chair; Mohan Balagopalan; Cynthia
23 Verdugo-Peralta; and Dr. Jerry P. Abraham, MD, MPH, CMQ. Petitioner, represented by
24 Maya Lopez Grasse, Alston & Bird LLP, did not appear. Respondent Executive Officer,
25 represented by Mary Reichert, did not appear. The joint Stipulation to Place Matter on Consent
26 Calendar, the Declarations of Sonny Cutwright and Robert MacDonald and the Proposed
27 Findings and Decision were received as evidence, and the prior evidence and testimony
28 considered in the *ex parte* and interim variance proceedings were incorporated, the case
submitted. The public was given the opportunity to testify. The Hearing Board finds and
decides as follows:

Nature of Business and Location of Facility

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

Equipment that is the Subject of the Variance Petition

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

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

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

SUMMARY

Petitioner is in violation of District Rule 1153.1 (Table 1) as it pertains to NOx emissions limits and District Rule 203(b) as it pertains to Condition 7 on Permits G78915 and G78618) as that condition relates to NOx limits. Additionally, Petitioner is in violation of 203(b) as it relates to Condition 8(b) of Permits G78915 and G78618 since it did not complete a successful source test on each oven prior to December 16, 2025. Petitioner has been operating under interim variance relief since November 18, 2025 and is uncertain when it will achieve compliance and seeks this Regular Variance to allow it to operate the ovens while it continues efforts to achieve compliance.

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FINDINGS OF FACT AND CONCLUSIONS

Following are the facts and conclusions supporting the findings set forth in California Health and Safety Code Section 42352 necessary to grant the variance. The Executive Officer did not oppose the granting of the variance.

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

1. Petitioner's two tunnel ovens are currently in violation of South Coast AQMD Rule 1153.1, Table 1, as it relates to NOx limits. Petitioner may be in violation of the Table 1 CO limits as it works to adjust NOx emissions. Petitioner's two ovens are also in violation of Rule 203(b) as it relates to Condition 7 of Permits G78915 and G78618. Petitioner is also in violation of Rule 203(b) as it relates to Condition 8(b) of Permits G78915 and G78618 since it was unable successfully source teste the ovens by December 16, 2025.

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

1. Petitioner originally sought variance relief on October 23, 2024, filing for *ex parte* emergency relief, interim variance relief, and regular variance relief when preliminary source testing of the two new ovens demonstrated noncompliant NOx emissions. The Hearing Board granted the *ex parte* relief on October 24, 2025 and granted the interim variance relief on November 18, 2025.

2. Petitioner's source testing had been scheduled to begin October 20, 2025. Petitioner encountered unexpected problems with both ovens in that neither could demonstrate compliance with applicable NOx limits, whether in the official source test or in preliminary testing with handheld analyzers.

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

1 coordination with the consultants.

2 4. Since the November 18, 2025 interim variance hearing, Petitioner has complied
3 with the variance conditions and made progress toward compliance by continuing to adjust
4 the equipment and order new components where warranted, which has been an iterative
5 process. Preliminary testing results have shown improvements, including recent results which
6 suggest the ovens could both demonstrate compliance under official source testing. However,
7 because the results are close to the margins and the testing is preliminary, this does not
8 demonstrate compliance.

9 5. Petitioner has scheduled official source testing for January 19, 2026, but will not
10 receive the final source test report until after this hearing.

11 6. If the source test is unsuccessful, Petitioner will assess whether it can make any
12 further adjustments to the burners and ovens that may allow them to pass source testing using
13 the approved protocol; or Petitioner may need to replace the existing Low-NOx burners with
14 another type of Low NOx burner which may entail a lead time of approximately 6 to 8 months,
15 and associated permit amendments.

16 7. Petitioner does not expect that it would need variance relief beyond one year;
17 however, Petitioner recognizes that delays are possible due to unforeseen supply chain and
18 logistics challenges in a lengthy procurement process if new burners are required and thus
19 requests variance relief through October 23, 2026 unless it achieves compliance earlier.

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

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

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

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

8 10. The estimated excess emissions for the two tunnel ovens, when in use during
9 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

10 11. The estimated excess emissions calculations were attached to the Petitioner's
11 Exhibit 2 (Declaration of Robert MacDonald dated November 12, 2025). Actual excess
12 emissions will be calculated during the variance period and reported at the conclusion of the
13 variance period. Actual excess emissions are expected to be less than the above estimates
14 since the ovens typically do not operate 24 hours per day.

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

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

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

3 14. Petitioner does not have the ability shift its baking and packaging operations to
4 another facility or another company.

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

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

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

14 16. Petitioner will calculate, record and report all excess emissions during the
15 variance period by maintaining logs of operating hours and maximum heat input for each
16 oven.

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19 **[PROPOSED] ORDER**

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

21 A. Petitioner is granted a regular variance from South Coast AQMD Rule 1153.1,
22 Table 1, as it relates to NOx and CO limits; and Rule 203(b) as it relates to Conditions 7 and
23 8(b) of Permits G78915 and G78618, and Condition 8 until October 23, 2026 or until
24 compliance is achieved, whichever comes first.

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

26 1. Petitioner shall operate Oven No. 1 such that it produces a maximum of 510
27 pounds per month of VOC emissions from the baking process as calculated in
28 Rule 1153.

2. Petitioner shall not process any dough containing yeast in Oven No. 2.
3. Petitioner shall keep and maintain daily records of both ovens' operations including but not limited to the hourly usage, the type of product baked, the amount of baking product processed, yeast percentage, and fermentation time, for the entire variance period.
4. Petitioner shall make all records set forth above available to its inspector, Michael Pua (Attn: mpua@aqmd.gov) upon request.
5. Petitioner shall conduct burner maintenance and services as expeditiously as possible before re-source testing the ovens.
6. Petitioner shall continue to provide progress reports detailing progress of the work that has been conducted on the two (2) ovens, or the status of new burner procurement, if applicable, to Inspector Michael Pua via email (mpua@aqmd.gov) every other Friday continuing the cadence which commenced Friday, October 31, 2025, for the duration of the variance period.
7. Petitioner shall notify the District via email to Mary Reichert (Attn: mreichert@aqmd.gov), Michael Pua (Attn: mpua@aqmd.gov), and Christopher Gill (Attn: cgill@aqmd.gov) at least 72 hours prior to re-source testing the ovens.
8. Petitioner shall request expedited review and processing of the Source Test Report to the South Coast AQMD by submitting the Expedited Evaluation Request Form 222-XST.
9. Petitioner shall submit to the South Coast AQMD, the Rule 1153.1 Source Test Reports for both ovens no later than 72 hours after receipt, with a copy to Mary Reichert (Attn: mreichert@aqmd.gov), Michael Pua (Attn: mpua@aqmd.gov), and Christopher Gill (Attn: cgill@aqmd.gov).
10. Petitioner shall calculate, record and report all excess emissions during the variance period, and will report excess emissions to Mary Reichert (Attn: mreichert@aqmd.gov), Michael Pua (Attn: mpua@aqmd.gov), Christopher Gill

1 (Attn: cgill@aqmd.gov), and the Clerk of the Hearing Board within fifteen (15)
2 days of the conclusion of the variance period.

3 11. Petitioner shall pay all applicable fees to the Clerk of the Board within fifteen
4 (15) days of notification in writing that the fees are due or the variance shall be
5 invalidated pursuant to Rule 303(k), unless otherwise ordered by the Hearing
6 Board.

7 12. Petitioner shall notify the District by telephone by calling 1-800-CUT-SMOG
8 and Mary Reichert (Attn: mreichert@aqmd.gov), Michael Pua (Attn:
9 mpua@aqmd.gov), Christopher Gill (Attn: cgill@aqmd.gov), and the Clerk of
10 the Hearing Board in writing that final compliance has been achieved within
11 twenty-four (24) hours of achieving compliance.

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13 DATED: _____

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15 BOARD MEMBER: _____

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18 Prepared by Maya Lopez Grasse

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