

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) MUTUAL AGREEMENT
DAVE’S KILLER BREAD, INC.,) AND FINAL ORDER
an Oregon corporation.) NO. AQ/ACDP-NWR-2020-126

WHEREAS:

1. Dave’s Killer Bread, Inc., (DKB) an Oregon corporation, owns and operates a commercial bread bakery at 5209 International Way, Milwaukie, Oregon (the Facility). DKB began operating the Facility in 2008.

2. The Facility is located within the Portland-Vancouver ozone air quality maintenance area.¹ OAR 340-204-0040(2)(b).

3. As part of the bread baking process, the Facility emits volatile organic compounds (VOCs).

4. VOC emissions are an ozone precursor according to OAR 340-200-0020(107).

5. The Facility is a “source” as defined in OAR 340-200-0020(166).

6. Baking ovens at the Facility are “stationary sources” as defined in OAR 340-200-0020(173).

7. VOCs emitted from the Facility are “air contaminants” as defined by OAR 340-200-0020(8), “regulated pollutants” as defined by OAR 340-200-0020(134)(a)(A) and (B) and a “maintenance pollutant” as defined by OAR 340-200-0020(88) when emitted within a former nonattainment area for that pollutant, such as the Portland-Vancouver ozone air quality maintenance area.

8. Until DEQ issued the Standard ACDP referred to in Paragraph 10 below, DKB had not had a Major or State New Source Review (NSR) action under OAR 340, division 224 for VOC emissions or for any other pollutant emitted from the Facility.

¹ According to OAR 340-200-0020(87) "Maintenance area" means any area that was formerly nonattainment for a criteria pollutant but has since met the ambient air quality standard, and EPA has approved a maintenance plan to comply with the standards under 40 C.F.R. 51.110.

1 9. On May 2, 2014, the Department of Environmental Quality (DEQ) issued Simple
2 Air Contaminant Discharge Permit No. 03-0093-SI-01 (Simple ACDP) to DKB. The Simple ACDP
3 authorized DKB to discharge air contaminants, including VOCs, from the Facility in accordance
4 with the requirements, limitations and conditions set forth in the Permit. At the time the 2014
5 Simple ACDP was issued, DKB produced 12 bread lines.

6 10. On June 29, 2021, DEQ issued DKB a Standard ACDP that authorizes the
7 construction or operation of the source in accordance with the New Source Review (NSR)
8 requirements in OAR 340, division 224. Upon issuance, the Standard ACDP replaced the Simple
9 ACDP. Under both ACDPs, DKB's netting basis is zero.

10 11. In April 2022, DKB completed installation of and began operating a catalytic
11 oxidizer to control and reduce VOC emissions from all current bread baking ovens at the Facility.

12 **DEQ ALLEGES THE FOLLOWING FACTS AND LEGAL CONCLUSIONS:**

13 **Bread Product Line Reporting**

14 12. For new bread product lines, Conditions 3.4 and 4.1 of the Simple ACDP required
15 that when DKB added a new or modified yeast product to production (bread product), DKB must
16 calculate the emission factor to be used in the monthly PSEL calculations using the formulas in
17 Condition 4.1.a or 4.1.b. Condition 3.4 of the Simple ACDP required DKB to submit the new
18 emission factor to DEQ prior to using the new emission factor in the PSEL compliance calculation.

19 13. Between May 2014 and March 2021, DKB added at least 12 new bread product
20 lines at the Facility as follows: four new bread product lines were added in 2014; two new bread
21 product lines were added in 2015; four new bread product lines were added in 2017; one new bread
22 product line was added in 2020; and one new bread product line was added in 2021. DKB did not
23 report these new bread lines to DEQ nor submit the new VOC emission factors for those lines to
24 DEQ, prior to their use in DKB's VOC PSEL compliance calculations, in violation of Condition
25 3.4 of the Simple ACDP. These are Class II violations according to OAR 340-012-0054(2)(b).

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MUTUAL AGREEMENT AND FINAL ORDER

1 **PSEL Exceedances**

2 14. Condition 2.1 of the Simple ACDP and Condition 4.1 of the Standard ACDP
3 establish a VOC Plant Site Emission Limit (VOC PSEL) for the Facility. In both ACDPs, the VOC
4 PSEL limits DKB's VOC emissions to 39 tons over a rolling 12-consecutive calendar month period.

5 15. In accordance with Conditions 3.1 and 3.4 of the Simple ACDP and Conditions 5.2
6 and 5.4 of the Standard ACDP, to determine compliance with the VOC PSEL, DKB must calculate
7 VOC emissions from bread baking each month, using the Facility's monthly bread production for
8 the previous 12-consecutive calendar month period, and emission factors in Condition 10.0 of the
9 Simple ACDP and later, Condition 14.0 of the Standard ACDP, unless alternative emission factors
10 are or were approved or required by DEQ.

11 16. On September 3, 2015, DKB conducted emission factor verification testing on its
12 bread product lines 2 and 4 ("Bread Lines 2 and 4") in accordance with Condition 3.3 of the Simple
13 ACDP. In May 2020, DEQ re-evaluated the test information and determined that the VOC emission
14 factors for Bread Lines 2 and 4 had been calculated incorrectly in the test results submitted by
15 DKB's consultant. Once corrected, DEQ determined that the VOC emission factors for those bread
16 lines were higher than previously known. DEQ then notified DKB that it must use the newly
17 developed VOC emission factors from the September 3, 2015, source test to calculate VOC
18 emissions from Bread Lines 2 and 4 to demonstrate compliance with the VOC PSEL. Those VOC
19 emission factors for Bread Lines 2 and 4 were later incorporated into Condition 14.0 of the Standard
20 ACDP.

21 17. Until June 2021, for the purpose of determining compliance with its PSELs, DKB
22 calculated the Facility emissions by dividing each 12-consecutive calendar month period into 13
23 baking periods (average four weeks per baking period). In June 2021, DKB began calculating
24 emissions for PSEL compliance on a monthly calendar basis.

25 18. In 2020, calculating VOC emissions in accordance with Condition 3.4 of the
26 Simple ACDP and the new emission factors for Bread Lines 2 and 4 referred to in Paragraph 15

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1 above, beginning in May 2020 (baking period 6), DKB exceeded the annual 39-ton VOC PSEL
 2 on a monthly basis for each rolling 12-consecutive calendar month period as follows:

Baking period/Month/Year	VOC Emissions (tons)
2019 baking period 7 through 2020 baking period 6	39.9
2019 baking period 8 through 2020 baking period 7	40.6
2019 baking period 9 through 2020 baking period 8	42.2
2019 baking period 10 through 2020 baking period 9	42.2
2019 baking period 11 through 2020 baking period 10	42.9
2019 baking period 12 through 2020 baking period 11	43.9
2019 baking period 13 through 2020 baking period 12	45.1
2020 baking period 1 through 2020 baking period 13	48.8
2020 baking period 2 through 2021 baking period 1	46.2
2020 baking period 3 through 2021 baking period 2	46.3
2020 baking period 4 through 2020 baking period 3	46.7
2020 baking Period 5 through 2021 baking Period 4	46.9
2020 baking period 6 through 2021 baking period 5	47.8
2020 baking period 8 through June 2021	44.7
2020 baking period 9 through July 2021	44.8
2020 baking period 10 through August 2021	45.3
2020 baking period 11 through September 2021	45.7
2020 baking period 12 through October 2021	45.9
2020 baking period 13 through November 2021	45.6
2021 baking period 1 through December 2021	44.5

25 DKB continued to exceed the VOC PSEL for five additional rolling 12-consecutive calendar
 26 month periods as follows: January 2022 (2021 baking period 2 through January 2022); February
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1 2022 (2021 baking period 3 through February 2022); March 2022 (2021 baking period 4 through
2 March 2022); April 2022 (2021 baking period 5 through April 2022); and May 2022 (June 2021
3 through May 2022) until DKB reduced rolling total emissions below the PSEL through the
4 installation and operation of the catalytic oxidizer beginning in April 2022 through the effective
5 date of this Mutual Agreement and Final Order (MAO). These PSEL exceedances are violations
6 of Condition 2.1 of the Simple ACDP, Condition 4.1 of the Standard ACDP and ORS
7 468A.045(2). They are Class I violations according to OAR 340-012-0054(1)(g).

8 **Emission Factor Verification Testing**

9 19. Condition 3.3 of the Simple ACDP required DKB to conduct emission testing to
10 verify the VOC emission factor for any dough type that exceeds ten tons in a 12-consecutive
11 calendar month period.

12 20. In a June 8, 2016 email, DEQ clarified that to comply with Condition 3.3 of the
13 Simple ACDP, DEQ would only require that DKB test a dough type exceeding ten tons of VOC
14 emissions in a 12-month period, if the dough type had not been tested in the past three years.

15 21. In accordance with the emission calculation in Condition 3.1 of the Simple ACDP,
16 since the September 3, 2015 emissions test, approximately every ten months, Bread Line 4 has
17 emitted more than ten tons of VOC in a 12-consecutive calendar month period. For each baking
18 period, DKB's VOC emissions from Bread Line 4 are greater than one ton. Therefore, by October
19 1, 2018, DKB should have conducted another emission factor verification test of Bread Line 4, but
20 did not, in violation of Condition 3.3 of the Simple ACDP. This is a Class II violation according to
21 OAR 340-012-0054(2)(b).

22 **Notification of New Stationary Sources**

23 22. Condition 6.5 of the Simple ACDP required that DKB notify DEQ in writing
24 using a Departmental "Notice of Construction Form" or "Permit Application Form" (as
25 applicable) and obtain approval from DEQ in accordance with OAR 340-210-0205 through 340-
26 210-0250, before constructing, installing, or establishing a new stationary source that will cause
27 an increase in any regulated pollutant emissions.

1 23. In 2016, DKB added four new bread baking ovens at the Facility, an action that
2 increased the Facility’s production capacity and potential to emit VOCs, without first submitting a
3 Notice to Construct Form or Permit Application Form to DEQ prior to installing the ovens at the
4 Facility, in violation of Condition 6.5 of the Simple ACDP. These are Class II violations according
5 to OAR 340-012-0054(2)(c).

6 **Facility Major Modification and New Source Review (NSR)**

7 24. At the time DKB submitted its Simple ACDP application in 2013, DKB’s estimated
8 annual bread production at the Facility was 15,050 tons per year. DKB’s application estimated VOC
9 emissions of 32.5 tons per year.

10 25. Beginning in operating years 2014 and continuing through 2021, DKB increased
11 annual bread production at the Facility over the 2013 estimated annual bread production, as follows:

- 12 a. In 2014, DKB produced a total of 20,649 tons of bread.
- 13 b. In 2015, DKB produced a total of 22,921 tons of bread.
- 14 c. In 2016, DKB produced a total of 23,947 tons of bread.
- 15 d. In 2017, DKB produced a total of 22,992 tons of bread.
- 16 e. In 2018, DKB produced a total of 22,992 tons of bread
- 17 f. In 2019, DKB produced a total of 24,237 tons of bread.
- 18 g. In 2020, DKB produced a total of 26,785 tons of bread.
- 19 h. In 2021, DKB produced a total of 26,096 tons of bread.

20 26. Once the VOC emission factors for Bread Lines 2 and 4 were corrected with the
21 September 2015 test information, DEQ concluded that the historic VOC emissions at the Facility
22 were higher than originally determined. The previous calculations using the pre-2015 test
23 information resulted in an underestimation of actual VOC emissions from the Facility. Based on
24 past production at the Facility and using the 2015 test results, beginning with the 12-month calendar
25 operating period of April 26, 2015 (2015 baking period 5) to April 23, 2016 (2016 baking period 4),
26 DKB’s actual total VOC emissions exceeded the VOC significant emission rate (SER) in

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1 OAR 340-200-0020(161)(i) of 40 tons per year of VOC. During the April 26, 2015 to April 23,
2 2016, 12-consecutive calendar month period, DKB emitted 44.9 tons of VOC.

3 27. According to OAR 340-224-0010(2)(a)(B), an owner or operator of an existing
4 source undertaking a major modification² of the source that is not subject to Major New Source
5 Review (NSR) (OAR 340-224-0010(1)), is located in a maintenance area for a pollutant and that
6 will result in the source emitting the maintenance pollutant³ at an amount that is equal to or greater
7 than the SER over the source's netting basis⁴, must comply with the applicable State NSR
8 requirements prior to construction⁵ or operation.

9 28. In accordance with OAR 340-224-0010(6), an owner or operator of a source that
10 meets the applicability criteria of OAR 340-224-0010(2) may not begin actual construction,
11 continue construction, or operate a source without complying with NSR requirements of OAR 340,
12 division 224, and obtaining an ACDP from DEQ that authorizes such construction or operation.

13 29. OAR 340-224-0260(1) requires that within a designated maintenance area, an owner
14 or operator of a source subject to State NSR, must apply Best Available Control Technology
15 (BACT) under OAR 340-224-0070(2) for each maintenance pollutant if the increase in emissions is
16 the result of a major modification.

17 30. On January 29, 2021, DKB submitted a BACT proposal to DEQ to install a catalytic
18 oxidizer to control VOC emissions for all 28 ovens at the Facility, achieving a VOC control
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20 ² According to OAR 340-224-0025(1) and (2)(a), a "major modification" of a source includes any
21 physical change or change in the method of operation of a source, since either the 1977-78 baseline period
22 or the most recent Major or Type A State NSR action for that pollutant, that results in either a PSEL or
23 actual emissions from the source that exceed the netting basis by an amount that is equal to or greater than
24 the SER, and includes the accumulation of emission increases due to all physical changes and changes in
25 the method of operation of a source that is equal to or greater than the SER.

26 ³ According to OAR 340-224-0025(4), major modifications for ozone precursors also constitute major
27 modifications for ozone.

⁴ According to OAR 340-200-0020(96), OAR 340-222-0046(2)(c)(B) and OAR 340-222-0040(3), a
source's netting basis is zero for any regulated pollutant that has a generic PSEL.

⁵ As used in OAR 340 division 224, "construction" means any physical change including, but not limited
to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the
method of operation of a source which would result in a change in actual emissions.

1 efficiency of 95%. DEQ has concluded that the 95% control efficiency represents BACT for the
2 Facility and approved the proposal.

3 31. Since on or about April 23, 2016, DKB has violated OAR 340-224-0010(2)(a)(B),
4 OAR 340-224-0010(6), and ORS 468A.045(1)(b) by constructing and operating a major
5 modification at the Facility without first obtaining an ACDP from DEQ that authorizes such
6 construction or operation in accordance with OAR 340, division 224 and that incorporates BACT
7 in accordance with OAR 340-224-0260(1) and OAR 340-224-0070(2). Specifically, as further
8 described in Paragraphs 13, 23 and 25 above, by adding additional bread product lines, new
9 bread baking ovens and increasing production at the Facility, DKB has conducted a major
10 modification of an existing source by making physical changes or changes in the method of
11 operation of the source that, over time, cumulatively resulted in actual emissions from the source
12 of a maintenance pollutant (VOCs) that equal or exceed the VOC SER (40 tons per year) over
13 the Facility's netting basis of zero. This is a Class I violation according to OAR 340-012-
14 0054(1)(a).

15 I. MUTUAL AGREEMENT AND RESOLUTION

16 1. DEQ and DKB recognize that the Environmental Quality Commission (EQC) has
17 the authority to impose civil penalties and to issue abatement orders for violations of Oregon
18 environmental law. Therefore, pursuant to ORS 183.417(3)(a) and (b), DEQ and DKB agree to
19 this MAO to settle and resolve the allegations related to or arising from any of the matters
20 identified in the November 26, 2019, Pre-Enforcement Notice or in this MAO, including without
21 limitation, the facts and violations alleged in Paragraphs 13, 16-18, 21, 23-26, and 30-31 above
22 (the "Covered Matters").

23 2. By entering into this MAO, DKB does not admit, and specifically denies, the
24 allegations in this MAO.

25 3. This MAO is not intended to limit, in any way, DEQ's right to proceed against
26 DKB in any forum for any past or future violations not expressly settled herein.

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1 4. This MAO shall be effective upon the date fully executed (MAO Effective Date).

2 5. DKB shall pay a civil penalty in the amount of \$136,845 for resolution of the
3 Covered Matters.

4 6. Upon receipt of the payments required by Paragraph 5 above, DEQ and the State
5 of Oregon release and waive any and all claims of any kind, known or unknown, past or future,
6 against DKB or its affiliates, parent company, employees, officers, directors, agents or
7 contractors arising out of the Covered Matters.

8 7. Regarding the Covered Matters, DKB hereby waives any and all of its rights to
9 any and all notices, a contested case hearing, judicial review, and to service of a copy of this
10 MAO.

11 8. DKB releases and waives any and all claims of any kind, known or unknown, past,
12 or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or
13 agents, arising out of the Covered Matters. Any and all claims includes but is not limited to any
14 claim under 42 USC § 1983 et seq., any claim under federal or state law for damages, declaratory,
15 or equitable relief, and any claim for attorney's fees or costs.

16 9. DKB agrees that this MAO is binding on DKB and its respective successors, agents,
17 and assigns. The undersigned representative of DKB certifies that they are fully authorized to
18 execute and bind DKB to this MAO.

19 10. Verifiable electronic, facsimile, or scanned signatures on this MAO shall be treated
20 the same as original signatures.

21 11. Approved SEP(s), if any, will be incorporated into this MAO by amendment. DKB
22 will be deemed to have completed the SEP(s) when DEQ receives a final report documenting
23 completion of the SEP(s).

24 **II. FINAL ORDER**

25 The EQC hereby enters a final order:

26 1. Imposing upon DKB a total civil penalty of \$136,845 for the Covered Matters
27 alleged in Paragraphs 13, 16-18, 21, 23-26, and 30-31 of this MAO. DKB shall pay \$27,369 of the

1 civil penalty to the State of Oregon within 30 days of the MAO Effective Date. Payment must be
2 made by check or money order made payable to "Department of Environmental Quality" and
3 mailed to: DEQ, Financial Services, 700 NE Multnomah Street, Suite 600, Portland, Oregon
4 97232.

5 2. Requiring that DKB, within 90 days of the MAO Effective Date (the SEP
6 application period), submit to DEQ for approval one or more SEP application(s) that meet DEQ's
7 SEP approval criteria, for penalty mitigation. The SEP(s) may contribute up to \$109,476 to one or
8 more third party organizations to implement one or more SEPs that will provide environmental
9 benefits, with a preference to air quality benefits, in the vicinity of the Facility. Within 30 days of
10 DEQ's approval of the SEP application(s), DKB must transmit payment to the third-party
11 organization(s) and provide DEQ with documentation of the payment(s). Documentation of SEP
12 application(s), requests and approvals, payments, and SEP Final Report may be sent to DEQ and
13 DKB in electronic format. If, at the end of the SEP application period, DKB is unable to allocate
14 any portion of the \$109,476 to a DEQ-approved SEP or chooses not to fund SEP(s), then DKB
15 must pay the remaining unpaid or non-SEP-allocated portion of the \$136,845 penalty to the State
16 of Oregon within 30 days after the close of the SEP application period. DKB must send the
17 remaining penalty to the DEQ address in Section II, Paragraph 1 above.

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19 DAVE'S KILLER BREAD, INC.

20 08/29/2022 | 12:18:45 PM EDT

21 Date

DocuSigned by:
Linda G. Jones
Signature 7B445C...
Linda G. Jones
Name (print)
President
Title (print)


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DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

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4 8/29/2022
5 Date

By: 
Kieran O'Donnell, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505