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

In the Matter of the Application of	)	
	)	
ABBOTT LABORATORIES, ROSS PRODUCTS DIVISION	)	No. 3565
	)	
	)	ORDER DENYING
For a Variance from Regulation 2, Rule 1, Section 307 insofar as it requires compliance with Permit Condition No. 21858	)	EMERGENCY VARIANCE

The above-entitled matter, being an Application for an Emergency Variance from the provisions of Regulation 2, Rule 1, Section 307, insofar as it requires compliance with Permit Condition No. 21858 in order to temporarily increase production for a 6-week period of time to replace a product that was recalled, having been filed at 13:04 p.m. on January 21, 2009 and (page 4) having been re-filed, at 8:46 a.m. on January 22, 2009, and having been considered by the Hearing Board:

THE HEARING BOARD STATES as the reasons for its decision and FINDS as to those matters in which findings are required:

1. Applicant filed this Application for Variance under the Emergency Variance procedures, Hearing Board Rules, Section 2.5. Pursuant to Health and Safety Code Sections 42359 and 42359.5, the Hearing Board determined that this Application properly could be ruled upon without notice and hearing. Prior to making this determination, and in accordance with Hearing Board Rules Section 2.5.d.2, the Hearing Board requested and received a response to this Application from the Air Pollution Control Officer. That response recommended the Emergency Variance be denied.

2. The Applicant operates a bar blending operation and nutritional bar manufacturing facility at 2302 Courage Drive, Fairfield, CA 94533.

3. In cooperation with the U.S. Food and Drug Administration, Applicant initiated a voluntary recall of all peanut butter containing products. The FDA has traced the salmonella outbreak to a plant in Georgia owned by Peanut Corporation of America that makes peanut butter and peanut paste that is sold to institutions and food companies.

4. To compensate for lost sales due to the voluntary recall, Applicant requests temporary increases in production from February 2, 2009 through March 2, 2009 to compensate for "loss of market share and profitability."

5. The Applicant's current permit limits are 580 pounds/week of precursor organic compounds (POC) and 15.08 tons over any consecutive 12-month period.

6. The Applicant has not demonstrated "good cause" as they volunteered to withdraw products not identified as contaminated or potentially contaminated by the FDA.

7. The "loss of market share and profitability" is not an emergency. Non-emergencies require a full hearing (H&SC 42359) rather than one hearing board member's authorization; and

8. Applicant does not satisfy the following hearing board requirement: "Due to conditions beyond their reasonable control, requiring compliance would result in an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business."

THEREFORE, THE HEARING BOARD ORDERS:

A Variance from Regulation 2, Rule 1, Section 307, insofar as it requires compliance with Permit Condition No. 21858, be and is hereby denied from the period February 2, 2009 to March 2, 2009.

DATED: January 28, 2009

Rolf Lindenhayn

Rolf Lindenhayn, Esq.