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November 16, 2015

VIA FEDERAL EXPRESS

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VIA FEDERAL EXPRESS

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**Re: Holsum de Puerto Rico, Inc.
Final Title V Operating Permit (PFE-TV-2051-70-0611-0368)
Request to Object to the Final Permit**

Dear Ms. McCarthy,

Holsum de Puerto Rico, Inc. (“Holsum”), pursuant to Rule 609 (e) of the Puerto Rico Environmental Quality Board’s (“EQB”) Regulation for the Control of Atmospheric Pollution (the “Air Regulation”), respectfully requests the U.S. Environmental Protection Agency (“EPA”) to object to EQB’s issuance of the Final Title V Operating Permit (PFE-TV-2051-70-0611-0368) (the “Final Permit”) for Holsum’s industrial bakery in Toa Baja, Puerto Rico (the “Facility”).¹ EQB issued the Final Permit under Title V of the Clean Air Act (“CAA”), as amended, on October 2, 2015. Rule 609 (e) provides that any person may request the EPA to object to the Final Permit if the

¹ Puerto Rico Department of State Regulation No. 5300. Note that the implementation of the Federal Title V Program under the CAA was delegated to the Commonwealth of Puerto Rico in 1996.

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EPA does not object to the issuance of the proposed permit within the forty five (45) day review period granted to it under Rule 609 (d). EPA's review period ended on September 18, 2015. Thus, the deadline to request EPA to object to the Final Permit is November 17, 2015. Accordingly, Holsum respectfully requests EPA to object to the Final Permit.

Introduction

As explained fully below, and detailed in prior communications to the EPA's Caribbean Environmental Protection Division ("EPA-CEPD"), the Facility is not an air emissions source subject to Title V of the CAA and the regulatory requirements of Part VI of the Air Regulation.² It is, and has always been, a minor emissions source of volatile organic compounds ("VOC"). As evidenced in the administrative record before EQB, an inadvertent error in the emissions calculations presented in Holsum's application for the renewal of its air emission source operating permit in 2011 - *albeit*, as a minor emissions source – led the EQB's Air Quality Area ("AQA") to request Holsum to file an application under Part VI of the Air Regulation as a major source. Based on this, the AQA denied Holsum's air emission source operating permit for and as a minor source. Holsum complied with the request filing its application in May 2011 (the "Application"). The EQB issued its letter allowing the Facility to continue operating under the Title V permit application shield in November of 2011.

It is while EQB's AQA considered the Application that Holsum performed stack tests at the Facility's bread and bun ovens (emission units EU-06 and EU-07, respectively) to determine the VOC emission rate (the "Stack Tests") for the Facility. The Stack Tests were performed following the plan and testing protocol designed with, approved and conducted under the supervision and presence of AQA personnel. As detailed in past communications to EPA-CEPD, the results of the Stack Tests submitted to AQA in November 2013, show that the Facility is not a major source of VOC emissions that should be regulated under the Title V Program.

Based on the foregoing, in December 2013, Holsum applied for a modification of the Facility's Air Emission Source Construction Permit for a Minor Source (PFE-70-1110-0621-I-II-C) (the "Permit Modification"). The Permit Modification incorporated the emission factors (and resulting emission calculations) developed for the bread and buns ovens (EU-06 and EU-07) from the results of the Stack Tests conducted. Note that, once AQA were to approve the Permit Modification reflecting the Facility's potential to emit, Holsum intended to file an application - as a minor source - for an Emissions Source Operating Permit under Part II of the Air Regulation. However, as of today, and almost two (2) years after its submittal, the AQA has not completed its evaluation of the Permit Modification and the Facility continues to be treated as a major source.

Instead, over a year and half later, and without completing its evaluation of the Stack Tests or the Permit Modification, EQB sent a proposed Title V Permit to EPA for its evaluation in

² See, Note also that Part VI of the Air Regulation pertains to mayor emission sources subject to the Title V Program.

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accordance with Rule 609 of the Air Regulation. A couple of weeks later, on August 17, 2015, AQA wrote to Holsum regarding the Permit Modification requesting that Holsum provide a revised application using the most recent approved version of the AP-42 (Compilation of Air Pollutants Emission Factors) emission factors. Again, Holsum complied with AQA's request and submitted a revised application using the AP-42 emission factors, which also demonstrate that the Facility is a minor source of VOC emissions. These results further confirm that the Facility is not a major source subject to the requirements of Part VI of the Air Regulation, as it has been argued by Holsum for almost two (2) years.

Noting that EPA's sixty (60) day review period under Rule 609 (d) of the Air Regulation ended on September 18, 2015, Holsum requested in writing for EPA-CEPD to object to the issuance of the Final Permit as it appeared evident that EQB intended to press forward despite the evidence in the administrative record showing the Facility was not a major source. Despite the evidence before it showing that the Facility was not a major source, EQB issued the Final Permit at the beginning of October without the AQA considering the results of the Stack Tests or the revised Permit Modification using the AP-42 emission factors that demonstrate that the Facility is not a major source.³

Accordingly, for the reasons detailed below, Holsum hereby requests to EPA (as it has already done at EPA-CEPD) under Rule 609 (e) to object the EQB's issuance of the Final Permit for the Facility as the evidence in the administrative record shows that Holsum is a minor emissions source of VOC's that is not and should not be subject to the regulatory requirements of the Title V Program. We explain.

Background

Permitting Process Before EQB

On June 13, 2011, Holsum filed a Title V permit application with EQB's AQA in response to a petition by EQB. EQB's request arose while considering Holsum's filing for the renewal of its Air Emissions Source Operating Permit for a minor source (PFE-LC-70-0106-0023-I-II-O), issued in January 26, 2006, which inadvertently estimated that the Facility's potential to emit VOC was in excess of the one hundred (100) tons per year limit established by the Air Regulation. On March 13, 2011, after evaluating Holsum's VOC estimates, EQB denied Holsum's petition for renewal of its

³ Note that AQA has taken the position that if Holsum is not a major source, it should withdraw the Application – this, in spite of the fact that Holsum has indicated that withdrawing the Application would mean that Holsum will have to shut down its operations as its minor emission source operating permit renewal application was denied. Holsum continues to operate under the permit shield granted by EQB after the Application was filed. It is important to note that Holsum provides the bread used in public schools in Puerto Rico as well as in restaurants and other institutions in Puerto Rico and the U.S. Virgin Islands; thus, shutting down its operation would or could have a significant impact on these customers and in Puerto Rico and the U.S. Virgin Islands.

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Air Emissions Source Operating Permit and ordered Holsum to file the Application. Holsum filed the Application accordingly.

During this process, and in order to confirm the VOC emissions rate for compliance with Rule 419 of the Air Regulation (a local Rule), Holsum, in coordination with and under the supervision of AQA, performed the Stack Tests at the Facility's bread and bun ovens (also described as emission units EU-06 and EU-07, respectively). AQA commented and eventually approved the testing protocol followed during the Stack Tests and was present when the Stack Tests were conducted on September 18, 2013.

On November 18, 2013, Holsum submitted the results of the Stack Tests to EQB confirming that the VOC emissions at the Facility are not, and have never been, in excess of the one hundred (100) tons per year limit (for any criteria contaminant) established by the Air Regulation. The Stack Tests results indicate that the emissions for the ovens is approximately eighty (80) tons per year, and, hence, the Facility's total VOC emissions is below the regulatory one hundred (100) tons per year threshold.⁴

Notwithstanding the aforementioned findings, EQB and AQA proceeded to hold a public hearing on the Application on December 5, 2013. Holsum, as expected, requested that the evaluation of the Application be stayed until AQA could evaluate the results of the Stack Tests of the bread and bun ovens (EU-06 and EU-07) as it was evident then that the Facility was not a major source subject to Part VI of the Air Regulation. The Hearing Examiner granted Holsum thirty (30) additional days to submit its comments to the draft Title V Permit issued by EQB prior to the public hearing and for Holsum and AQA to meet to consider the results of the Stack Tests and how to proceed with the Application. Although the parties discussed the results, AQA did not evaluate the results of the Stack Tests nor did it agree with Holsum's proposal that it should be treated as a minor source.

Again, note that Holsum could not withdraw the Application from AQA's consideration because the Facility is operating under the "permit shield" provided to Title V applicants under Part VI of the Air Regulation as its request to renew its minor air emissions source operating permit had been denied.⁵ Instead, on December 23, 2013, Holsum applied for a modification of its Air Emissions Source Construction Permit for a Minor Source (PFE-70-1110-0621-I-II-C) ("Permit Modification") to incorporate the emission factors (and resulting emission calculations) for the bread and buns ovens (EU-06 and EU-07) developed from the results of the Stack Tests conducted under the supervision and approval of AQA. Holsum intended to file a revised application - as a minor

⁴ On December 3, 2013 Holsum submitted to AQA the final Emissions Testing Report – Bread & Buns Oven Stacks, dated November 30, 2013, prepared by its consultants Lorenzo R. Iglesias Associates.

⁵ Note that AQA denied Holsum's application for renewal of its Air Emissions Source Operating Permit (PFE-LC-70-0106-0023-I-II-O) on March 13, 2011. Therefore, Holsum could not withdraw the Application as it would leave the Facility without a valid permit to operate.

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source - for an Air Emissions Source Operating Permit under Part II of the Air Regulation once the AQA approved the Permit Modification. The latter has not occurred yet.

As mentioned above, for close to two (2) years already, AQA has not reached a final decision on Holsum's Permit Modification request. Nor has it completed its evaluation of the proposed emission factors for the bread and buns ovens (EU-06 and EU-07) developed from the results of the Stack Tests provided to them two years ago. Instead, on August 17, 2015, AQA requested Holsum to modify the Permit Modification using the most recent approved version of the AP-42 (Compilation of Air Pollutants Emission Factors) emission factors. Holsum complied with AQA's request and submitted a revised Permit Modification on September 4, 2015. As with the emission factors resulting from the Stack Test, the resulting emissions of the Facility using the AP-42 also shows that the Facility is a minor source of VOC emissions.

Notwithstanding the evidence in the administrative record, AQA's and EQB's position throughout this process has been that, once Holsum's Facility becomes subject to a final permit under the Title V Program, it can demonstrate after two (2) years that its emissions are not above the regulatory threshold. The Facility can then request that it be allowed to operate as a minor source under an Air Emissions Source Operating Permit under Part II of the Air Regulation. And EQB, after evaluating the emissions data, will consider removing the Facility from the Title V Program. This position is not only not supported by the data that proves that Holsum's VOC emissions have never been above the regulatory limit or the Title V Program but there is not part of the regulatory process in the Air Regulation or the CAA.

On October 2, 2015, despite the evidence on record and objections from Holsum to its issuance, EQB issued the Final Permit.

Communications with EPA-CEPD and EPA

In addition, it is important to note that, while EQB's decision on whether to issue a final Title V Permit for the Facility remained pending, Holsum maintained the EPA-CEPD aware of the developments. In particular, Holsum undertook this task as it became evident that the EQB had no intention to consider and evaluate the evidence and data before it and intended to issue a permit under Title V and would require Holsum to provide its emission data collected over a span of two (2) years while it operates under a permit meant for a major source.

To begin, EPA-CEPD Inspector, Mr. Francisco Claudio, visited the Facility to perform an inspection to determine if the Facility was in compliance with federal air regulations. During this visit, Mr. Nestor Hernández, Holsum's Compliance Officer, explained to Mr. Claudio that, although Holsum had filed the Application, it had since established that the Facility's actual VOC emissions did not exceed the regulatory limit; hence, the Facility was not and had never been a major source subject to Part VI of the Air Regulation. Mr. Hernández provided Mr. Claudio with copy of the Stack Test report, the *Holsum Bakery Test Report* dated November 20, 2013, and prepared by Holsum's consultant, Lorenzo R. Iglesias Associates (the "Report").

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In response to the EPA-CEPD inspection, in July 2014, Holsum filed a request under the Freedom of Information Act (EPA-R2-2014-009038) seeking to obtain EPA-CEPD's reports on the visit and any evaluation, if any, made by USEPA with regard to the Facility's status under the Title V Program.⁶ In particular, since EPA-CEPD had been provided a copy of the Report that includes the results that show that the Facility is not subject to Part VI of the Air Regulation and Holsum was interested in considering EPA-CEPD's evaluation of the status of the Facility. EPA-CEPD provided a copy of the report to Holsum on March 3, 2015.

Moreover, while Holsum's FOIA request to EPA remained pending, on August 27, 2014, although the evidence in record showing the VOC emissions from the Facility remain below the regulatory threshold established under the Air Regulation, the EQB ordered the AQA to translate the draft Title V Permit (PFE-TV-2051-70-0611-0368) into English and provide EPA with a copy for its evaluation as required by Rule 609 of the Air Regulation. Knowing that EQB intended to provide EPA with a translated version of the Proposed Permit and having reviewed the report prepared by EPA-CEPD, Holsum respectfully requested EPA-CEPD to consider its position via letter dated May 22, 2015.⁷

On July 13, 2015, EPA-CEPD presented Holsum with a request for additional information concerning the Report and the Stack Tests. Holsum responded to the request for information via letter dated July 30, 2015.⁸ On September 10, 2015, following EQB's request for Holsum to revise the Permit Modification using the AP-42 emission factors, it wrote to EPA-CEPD to keep them apprised of the latest developments and included the revised Permit Modification which also showed that the emissions calculations results using the AP-42 also demonstrated the Facility was not a major source.⁹

On September 24, 2015, in accordance with Rule 609 (e) of the Air Regulation, Holsum wrote to EPA-CEPD requesting that it object to the EQB's issuance of the proposed Final Permit. Pursuant to Rule 609 (e), if the EPA does not object to the issuance of the proposed permit within the forty five (45) day review period granted to it under Rule 609 (d), any person may petition EPA to make such objection.¹⁰ Such petition to EPA must be requested within sixty (60) days after the expiration of EPA's review period and be based on objections to the permit raised on the

⁶ See, Letter from Holsum to EPA dated February 17, 2015 regarding the pending FOIA request attached herein as **Exhibit 1**.

⁷ See, Letter from Holsum to EPA-CEPD dated May 22, 2015 attached herein as **Exhibit 2**.

⁸ See, Letter from Holsum to EPA-CEPD dated July 30, 2015 attached herein as **Exhibit 3**.

⁹ See, Letter from Holsum to EPA-CEPD dated September 10, 2015, which includes a copy of the revised Permit Modification, attached herein as **Exhibit 4**.

¹⁰ See, Letter from Holsum to EPA-CEPD dated September 24, 2015 attached herein as **Exhibit 5**.

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administrative record.¹¹ EPA's forty-five (45) day review period started on August 4, 2015, when it received the proposed permit from EQB and ended on September 18, 2015. As such, the sixty (60) day period to request EPA to object ends on November 17, 2015. Holsum, being within the applicable period, having being now recommended by Mr. Francisco Claudio of EPA-CEPD,¹² and having established its objections to the EQB's issuance of the proposed permit on the record, is within its rights to requests EPA to object.

Discussion

As the data and facts in the administrative record show, the Facility is not a major source subject to the strict regulatory requirements of the Title V Program and Part VI of the Air Regulation. This has been evident since the Stack Tests were performed under the approval, supervision and guidance of EQB, demonstrated on the Report and, most recently, by following the AP-42 emission factors. Holsum should not be subject to a Title V permit based on an inadvertent error committed on a renewal application submitted over four (4) years ago. Throughout this process, neither the AQA nor EQB have provided Holsum with any information regarding the evaluation of the information submitted to them by Holsum. Instead, they are relying on the numbers included in an application that has since then been superseded by multiple filings related to the Stack Tests and the Permit Modification. To Holsum's knowledge, EQB has neither evaluated the results of the Stack Tests nor has it evaluated the Permit Modification submitted using the AP-42. Regardless, EQB has pressed forward despite the evidence in record and issued a Final Permit that subjects Holsum to regulatory requirements meant for a major source and that do not apply to its Facility.

EQB provides no justification for being stagnant and, practically, ignoring the information that has been before the AQA for close to two (2) years. Nor has it even considered Holsum's request to allow it operate under a temporary air emission permit while AQA completes the evaluation of the information pending before it – so can Holsum then proceed to withdraw its Application.

EQB has chosen to impose a Final Permit that does not apply to Holsum Facility and place the burden on Holsum to operate under rules that are not meant to govern its operation for, according to EQB, a minimum of two (2) years, while it demonstrates that it is not a major source of VOC emission; something that Holsum has already done and the EQB has not disputed or even evaluated. There are no legal grounds to support EQB's decision to subject a Facility to regulations (especially,

¹¹ See, Rule 609 (e) of the Air Regulation.

¹² On October 21, 2015, Holsum reiterated its request to object in its letter to EPA-CEPD responding to EPA-CEPD's findings regarding the Report. See, Letter from Holsum to EPA-CEPD dated October 21, 2015 attached herein as **Exhibit 6**.

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an EPA program delegated to it) that do not apply to its operations based on an error committed in its application. Simply, an error cannot be corrected or addressed with another error.

Based on the foregoing, Holsum requests EPA to object to the Final Permit because the evidence in the administrative record shows that the Facility is not a major source and, as such, it is not subject to the rigorous requirements of the Title V Program and Part VI of the Air Regulations. The evidence in the record shows that the Facility is not a major emissions source of VOCs subject to Title V of the CAA and EQB cannot rely on an error in the application to impose these requirements. This is not only evident from the Report and the Stack Test results but it is further established in the revised application for the Permit Modification.

Despite the evidence being before AQA and EQB for quite a long time, and multiple requests from Holsum for AQA to evaluate the same prior to reaching a final determination on the Proposed Permit, EQB pressed and issued a Final Permit that is contrary to the Air Regulation and the CAA. As such, having met the requirements of the Air Regulation, Holsum respectfully requests EPA to object to the EQB's issuance of the Final Permit.

Conclusion

Accordingly, for the foregoing reasons and as supported by the evidence on the administrative record, Holsum respectfully requests that EPA oppose the Final Permit and require EQB to evaluate the Permit Modification and issue Holsum an operating permit under Rule 204 of the Air Regulation. Also, it is reasonable that, if the EQB is to ask Holsum to withdraw its Application, the EQB should be required to issue Holsum a temporary permit so it can continue to operate and continue supplying the bread for its costumers, which include public schools, restaurants and other customers in Puerto Rico and the U.S. Virgin Islands.

We thank you for your attention to this matter.

If you have any question regarding this request to object to the Final Permit or the information provided and discussed above, please do not hesitate to contact me at 787-282-5729.

Sincerely,



Jerry Lucas Marrero



Fermín E. Fontanés Gómez

O'NEILL & BORGES LLC

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Mr. Néstor Hernández
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