

IN THE COURT OF COMMON PLEAS  
WYANDOT COUNTY, OHIO

STATE OF OHIO, EX REL.  
JIM PETRO  
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

KALMBACH FEED  
INGREDIENTS, INC., et al.,

Defendants.

CASE NO. 02-CV-0148

JUDGE KATHLEEN A. AUBRY

AMENDED CONSENT ORDER

AMANDA R. DUNBAR  
CLERK

2006 MAR -1 A 10:00

CLERK'S OFFICE  
WYANDOT CO., OHIO  
FILED

The above-captioned matter having been originally resolved by a Consent Order and Final Judgment Entry entered by this Court on December 27, 2002, and there having been subsequent alleged violations of that Consent Order by Advanced Organics, Inc. (hereinafter "AOI") and Kalmbach Feed Ingredients, Inc. (hereinafter "KFI") , and the Plaintiff State of Ohio, by its Attorney General Jim Petro, (hereinafter "Plaintiff") and the Parties hereto having consented to the entry of this Amended Consent Order to resolve such alleged violations,

NOW THEREFORE, upon consent of the Parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

**I. DEFINITIONS**

1. As used in this Amended Consent Order, the following terms are defined as follows:

- a. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01(C) and Ohio Adm. Code 3745-31-01(D) and 3745-35-01(B)(1).
- b. "Amended Consent Order" means this Order and Final Judgment Entry.

- c. "Defendants" means Kalmbach Feed Ingredients, Inc., and Endres Processing, Ohio LLC (upon Endres' acquisition of the Facility) collectively.
- d. "Facility" means the feed drying facility located at 7150 State Route 199, North Upper Sandusky, Ohio that is the subject of this action.
- e. "Ohio EPA" means the Ohio Environmental Protection Agency.
- f. "Original Consent Order" means the Consent Order and Final Judgment Entry entered in this case on December 27, 2002.
- g. The "Parties" are Plaintiff, Kalmbach Feed Ingredients, Inc., and Endres Processing, Ohio LLC (upon Endres' acquisition of the Facility).
- h. "Permit to Install" or "PTI" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-31.
- i. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-77.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the Parties and the subject matter of this case.

The Complaint states a claim upon which relief can be granted against Defendants under Chapter 3704 of the Ohio Revised Code, and venue is proper in this Court.

## **III. FACTUAL BACKGROUND**

3. On December 27, 2002, Plaintiff entered into the Original Consent Order with AOI regarding alleged air quality violations at the Facility. The Original Consent Order required AOI to submit a PTI application for the facility, pay a civil penalty of \$180,000, and install and operate a thermal oxidizer to reduce emissions from the Facility.

4. The thermal oxidizer was installed at the Facility and operated until May 4, 2004 when the equipment suffered an unexpected failure. AOI provided notice to Ohio EPA of the

failure of the thermal oxidizer on May 5, 2004, and followed with written notification to Ohio EPA on May 24, 2004. AOI has indicated that the failure resulted from the unforeseen emission of salt and other compounds that caused damage to the equipment despite a guarantee from the manufacturer of the thermal oxidizer, Eisenmann, that the thermal oxidizer would work for this application and achieve the prescribed reduction in VOC and particulate emissions.

5. On June 14, 2005, William E. Jerew filed a verified complaint in accordance with R.C. 3745.08(A) regarding emissions from the Facility. Pursuant to R.C. 3745.08(B), Ohio EPA investigated the verified complaint and the Director of Environmental Protection requested that the Attorney General commence appropriate legal proceedings. This Amended Consent Order, including the schedule of compliance and the penalty imposed herein, constitutes the resolution of the Director's request regarding the verified complaint.

6. The Facility was purchased by KFI on August 1, 2005. KFI provided financial information regarding ability to pay a penalty for both itself and AOI, and the State gave consideration to that information in resolving the violations alleged by the State in this matter. Endres Processing, Ohio LLC ("Endres") plans to purchase the Facility on or about March 1, 2006, and agrees, following purchase of the Facility, to implement the compliance plan and be bound to the terms of this Amended Consent Order as provided herein.

#### **IV. PARTIES**

7. Sections I, II, III, IV, V, IX, XII, XIII, XIV, and XV of this Amended Consent Order shall apply to and be binding upon all Parties. Sections VI, VII, VIII, X, and XI of the Amended Consent Order shall apply to and be binding on Plaintiff and Endres. The provisions of the Amended Consent Order applicable to a party shall also be applicable to that party's agents, officers, employees, assigns, successors in interest, and, in accordance with Rule 65(D)

of the Ohio Rules of Civil Procedure, any person in active concert or participation with it who receives actual notice of this Amended Consent Order whether by personal service or otherwise. This Amended Consent Order represents resolution of a dispute between the Plaintiff and Defendants and is made without any admission of fact or law or of the alleged violations. Nothing in this Amended Consent Order creates any rights, or grants any cause of action, to any person not a party to this Amended Consent Order, except that AOI and AOI's and the Defendants' officers, employees, shareholders, owners, agents, and representatives are provided with the satisfaction of liability described in Paragraph 8. This Amended Consent Order shall take effect upon Endres' purchase of the Facility, at which time it will replace and supersede the Original Consent Order except as otherwise provided in Paragraph 24 of the Amended Consent Order. Upon acquisition of the Facility, Endres agrees to be bound by the Amended Consent Order as provided herein. If Endres does not purchase the Facility, this Amended Consent Order shall be null and void, and the Original Consent Order shall remain in effect.

#### **V. SATISFACTION OF ENVIRONMENTAL ENFORCEMENT ACTION**

8. This Amended Consent Order contains a schedule of compliance for alleged violations arising out of the failure of the Facility's thermal oxidizer. Compliance with the terms of this Amended Consent Order shall constitute full satisfaction of any civil or administrative liability of Endres and its officers, employees, shareholders, owners, agents, and representatives, and compliance by KFI with sections IX, XIII and XV shall constitute full satisfaction of any civil or administrative liability of KFI and AOI and their officers, employees, shareholders, owners, agents, and representatives, for all days of alleged violation: (1) described in the December 27, 2002 Complaint against AOI ; (2) of the Original Consent Order from the date of

its entry, up to and including any violations that occur prior to the entry of the Amended Consent Order; (3) in Notices of Violation issued by Ohio EPA regarding the Facility from the entry of the Original Consent Order through entry of the Amended Consent Order including those issued on October 31, 2003, July 8, 2004, August 3, 2004, December 2, 2004, August 12, 2005, and September 30, 2005; (4) any other alleged violation of R.C. Chapter 3704 or the Original Consent Order known by Ohio EPA to have occurred at the Facility; and (5) of applicable state laws and air permits and the Original Consent Order arising out of the failure of the thermal oxidizer (including, but not limited to, those related to VOC and particulate emission limits) during the period from entry of the Amended Consent Order until compliance is restored pursuant to the schedule included in Paragraph 14 of the Amended Consent Order. Except as provided above, nothing in this Amended Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for days of violation that occur after the filing of this Amended Consent Order.

## VI. INJUNCTION

9. Endres agrees and is hereby enjoined and ordered to comply with R.C. Chapter 3704 and the regulations adopted thereunder. Specifically, Endres agrees to refrain and is hereby enjoined from "installing" or "modifying" any "air contaminant source," as those terms are defined by Ohio Adm. Code 3745-31-01, at the Facility without first applying for and obtaining a Permit to Install from the Director in accordance with Ohio Adm. Code. 3745-31-02, except for corrective actions in this section of this Amended Consent Order, for which Endres will apply for a PTI as provided in this section.

10. Within thirty (30) days of the entry of this Amended Consent Order, Endres shall submit a revised Title V Permit to Operate application incorporating the compliance schedules

contained in this Amended Consent Order and all other changes necessary for the submission of an approvable Title V Permit to Operate application. Within thirty (30) days of receiving a Permit to Install in accordance with the schedules contained in this section, Endres shall submit an application for a Title V Permit to Operate modification pursuant to Ohio Adm.Code 3745-77-08.

11. In an effort to reduce the alleged odor and dust nuisance problems that exist at the Facility, Endres agrees and is hereby enjoined to comply with the following list of activities at the specified intervals and to comply with the following schedule of events:

a. By April 15, 2006, Endres shall develop a "Best Management Practices" plan for the Facility by evaluating Facility operations, including feedstock unloading, processing operations, and loading and transport of finished product. Such evaluation shall determine the potential causes of, and additional best management practices to reduce, odors and emission of pollutants from the Facility. By May 15, 2006, Endres shall submit a proposed "Best Management Practices" plan for the Facility to the Ohio EPA and shall begin implementing the "Best Management Practices" plan. Within 30 days of receiving the "Best Management Practices" plan, Ohio EPA may recommend the implementation of additional or different reasonable practices to further reduce the dust and odor problem. Within 14 days of receiving recommendations on the "Best Management Practices" plan from Ohio EPA, or at such other time agreed upon by Endres and Ohio EPA, Endres and Ohio EPA agree to meet to discuss and negotiate the recommendations that Ohio EPA deems necessary for inclusion in the "Best Management Practices" plan. Endres shall amend the "Best Management Practices" plan to address the comments from Ohio EPA and shall submit the amended "Best Management Practices" plan to Ohio EPA within 14 days of such meeting. Either party may, at any time, seek

the assistance of the court in determining what is reasonable and the implementation of such measures may be delayed for prompt consultation with the court.

b. By April 15, 2006, Endres shall develop and implement a detailed daily and weekly housekeeping plan and schedule at the Facility. The plan shall assign responsibility for various housekeeping activities and address all areas of housekeeping at the Facility. Should corrective actions to improve the daily housekeeping at the Facility be necessary, such action shall be taken expeditiously. Endres shall maintain daily recordkeeping of all housekeeping responsibilities and of any and all corrective actions taken.

c. By April 15, 2006, Endres shall undertake an initial evaluation of the ductwork and stack(s) serving the emissions units at the Facility to determine areas of potential improvements and reconfigurations for emission control and dispersion .

d. By May 31, 2006, Endres shall complete interim improvements and reconfigurations of ductwork, including, but not limited to, the elimination and replacement of corroded ductwork and, if appropriate, the relocation of the existing emission stack or installation of a second emission stack of a height equal to or greater than that of the existing emission stack.

e. Following the alterations made to the ductwork, as set forth in Paragraph 11.d of the Amended Consent Order, Endres shall conduct monthly inspections of all the ductwork at the Facility and, within one week, repair any holes or leaks discovered during each inspection.

f. Beginning on the effective date of the Amended Consent Order, Endres shall conduct monthly inspections of the walls at the Facility and, within one week, repair any holes discovered during each inspection.

g. Beginning on the effective date of the Amended Consent Order, Endres shall conduct monthly inspections of the roof at the Facility and, within one week, repair any holes discovered during each inspection.

h. Endres shall replace the exterior door and repair the associated walls in the pre-production feedstock area no later than May 31, 2006. Beginning on the effective date of the Amended Consent Order, Endres shall conduct monthly inspections of all other exterior doors at the Facility and, within one week of each inspection, repair any holes discovered in the doors and replace any doors that are not in good working order. Following installation, Endres shall include the door in the pre-production feedstock area in its monthly inspection and repair process, as set forth *supra*.

i. Beginning on the effective date of the Amended Consent Order, Endres shall conduct weekly inspections and maintenance of the cyclones.

j. Beginning on the effective date of the Amended Consent Order, Endres shall conduct weekly inspections and cleaning, as necessary, of the duct work and the dryer system equipment.

k. By April 30, 2006, Endres shall develop and implement a written training procedure for all dryer systems operators. Such training shall cover all aspects of dryer operation and include training regarding start-up and shutdown of equipment and environmental requirements applicable to the dryer equipment.

l. By April 30, 2006, Endres shall install thermocouple equipment and implement a system designed to better monitor the temperature of each dryer system and prevent the singeing of feed materials.

m. By April 30, 2006, Endres shall begin to record start-up and shutdown

times for each dryer. Thereafter, such times shall be recorded on a daily basis.

n. By April 30, 2006, Endres shall begin to maintain records of the total amount of material dried each day (in tons/day). Thereafter, such records shall be maintained on a daily basis.

o. By March 31, 2006, Endres shall begin to record, on a daily basis, the pressure drop for each cyclone. To the extent such pressure drop is not between four and nine inches of water, Endres shall expeditiously take corrective actions to restore the pressure drop within such range and maintain a written record of the corrective actions. The pressure drop range established herein may be changed with the written consent of Ohio EPA and without the need for an amendment to this Amended Consent Order.

12. In an effort to reduce the alleged odor and dust nuisance problems that exist at the Facility, beginning on the effective date of the Amended Consent Order, Endres further agrees and is hereby enjoined to comply with the following requirements:

a. Except as otherwise provided in Paragraph 11.h, Endres shall store any and all pre- or post-production feedstock materials inside the Facility, behind walls that are free from cracks and holes and, where applicable, behind doors that remain closed at all times, except during delivery or removal of such materials, and which close properly and are in good working order and free from holes and cracks.

b. Endres shall unload all pre-production feedstock materials inside the Facility or at loading docks with immediate placement inside the facility.

c. Endres shall undertake and document a daily assessment of pre-production feedstock materials for odor causing potential at the Facility. Endres shall evaluate the materials, using the form attached hereto as "Attachment One." Materials that are identified as

having either an odor strength or potency of three, as detailed in Attachment One, shall be not be processed and shall be removed from the Facility and transported offsite to a landfill or some other location within twenty-four hours of their arrival at the Facility. Once a pre-production feedstock material is identified as having an odor strength or potency of three, as detailed in Attachment One, Endres shall no longer transport such material into the Facility and shall no longer utilize such material in processing at the Facility until startup of the thermal oxidizer. To the extent it is possible, Endres shall make every effort to identify materials that possess this greater odor causing potential prior to their arrival at the Facility and, once identified, avoid bringing them to the Facility.

d. The permit to install for Facility feed dryers was evaluated based on the raw materials consisting of sawdust, wheat midds and bakery by-products. Bakery by-products consist of breads, pizza/pasta, cookies/crackers, cereals, jellies, candies, and other grain-based materials. Beginning March 15, 2006, and continuing until the approval of the PTI modification applications under either Option A or Option B, below, prior to any use of raw materials not provided for above ("new raw materials"), Endres shall conduct an evaluation to determine if use of the new raw material would: (1) result in an increase in actual emissions of regulated air pollutants compared to actual emissions from use of the raw materials described above from the existing Facility; and (2) result in odors characterized as Category 3 under the attached Odor Evaluation Checklist. If the change to a new raw material will result in an increase in actual emissions or Category 3 odors, then Endres shall not process the material. Upon documenting that any change in raw materials will not result in an increase in actual emissions from the Facility and is not expected to result in Category 3 odors, Endres may commence use of such new raw material. Endres will provide a copy of the Odor Evaluation Checklist to Ohio EPA's

Northwest District Office the same business day that Endres commences use of any such new raw material. Endres shall collect, record and retain the final determinations and any supporting information when such new raw material change evaluations are performed. Endres has indicated that it plans to submit a Permit to Install application to Ohio EPA to expand the raw material feedstock used at the facility. To the extent a new or modified Permit to Install is issued by Ohio EPA and expressly provides for use of requested new raw materials, such new list of approved raw materials will govern Facility operations and supersede this section of the Consent Order.

13. By April 15, 2006, Endres shall implement a 24-hour community hotline to respond to and evaluate any and all community concerns regarding the operation of the Facility. Additionally, by April 15, 2006, Endres shall hold a community meeting to provide information regarding the Facility's interim and long-term compliance measures and schedule. At a minimum, such meeting shall be publicized with a notice or advertisement in the local newspaper. Additionally, the Ohio EPA agrees to assist with the publicizing of such meeting. Information regarding the 24-hour community hotline shall be disseminated at the community meeting.

14. To ensure that the Facility returns to a state of compliance with R.C. 3704 and the regulations adopted thereunder and the terms of its PTI, number 03-13687, Endres agrees and is hereby enjoined to install and operate a pilot baghouse no later than March 31, 2006. Once the baghouse has been installed, Endres shall complete an evaluation of the pilot baghouse to determine its effectiveness no later than June 30, 2006. Thereafter, Endres shall report to the Ohio EPA, in writing, no later than July 31, 2006 concerning the effectiveness of the pilot baghouse, and whether Endres will proceed under the "Option A" or "Option B" emission

control plan schedule, as those options are set forth in greater detail below. Once an option has been chosen, Endres shall meet each deadline set forth in that option:

**Option A**

<b>Event</b>	<b>Completion Date</b>
1. Design and order necessary emission control equipment.	July 31, 2006
2. Undertake and complete off-site construction of baghouse equipment and deliver to facility; and initiate repairs on existing thermal oxidizer.	November 30, 2006
3. Complete repairs to thermal oxidizer; install new baghouse equipment; and initiate operation and shakedown of pollution control equipment.	December 31, 2006
4. Submit Intent to Test notification to the Ohio EPA.	January 31, 2007
5. Complete shakedown of pollution control equipment and perform stack testing for particulates, VOC, and destruction efficiency which demonstrates compliance with applicable emission requirements.	March 15, 2007
6. Submit stack test report to Ohio EPA.	April 15, 2007
7. Submit application to the Ohio EPA to modify PTI No. 03-13687	April 30, 2007

**Option B**

<b>Event</b>	<b>Completion Date</b>
1. Contract with an engineering firm to design the necessary emission control equipment.	August 1, 2006
2. Order emission control equipment.	November 30, 2006
3. Undertake and complete off-site construction of pollution control equipment and deliver to facility.	June 30, 2007
4. Install new pollution control equipment and initiate operation and shakedown of pollution control equipment.	August 31, 2007
5. Submit Intent to Test notification to Ohio EPA.	September 30, 2007
6. Complete shakedown of pollution control equipment and perform	November 15, 2007

stack testing which demonstrates compliance with applicable emission requirements.

7. Submit stack test report to Ohio EPA. December 15, 2007

8. Submit application to the Ohio EPA to modify PTI No. 03-13687 December 31, 2007

## **VII. MONITORING AND RECORD KEEPING REQUIREMENTS**

15. Endres shall perform daily checks, when one or both dryers are in operation and when the weather conditions allow, for any visible particulate emissions from the stack(s) at the Facility. The presence or absence of any visible emissions, along with the date of the visible emissions observation, shall be noted in an operations log. If visible emissions are observed, Endres shall also note the following information in the operations log:

- a. the color of the emissions;
- b. the total duration of any visible emission incident; and
- c. any corrective actions taken to reduce or eliminate the visible emissions.

16. The information described in Paragraph 15 shall be included in the progress reports, described in further detail in Section VIII of the Amended Consent Order.

17. Beginning on the effective date of the Amended Consent Order, or the date set forth in Section VI on which a particular task is set to begin, Endres shall maintain records of any and all items listed in Section VI of the Amended Consent Order. Such records shall be maintained at the Facility for a period of five years following the date that Endres returns to a state of compliance. Before any such records are destroyed, Endres shall so notify the Ohio EPA. Additionally, such records shall be made available to the Ohio EPA within a reasonable amount of time upon request. The Ohio EPA's request shall be made during regular business

hours. Nothing herein shall limit Ohio EPA's authority to inspect the Facility pursuant to R.C. Chapter 3704.

### **VIII. PROGRESS REPORTS AND NOTICE**

18. Unless otherwise directed by Ohio EPA, Endres shall submit a written progress report to Ohio EPA by the fifteenth day of every month beginning on March 15, 2006. Endres shall continue to submit such reports on a monthly basis through July 31, 2006. If Endres determines that it is possible to achieve compliance using "Option A," as detailed above, such progress reports shall continue to be submitted monthly through the completion of the installation process (item 3) of "Option A." However, should Endres determine that it is not possible to achieve compliance using "Option A" and chooses to proceed with "Option B," beginning November 20, 2006 (and covering the third quarter of 2006), Endres shall submit progress reports on a quarterly basis, due on the twentieth of the month, following the end of each calendar quarter, and continuing through December 31, 2007 or until Endres returns to a state of compliance, whichever occurs later.

19. The progress reports described in Paragraph 18 shall be delivered via e-mail to Jennifer Jolliff, at [Jennifer.Jolliff@epa.state.oh.us](mailto:Jennifer.Jolliff@epa.state.oh.us) and John Paulian at [John.Paulian@epa.state.oh.us](mailto:John.Paulian@epa.state.oh.us). In addition, the progress reports shall be sent via regular mail to both Jennifer Jolliff (or her successor) at Ohio EPA Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio 43402 and John Paulian (or his successor) at Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.

20. At a minimum, the progress reports shall include the following information for the previous month or calendar quarter, whichever is applicable pursuant to Paragraph 18 of the Amended Consent Order:

- a. Identify the Facility and describe the status of the progress since the previous progress report, or for the first report, the progress to date;
- b. Describe difficulties encountered during the reporting period and actions taken to address any difficulties;
- c. Describe activities planned for the next month or quarter as applicable;
- d. List target and actual completion dates for each compliance milestone in the Amended Consent Order;
- e. Provide an explanation for any deviation from any applicable compliance milestone;
- f. Describe any actual or potential noncompliance with the terms of this Consent Order; and
- g. Provide a summary of the results of the visible emissions inspections performed, as detailed in Section VII of the Amended Consent Order.

**IX. STIPULATED PENALTIES FOR ALLEGED VIOLATIONS  
OF THE DECEMBER 27, 2002 CONSENT ORDER**

21. Pursuant to and in accordance with R.C. 3704.06, KFI is enjoined and ordered to pay a total civil penalty of One Hundred Thousand Dollars (\$100,000.00). This amount shall be paid in accordance with the following schedule:

- a. Defendants shall pay Twenty Thousand Dollars within 30 days of the entry of this Amended Consent Order. That payment shall be directed to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD) as a Supplemental Environmental Project.
- b. Defendants shall pay Twenty Thousand Dollars within six months of the entry of the entry of this Amended Consent Order. That payment shall be deposited in

accordance with R.C. 3704.06.

c. Defendants shall pay Twenty Thousand Dollars within twelve months of the entry of the entry of this Amended Consent Order. That payment shall be deposited in accordance with R.C. 3704.06.

d. Defendants shall pay Twenty Thousand Dollars within eighteen months of the entry of the entry of this Amended Consent Order. That payment shall be deposited in accordance with R.C. 3704.06.

e. Defendants shall pay Twenty Thousand Dollars within twenty-four months of the entry of the entry of this Amended Consent Order. That payment shall be deposited in accordance with R.C. 3704.06.

All payments shall be made by cashier's or certified check payable to the Order of "Treasurer, State of Ohio" and delivered to J. Mark Lemmon, Paralegal, or his successor, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400.

#### **X. STIPULATED PENALTIES**

22. In the event that the Endres violates any of the terms or deadlines set forth in the foregoing paragraphs, Endres shall be liable for and shall immediately pay stipulated penalties in accordance with the following schedule: for each day of each failure to meet a requirement and/or deadline, up to thirty (30) days- two hundred and fifty dollars (\$250.00) shall be paid per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline from thirty-one (31) to sixty (60) days- three hundred and seventy five dollars (\$375.00) shall be paid per day per requirement and/or deadline not met. For each day of each failure to meet a requirement and/or deadline after sixty (60) days- five hundred dollars

(\$500.00) shall be paid per day per requirement and/or deadline not met.

23. Any such stipulated penalty shall be paid by delivering to J. Mark Lemmon, Paralegal (or his successor), Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for the appropriate amount immediately upon the date of the violation, made payable to the Order of "Treasurer, State of Ohio." The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline or requirement not met and the date upon which the violation of this Consent Order occurred. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 308856."

#### **XI. FORCE MAJEURE**

24. Paragraphs 12 and 13 of the Original Consent Order are incorporated by reference as if fully stated herein.

#### **XII. RETENTION OF JURISDICTION**

25. The court will retain jurisdiction of this action for the purpose of enforcing this Amended Consent Order.

#### **XIII. COSTS**

26. Defendants are hereby ordered to pay the court costs of this action.

#### **XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

27. Upon signing of this Amended Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the

journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**XV. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

28. The signatory for each of the Parties represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

**IT IS SO ORDERED**

\_\_\_\_\_  
DATE

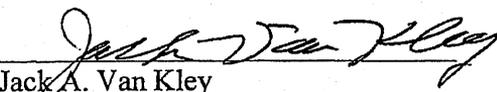
**APPROVED:**

**KALMBACH FEED INGREDIANTS, INC.**

BY:



Paul Kalmbach  
Chairman  
*Kalmbach Feed Ingredients, Inc.*



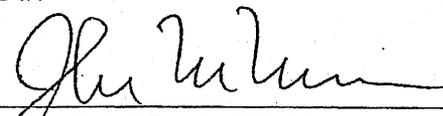
Jack A. Van Kley  
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(614) 431-8900  
*Attorney for Defendant  
Kalmbach Feed Ingredients, Inc.*

**/S/ KATHLEEN A. AUBRY**

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**JUDGE, WYANDOT COUNTY  
COURT OF COMMON PLEAS**

**JIM PETRO  
ATTORNEY GENERAL OF OHIO**

BY:



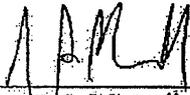
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*Attorneys for Plaintiff,  
State of Ohio*

**ENDRES PROCESSING, OHIO LLC**

BY:



Leon J. Endres  
Chief Executive Officer  
*Endres Processing, Ohio LLC*



James A. Mennell  
The Environmental Law Group  
East Ridge at Riverplace  
Suite 114  
10 Second St. NE  
Minneapolis, MN 55413  
*Attorney for Defendant*  
*Endres Processing, Ohio LLC*

## Attachment One Feedstock Odor Evaluation Checklist

Each operating day, until commencement of operation of the thermal incinerator for dryer emissions, Edres shall evaluate feedstock for odor causing potential. Specifically, using the checklist below, feedstock shall be evaluated regarding the nature and type of material, condition, moisture, and odor type and strength. Odors will be ranked according to the three categories below. For materials that are considered to have a very high odor causing potential (Category 3), the facility will expeditiously ship such materials off site. Records of the daily feedstock evaluations and corrective actions must be maintained until termination of the Consent Order.

Odor Characterization:

<b>Category 1</b>	No odor
<b>Category 2</b>	Very light to medium grain, bakery or food odor; light to medium sweet or fermentation odor
<b>Category 3</b>	Strong sweet or fermentation odor; any other strong food odor; rancid, nauseating, overbearing garbage or overbearing fermentation odor

Daily Checklist:

Date	Type of Material (e.g., candy, baked goods, grain products, cereal, cookies, chips/snack foods, pasta, or any other approved feedstock material)	Moisture (e.g., wet or dry)	Condition (e.g., packaged, fresh, light fermentation, extensive fermentation)	Odor Description and Characterization (Category 1-3)	Corrective Actions for any Category 3 Materials	New Raw Material (Y/N) <sup>a</sup>	For new raw materials, has an evaluation been performed pursuant to the consent order (Y/N)

<sup>a</sup>Consistent with paragraph 12(d) of the Consent Order, a "new raw material" is defined as any raw material that is not sawdust, wheat midds and bakery by-products. (Bakery by-products consist of breads, pizza/pasta, cookies/crackers, cereals, jellies, candies, and other

grain based materials). Beginning March 15, 2006, and continuing until the approval of the PTJ modification applications under either Option A or Option B, below, prior to any use of new raw materials, Endres shall conduct an evaluation to determine if use of the new raw material would: (1) result in an increase in actual emissions of regulated air pollutants compared to actual emissions from use of the raw materials described above from the existing Facility; and (2) result in odors characterized as Category 3 under the attached Odor Evaluation Checklist. If the change to a new raw material will result in an increase in actual emissions or Category 3 odors, then Endres shall not process the material. Upon documenting that any change in raw materials will not result in an increase in actual emissions from the Facility and is not expected to result in Category 3 odors, Endres may commence use of such new raw material. Endres will provide a copy of this Odor Evaluation Checklist to Ohio EPA's Northwest District Office the same business day that Endres commences use of any such new raw material. Endres shall collect, record and retain the final determinations and any supporting information when such new raw material change evaluations are performed.