

**Albuquerque-Bernalillo County
Air Quality Control Board**

Adjudicatory Procedures Guidebook

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I. Introduction

The Albuquerque-Bernalillo County Air Quality Control Board is an administrative agency responsible for ensuring that provisions of the federal Clean Air Act, the state Air Quality Control Act, and the Air Quality Control Board Ordinances adopted by the Albuquerque City Council and the Bernalillo County Commission are implemented within Albuquerque-Bernalillo County (except Indian Country).

The Board consists of seven members appointed for three-year terms. Four members are appointed by the City and three members are appointed by the County. A majority of the membership of the Board are individuals who represent the public interest. Board members are selected for their concerns about, and commitment to, local ambient air quality. Additionally, the City Environmental Planning Commission and the County Planning Commission may each appoint a non-voting member to be liaisons to the Air Quality Control Board.

Through adoption of regulations and air quality standards (together, 'regulations'), the Board has authorized an air quality management program that promotes clean air for the County's residents and visitors. The Board ensures compliance with its regulations by reviewing the air quality permitting work of the City of Albuquerque Environmental Health Department staff through its adjudicatory procedures.

This Guidebook has been prepared to provide members of the public and other interested parties with information about the Board's process by which it considers appeals of air permitting actions by permittees, permit applicants, or other persons. If you wish to participate in the adjudicatory process, you are responsible for reviewing the relevant statutes and rules to assure understanding of your rights and responsibilities. See the New Mexico Air Quality Control Act, NMSA 1978, Sections 74-2-7; Revised Ordinances of Albuquerque § 9-5-1-7; and the Bernalillo County Code of Ordinances, Art. II § 30-36; and the Board's Adjudicatory Procedures set out in Section 20.11.81 of the New Mexico Administrative Code (NMAC). The Board hopes this Guidebook will facilitate public involvement and improve understanding of the adjudicatory process.

Anyone interested in participating in adjudication process is strongly advised to consult with an attorney on the most effective means of doing so. The Board, the hearing officer, the hearing clerk or EHD staff cannot provide legal advice. The State Bar of New Mexico offers an attorney referral program, as well as other resources on obtaining legal services, at www.nmbar.org. This Guidebook does not constitute legal advice and is not intended to substitute for advice provided by a licensed attorney. Nor does this Guidebook supersede or replace Part 81 or any applicable law. The reader should refer to the above laws and to Part 81 and follow the specific requirements for any adjudicatory process.

For further information regarding adjudicatory procedures or the Board, please contact:

Physical: City of Albuquerque Environmental Health Department Air Quality
Program
One Civic Plaza NW, Room #3023
Albuquerque, New Mexico 87102

Website: www.cabq.gov/airquality/air-quality-control-board

Phone: 505-768-2601

Email: adaffern@cabq.gov

II. Requesting an Adjudicatory Hearing

A. An Adjudicatory Hearing is Requested by an Appeal Petition

An appeal is initiated when a petition is filed in writing within thirty consecutive days from the date notice is given of a permitting action, submitted to the hearing clerk as an original with nine copies, and served on the Environmental Health Department.

An appeal petition has several required parts:

1. Petitioner's name, address, telephone number, and other contact information.
2. A statement describing how the petitioner participated in the permitting action before the department, and how the petitioner is adversely affected by that action; or a citation to a Board regulation that otherwise authorizes the request for hearing and a statement as to how the petitioner qualifies to make the request.
3. If a permitting action is being challenged, the identity of the permitting action, the portions of the permitting action to which the petitioner objects, and the factual and legal basis for the petitioner's objections.
4. A statement of the remedy the petitioner is seeking, the legal basis for the remedy, and how granting the remedy is within the Board's jurisdiction.
5. A copy of the permitting action or other action regarding which petitioner is filing the appeal.

The petition must be signed under oath or affirmation to attest to the truth of the information therein, and a filing fee specified in Section 20.11.2 NMAC must be paid when the petition is filed.

B. Hearing Delay and Waiver

The Board's Adjudicatory Procedures include very short timelines that are usually waived in order to allow more time for the parties to gather their resources, submit the necessary filings, and prepare for hearing.

The Petitioner may be asked to file a waiver staying all deadlines for an additional 30 days or longer to allow more time to prepare for the hearing.

C. The Environmental Health Department's Response

Following receipt of a petition, if a permitting action is being challenged, the department must file with the hearing clerk:

1. The administrative record of the permitting action being challenged, with an index of that record. The department must serve the index on all parties.
2. A list of interested persons, including those who have expressed interest in writing, and those who attended a public information meeting or hearing and provided their contact information.
3. The department's answer to the petition, responding to each objection therein.

D. Board Appointment of Hearing Officer

After a petition has been received, the Board usually appoints a hearing officer to handle the pre-hearing process, rule on non-dispositive motions, issue subpoenas, conduct the hearing, maintain order, and take all necessary measures to assure fair and impartial adjudication of the issues in the proceeding.

E. Public Notice, Arrangements for Hearing Room, Transcription or Recording

The hearing clerk docket each appeal and is responsible for providing all required public notice of the appeal hearing and notice about the manner in which interested persons may participate. The hearing clerk is also responsible for arranging for a hearing room and verbatim transcription or recording of the hearing. Parties requesting a transcript bear the cost of that transcript. Petitioners should bear in mind that the cost of such a transcript can run from hundreds to thousands of dollars. Petitioners who feel they are unable to pay this cost should consult with the hearing officer on potential alternative arrangements.

In the event of a timely request (i.e. one that meets deadlines in the regulations or in a prehearing order by the hearing officer), the hearing clerk may also arrange for interpreters or other special services necessary to provide accommodation.

III. The Prehearing Process

A. Prehearing Scheduling Order

After being appointed, the hearing officer will issue a pre-hearing order setting the date for the hearing and addressing specific deadlines and procedures for the hearing.

Examples of provisions in a pre-hearing order may include the scheduling of a pre-hearing teleconference; the scheduling of public comment sessions; a requirement that interpreters or special equipment be provided or additional public notice be provided; early deadlines for pre-filed technical testimony; and permission to present technical witnesses in panels.

Formal discovery (depositions, interrogatories, requests for admission) is discouraged, and will be allowed only by an order of the hearing officer in certain circumstances. If allowed, it will be guided by the New Mexico rules of civil procedure.

B. Notice of Intent to Present Technical Testimony

Apart from any requirements set out in a pre-hearing order, the adjudicatory procedures require all persons, including the petitioner, who intend to present technical testimony (scientific, engineering, economic or other specialized testimony) to file a 'Notice of Intent' (NOI). The NOI must be filed as an original with nine copies, and has required elements:

1. The name of the person for whom the witness(es) will testify (here, "person" can refer to an organization as well as an individual).
2. A statement of whether the filer supports or opposes the petition.
3. The name of each witness, and an estimate of the length of their direct testimony.
4. A summary or outline of the direct testimony of each technical witness. The hearing officer may impose more stringent requirements in the pre-hearing order.
5. A list of all exhibits that will be offered, and a copy of each exhibit.

NOIs must be timely filed with the hearing clerk; check the pre-hearing order for the deadline. NOIs must be served on all other parties. The hearing clerk can provide contact information for all parties. If an NOI is not timely filed or lacks the necessary information, the hearing officer may exclude testimony or exhibits offered at hearing.

C. Alternatives: Entry of Appearance or Non-Technical Public Comment

In addition to participating in an adjudicatory hearing by presenting technical evidence via an NOI, a person may participate in two other ways. First, a person may

choose to become a party, which means that person will be entitled to key documents filed with the Board during the adjudicatory process. A person becomes a party without presenting technical evidence by filing an entry of appearance at least fifteen days prior to hearing, or as required by a pre-hearing order. Second, a person may choose not to become a party at all, and instead to offer non-technical public comment at the hearing. No filings are necessary to offer non-technical public comment at a hearing.

IV. The Adjudicatory Hearing

The hearing officer shall conduct the hearing in a way that provides a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy, cumbersome, or repetitious. The burden of presenting evidence in opposition to EHD's action and the burden of proof by a preponderance of evidence is on the petitioner.

All testimony is taken under oath and is subject to cross-examination by the Board, hearing officer, other parties, and other interested persons.

Motions and objections may be made and argued such that evidentiary rulings are necessary. The hearing officer will look to the rules of evidence and the rules of civil procedure for guidance.

The hearing typically proceeds as follows:

1. An introduction by the hearing officer on the procedures for the hearing.
2. Opening statements by any party wishing to make one.
3. The petitioner's presentation of evidence.
4. Other parties' presentation of evidence, in an order determined by the hearing officer based on the NOIs and witness availability.
5. Non-technical public comment, which is always invited at the end of the parties' technical presentations and is usually invited at other times as well. Every day of a multi-day hearing includes an opportunity to provide public comment.
6. Closing statements by any party who wishes to make one, unless the hearing officer directs that closing statements be put in writing as part of a post-hearing submittal.
7. A closing discussion by the hearing officer on whether the record will be left open for post-hearing submittals and the deadline for those submittals.

V. The Post-Hearing Process

A. Post-Hearing Submittals

Post-hearing submittals from the parties are typically due after the transcript is prepared and include written closing arguments, and proposed findings of fact and conclusions of law. If the Board requests a hearing officer report, the report will include a discussion of the issues raised at hearing, the parties' final arguments and the evidence supporting the arguments, a recommended decision, and proposed final order.

B. Deliberations Immediately Following the Hearing

If the record is not left open for post-hearing submittals or a hearing officer report, the Board may choose to deliberate and take action immediately following the close of the appeal hearing.

C. Board Decision-Making Criteria

In making its decision on the appeal, the Board shall give appropriate weight to all evidence presented at the hearing. The Board does not use the same criteria used for rulemaking.

D. Notice and Publication of Board Action, Appeals

The hearing clerk will provide notice of the Board's action to all parties and other interested persons. Any appeal of that action must be taken to the New Mexico Court of Appeals within thirty days of the date of the Board's written order issued after the proceeding.

IV. Participating as a Member of the Public—Some Practical Observations

A. Staying Informed

1. The Board has a listserv for providing notice of upcoming meetings and hearings related to air quality management in Bernalillo County. To join the listserv, contact the hearing clerk. You may subscribe or unsubscribe at any time.
2. Documents related to any appeal are available for public review and copying from the hearing clerk. In matters of special public interest, the hearing clerk may post all documents on the Board webpage for easy access.
3. The hearing clerk can serve as a resource to answer questions about the status of an action and upcoming deadlines, provide contact information for those involved, supply copies of documents filed or a link to a webpage where they can be found, and offer other practical information. The Board's hearing clerk cannot offer legal advice.
4. Questions or comments about a permit issued by EHD should be directed to EHD staff as early in the process as practicable—there is no need to wait for the hearing. EHD staff does respond to written comments and questions throughout the adjudicatory process.
5. The New Mexico Legislature has imposed significant constraints on the Board's authority to impose on a permittee activities or equipment that are not required by federal law. A full understanding of any permit will include an attorney's review of rules and standards and the scope of the Board's authority.

B. Engaging Without Frustration

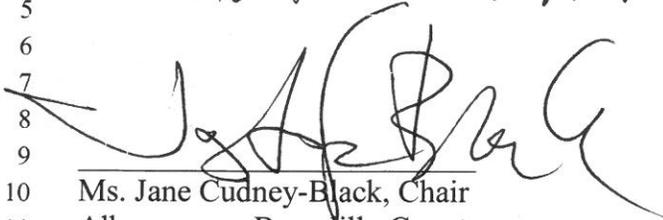
1. Choose your level of engagement in the adjudicatory process with care. Advice from an attorney will greatly aid in understanding the process and participating effectively.
 - i. Public commenter: If you wish to comment on a permit appeal without filing any pleadings (i.e. documents required by law for the rulemaking process) with the hearing clerk, you may submit written non-technical public comment of any length to the hearing clerk before or during the hearing, or you may deliver your comment verbally during the hearing. Occasionally time limits are imposed on verbal comments, and you may be cross-examined (asked to answer questions) about your verbal comment. As a public commenter you may not enter scientific or other technical evidence or exhibits into the record.

- ii. Party: If you wish to file pleadings and receive pleadings filed by others, including post-hearing submittals, you must enter an appearance. At the hearing, you may offer non-technical, non-scientific testimony.
 - iii. Party presenting technical testimony: If you wish to present technical or scientific testimony, you must file an NOI. The NOI should be prepared very carefully, as its contents will be reviewed for the scientific basis of the conclusions set out there and the education and expertise of the witnesses. Testimony or exhibits about toxicology must be offered by a toxicologist, for example. Internet research by a layperson will likely not be accepted as having a sufficient basis. Exhibits or testimony not reflected in the NOI will likely be excluded unless offered as rebuttal to another party's evidence. If the hearing officer rules that your evidence should be excluded from consideration by the Board, you should request that it be included in the record as an "offer of proof."
 - iv. Petitioner: Air quality management is an exceptionally complex area of environmental law. Anyone bringing a permit appeal should consider retaining experienced legal counsel and potentially technical experts.
2. The Board's Adjudicatory Procedures include very short timelines that are usually waived in order to allow more time for the parties to gather their resources, submit the necessary filings, and prepare for hearing.
 3. Understand the reach of the Air Quality Control Board's jurisdiction regardless of your role. The Board's legal authority does not include several issues of importance to people, such as noise, traffic, or property values.
 4. After an appeal is initiated, and until it is concluded (including conclusion of any court action regarding the appeal), all input must be submitted through the hearing clerk or during the hearing. No one may have 'ex parte' contact (off-the-record communications) with any Board member or the hearing officer regarding the merits of an appeal petition. Discussion of procedural matters with the hearing officer is appropriate.
 5. Know that before voting the Board reads all submissions which have been filed and either listens to all input during the hearing on a permit appeal or reads the transcript. Form letters may not weigh heavily in deliberations, but constructive comments from individuals or associations are appreciated and help guide the Board's important policy decisions.

1 Passed and Adopted by the Albuquerque-Bernalillo County Air Quality Control Board this 13th
2 day of December, 2017.

3 **BY A VOTE OF 6 FOR, AND 0 AGAINST.**

4 Absent: *Member Dale H. Mack*

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10 Ms. Jane Cudney-Black, Chair
11 Albuquerque-Bernalillo County
12 Air Quality Control Board

13
14
15 Attest:

16
17 

18 Dario Rocha,
19 Secretary to the Air Quality Control Board
20

Appendix 1. Glossary of Terms

See 20.11.81.7 NMAC - N for all definitions of terms used in the Board's Adjudicatory Regulations.

"**Act**" means the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978.

"**Applicant**" means a person who has applied for or has been issued an air quality permit by the department.

"**Board**" means the Albuquerque-Bernalillo county air quality control board.

"**Days**" means consecutive days except as otherwise specifically provided.

"**Department**" means the city of Albuquerque environmental health department.

"**Docket**" means, when used as a noun, the list compiled by the hearing clerk of all documents filed by or with the hearing clerk from the beginning to the end of a matter, but does not include the administrative record or the law of the case and, when used as a verb, means assigning an individual number to a newly-opened case or filing a document in and listing the document on the docket.

"**Document**" means any pleading, motion, response, memorandum, decision, order or other written material or tangible item that is filed or brought to or before the board for its consideration in a matter, but does not include the cover letter that accompanies a document transmitted for filing.

"**Ex parte contact**" means oral or other communication with a board member or a board hearing officer regarding the merits of an expected or pending petition or related proceeding if:

1. the communication is made by a person who is not a board member, hearing clerk or hearing officer;
2. the person communicating knows or has reason to know a petition will be or has been filed pursuant to 20.11.81 NMAC;
3. the communication is made without all other parties being present or receiving the same communication received by the board member or board hearing officer; and
4. the communication is intended to affect, or reasonably may be expected to affect the board member's or the hearing officer's opinion regarding the merits of the expected or pending petition or related proceeding.

"**Hearing clerk**" means the department employee designated by the director to provide staff support to the board, and is the person designated by the board to maintain the official record of the proceeding.

"**Hearing officer**" means the person who is appointed or otherwise authorized by the board to conduct a proceeding pursuant to 20.11.81 NMAC.

"Interested participant" means any person, other than a party, who files an entry of appearance in accordance with Paragraphs (1) and (2) of Subsection I of 20.11.81.14 NMAC.

"Party" means the petitioner, the applicant if the applicant is not the petitioner, the department, and any other person granted intervenor status by the hearing officer or board following a motion.

"Petition" means a petition filed pursuant to Subsection H of 74-2-7 NMSA 1978 and 20.11.81 NMAC.

"Petitioner" means a person who files a timely petition pursuant to Subsection H of NMSA 74-2-7 and 20.11.81 NMAC.

"Record proper" or "record" means all documents filed by or with the hearing clerk during the proceeding authorized by 20.11.81 NMAC, and includes:

1. the administrative record of the permitting action filed by the department;
2. the verbatim record of the hearing (transcript or tapes, as applicable) and all exhibits offered into evidence at the hearing, whether or not admitted; and
3. minutes or a summary of minutes, or the decision or order resulting from a hearing or board meeting at which the board deliberated or acted on any procedural or substantive issue in the proceeding.

"Regulations" means the rules promulgated by the board, as authorized by the act.

"Service" means delivering to a person that 20.11.81 NMAC requires to be served a copy of a document, exhibit or pleading by personally delivering it to that person, mailing it to that person, or, if that person agrees, by sending it by facsimile or electronic transmission to that person. If a person is represented by an attorney, service shall be made on the attorney. Service by mail is complete upon mailing the document unless service is made by mail to a party who must act within a prescribed period after being served, in which case three days shall be added to prescribed period. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed or upon acknowledgement by the recipient.

"Technical evidence" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

Appendix 2. Example Adjudicatory Petition

STATE OF NEW MEXICO
Before the
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 3131 [Honstein Oil]

SouthWest Organizing Project [SWOP]
by Juan Reynosa, Environmental Justice Organizer;
Esther and Steven Abeyta, Members of SWOP,
Petitioners

RECEIVED
ENVIRONMENTAL HEALTH
14 AUG 12 PM 1:21

PETITION FOR A HEARING

Pursuant to Chapter 74, Article 2, Section 7.G-I, NMSA 1978, and 20.11.81.14 NMAC, Petitioners, by and through counsel Jon Block and Eric Jantz, New Mexico Environmental Law Center, hereby request a hearing on the above captioned permit for the reasons of fact and law below. Petitioners also set forth below the hearing request information required by regulation, and have provided the Clerk or designated person with an original and nine copies of the Petition with the permit attached as Exhibit 'A' and a certificate of service, and will serve stamped copies on (or to a designated person for) Department counsel, Board Counsel, Hearing Officer and Permittee. Petitioners and Counsel have below certified they attest to the truth of the information in this petition.

A. Notice of the Department's granting of the permit was served on Petitioners by certified mailing on July 16, 2014. This Petition is filed with the Clerk on August 12, 2014, less than 30 consecutive days from the date notice was given to Petitioners of the permitting action taken by the department that this Petition contests.

B. Contact Information for Petitioners and Petitioners' Attorneys:

Petitioners:

1. Southwest Organizing Project ("SWOP")

Juan Reynosa, Environmental Justice Organizer
Southwest Organizing Project
222 Tenth Street, S.W.
Albuquerque, NM 87102
(505) 247-8832
Juan Reynosa, SWOP <juan@swop.net>

2. Representative SWOP Members from the community affected by the permit at issue:

Esther and Steven Abeyta
2419 William SE
Albuquerque, NM 87102
(505) 440-1669
Esther Abeyta <sjnal@live.com>
Steven Abeyta <stevenabeyta@gmail.com>

Counsel for Petitioners:

Attorneys for the Petitioners:

Jon Block and Eric Jantz
New Mexico Environmental Law Center
1405 Luisa Street, Ste. 5
Santa Fe, NM 87505
(505) 989-9022 (Voice)
(505) 989-3769 (Faximile)
jblock@nmelc.org
ejantz@nmelc.org

C. Statement of the manner of Petitioners' participation in the permitting action that was pending before the department and how the petitioner is adversely affected by the permitting action taken by the department:

Petitioners submitted written and oral comments during the Public Information Hearing. Petitioners have also obtained information concerning the permit at issue through the IPRA process. Petitioner organization SWOP, by and through representative members Esther and Steven Abeyta who live in the South Valley in the San Jose Community, an United States Environmental Protection Agency recognized Environmental Justice community, are directly affected by the permitting action in that it allows an addition to the already existing cumulative impacts upon them from the polluted air they breathe in that community.

D. (i) The specific permitting action appealed from, (ii) specify the portions of the permitting action to which petitioner objects, and (iii) state the factual and legal basis of petitioner's objections to the permitting action taken by the department:

(i) Air Quality Permit No. 3131 ~ Honstein Oil Distributing, LLC (Honstein), Authority-to-Construct Permit - 101 Anderson Ave. SE, Effective date: June 16, 2014.

(ii) Petitioners object to issuing the entire permit without consideration of health and safety of the affected community given cumulative impacts on air quality from industrial facilities in the South Valley, particularly the San Jose community; no attempt was made to assess cumulative impacts despite some evidence of excess emissions; no attempt was made to assess the public health and safety aspects of granting another permit for the type of emissions the facility at issue emits; no consideration in the permitting process for the Honstein facility was given to the adverse impacts issuing the

permit has on the quality of life-- particularly in relation to existing permitted cumulative impacts--in the San Jose community, and Petitioner SWOP, by and through its San Jose community members Esther and Steven Abeyta. Petitioners object to the Albuquerque-Bernalillo Air Quality Bureau failing to take any investigative steps to assess the impacts of continued permitting of facilities such as Honstein's upon the quality of life of persons living in proximity to the facility, particularly those of the San Jose Community in which SWOP members Ester and Steven Abeyta reside. Petitioners object to the Albuquerque-Bernalillo Air Quality Bureau failing to take any investigative steps to assess the cumulative impacts of continued permitting of facilities such as Honstein's upon the air quality for persons living in proximity to the facility, particularly those of the San Jose Community in which SWOP members Ester and Steven Abeyta reside.

(iii) Relying upon the facts as set forth above, statutory basis for this Petition is contained in Chapter 74, Article 2, NMSA 1978, the Air Quality Control Act, and, in pertinent part, but not limited to the following, "The ... local board shall prevent or abate air pollution." *Id.* at 74-2-5.A; *see also* 74-2-5.1.A (local agency "shall" develop facts and make investigations and studies consistent with the Air Quality Control Act..."); 74-2-7.C and D (under state law, a permit could be issued with a condition that requires continuous air monitoring at the site to assure compliance with federal Clean Air Act standards), *and see Colonias Development Council v. Rhino Environmental Services*, 2005-NMSC-024 at ¶¶30-35 (requiring consideration of quality of life and cumulative impacts in making a permitting determination).

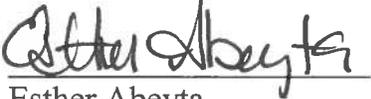
E. The remedy Petitioners seek, the legal basis for the remedy, and how granting the remedy is within the air quality jurisdiction of the board:

Petitioners seek rescinding the permit until a cumulative impact assessment on the effects upon air quality in the San Jose community due to granting yet another permit such as the Honstein permit may be conducted. The impact should assess cumulative air emissions on this community from the aspect of public health and safety, particularly to children, the elderly, and persons with handicapped conditions. Additionally, if a permit is issued for the facility, the permit can be conditioned to require continuous monitoring at the permit site for any exceedance of the federal Clean Air Act standards. Petitioners contend that the New Mexico Air Quality Control act authorizes and provides jurisdiction for the Board to take such actions as are necessary to assure public health and safety by regulating air emissions and that consideration of cumulative impacts is a prudent and necessary consideration in the granting or denying of an air emissions permit. *See generally* statutes and law cited above.

F. A copy of the permit at issue is attached to this Petition as Exhibit 'A'

Petitioners and Counsel hereby certify and attest that the foregoing is true and correct to the best of our knowledge and belief:

Petitioners:



Esther Abeyta



Steven Abeyta



Juan Reynosa

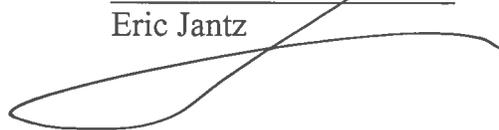
Counsel for Petitioners:



Jon Block



Eric Jantz





AIR QUALITY AUTHORITY TO CONSTRUCT PERMIT #3131
 FACILITY CDS # NM/001/02259
 Facility ID: FA0005668 Record ID: PR0006305



Richard J. Berry, Mayor

Mary Lou Leonard, Director

Issued to: Honstein Oil & Distributing, LLC
 Company Name

Certified Mail # 7010 3090 0001 4486 6999
 Return Receipt Requested

11 Paseo Real
 Mailing Address

Santa Fe
 City

NM
 State

87507
 Zip

Responsible Official: Rod Honstein, Managing Member
 Authorized Representative

Pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2 New Mexico Statutes Annotated 1978 (as amended); the Joint Air Quality Control Board Ordinance, 9-5-1 to 9-5-99 ROA 1994; the Bernalillo County Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5; the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) regulation, Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 40 (20.11.40 NMAC), Source Registration; and AQCB regulation, Title 20, NMAC, Chapter 11, Part 41 (20.11.41 NMAC), Authority to Construct.

Honstein Oil Company ("permittee") is hereby issued this **AUTHORITY TO CONSTRUCT PERMIT** as a **NEW STATIONARY SOURCE**.

This **AUTHORITY TO CONSTRUCT** Permit Number 3131 has been issued based on the review of the applications received by the Albuquerque Environmental Health Department (Department), Air Quality Program (Program) on October 3, 2013 and May 15, 2014 and additional information received December 13, 2013, which was deemed complete on December 17, 2013, and on the National Ambient Air Quality Standards, New Mexico Ambient Air Quality Standards, and Air Quality Control Regulations for Albuquerque/Bernalillo County, as amended. As these standards and regulations are updated or amended, the applicable changes will be incorporated into this Air Quality Permit Number 3131 and will apply to the facility. This facility is authorized to construct and operate the following type of process at:

Facility Name & Address	UTM Coordinates	Process Description	SIC	NAICS
Honstein Oil 101 Anderson Avenue SE Albuquerque, New Mexico 87102	349473 Easting 3881234 Northing	Bulk Gasoline Plant ¹	5171	424710

¹Bulk Gasoline Plant means any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, or cargo tank, and subsequently loads the gasoline into gasoline cargo tanks for transport to gasoline dispensing facilities, and has a gasoline throughput of less than 20,000 gallons per day.

Issued on the 12th day of June, 2014
Israel L. Tovar Israel L. Tovar
 Print Name Sign Name

Air Quality Protection Programs - Permitting Section
 Air Quality Program
 City of Albuquerque Environmental Health Department

1. AUTHORITY TO CONSTRUCT PERMIT THRESHOLD (74-2-7.A.(1) NMSA). By regulation, the local board shall require a person intending to construct or modify any source, except as specifically provided by regulation, to obtain a construction permit from the local agency prior to such construction or modification. This permit recognizes the construction and operation of the following equipment:

Unit Number	Unit Description	Storage Capacity in gallons	Installation Date	Product Stored	Minimum Required Emissions Control ¹
1	Underground Storage Tank	6,000	Unknown	Regular Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling

¹ **TRANSPORT AND DELIVERY OF GASOLINE BY MOBILE TANK TRUCKS OR TRAILER:** No person shall unload gasoline into any underground storage tank with a capacity of 3,000 gallons or more unless such tank is equipped with an approved vapor loss control system, including a submerged fill pipe, in which displaced vapors from the underground storage tank are either contained or are processed such that final emissions to the atmosphere do not exceed 1.15 pounds of VOCs per 1,000 gallons of gasoline loaded. [Albuquerque-Bernalillo Air Quality Control Board Regulation 20.11.65.14.A.(1) NMAC, Volatile Organic Compounds.]

2. COMPLIANCE ASSURANCE.

A. All air pollution emitting facilities within Bernalillo County are subject to all applicable Albuquerque/Bernalillo County Air Quality Control Regulations, whether listed in this permit or not.

B. The issuance of an Authority to Construct permit does not relieve the Company from the responsibility of complying with the provisions of the state air quality control act, federal clean air act, or any applicable regulations of the board. (20.11.41.17 NMAC)

C. Any term or condition imposed by the department in an Authority to Construct permit shall apply to the same extent as a regulation of the board. (20.11.41.18.C NMAC)

D. Whenever two or more parts of the Air Quality Control Act, or the laws and regulations in force pursuant to the Act, limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern.

E. The department is authorized to issue a compliance order requiring compliance and assessing a civil penalty not to exceed Fifteen Thousand and no/100 Dollars (\$15,000) per day of noncompliance for each violation, commence a civil action in district court for appropriate relief, including a temporary and permanent injunction. (74-2-12 NMSA).

3. SUBSTITUTION. Substitution of equipment is authorized provided the equipment has the same or lower process capacity as the piece of equipment being substituted. The department shall be notified in writing within 15 days of equipment substitution. Equipment that is substituted shall comply with the requirements in the Section 4 Gasoline Unit Emission Limits table.

4. GASOLINE UNIT EMISSION LIMITS. Allowable annual gasoline throughput. Allowable ton per year (tpy) emissions.

Unit	Unit Description	Daily Throughput Threshold of Gasoline (in gallons) ¹	Allowable Annual Throughput of Gasoline (in gallons) ²	Allowable Annual Emissions of Volatile Organic Compounds (VOC's) ²
1	Underground Storage Tank	≤20,000	For Stage I Vapor Recovery 250,000	2.26 tons per year

¹ Daily throughput threshold is the maximum calculated design throughput for any day, and is not an average

² Based on the annual gasoline throughput requested in the permit application

5. EMISSIONS INVENTORY REQUIREMENTS (20.11.47 NMAC). Subsection 20.11.47.14.A.(1) – Applicability - requires an emissions inventory of any stationary source in Bernalillo county that has an active permit issued pursuant to 20.11.41 NMAC Authority to Construct. Subsection 20.11.47.14.B.(1) – Reporting Requirements – requires the submittal of an emissions inventory report annually. Therefore, an annual emissions inventory (in pounds or tons per calendar year) shall be submitted to the department by March 15 each year.

6. MODIFICATION.

A. Any future physical changes or changes in the method of operation which result in an increase in the pre-controlled emission rate may constitute a modification. Change in the method of control of emissions or in the character of emissions shall not be made unless submitted to the department as a modification to this permit. 20.11.41.7.H NMAC defines proposed changes to a facility that may constitute a permit modification. Compliance will be based on department inspections and the submittal of a new permit application for any modification. No modification shall begin prior to issuance of a permit and shall be processed in accordance with 20.11.41 NMAC.

B. This facility shall obtain a permit modification and comply with the requirements of 40 CFR 63 Subpart CCCCC – National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Dispensing Facilities if the facility dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition.

7. MONITORING and RECORDKEEPING (20.11.41.18.B.(8)NMAC). Monitor and maintain a log of the total monthly gasoline throughput for the facility. These records must be retained for the most recent five-year period for the facility.

8. REPORTING.

A. The following reporting requirements, in accordance with 20.11.41.18, 20.11.41.20, 20.11.47 and 20.11.49 NMAC, to allow the department to determine compliance with the terms and conditions of the permit. Compliance will also be based on timely submittal of the reports. The permittee shall notify the department in writing of:

1. Any change in control or ownership, within 15 days of the change in control or ownership. In the event of any such change in control or ownership, the permittee shall notify the succeeding owner of the permit. The permit conditions apply in the event of any change in control or ownership of the facility. At minimum, an administrative permit modification is required to address any change in control or ownership of the facility;

2. Any substitution of equipment, within 15 days of equipment substitutions. Equipment may only be substituted if it has the same or lower process capacity as the piece of equipment being substituted, and there are no other federal, state, or local air quality permit requirements triggered by the introduction of the substituted piece of equipment. Substituted equipment shall comply with the Section 4 Gasoline Unit Emission Limits table;

3. The annual (January 1 through December 31 of previous year) throughput of gasoline and emission inventory, by March 15 of every year; and

4. Any breakdown of equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by permit conditions. Any breakdown or abnormal operating conditions shall be reported to the department by submitting the following reports on forms provided by the department:

a) Initial Report: The permittee shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission pursuant to 20.11.49.15.A.(1) NMAC;

b) Final Report: The permittee shall file a final report, no later than 10 days after the end of the excess emission. If the period of an excess emission extends beyond 10 days, the permittee shall submit the final report to the department within 72 hours of the date and time the excess emission ceased. This condition is pursuant to 20.11.49.15.A.(2) NMAC and 20.11.49.15.C NMAC; and

c) Alternative Reporting: If the facility is subject to the federal reporting requirements of 40 CFR Parts, 60, 61, or 63 and the federal requirements duplicate the requirements of 20.11.49.15 NMAC, then the federal reporting requirements shall suffice. This condition is pursuant to 20.11.49.15.D NMAC.

B. The emission of a regulated air pollutant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action. The owner or operator of a source having an excess emission shall, to the extent practicable, operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. This condition is pursuant to 20.11.49.14 NMAC.

9. **PERFORMANCE TEST REQUIREMENTS.** Each owner or operator, at the time of installation, of a vapor loss control system required under 20.11.65.14.A.(1) NMAC and every 3 years thereafter, must comply with the requirements below:

A. You must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 1 of 40 CFR Part 63, Subpart CCCCCC, for pressure-vacuum vent valves installed on your gasoline storage tank(s) using one of the test methods below:

1. California Air Resources Board Vapor Recovery Test Procedure TP-201.1E.—Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (incorporated by reference, see §63.14); or
2. Use alternative test methods and procedures in accordance with the alternative test method requirements in §63.7(f).

B. You must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 1 of 40 CFR Part 63, Subpart CCCCCC, for your vapor loss control system by conducting a static pressure test on your gasoline storage tank(s) using one of the test methods below:

1. California Air Resources Board Vapor Recovery Test Procedure TP-201.3.—Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporated by reference, see §63.14); or
2. Use alternative test methods and procedures in accordance with the alternative test method requirements in §63.7(f).

10. **INSPECTION (74-2-13 NMSA).**

A. The department may conduct scheduled and unscheduled inspections, and, upon presentation of credentials:

1. Shall have a right of entry to, upon, or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the board or by any permit condition are located; and
2. May, at reasonable times:
 - a) Have access to and copy any records required to be established and maintained by regulations of the board or any permit condition;
 - b) Inspect any monitoring equipment and method required by regulations of the board or by any permit condition; and
 - c) Sample any emissions that are required to be sampled pursuant to regulation of the board or any permit condition.

B. Any credible evidence may be used to establish whether the facility has violated or is in violation of any regulation of the board, or any other provision of law. Credible evidence and testing shall include, but is not limited to 20.11.41.26.A and B NMAC as follows:

1. A monitoring method approved for the source pursuant to 20.11.42 NMAC, Operating Permits, and incorporated into an operating permit;
2. Compliance methods specified in the regulations, conditions in a permit issued to the facility, or other provision of law;
3. Federally enforceable monitoring or testing methods, including methods in 40 CFR parts 51, 60, 61, 63 and 75; and
4. Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the department and the USEPA.

C. Compliance will be based on department inspections of the facility, reviews of production records, submission of appropriate permit applications for modification, and timely notification to the department regarding equipment substitutions and relocations.

11. **FEDERAL RULEMAKING.** In addition to Albuquerque-Bernalillo Air Quality Control Board Regulation 20.11.65 NMAC, *Volatile Organic Compounds*; 40 CFR Part 63, Subpart BBBB3B3B – National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Plants applies to this facility. Based on the requested annual throughput for gasoline, this facility's daily throughput would amount to 20,000 gallons or less of gasoline. Therefore, the permittee shall ensure the applicable requirements of 40 CFR Part 63, Subpart BBBB3B3B, §63.11085 and §63.11086 are met as well as the Subpart A – General Provisions of 40 CFR Part 63.

A. **GENERAL APPLICABLE REQUIREMENTS.**

1. §63.11085(a) You must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.
2. §63.11086(d) You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:
 - (d)(1) Minimize gasoline spills;
 - (d)(2) Clean up spills as expeditiously as practicable;
 - (d)(3) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; and
 - (d)(4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

B. **SUBMERGED FILLING OF GASOLINE STORAGE TANKS (§63.11086).**

1. §63.11086(a) You must only load gasoline into storage tanks and cargo tanks at your facility by utilizing submerged filling, as defined in §63.11100, and as specified in paragraph (a)(1) or (a)(2) of this section:
 - (a)(1) Submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the tank; or
 - (a)(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

C. **LEAK INSPECTION REQUIREMENTS.**

1. §63.11086(e) You must perform a monthly leak inspection of all equipment in gasoline service according to the requirements specified in §63.11089(a) through (d).
2. §63.11089(a) You shall perform a monthly leak inspection of all equipment in gasoline service, as defined in §63.11100. For this inspection, detection methods incorporating sight, sound, and smell are acceptable.
3. §63.11089(b) A log book shall be used and shall be signed by the owner or operator at the completion of each inspection. A section of the log book shall contain a list, summary description, or diagram(s) showing the location of all equipment in gasoline service at the facility.
4. §63.11089(c) Each detection of a liquid or vapor leak shall be recorded in the log book. When a leak is detected, an initial attempt at repair shall be made as soon as practicable, but no later than 5 calendar days after the leak is detected. Repair or replacement of leaking equipment shall be completed within 15 calendar days after detection of each leak, except as provided in §63.11089(d).
5. §63.11089(d) Delay of repair of leaking equipment will be allowed if the repair is not feasible within 15 days. The owner or operator shall provide in the semiannual report specified in §63.11095(d), the reason(s) why the repair was not feasible and the date each repair was completed.

D. NOTIFICATIONS.

1. §63.11086(e) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008. The notification must be submitted to the applicable EPA Regional Office and the delegated State authority as specified in §63.13. The Initial Notification must contain the information specified in paragraphs (e)(1) through (3) of this section as follows:

(e)(1) the name and address of the owner and the operator;

(e)(2) the address (i.e., physical location) of the bulk plant; and

(e)(3) a statement that the notification is being submitted in response to this subpart and identifying the requirements in paragraphs (a), (c) and (d) of §63.11086 that apply to you;

2. §63.11086(f) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in §63.13, by May 9, 2008. The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of this subpart. If your facility is in compliance with the requirements of this subpart at the time the Initial Notification required under paragraph (e) of this section is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under paragraph (e) of this section.

3. Sources in Bernalillo county that are in compliance with a 20.11.41 NMAC, Authority to Construct should be meeting the 20.11.65 NMAC, Volatile Organic Compounds requirements for submerged fill pipe and vapor loss control system for loading of fuel storage tanks and vapor recovery, and therefore should not have to submit an Initial Notification or a Notification of Compliance Status. **Since all gasoline dispensing facilities permit through 20.11.41 NMAC, Initial Notifications and Notifications of Compliance Status are met through the permitting process and through the inspection program.**

E. RECORDKEEPING.

1. §63.11085(b) - You must keep records and submit reports as specified in §63.11094(g) and §63.11095(d).

2. §63.11094(g) - Each owner or operator of an affected source under this subpart shall keep records as specified in paragraphs (g)(1) and (2) of this section:

(g)(1) Records of the occurrence and duration of each malfunction of operation (i.e., process equipment) or the air pollution control and monitoring equipment.

(g)(2) Records of actions taken during periods of malfunction to minimize emissions in accordance with §63.11085(a), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

3. §63.11095(d) - Each owner or operator of an affected source under this subpart shall submit a semiannual report including the number, duration, and a brief description of each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with §63.11085(a), including actions taken to correct a malfunction. Owners or operators are not required to submit reports for periods during which no malfunctions occurred.

12. **FEES (20.11.2 NMAC).** Every owner or operator of a source that is required to obtain an Authority to Construct permit shall pay an annual emission fee pursuant to 20.11.2 NMAC. The annual emission fee for maintenance of this permit will be based on the greater of a base annual fee or a per ton fee rate based on the per ton allowable annual emissions of volatile organic compounds (VOC's) given in the Section 4 - Gasoline Unit Emission Limits table.

13. **PERMIT CANCELLATION.** The department may cancel any permit if the construction or modification is not commenced within one (1) year from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year. (20.11.41.19.A and B NMAC)

14. **INFORMATION SUBMITTALS [Air Quality Program contact numbers: (505) 768-1972 (voice); 1-800-659-8331 (NM Relay)].**

- Completed forms can be hand delivered to 1 Civic Plaza - Room 3047 (8:00am - 4:30pm Mon. - Fri. except city holidays) or can be mailed to:

Albuquerque Environmental Health Department
Air Quality Program
Permitting Section
P.O. Box 1293
Albuquerque, New Mexico 87103

- Test protocols and compliance test reports shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Program
Attention Enforcement Supervisor
P.O. Box 1293
Albuquerque, New Mexico 87103

- All reports shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Program
Attention Compliance Officer
P.O. Box 1293
Albuquerque, New Mexico 87103

**STATE OF NEW MEXICO
ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD**

IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 3131 [Honstein Oil]

SouthWest Organizing Project [SWOP]
by Juan Reynosa, Environmental Justice Organizer;
Esther and Steven Abeyta, Members of SWOP,
Petitioners

CERTIFICATE OF SERVICE

On this 12th day of August, 2014, I, Jon Block, counsel for Petitioners, caused to be served by hand the original and nine (9) copies of the Petition with Exhibit 'A' (the contested permit) and this certificate of service upon the Clerk or designated person for Albuquerque Bernalillo Air Quality Board, City Hall, Rm. 3023, and to the office of counsel for the Environmental Health Department, Rm. 4072; said Clerk or designated person accepted service for Board Counsel and Hearing Officer. I also caused service to be made on this day by United States Postal Service, certified Priority Mail, postage prepaid mail. of the above described matter to the permittee Ron Honstein, Managing Member, Honstein Oil & Distributing, LLC, 11 Paseo Real, Santa Fe, NM 87507 (Certified Article Number: 7007 3020 0001 2496 0690).


Jon Block, Staff Attorney
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