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. 3136 ISSUED TO SMITH'S FOOD AND DRUG CENTERS, INC.

Arthur Gradi, Ruth A. McGonagil, Jerri Paul-Seaborn, Bernice Ledden, Susan Kelly, Americo Chavez, and Pat Toledo, Petitioners

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No. AQCB 2014-350
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PREHEARING ORDER

The Hearing Officer, Petitioners, City staff and Counsel, and Counsel for Permittee participated in two teleconferences on July 25 and July 31, 2014 to discuss the scheduling of the hearing in this matter and deadlines for pre-hearing submittals.

Other issues discussed included Petitioners' lack of legal representation and disinclination to identify a single spokesperson, non-fatal flaws in the Petition and Certificate of Service, questions about whether the Board members would be present at hearing, whether any of the grounds for disqualifying the Hearing Officer for bias was present, service by electronic transmission or hard copy, and discovery.

Teleconference participants were ultimately in agreement with the scheduling and pre-hearing deadlines set out below. The written discovery and the early filing of technical testimony in full narrative are intended to obviate the need for depositions.

It is therefore ordered:

- 1. The hearing in this matter will begin 9 a.m. November 12, 2014 and continue as necessary through the day and potentially the evening on November 13, 2014 in the Albuquerque Convention Center in Albuquerque, New Mexico.
- 2. The order of presentation follows: Petitioners, with the burden of proof under Section 74-2-7.K, will present their evidence first. The City will present its evidence second. Permittee Smith's will present its evidence third. Rebuttal will occur in the same order as necessary.
- 3. Public comment of a non-technical nature: Public comment will be accepted starting at 5 p.m. November 12 regardless of the progress in the technical case. The Hearing Officer will take public comment at other times throughout the hearing as necessary.
- 4. Motions, the number of copies required for any document filed with the Hearing Clerk, proper service and any other matter not specifically addressed in this Order are governed by the Board's Adjudicatory Procedures in Section 20.11.81 NMAC.
- 5. The City shall file with the Hearing Clerk the Administrative Record in this matter, with an Answer to the Petition, an Index and list of interested parties, by July 23, 2014 [completed]. The City shall publish and mail notice of the hearing by October 10, 2014. The City is encouraged to explore the possibility of making substantive materials in this matter available on the Internet.
- 6. Petitioners shall file a corrected Petition with corrected attachment and Certificate of Service with the Hearing Clerk by August 5, 2014 [completed].

- 7. Notices of Intent: Any Petitioner who intends to present technical evidence or testimony at the hearing must file a notice of intent to present technical testimony (NOI) by October 7, 2014. If the City or Permittee intend to present technical evidence or testimony, the NOI must be filed by October 28, 2014. Technical evidence or testimony means scientific, engineering, economic or other specialized evidence or testimony. It does not mean legal argument, general comments or statements of policy. NOIs must identify the person filing the statement; identify each witness, including name, affiliation, education and work background; include the testimony of each witness in full narrative fashion, particularly any opinion to be offered by each witness and an explanation of the basis for the opinion; include technical materials relied upon by each witness in forming opinions; estimate the length of each witness' presentation; and identify all exhibits that are part of the administrative record maintained by the City and attach a copy of any exhibit not in the administrative record. Powerpoint and other slide presentations or displays which are demonstrative and based on technical evidence timely submitted may be shown at the hearing regardless of inclusion in the NOI. Copies no larger than 8 ½ by 11 inches shall replace large charts and maps in the record after the hearing. Failure to file a timely and complete NOI will preclude a person from presenting that technical evidence or testimony sought to be offered.
- 8. The deadline for entries of appearance is October 7, 2014.

9. Interrogatories and requests for admission, no more than 20 each, may be propounded by Smith's and the City no later than August 22, 2014, and may include a request for production for documents substantiating the answers to

the interrogatories. Responses are due no later than September 19, 2014.

10. As to Petitioner Gradi, interrogatories and requests for admission, no more

than 20 each, may be propounded no later than August 22, 2014, and may

include a request for production for documents substantiating the answers to

the interrogatories. Responses are due no later than September 19, 2014.

11. As to the remaining Petitioners, collectively, interrogatories and requests for

admission, no more than 30 each, may be propounded no later than August 22,

2014, and may include a request for production for documents substantiating

the answers to the interrogatories. Responses are due no later than September

19, 2014.

12. Petitioners may, but are not required to, file pleadings jointly. Regardless, all

signatures and verifications must be shown. Petitioners may, but are not

required to, offer an email address for electronic service.

13. In the event dispositive motions are filed by any Party, such motions shall be

filed in such time as to allow the Board to receive written Motion Responses

and to hear arguments on October 22, 2014.

Original signed by

Felicia L. Orth, Hearing Officer

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CERTIFICATE OF SERVICE

I hereby certify that I have e-mailed or mailed a true and correct copy of the foregoing PREHEARING ORDER on this 8^{th} day of August, 2014, to the following:

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Respectfully submitted,

Andrew Daffern, AQCB Hearing Clerk