

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. 3135,

Margaret Freed, Mary Ann Roberts,
Pat Toledo,

Petitioners.

No. AQCB 2014-44

**SMITH'S FOOD & DRUG, INC.'S MOTION TO DISMISS
PETITIONER PAT TOLEDO FOR LACK OF STANDING**

Smith's Food & Drug Centers, Inc. ("Smith's") moves the Albuquerque-Bernalillo County Air Quality Control Board ("Board") to dismiss Petitioner Pat Toledo ("Toledo") from this lawsuit for lack of standing. As grounds for this Motion, Smith's states that Toledo lacks standing to challenge the issuance of Permit No. 3135 to Smith's under NMSA 1978, § 74-2-7(H) and 20.11.81.2 NMAC because he was not, and could not have been, adversely affected by the permitting action. Accordingly, Toledo's claims should be dismissed with prejudice.

BACKGROUND

On November 5, 2013, Smith's filed with the Air Quality Division of the City of Albuquerque Environmental Health Department ("EHD") an application for an authority-to-construct permit for a proposed gasoline dispensing facility ("GDF") to be located at 6941 Montgomery Boulevard NE (the "Montgomery GDF"). AR 3, pp. 9-10; AR 5, p. 15. EHD evaluated Smith's application and ruled it complete on December 3, 2013. AR 9, p. 19. EHD published notice of the proposed permitting action on December 6, 2013, and held a public information hearing ("PIH") on April 3, 2014. AR 11, p. 24; AR 52, p. 143. After considering all of the documents and comments it received at the public

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information hearing and during the public comment period, EHD issued Permit No. 3135 to Smith's. AR 78, pp. 320-24; AR 79, p. 327.

Petitioners Margaret Freed, Mary Ann Roberts and Pat Toledo (collectively, "Petitioners") filed their Petition For Hearing ("Petition") on June 2, 2014. Section II of the Petition purports to explain how each of the Petitioners was adversely affected by the permitting action. Petition at 2. Petitioners allege that Freed owns property that is adjacent to the Montgomery GDF and that Roberts owns property across the street from the Montgomery GDF. Petition at 2. With regard to Toledo, the Petition identifies his address as 3404 Calle Del Ranchero NE, which appears to be approximately four miles from the Montgomery GDF. Petition at 1; see Google Map attached as Exhibit A. In order to establish a closer connection to the Montgomery GDF, Toledo alleges that his father resides at 3232 La Ronda NE, which Toledo describes as "close to the [Montgomery GDF]." Petition at 2; see Google Map attached as Exhibit B. Toledo alleges that he "provides regular assistance and care for his father, is regularly in the area of the [Montgomery GDF] and is concerned regarding the impact of the [Montgomery GDF] on his father's property and quality of life." Petition at 2. The Petition further alleges, in relevant part, that:

Each of the Petitioners are adversely affected by the permitting action because [EHD] failed to take into consideration quality-of-life concerns raised by the participants at the PIH. In addition, each of the Petitioners are likely to be adversely affected by increased VOC emissions, odors, fumes, increased traffic and other negative impacts on their property and quality of life resulting from the construction of the [Montgomery GDF].

Id. None of these allegations specifies how Toledo would be directly affected by the operation of the yet-to-be-built Montgomery GDF in accordance with Permit No. 3135, much less the issuance of the air permit itself, which is the issue before the Board.

Smith's served Petitioners with discovery requests to discover what evidence exists to support Toledo's standing to assert his claims. See Petitioners' Responses to Smith's Discovery, attached as Exhibit C (Int. Nos. 1, 2, 3, 5; RFA Nos. 1, 2, 3, 5). Toledo's responses were mostly evasive, but the scant information he provided demonstrates that he has no specific evidence that he will be adversely affected.

For example, Toledo admits that he owns no property within a three-mile radius of the Montgomery GDF and that his father's residence is located approximately 4/5 of one mile from the Montgomery GDF. Exhibit C at 14 (RFA Nos. 1, 3). Toledo claims that the routes he travels to and from his father's house "vary depending on what they are doing but they regularly travel through the intersection of Montgomery and Louisiana." Exhibit C at 2 (Int. No. 2). Toledo admits that the Montgomery GDF "has not yet been built so there is no existing direct evidence of the impacts from the GDF[.]" but claims that "he is familiar with the impacts resulting from the Smith's GDF located at Carlisle and Constitution and it is reasonable to expect that similar impacts will occur from the [Montgomery GDF]." Exhibit C at 3 (Int. No. 3). Finally, Toledo says that he "will be adversely impacted by the fact that he is frequently in the area of the [Montgomery GDF] and also because he is a citizen of Albuquerque and there is no basis for limiting the ability of citizens of Albuquerque to appeal a final permitting decision of EHD." Exhibit C at 4-5 (Int. No. 5). As explained below, none of these claims are sufficient to establish Toledo's standing under New Mexico law.

Petitioners' Notice of Intent to Present Technical Testimony ("Petitioners' NOI") likewise fails to establish Toledo's standing. Petitioners identify Dr. Dana Rowangould as their sole proposed technical witness. Petitioners' NOI at 1. Petitioners expect Dr.

Rowangould to testify that emissions from vehicles entering and exiting the Montgomery GDF, in addition to emissions from vapor losses associated with refueling activities, could increase the risk of health impacts in the vicinity of the Montgomery GDF. *Id.* at 1-2; Exhibit 1 to Petitioners' NOI at 1-3. Dr. Rowangould defines the relevant vicinity by stating that "evidence suggests that vehicle emissions from busy roads are elevated for distances as great as 377-1870 feet[.]" Exhibit 1 to Petitioners' NOI at 3. Based upon this information, Dr. Rowangould identifies certain buildings near the Montgomery GDF as "potential receptors" of air pollution. See *id.* at 4 (Table 1). Toledo's father's residence, which is located well beyond 1870 feet from the Montgomery GDF, is not included in Dr. Rowangould's list of potential receptors. *Id.*

Nothing in Petitioners' NOI suggests that Toledo (or his father, for that matter) will be adversely affected by the Montgomery GDF. Significantly, Dr. Rowangould does not even conclude that the Montgomery GDF will cause, or is reasonably likely to cause, adverse health impacts in the vicinity of the Montgomery GDF. Instead, Dr. Rowangould recommends "conducting additional analysis to ensure that the potential air quality and health impacts associated with the [Montgomery GDF] are better understood." Exhibit 1 to Petitioners' NOI at 4. Thus, even assuming that Dr. Rowangould's proposed testimony is valid, which Smith's disputes, her testimony cannot establish that Toledo will be adversely affected by operation of the Montgomery GDF. Accordingly, the Board should dismiss Toledo as a petitioner in this matter.

ARGUMENT

Whether a party has standing to bring a claim is a question of law that New Mexico courts review de novo. *Protection & Advocacy System v. City of Albuquerque*, 2008-NMCA-149, ¶ 17, 145 N.M. 156, 195 P.3d 1. “For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” *Id.* (quoted authority omitted). However, if “the plaintiff’s standing does not adequately appear from all materials of record, the complaint must be dismissed.” *Id.* (quoted authority omitted).

The Air Quality Control Act, NMSA 1978, §§ 74-2-1 through -17 (“Air Act”) governs air quality permitting in New Mexico. The Air Act creates a procedural avenue for certain persons to obtain review of EHD’s air quality permitting decisions. Specifically, the Air Act provides that “[a] person who participated in a permitting action before [EHD] and who is adversely affected by such permitting action may file a petition for hearing before the [Air Board].” Section 74-2-7(H). Accordingly, the Air Act governs who has standing to challenge the issuance of an air quality permit. See *San Juan Agric. Water Users Ass’n. v. KNME-TV*, 2011-NMSC-011, ¶ 8, 150 N.M. 64, 257 P.3d 884 (“Where the Legislature has granted specific persons a cause of action by statute, the statute governs who has standing to sue.”).

Complainants who wish to challenge a permit decision must meet two criteria in order to have standing under the Air Act: (1) they must have participated in the permitting action, and (2) they must be adversely affected by the permitting action. Section 74-2-7(H). Similarly, the Air Board’s regulations require a petition for hearing to

set forth both “in what manner the petitioner participated in the permitting action . . . and how the petitioner is adversely affected by the permitting action[.]” 20.11.81.14(B)(2)(c) NMAC. As explained below, Toledo cannot meet the second factor of being adversely affected.

1. Toledo Did Not Suffer A Direct Injury, Which Is A Required Element Of Standing in New Mexico.

New Mexico’s standing doctrine “generally requires litigants to allege three elements: (1) they are directly injured as a result of the action they seek to challenge; (2) there is a causal relationship between the injury and the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision.” *ACLU of New Mexico v. City of Albuquerque*, 2008-NMSC-045, ¶ 1, 144 N.M. 471, 188 P.3d 1222 (“ACLU II”). New Mexico courts “have long been guided by the traditional federal standing analysis[.]” which incorporates these three elements. *Id.* ¶ 10. Standing is jurisdictional in New Mexico when a plaintiff seeks relief under a statutory cause of action. *Id.* ¶¶ 9 n.1, 10; *San Juan Agric. Water Users Ass’n.*, 2011-NMSC-011, ¶ 8.

With regard to the first element of standing, New Mexico requires that a complainant allege a direct injury. See *De Vargas Sav. & Loan Ass’n v. Campbell*, 1975-NMSC-026, ¶ 11, 87 N.M. 469, 535 P.2d 1320 (“New Mexico has always required allegations of *direct injury to the complainant* to confer standing.”) (emphasis added). “[O]nce the party seeking review alleges *he himself is among the injured*, the extent of the injury can be very slight.” *Id.* ¶ 12 (emphasis added). New Mexico cases establish that the alleged threat of injury must be “real and traceable to the individual plaintiffs . . . not a general, undifferentiated threat of a hypothetical harm to some unidentifiable person.” *ACLU II*, 2008-NMSC-045, ¶ 18; see also *Ramirez v. City of Santa Fe*, 1993-

NMCA-049, ¶ 9, 115 N.M. 417, 852 P.2d 690 (“[P]leadings must be something more than an ingenious exercise in the conceivable”) (quoted authority omitted).

The New Mexico Supreme Court reaffirmed the importance of the direct injury prong of New Mexico’s standing test in *ACLU II*. The plaintiffs in that case asked the Court to change New Mexico’s standing test to focus on the magnitude of the potential harm rather than on the direct nature of the harm to the particular plaintiff. 2008-NMSC-045, ¶ 17. The Court rejected the request, noting that “[r]equiring that the party bringing suit show that he is injured or threatened with injury *in a direct and concrete way* serves well-established goals of sound judicial policy.” *Id.* ¶ 19 (emphasis added). The Court quoted the following passage from Justice Kennedy’s concurrence in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992):

While it does not matter how many persons have been injured by the challenged action, the party bringing suit must show that the action injures him in a concrete and personal way. This requirement is not just an empty formality. It preserves the vitality of the adversarial process by assuring both that the parties before the court have an actual, as opposed to a professed, stake in the outcome, and that the legal questions presented ... will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.

ACLU II, 2008-NMSC-045, ¶ 19 (quoting *Lujan*, 504 U.S. at 581). The Court went on to explain that the injury in fact requirement “is deeply ingrained in New Mexico jurisprudence” and expressed concern that the plaintiffs’ proposed alternative would “eviscerat[e] the standing requirement.” *Id.* ¶ 20.

In the present case, Toledo fails to allege any facts establishing that operation of the Montgomery GDF in accordance with Permit No. 3135 would directly and concretely injure him. The closest connection Toledo has to the Montgomery GDF is the fact that

his father lives 4/5 of one mile from the Montgomery GDF and the two “regularly” travel through the intersection of Montgomery and Louisiana. This claim is virtually identical to the one Toledo made in connection with his appeal of Permit No. 1677-M2 in AQCB No. 2013-6 (“Smith’s Tramway Appeal”) that he has friends “who live in the Four Hills area” whom he visits “regularly.” See Affidavit of Pat Toledo, attached as Exhibit D, at 1, ¶ 3. Even if one could acquire standing merely by having friends or relatives who live near a regulated activity, which Smith’s disputes, Toledo fails to explain how traveling by the Montgomery GDF at some unknown frequency directly injures *him*. Again, New Mexico courts are looking for “something more than an ingenious exercise in the conceivable[.]” *Ramirez*, 1993-NMCA-049, ¶ 9 (quoted authority omitted), or an “undifferentiated threat of a hypothetical harm[.]” *ACLU II*, 2008-NMSC-045, ¶ 18. Rather, in order to have standing in New Mexico, a claimant “must show injury or a real risk of future injury.” *N.M. Cattle Growers Ass’n v. New Mexico Water Quality Control Com’n*, 2013-NMCA-046, ¶ 13, 299 P.3d 436. The Air Board concluded in the Smith’s Tramway Appeal that Toledo did not have a sufficient connection to the Tramway GDF to be adversely affected in that case. The same is true in the present case.

Similarly, Toledo cannot claim to have standing simply as a “citizen of Albuquerque.” To conclude otherwise would render meaningless the requirement of Section 74-2-7(H) and 20.11.81.14(B)(2)(c) NMAC that a petitioner be “adversely affected” by the permitting action. Under that view, essentially any member of the Albuquerque community could challenge a permitting action without having to demonstrate a direct injury in fact. This is not the law. *DeVargas*, 1975-NMSC-026, ¶ 11; *ACLU II*, 2008-NMSC-045, ¶ 18.

To the extent Toledo claims to be acting on behalf of the citizens of Albuquerque, he cannot meet the following three-part test for standing to assert claims on behalf of third parties set forth by the New Mexico Supreme Court in *New Mexico Right To Choose/NARAL v. Johnson*: “The litigant must have suffered an injury in fact, thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party’s ability to protect his or her own interests.” 1999-NMSC-005, ¶ 13, 126 N.M. 788, 975 P.2d 841 (internal quotation marks and citation omitted). Toledo fails to meet the first part of the test because he cannot identify his own injury in fact. Nor can he claim to have a close relation to the third party in this case, which is presumably the entire population of the City of Albuquerque. Finally, there is no hindrance to the ability of any citizen of Albuquerque who participates in a permitting action and who is adversely affected by it to challenge the issuance of a minor stationary source permit such as Permit No. 3135. See *id.* ¶ 14 (holding that advocacy group had standing to represent its members in part because “privacy concerns and time constraints impose a significant hindrance on the ability of [the members] to protect their own interest[.]”).

Smith’s does not challenge Toledo’s right to participate in public information hearings relating to any proposed GDF air permit, nor does Smith’s challenge his right to give public comment at regular Board meetings or even during a hearing on the merits. Those are the appropriate avenues for Toledo to express his views about GDF air quality permitting. But Toledo cannot be allowed to occupy the status of a petitioner, with the accompanying right to invoke and fully participate in the hearing process,

simply because he has taken a special interest in Smith's fuel centers. *See United States v. SCRAP*, 412 U.S. 669, 687 (1973) (holding that the direct injury requirement of standing "prevents the judicial process from becoming no more than a vehicle for the vindication of the value interests of concerned bystanders"); *see also Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982) ("[S]tanding is not measured by the intensity of the litigant's interest or the fervor of his advocacy."). Concluding otherwise would render New Mexico's law of standing meaningless and would open the Board's hearing procedure to anyone who opposes the issuance of any air permit. No sound reason supports such a result.

CONCLUSION

Toledo cannot meet both of the elements of standing set forth in Section 74-2-7(H) and 20.11.81.2. The Board should therefore dismiss Toledo from this action with prejudice. Counsel for EHD concurs in this motion. Concurrence of counsel for Petitioner Toledo was not sought due to the dispositive nature of this motion.

SUTIN, THAYER & BROWNE
A Professional Corporation

By



Frank C. Salazar
Timothy J. Atler

Post Office Box 1945
Albuquerque, New Mexico 87103-1945
Telephone: (505) 883-2500
*Attorneys for Smith's Food & Drug
Centers, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion To Dismiss was served on the following parties, counsel and other individuals by the method indicated:

The original of the Motion to Dismiss was filed with the Hearing Clerk in this matter along with nine copies, all of which were delivered to the Hearing Clerk by hand delivery.

EMAIL

Carol M. Parker
Assistant City Attorney
P.O. Box 2248
Albuquerque, New Mexico 87103
cparker@cabq.gov
*Attorney for City of Albuquerque,
Environmental Health Department*

EMAIL


Pete V. Domenici, Jr.
Lorraine Hollingsworth
Domenici Law Firm, PC
320 Gold Avenue SW, Suite 1000
Albuquerque, NM 87102
pdomenici@domenicilaw.com
lhollingsworth@domenicilaw.com
Attorneys for Petitioners

HAND-DELIVERY AND EMAIL

Felicia Orth, Esq.
c/o Margaret Nieto
Control Strategies Supervisor
Air Quality Division, Environmental Health Dept.
One Civic Plaza
3rd Floor, Room 3023
Albuquerque, NM 87103
orthf@yahoo.com
Board Attorney

on the 19th day of September, 2014.

SUTIN, THAYER & BROWNE
A Professional corporation

By 

Get directions My places



A 3404 Calle Del Rancho NE, Albuquerque, NM

B 6941 Montgomery Boulevard Northeast, Albu

Add Destination - Show details

GET DIRECTIONS

Walking directions are in beta.

Use caution - This route may be missing sidewalks or pedestrian paths

Suggested routes

San Mateo Blvd NE 4.3 mi, 1 hour 27 mins

Carlisle Blvd NE 4.3 mi, 1 hour 27 mins

San Pedro Dr NE 4.3 mi, 1 hour 27 mins

Or take Public Transit (Bus) 21 mins

Walking directions to 6941 Montgomery Blvd NE, Albuquerque, NM 87109

A 3404 Calle Del Rancho NE Albuquerque, NM 87105

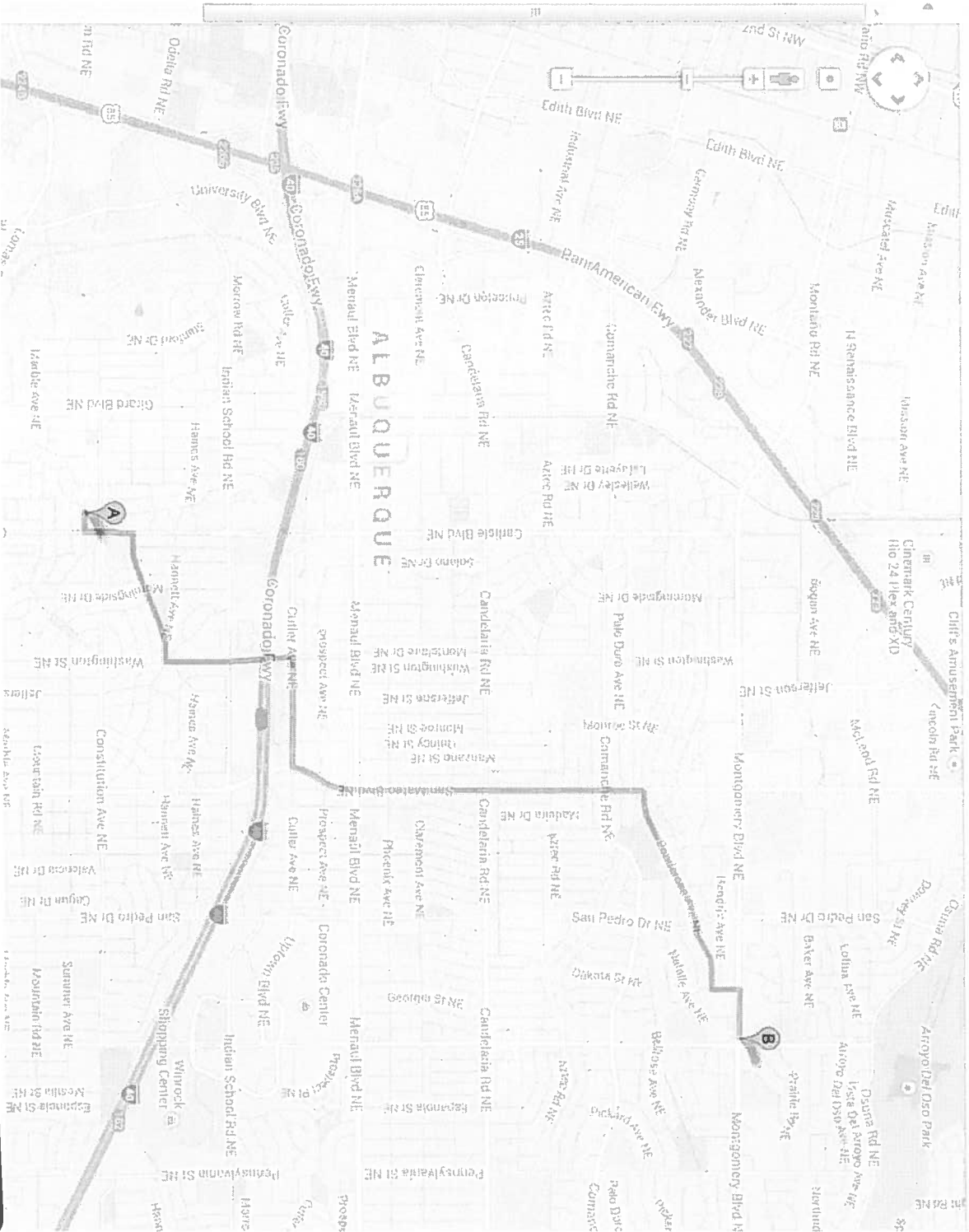
1. Head east on Calle Del Rancho NE toward Carlisle Blvd NE

2. Turn left onto Carlisle Blvd NE

3. Turn right onto Aspen Ave NE

4. Continue onto Hannett Ave NE

4.3 mi
0.5 mi
0.5 mi
0.5 mi



Get directions My places



A 3232 La Ronda NE

B 6941 Montgomery Boulevard Northeast, Albu

Add Destination - Show options



Walking directions are in beta.

Use caution - This route may be missing sidewalks or pedestrian paths

Suggested routes

Louisiana Blvd NE 0.8 mi, 16 mins

Or take Public Transit (Bus) 6 mins

Walking directions to 6941 Montgomery Blvd NE, Albuquerque, NM 87109

A 3232 La Ronda Pl NE Albuquerque, NM 87110

1. Head north on La Ronda Pl NE toward Louisiana Blvd NE

2. Turn left onto Louisiana Blvd NE

3. Turn left onto Montgomery Blvd NE

B 6941 Montgomery Blvd NE Albuquerque, NM 87109

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause variations to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2012 Google



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**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. 3135

Margaret M. Freed, Mary Ann Roberts
and Pat Toledo,

Petitioners.

No. AQCB 2014-2

**PETITIONERS' RESPONSES TO SMITH'S INTERROGATORIES,
REQUESTS FOR ADMISSIONS AND REQUEST FOR PRODUCTION**

COME NOW the Petitioners, by and through undersigned counsel of record, and hereby provide the following responses to Smith's Food & Drug Centers, Inc.'s Interrogatories, Requests for Admissions and Request for Production.

INTERROGATORIES

Interrogatory No. 1: If any petitioner contends he or she will personally suffer from any negative effects of "air pollution," as that term is defined in NMSA 1978, § 74-2-2(B) (2001), as a result of the emissions authorized by Permit No. 3135, please identify: (1) the specific negative effects each petitioner contends he or she will suffer, (2) the specific factual basis for each petitioner's contention that he or she personally will suffer negative effects, (3) any medical, environmental or other scientific evidence that supports the contention, and (4) all witnesses and exhibits petitioners will present in support of the contention at the September 10, 2014 hearing on the merits (the "Hearing").

ANSWER: The Petitioners object to subparts 3 and 4 of Interrogatory No. 1 in that it requests information that will be provided pursuant to the Notice of Intent to Present Technical Testimony. Ms. Roberts states that the VOCs produced at the intersection of Montgomery and



Louisiana are already high and are adversely affecting her health and that of her employees. See Petition for Hearing and answers to remaining interrogatories.

Interrogatory No. 2: With regard to the allegation on page 2 of the Petition that Petitioner Toledo “provides regular assistance and care for his father [and] is regularly in the area of the proposed fuel dispensing station [at 6941 Montgomery Blvd NE (“Montgomery GDF”)],” please state specifically: (1) what type of care Toledo provides to his father, (2) how often Toledo provides such care (e.g. days per week or per month), (3) what specific distance encompasses the “area” of the Montgomery GDF to which Toledo refers, (4) how often Toledo is in that “area” (e.g. days per week or per month), and (5) the route Toledo takes when visiting his father’s residence.

ANSWER: Petitioner Toledo’s father is 94-years-old and lives less than a mile north of the proposed GDF. His health is fragile and he suffers from respiratory conditions. Mr. Toledo provides his father assistance with daily living, including but not limited to companionship, health and home care assistance, running errands, and transportation to appointments. Mr. Toledo’s father does not drive and is dependent on Mr. Toledo for assistance and companionship. Mr. Toledo visits his father 3 to 4 times per week. The routes to and from his father’s house vary depending on what they are doing but they regularly travel through the intersection of Montgomery and Louisiana.

Interrogatory No. 3: With regard to Petitioner Toledo’s allegation on page 2 of the Petition that the Montgomery GDF will have an “impact” on his father’s property and quality of life, describe: (1) the specific impact alleged, (2) the specific factual basis for the allegation, (3) any medical, environmental or other scientific evidence that supports the allegation, and (4) all witnesses and exhibits petitioners will present at the Hearing in support of the allegation.

ANSWER: Petitioner Toledo objects to subparts 3 and 4 of Interrogatory No. 3 in that it requests information that will be provided pursuant to the Notice of Intent to Present Technical Testimony. The specific impacts alleged include, but are not limited to, odors, increased air pollution, increased traffic and congestion and cumulative effects that may result from adding a large GDF that will necessarily attract more traffic to an already congested area. The proposed GDF has not yet been built so there is no existing direct evidence of the impacts from the GDF. However, as Mr. Toledo will testify at the hearing, he is familiar with the impacts resulting from the Smith's GDF located at Carlisle and Constitution and it is reasonable to expect that similar impacts will occur from the proposed GDF at the Montgomery and Louisiana location.

Interrogatory No. 4: With regard to the allegation on page 2 of the Petition that the City of Albuquerque Environmental Health Department's Air Quality Program ("EHD") "refused and failed to take into consideration quality-of-life concerns" raised at the public information hearing, state: (1) what specific concerns EHD allegedly failed to consider and, (2) if petitioners contend that EHD's consideration of those concerns should have led to a denial of Permit No. 3135, state the specific factual and legal bases for that contention.

ANSWER: EHD, in the letter of April 30, 2014, stated: "Before the Department made a decision regarding Smith's application, the Department considered all written comments and evidence, testimony, exhibits and questions supporting and opposing the permit application. The Department considered whether the application complied with the technical requirements of the Clean Air Act, the Air Act, and applicable air quality ordinances and regulations. Public opinion regarding air quality issues, wider public health, and environmental issues, and additional public safety and welfare issues were duly noted and, in some cases, conveyed to City Departments with jurisdiction over particular issues." EHD's refusal to consider the public comments in

opposition to the GDF, and the issues raised by the public, as identified in the EHD letter, in determining whether to issue the permit is contrary to the decision of the Air Quality Board in the Carlisle case, AQCB 2012-1 and 2012-2 and to the requirement to fully consider public comments regarding quality of life issues set forth in *Colonias Dev. Council v. Rhino Enviro. Services*, 2005-NMSC-024, 138 N.M. 133. The issues raised by the public include increased VOC emissions, odors, fumes, impacts to the children attending Cleveland Middle School, which is directly south of the proposed location, traffic increases and the cumulative effect of building a large-scale GDF at the proposed location.

Petitioner Roberts further states that adding a third gas station plus the emissions testing business at this intersection will increase the VOCs, emissions, odors and fumes. EHD did not consider the impact on Cleveland Middle School, the dental complex, the Church, the shopping centers, and the people, both children and adults, who will be exposed to the increased emissions and traffic conditions that will result from the proposed GDF.

See Answer to Interrogatory No. 10.

Interrogatory No. 5: With regard to the allegation on page 2 of the Petition that “each of the Petitioners are likely to be adversely affected by increased VOC emissions, odors, fumes, increased traffic and other negative impacts on their property and quality of life resulting from the construction of the [Montgomery GDF],” please state: (1) the specific factual basis for the allegation, (2) what specifically are the “other negative impacts” to which Petitioners refer, and (3) every statute or regulation supporting Petitioners’ contention that any of these alleged impacts should compel reversal or revocation of EHD’s issuance of Permit No. 3135.

ANSWER: Petitioners Margaret Freed and Mary Ann Roberts own property in the immediate vicinity of the proposed GDF location and will be adversely affected by the identified

negative impacts from the proposed GDF. Both Ms. Freed and Ms. Roberts face a possible loss of business and possible impacts to their customers and tenants. Petitioner Pat Toledo will be adversely impacted by the fact that he is frequently in the area of the proposed GDF and also because he is a citizen of Albuquerque and there is no basis for limiting the ability of citizens of Albuquerque to appeal a final permitting decision of the EHD. See Answer to Interrogatory No. 4.

Interrogatory No. 6: Are Petitioners aware of any instance in which a person suffered a documented physical injury or medical condition as a result of emissions generated by one or more gasoline dispensing facilities in Albuquerque or in any other location? If so, please provide all details about any such instances, including but not limited to name of person injured, contact information, type of physical injury or medical condition suffered, date of injury, and location of injury.

ANSWER: The husband of Mary Ann Roberts, Mel Roberts, was diagnosed with Multiple Myeloma in 1998 and passed away in October, 2005 as a result of the disease. It is well documented that constant exposure to benzene with cause this type of cancer. Mr. and Mrs. Roberts have owned the Chevron station since 1993 and Mr. Roberts worked daily in that environment. It is Ms. Roberts' belief that the exposure to the gasoline fumes was the cause of or contributed to Mr. Roberts contracting Multiple Myeloma.

Interrogatory No. 7: Do Petitioners contend that any applicable law prohibits the construction or operation of more than two gas stations at a single intersection in Albuquerque or in Bernalillo County? If so, please identify any such law.

ANSWER: The Petitioners object to Interrogatory No. 7 in that it requests a legal conclusion, which is not the proper subject of interrogatories. In addition, the Petitioners have

not made any such claims and that is not the basis for the Petition for Hearing before the Board.
See Answer to Interrogatory No. 4.

Interrogatory No. 8: With regard to the allegation on page 5 of the Petition that the Chevron station owned by Petitioner Mary Ann Roberts has an annual throughput limit of 800,000 gallons, please state: (1) the specific nature of Ms. Roberts' ownership interest in the Chevron station and, if applicable, in the real property upon which the Chevron is situated, (2) the date of issuance and permit number for any air quality permit or permit modification authorizing gasoline throughput at the Chevron station, (3) the actual annual throughput for the Chevron station for the twelve-month periods ending on December 31 of 2011, 2012 and 2013, and for the twelve-month period ending on June 30, 2014, and (4) if the Chevron station has ever exceeded its annual throughput limit, on what dates and in what amounts.

ANSWER:

- (1) 100% ownership of the building and property
- (2) Permit No. 1519, issued 02/25/2000
- (3) 01/11 – 12/11 707,997 gallons; 01/12 – 12/12 745,816 gallons; 01/13 – 12/13 758,185 gallons; 01/14 – 06/14 250,121 gallons.
- (4) The station has never exceeded its annual throughput limit.

Interrogatory No. 9: With regard to the allegation on page 5 of the Petition that the “construction of the [Montgomery GDF] will result in significantly increased traffic, which will cause an increase in air pollution[,]” please identify: (1) the specific factual basis for the allegation, (2) all witnesses and exhibits petitioners will present at the Hearing in support of the allegation, and (3) if petitioners contend that an actual or potential increase in traffic from mobile

sources, such as motor vehicles, can be a basis for denying an application for a minor stationary source permit, all legal authority supporting that contention.

ANSWER: Petitioners object to Interrogatory No. 9 in that it requests information that will be provided pursuant to the Notice of Intent to Present Technical Testimony. Without waiving any objections, the Petitioners state that, by its very nature, a GDF relies on motor vehicles in order to sell its product and, given the size of the proposed GDF and the experience at the Carlisle GDF location, it is reasonable to expect that the proposed GDF will result in significantly increased traffic and associated increases in air pollution. The Petitioners do not have a traffic study because neither Smith's nor the City prepared such a study. The decision of the Air Quality Board in the Carlisle case, AQCB 2012-1 and 2012-2T provides the basis for denial of the application.

Interrogatory No. 10: With regard to the allegation on page 5 of the Petition that the property owned by Petitioner Freed "is immediately adjacent to the [Montgomery GDF] and would be impacted by the VOCs, fumes and increased traffic[,]" please identify: (1) the specific nature of Ms. Freed's ownership interest in the property, (2) what specific impact petitioners are alleging the VOCs, fumes and increased traffic will have on Petitioner Freed's property, (3) the specific factual basis for the allegation, (4) all witnesses and exhibits petitioners will present at the Hearing in support of the allegation, and (5) any applicable statutory or regulatory standards for VOC emissions that petitioners contend would be violated by the operation of the Montgomery GDF in accordance with Permit No. 3135.

ANSWER: Petitioner Freed objects to subparts 4 and 5 of Interrogatory No. 10 in that it requests information that will be provided pursuant to the Notice of Intent to Present Technical Testimony.

Ms. Freed has owned the property since 1983. The property is a commercial location whose tenants include Dr. Margaret Jansen, who has been a tenant for over 20 years, Optic Expressions, which has operated out the same location since 1983, and the Desert Rose Playhouse, a non-profit organization which has been at this location since 1990 and whose work includes summer programs for children. In addition, the Southern Bell Spa is expected to become a tenant in August, 2014.

The VOCS, fumes, odors and increased traffic will have a direct and negative impact on Ms. Freed's reasonable use of her property because it is likely that the air conditioning and heating units in the building will pull the pollutants, fumes and odors into the buildings, which will affect all of the occupants and users of the premises and will impact the usefulness and value of Ms. Freed's property. With a GDF that is expected to dispense 7,000,000 gallons of fuel, the customer base would be several times the size of a normal gas station, which would result in significantly increased traffic, which could impact the access to Ms. Freed's property. In addition, customers approaching the GDF from the west on Montgomery will be forced to make a left turn at the intersection onto Louisiana and then another left turn into the GDF, again impacting traffic and creating congestion.

Ms. Freed has experienced the impacts from odors and fumes from a gasoline station first hand. On July 11, 2014, Ms. Freed and her granddaughter were at the intersection of Montgomery and Wyoming, stopped at a red light. The car air conditioning pulled odors and fumes from the adjacent GDF into the car. The pollutants had an immediate effect on Ms. Freed and her granddaughter, making Ms. Freed feel as though she was suffocating. The traffic light changed and she was able to leave the situation.

Interrogatory No. 11: With regard to the allegation on page 5 of the Petition that the Montgomery GDF “would have negative and cumulative impacts on the quality of life in the area and on the health, welfare and safety of people who own property, live, go to school and regularly travel in the area[.]” please identify: (1) the specific negative impacts to which Petitioners refer, (2) the specific cumulative impacts to which Petitioners refer, (3) the specific factual basis for the allegation, (4) all witnesses and exhibits petitioners will present at the Hearing in support of the allegation, and (5) any legal authority upon which petitioners rely in support of the allegation.

ANSWER: The Petitioners object to Interrogatory No. 11 because it seeks information that is required to be presented in the Notice of Intent to Present Technical Testimony.

Interrogatory No. 12: With regard to the statement by Petitioner Freed in Exhibit 2 of the Petition that Smith’s request for throughput at the Montgomery GDF “is in violation of proper zoning regulations[.]” please state: (1) the specific portion of the Albuquerque Zoning Ordinance that Petitioner Freed claims has been violated, and (2) the specific factual basis for that claim.

ANSWER: Petitioner Freed does not have information responsive to this Interrogatory at this time and reserves the right to supplement her answer.

Interrogatory No. 13: With regard to the claim by Petitioner Freed in Exhibit 2 of the Petition that Smith’s permit request for the Montgomery GDF “is not for an ‘Area Source’ but is instead for a ‘Major Source’ due to their stated 45.5 tons of VOC’s” please identify what specific legal authority, including but not limited to any provision of the New Mexico Air Quality Control Act, the federal Clean Air Act or the Albuquerque-Bernalillo County Air Quality

Control Board's ("Air Board") regulations, supports Petitioner Freed's claim that a gasoline dispensing facility emitting up to 45.5 tons of VOCs annually is a major source.

ANSWER: Petitioner Freed objects to this Interrogatory because it calls for legal conclusions, which are not the proper subject of interrogatories.

Interrogatory No. 14: With regard to the allegation by Petitioner Freed in Exhibit 2 of the Petition concerning "health issues" that would result from "very high amounts of pollutants[.]" please identify: (1) the specific health issues to which Petitioner Freed refers, (2) the specific pollutants to which Petitioner Freed refers, (3) the specific factual basis for the allegation, and (4) all witnesses and exhibits petitioners will present at the Hearing in support of the allegation.

ANSWER: Petitioner Freed objects to this Interrogatory in that it requests information that is required to be included in the Petitioners' Notice of Intent to Present Technical Testimony.

Interrogatory No. 15: Do Petitioners contend that the construction and operation of the Montgomery GDF in accordance with Permit No. 3135 will: (1) not meet applicable standards, rules or requirements of the New Mexico Air Quality Control Act or the federal Clean Air Act, (2) cause or contribute to air contaminant levels in excess of a national or state standard or, within the boundaries of the City of Albuquerque and Bernalillo County, applicable local ambient air quality standards, or (3) violate any other provision of the New Mexico Air Quality Control Act or the federal Clean Air Act? If so, please state the specific factual basis supporting the contention.

ANSWER: Petitioners object to Interrogatory No. 15 because it calls for legal conclusions, which are not the proper subject of interrogatories. See Response to Interrogatory No. 4.

Interrogatory No. 16: Do Petitioners contend that EHD failed to comply with applicable regulations governing public notice and/or public participation prior to issuing Permit No. 3135? If so, please state the specific factual and legal bases for the contention(s).

ANSWER: Petitioners object to Interrogatory No. 16 because it calls for legal conclusions, which are not the proper subject of interrogatories. The Petitioners contend that the City should have provided notice to adjacent property owners, as they have in other matters that have the potential to directly impact the surrounding property owners. For example, when another property owner requested a permit to erect a cell tower on his property, the adjacent property owners were notified by the City. The cell tower was not erected.

Interrogatory No. 17: Do Petitioners contend that EHD was required to consider what cumulative impact, if any, would result from the emissions authorized by Permit No. 3135 in combination with the emissions authorized by other minor stationary source permits issued to Smith's or to any other gas stations? If so, please identify the specific statutes, regulations or cases upon which Petitioners rely in support of the contention.

ANSWER: See Answer to Interrogatory No. 4.

Interrogatory No. 18: Do Petitioners contend that the annual throughput limits set forth in minor stationary source permits for gasoline dispensing facilities in Albuquerque and Bernalillo County serve any purpose other than to enable EHD to determine annual fees and to forecast an emissions inventory of VOCs in Albuquerque and Bernalillo County? If so, please identify: (1) what other specific purpose(s) petitioners contend the throughput limit serves, (2)

all legal authority upon which petitioners rely in support of the contention, and (3) all witnesses and exhibits petitioners will present at the Hearing in support of the contention.

ANSWER: Petitioners object to Interrogatory No. 18 because it calls for legal conclusions, which are not the proper subject of interrogatories. See Response to Interrogatory No. 4.

Interrogatory No. 19: Do Petitioners contend that EHD should have issued Permit No. 3135 with an annual throughput limit that is less than seven million gallons per year? If so, please identify: (1) the maximum throughput limit petitioners contend EHD was authorized to approve for the Montgomery GDF, (2) the specific factual basis for the contention, (3) all legal authority upon which petitioners rely in support of the contention, and (4) all witnesses and exhibits petitioners will present at the Hearing in support of the contention.

ANSWER: Petitioners object to Interrogatory No. 19 because it calls for legal conclusions, which are not the proper subject of interrogatories. See Response to Interrogatory No. 4.

Interrogatory No. 20: If Petitioners' response to any of the requests for admission set forth below is anything other than an unqualified admission, then for each such response, state:

- A. Every reason, factual or legal, why Petitioners do not admit the request without qualification;
- B. The name, position or job title, and current or last known address of every person Petitioners will call to testify as a witness in support of Petitioners' position on that matter; and

all legal authority upon which petitioners rely in support of the contention, and (3) all witnesses and exhibits petitioners will present at the Hearing in support of the contention.

ANSWER: Petitioners object to Interrogatory No. 18 because it calls for legal conclusions, which are not the proper subject of interrogatories. See Response to Interrogatory No. 4.

Interrogatory No. 19: Do Petitioners contend that EHD should have issued Permit No. 3135 with an annual throughput limit that is less than seven million gallons per year? If so, please identify: (1) the maximum throughput limit petitioners contend EHD was authorized to approve for the Montgomery GDF, (2) the specific factual basis for the contention, (3) all legal authority upon which petitioners rely in support of the contention, and (4) all witnesses and exhibits petitioners will present at the Hearing in support of the contention.

ANSWER: Petitioners object to Interrogatory No. 19 because it calls for legal conclusions, which are not the proper subject of interrogatories. See Response to Interrogatory No. 4.

Interrogatory No. 20: If Petitioners' response to any of the requests for admission set forth below is anything other than an unqualified admission, then for each such response, state:

- A. Every reason, factual or legal, why Petitioners do not admit the request without qualification;
- B. The name, position or job title, and current or last known address of every person Petitioners will call to testify as a witness in support of Petitioners' position on that matter; and

C. A detailed description of every document or other item that Petitioners will offer as an exhibit in support of Petitioners' position on that matter.

ANSWER: The Petitioners object to subparts B and C of Interrogatory No. 20 because it requests information that is required to be included in the Notice of Intent to Present Technical Testimony.

REQUESTS FOR ADMISSION

Request for Admission No. 1: Admit that Petitioner Toledo does not own, rent or otherwise have an interest in real property within a three-mile radius of the Montgomery GDF.

RESPONSE: Admit x Deny

Petitioner Toledo specifically denies that a three-mile radius has any relevancy to this matter.

Request for Admission No. 2: Admit that Petitioner Toledo will not suffer a direct injury in fact as a result of the issuance of Permit No. 3135.

RESPONSE: Admit Deny x

Petitioner Toledo objects to this Request for Admission because it requires a legal conclusion and therefore denies the same.

Request for Admission No. 3: Admit that Joe Toledo's residence, located at 3232 La Ronda NE, is located approximately 4/5 of one mile from the Montgomery GDF.

RESPONSE: Admit x Deny

Request for Admission No. 4: Admit that Petitioner Toledo has filed a lawsuit against Smith's in the New Mexico Second Judicial District Court, Case No. D-202-DV-2013-08822, in which Toledo seeks, among other things, money damages from Smith's.

RESPONSE: Admit **x** Deny ____

Petitioner Toledo objects to the relevancy of this Request for Admission.

Request for Admission No. 5: Admit that the Petitioners have no specific evidence that their “quality of life” will be adversely affected by the operation of the Montgomery GDF in accordance with Permit No. 3135.

RESPONSE: Admit ____ Deny **x**

See Answers to Interrogatories. Additional information will be provided as part of the Notice of Intent to Present Technical Testimony.

Request for Admission No. 6: Admit that the Petitioners’ “quality of life” concerns lack a nexus to an applicable air quality statute or regulation.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 7: Admit that retail gasoline sales is a permissive use in the C-2 Community Commercial Zone.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 8: Admit that the Montgomery GDF is not a major source, as that term is defined in 20.11.42.7(S) NMAC, if operated in accordance with Permit No. 3135.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 9: Admit that the Petitioners are not aware of any specific instance in which emissions generated by one or more gasoline dispensing facilities in Albuquerque or in any other location caused a person to suffer a documented physical injury or medical condition.

RESPONSE: Admit ____ Deny x

Request for Admission No. 10: Admit that the Petitioners have no specific evidence that the operation of the Montgomery GDF will result in "significantly increased traffic."

RESPONSE: Admit ____ Deny x

Information will be provided as part of the Notice of Intent to Present Technical Testimony. See Answer to Interrogatory Nos. 9 and 10.

Request for Admission No. 11: Admit that the public notice provided by EHD for the permitting action in this case complied with the requirements of 20.11.41.14(A)(3) NMAC (2002).

RESPONSE: Admit ____ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 12: Admit that Smith's meets all requirements under the Air Quality Control Act and applicable regulations adopted pursuant to that Act for receiving Permit No. 3135.

RESPONSE: Admit ____ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 13: Admit that the Petitioners have no specific evidence of a “cumulative impact” on any person or community resulting from the operation of Smith’s fuel centers in Albuquerque.

RESPONSE: Admit ____ Deny **x**

The Carlisle permitting case provided testimony and evidence of the impacts from a Smith’s GDF that resulted in the Air Quality Board overturning the issuance of Smith’s permit.

Request for Admission No. 14: Admit that the sole purposes of the annual throughput limit in minor stationary source permits for gasoline dispensing facilities in Albuquerque and Bernalillo County are to enable EHD to (1) determine annual fees, and (2) forecast an emissions inventory of VOCs in Albuquerque and Bernalillo County.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 15: Admit that 40 CFR Part 63, Subpart CCCCCC (“Hex C”) is the federal regulation governing emission standards for gasoline dispensing facilities.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 16: Admit that in promulgating Hex C, the federal Environmental Protection Agency chose to regulate VOC emissions by requiring gasoline

dispensing facilities to use Stage I vapor recovery systems and other performance measures rather than by setting ambient air standards for VOCs.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 17: Admit that there are no ambient air standards for VOCs.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 18: Admit that petitioners have no evidence that Smith's will be unable to comply with the requirements of Hex C that are incorporated by reference in Permit No. 3135.

RESPONSE: Admit ____ Deny **x**

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same.

Request for Admission No. 19: Admit that the hazardous air pollutants ("HAPs") that tend to be present in gasoline collectively constitute anywhere from 2% to 11% of VOCs emitted from gasoline.

RESPONSE: Admit ____ Deny **x**

Smith's has not provided any basis for this Request for Admission and the Petitioners therefore deny the same.

Request for Admission No. 20: Admit that Smith's application for Permit No. 3135 was not an application for a variance pursuant to NMSA 1978, § 74-2-2(B) (1992).

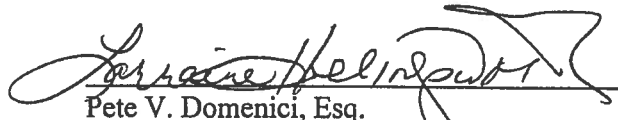
RESPONSE: Admit x Deny

REQUEST FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1: Produce all written and electronically stored documents, including all exhibits petitioners will present at the Hearing, identified or relied upon in petitioners' answers to the interrogatories and requests for admissions set forth above and, for each document produced, identify the corresponding interrogatory(ies) or request(s) for admissions to which that document is responsive.

RESPONSE: Petitioners object to the Request for Production because it calls for documents and information that are to be provided as part of the Notice of Intent to Present Technical Testimony.

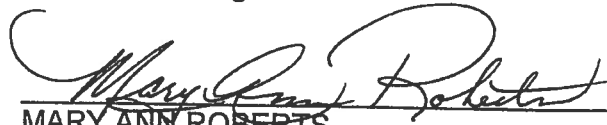
DOMENICI LAW FIRM, P.C.


Pete V. Domenici, Esq.
Lorraine Hollingsworth, Esq.
320 Gold Ave. SW, Suite 1000
Albuquerque, New Mexico 87102
505-883-6250

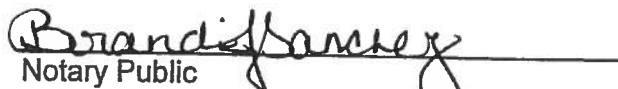
VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Mary Ann Roberts, being of legal age, having been first duly sworn upon her oath, states that she participated in answering and has read, knows and understands the contents of petitioners' answers to Smith's interrogatories, and the statements and information provided therein are true of her own knowledge and belief.


MARY ANN ROBERTS

SUBSCRIBED AND SWORN TO before me on this 1st day of August 2014, by Mary Ann Roberts


Notary Public

My Commission Expires:

2/13/16



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/16

VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Margaret M. Freed, being of legal age, having been first duly sworn upon her oath, states that she participated in answering and has read, knows and understands the contents of petitioners' answers to Smith's interrogatories, and the statements and information provided therein are true of her own knowledge and belief.

Margaret M. Freed
MARGARET M. FREED

SUBSCRIBED AND SWORN TO before me on this 1st day of
August 2014, by Margaret M. Freed

Brandi Sanchez
Notary Public

My Commission Expires:

2/13/16



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/16

VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Pat Toledo, being of legal age, having been first duly sworn upon his oath, states that he participated in answering and has read, knows and understands the contents of petitioners' answers to Smith's interrogatories, and the statements and information provided therein are true of his own knowledge and belief.

Pat Toledo
PAT TOLEDO

SUBSCRIBED AND SWORN TO before me on this 1st day of August 2014, by Pat Toledo.

My Commission Expires:

2/13/16
3282855.doc

Brandi Sanchez
Notary Public



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/16

AFFIDAVIT OF PAT TOLEDO

STATE OF NEW MEXICO)
) ss:
COUNTY OF BERNALILLO)

COMES NOW Affiant, Pat Toledo, being first duly sworn upon his oath, and states as follows:

1. My name is Pat Toledo and I am a retired citizen of the City of Albuquerque, New Mexico.
2. I live approximately 6 miles from the Smith's gas station located at Tramway and Central. I can drive there, and often do, in 10 minutes and ride my bike there in about 25 minutes.
3. I have friends who live in the Four Hills area who I visit regularly.
4. I became interested and active in matters involving the increased throughput at Smith's gas stations and the negative impacts of those increases on the air quality in the City of Albuquerque because of the permit modification that was requested for the Smith's gasoline station located at 1313 Carlisle. I participated in that matter and, as a result of my participation, I became aware of the number of Smith's gas stations located in the City of Albuquerque. I also became aware that Smith's was requesting similar permit modifications at those locations.
5. The air quality in Albuquerque is not confined to one neighborhood or one part of town. Impacts to air quality in one location can have a negative impact on the entire City. As a long-time resident of the City, I am concerned about air quality throughout the entire City.
6. I participated in the permitting procedure for the increased throughput at the Tramway location by submitting comments and requesting a public hearing. My request for a public hearing was denied by the Department because they determined that there was not enough



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public interest to justify holding a hearing.


7. After the permit modification was approved by the Department, I took the time to draft a petition and to get signatures from people living in the area of the Smith's Tramway location.

8. As part of my involvement at the Carlisle location, I became aware that Smith's has a business model that links all of its stores and gas stations throughout the City. I am concerned that the increased VOCs resulting from the permit modifications at the numerous Smith's gasoline stations have the potential to impact air quality throughout the City and that there is a cumulative effect from these permitting actions.

9. I am also aware of the Smith's has had violations of its existing permits and am concerned that the Department, by granting the modifications, is simply allowing Smith's to keep increasing throughputs with little to no real oversight or incentive to comply with its existing permits.

10. I also have firsthand knowledge of the importance of public participation. Without the public participation at the Carlisle location, the Board would not have heard the full story of what has happened and is happening at the Carlisle location. We were given the opportunity to participate in the permitting process for the modification and I believe very strongly that the citizens of Albuquerque, particularly those who live close to the Tramway location, should be given the same opportunity, including the opportunity to participate in a public hearing before the permit modification is granted.

FURTHER AFFIANT SAYETH NOT.



Pat Toledo

SUBSCRIBED AND SWORN TO before me this 11 day of September,

2013.



OFFICIAL SEAL
Jeanne Cameron Washburn
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 8/11/14

Jeanne Cameron Washburn
NOTARY PUBLIC

My Commission Expires:

8/11/14