

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. 2037-M1
GEORGIANNA E. PENA-KUES, Petitioner

Petitioner's contact information:

Name/Address:

Georgianna E. Peña-Kues
3412 Calle del Monte, NE
Albuquerque, NM 87106

Phone number: (505) 265-0489

This document serves as a petition to request a hearing on the merits of an action by the City of Albuquerque Environmental Health Department Air Quality Control Division to approve permit No. 2037-M1. This modification increases the allowed gasoline throughput of the applicant from about 3.3 to 4.5 million gallons per rolling annual period. The modification to the permit also increases the allowed Volatile Organic Compounds (VOC) concentrations to 29.3 tons per year.

That VOC load in a primarily residential area is too great a load and will increase levels of benzene, a known carcinogen, and other Volatile Organic Compounds (VOC's) to unacceptable levels.

Petitioner participation in permitting action:

Petitioner testified at the Public Information Hearing (PIH) conducted by the City of Albuquerque Environmental Health Department Air Quality Division on February 27th, 2012, regarding permit No. 2037-M1.

Petitioner received notice of approval of permit no. 2037-M1 that was mailed to her on April 18, 2012. That notification stated the petitioner had the right to request a hearing on the merits of the action taken by the Air Quality Division.

Adverse effect to petitioner by permitting action taken by department:

Petitioner owns a home and lives within about 1000 feet of the business approved for the subject permit modification. Fumes generated by the approved activity will create at least 29 tons of VOC's, and perhaps much more, at the location granted the permit.

Emissions from the permitted activity will disperse away from the permitted location into surrounding neighborhoods. These emissions contain numerous chemicals, at least one of which is a known carcinogen. As a direct result of the permitted action by the department,

petitioner is subjected to a large increase in exposure to harmful VOC's, especially at the intersection where the business is located and which is frequently accessed by the Petitioner as that intersection is along the main route used for freeway access.

It should be noted that the location in question had not been used as a gas station with fuel dispensing in the memory of the Petitioner who has lived in the neighborhood for over 30 years.

For more than 30 years, Petitioner regularly used the alley adjacent to the business location granted permit No. 2037-M1. Now Petitioner is not be able to use the alley adjacent to the business for regular thoroughfare due to fumes arising from the business activity that was granted the permit under consideration. Petitioner has been standing in the vicinity of the gas station and has had to exit the area due to choking as a result of gas fumes emanating from the gas station. The fumes were so severe and intense that the Petitioner was unable to breath for several seconds.

Granting a permit modification to increase fuel throughput and associated Volatile Organic Compound emissions will increase air degradation in the vicinity of petitioner's property as well as surrounding neighborhood areas often frequented by the petitioner and will restrict the Petitioner's free access to the public right of way that the Petitioner has enjoyed for more than 30 years.

At least one chemical, benzene, released during fueling activity is a known carcinogen in humans after long-term exposure. Petitioner is subjected to this chemical when attempting to move through the neighborhood which Petitioner does on a regular basis.

Specific permitting action appealed from:

Petitioner is appealing the granting of modification Permit No. 2037-M1 by the City Environmental Health Department, Air Quality Division.

Portions of the permitting action to which petitioner objects:

Petitioner objects to the entire granting of permit modification 2037-M1.

Petitioner particularly objects to granting a modification to allow underground storage tanks No. 1 and 2 to increase annual throughput limits based on a 12 month rolling total from 3.3 to 4.5 million gallons.

In addition, petitioner also particularly objects to increasing of emissions limits on underground storage tanks No. 1 and 2 to 29.3 tons per year.

Factual and legal basis of petitioner's objections to the permitting action taken by the department:

The applicant was granted a permit modification even though division personnel were aware the permittee was in violation of their original gasoline throughput permit limit and associated emissions limit. Exceeding throughput was cited as one example of Potential Non-Compliance in the Notice Of Violation (NOV) given to the Smith's Fuel Center #496 located at 1313 Carlisle Blvd. NE, on Oct. 14, 2011. It was one item noted on the NOV with which the Division found the permittee was not in compliance. The permittee was also cited for non-compliance of their emissions limit.

The permittee increased gasoline throughput volumes thereby modifying their gasoline throughput amounts prior to the issuance of a permit in violation of NMAC 20.11.41.2 (B)(3)(c) that states "for all sources subject to this Part, applications for Authority-to-Construct permits shall be filed prior to the commencement of construction, modification, or installation. Regardless of the anticipated commencement date, no construction, modification, or installation shall begin prior to issuance of the permit."

Prior to issuance of the decision to grant the permit modification Petitioner believes Air Quality Division personnel were aware the applicant was exceeding permitted gasoline throughput limits by about 500,000 gallons.

In addition, the company did not voluntarily reduce throughput limits as required by stipulations of the NOV issued to the company. This agreement is referenced in the NOV and in a published newspaper article.

To issue a permit modification when the permitted amount was exceeded months earlier is a violation of NMAC 20.11.41.2 (B)(3)(c). This action by the Air Quality Division condones a violation of the law. By permitting the modification after the fact the Air Quality Division has completely abrogated their mandate to enforce NMAC regulations.

This violation of the NMAC creates a basis for permit denial as stated in NMAC 20.11.41.16 (A) (5) "BASIS FOR DENIAL:" that states "(A) The Department shall deny any request for a permit if;" and in subsection (5) "any provision of the Air Quality Control Act will be violated".

As a result, Air Quality Permit No. 2037-M1 should be denied.

Improper procedures at Public Information Hearing (PIH), other procedural concerns:

During the PIH on February 27th, 2012, advertized and conducted by the Air Quality Division regarding the subject permit modification, the process by which the hearing was held violated due process rights of the public and therefore the Petitioner.

Although members of the public, individuals representing the applicant, and members of the City Air Quality Control Division were present at the hearing, only members of the public, including the petitioner, were required by the contracted Hearing Officer to be sworn in prior to giving testimony. Members of the company applying for the permit modification were allowed to freely give rebuttal testimony and offer other testimony and comments, without being sworn in. Members of the City Air Quality Division present were also not sworn in.

This created an atmosphere of intimidation for members of the public who were only trying to exercise their First Amendment right of free speech and were sincerely trying to do so in complete compliance with processes mandated by the Division

During the PIH, an member of the public asked during his opportunity to speak whether the company was in compliance with its original permit. Mr. Damon Reyes of the Air Quality Division, Environmental Health Department stated that the company was in compliance. Additionally, a representative of the company requesting the modification permit stated

that the company had been given an extension to comply with the provisions of the original permit.

Petitioner has extensively reviewed both 20.11.41 NMAC and 20.11.81 NMAC and finds no indication that a mechanism exists to grant a permittee an extension of any kind in order to comply with an Authority-To-Construct permit.

I have also noted that the applicant was required to enter into a Standard Operating Procedure (SOP) with the applicant to reduce gasoline throughputs at 1313 Carlisle Blvd., NE. as one of the Corrective Actions noted in the NOV. I have requested a copy of this referenced SOP on two different occasions through a records request at the Environmental Health Department and was told that no record of an SOP relating to this applicant exists. This agreement was also referenced in a published newspaper article and during a conversation with Mr. Isreal Tavaréz on April 18, 2012, when I understood him to say that the company had not brought down their throughputs and would therefore be subject to another fine, even more substantial than the original fine, because fine amounts increase with each subsequent violation. Similar information was repeated by Mr. Westmorland, Deputy Director of the Environmental Health Department, in a published newspaper article.

Petitioner was able to obtain gasoline throughput records via a records inspection request. On review of the provided data, petitioner came to understand that the applicant was in fact allowing throughput volumes in excess of their allowed amount of about 3.3 million gallons per rolling annual period. This information was included in a write up that was submitted to the record of the PIH during the time the record was held open.

Therefore Petitioner understands that the assertions made during the PIH by the officials of the Air Quality Division were false and misleading to the public and violated the public trust.

The Petitioner also was present at a meeting two days after the PIH on February 29, 2012, where Mr. Westmorland made the assertion that they knew the applicant was not in compliance and that 3 million gallons of gasoline was too much to dispense at that location.

This blatant disregard for the truth and blurring of lines between the applicant and the City department meant to regulate that applicant – and thereby provide oversight and protection of public health and safety - is unconscionable.

Since the Air Quality Division of the Environmental Health Department is unable or unwilling to uphold the provisions of 20.11.41 NMAC I am requesting the Air Board do so and deny permit no. 2037-M1.

Remedy:

Petitioner seeks reversal of the issuance of Air Quality Permit No. 2037-M1.

Permit modification can not be granted if modification was made prior to issuance of a permit modification by City Air Quality Division. Granting this permit modification would be an approval of a violation of the original permit granted to the applicant.

Granting the remedy is within the air quality jurisdiction of the board. According to NMAC 20.11.81.2 (A) "20.11.81 NMAC governs the following adjudicatory proceedings of the

board, which are proceedings in which the board makes final, binding determinations that directly affect legal rights:

- (1) petitions for hearings on the merits before the board made by permit applicants, permittees or other persons who participated in a permitting action before the department and who are adversely affected by the permitting action, as provided by the New Mexico Air Quality Control Act, Subsection H of Section 74-2-7 NMSA 1978".

Petitioner reserves the right to present any other factual or legal issues identified by Petitioner prior to the hearing on the merits of this case.

I, Georgianna E. Peña-Kues Georgianna E. Peña-Kues hereby affirm that the information contained herein is accurate and correct to the best of my knowledge and understanding.

Date: May, 17, 2012



**AIR QUALITY AUTHORITY TO CONSTRUCT PERMIT #2037-M1
FACILITY CDS # NM/001/02027**

Richard J. Berry, Mayor

Facility ID: FA0003035 Record ID: PR0005211

Mary Lou Leonard, Director

Issued to: Smith's Food & Drug Centers, Inc.
Company Name

Certified Mail # 7010 3090 0001 4395 6530
Return Receipt Requested

1550 South Redwood Road
Mailing Address

Salt Lake City
City

UT
State

84104
Zip

Responsible Official: Steven M. Sorensen, Vice President
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.

Smith's Food & Drug Centers, Inc. ("permittee") is hereby issued this **AUTHORITY TO CONSTRUCT PERMIT** as a **MODIFIED STATIONARY SOURCE**.

This **AUTHORITY TO CONSTRUCT** permit number 2037-M1 has been issued based on the review of the application information received by the Albuquerque Environmental Health Department (Department), Air Quality Division (Division) on September 22, 2011, which was deemed complete on October 21, 2011, 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. This permit supersedes all portions of Air Quality Permit #2037 issued on November 30, 2009. As these standards and regulations are updated or amended, the applicable changes will be incorporated into this Air Quality Permit Number 2037-M1 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
Smith's Food & Drug Centers, Inc. 1313 Carlisle Blvd NE Albuquerque, NM 87110	353740 Easting 3884700 Northing	Gasoline Dispensing Facility (GDF) ¹	5541	447190

¹Gasoline dispensing facility (GDF) means any stationary facility which 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. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

Issued on the 17th day of April, 2012
Israel L. Tavaraz Israel L. Tavaraz
Print Name Sign Name

Air Quality Programs - Permitting Division
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	Underground Storage Tank	20,000	2009	Regular Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling
2	Underground Storage Tank	10,000	2009	Premium Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling

¹ GASOLINE HANDLING AND HOLDING AT RETAIL OR FLEET SERVICE STATIONS: No person shall allow loading of gasoline into an underground storage tank with greater than 3,000 gallons capacity, unless it is equipped with an approved vapor loss control system, including a submerged fill pipe, in which the displaced vapors are either continuously contained or processed such that the emission of gasoline vapors to the atmosphere do not exceed 1.15 pounds of gasoline per 1,000 gallons loaded into said tank. Liquid gasoline dispensing from the underground storage tank as well as momentary opening of the system for gasoline gauging purposes shall not be considered as vapor loss in the requirement of this Section. [Albuquerque-Bernalillo Air Quality Control Board Regulation 20.11.65.15 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. (20.11.41.18B NMAC)
- 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 monthly and annual gasoline throughput. Allowable ton per year (tpy) emissions.

Unit	Unit Description	Allowable Average Monthly Throughput of Gasoline (in gallons) ¹	Allowable Annual Throughput of Gasoline (in gallons) ²	Allowable Annual Emissions of Volatile Organic Compounds (VOC's) ² (in tons per year)
1	Underground Storage Tank	≥100,000	For Stage I Vapor Recovery 4,500,000	29.3 tons per year
2	Underground Storage Tank			

¹ Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each Gasoline Dispensing Facility (GDF) during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

² Based on the annual gasoline throughput requested in the permit application. There is no restriction on individual tank throughput.

5. EMISSIONS INVENTORY REQUIREMENTS (20.11.47 NMAC). Subsection 20.11.47.14A.(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 20.11.47.14B.(1) – Reporting Requirements – requires the submittal of an emissions inventory report annually. Therefore, an annual emissions inventory (in pounds per calendar year) shall be submitted to the department by March 15 each year by:

using the total Unit #1 and #2 actual gasoline throughputs from January 1st through December 31st of the previous calendar year. The actual gasoline throughput shall be multiplied by 0.013 pounds/gallon if Stage I Vapor Recovery is used or 0.0031 pounds/gallon if Stage II Vapor Recovery is used. An electronic emissions inventory form is available at www.cabq.gov/airquality, under Business Resources – Business Applications, Permits and Forms.

6. MODIFICATION. 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. 20.11.41.7H 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.

7. MONITORING and RECORDKEEPING [20.11.41.18.B(8)]

- A. Monitor and Maintain a log of the total monthly gasoline throughput for the facility.
 - B. Monitor and Maintain the monthly gasoline fuel purchase records for the facility.
- These records must be retained for the most recent five-year period for the facility.

8. REPORTING.

- A. By the 15th of each month the permittee shall submit to department:
 - 1. The monthly gasoline fuel throughput records for the previous month; and
 - 2. The monthly gasoline fuel purchase invoices records for the previous month.
- B. The following reporting requirements, in accordance with 20.11.41.18, 20.11.41.20, 20.11.41.47 and 20.11.41.49 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.

C. 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. 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.

10. FEDERAL RULEMAKING. In addition to Albuquerque-Bernalillo Air Quality Control Board Regulation 20.11.65 NMAC, *Volatile Organic Compounds*; 40 CFR Part 63, Subpart CCCCCC – National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Dispensing Facilities apply to this facility. Based on the requested annual throughput for gasoline, this facility's monthly throughput would amount to 100,000 gallons or more of gasoline. Therefore, the permittee shall ensure the applicable requirements of 40 CFR Part 63, Subpart CCCCCC, §63.11116, §63.11117, and §63.11118 are met as well as the Subpart A – General Provisions of 40 CFR Part 63.

A. GENERAL APPLICABLE REQUIREMENTS (§63.11116).

1. 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.

2. §63.11116(a) requires that measures to be taken include, but are not limited to, the following:

a) Minimize gasoline spills;

b) Clean up spills as expeditiously as practicable;

c) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; [§63.11116(d) Portable gasoline containers that meet the requirements of 40 CFR Part 59, Subpart F, are considered acceptable for compliance with this requirement]; and

d) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

3. §63.11116(b) requires that records be made available within 24 hours of request by the department to document your gasoline throughput.

B. SUBMERGED FILLING OF GASOLINE STORAGE TANKS (§63.11117).

1. §63.11117(b) requires that except as specified in §63.11117(c), you must only load gasoline into storage tanks at your facility by utilizing submerged filling, as defined in §63.11132, and as specified in paragraph (b)(1) or paragraph (b)(2) of this section.

2. §63.11117(b)(1) requires submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the storage tank. [A-BCAQCB regulation 20.11.65 NMAC requires submerged fill pipes to be no more than 6 inches from the bottom of the storage tank.]

3. §63.11117(b)(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the storage tank.

4. RESERVED

5. §63.11117(c) Gasoline storage tanks with a capacity of < 250 gallons are not required to comply with the submerged fill requirements in paragraph (b) of this section.

C. CONTROL REQUIREMENTS

1. §63.11118(b)(1) – meet each management practice in Table 1 of 40 CFR Part 63, Subpart CCCCCC that applies to your GDF by installing

and operating a vapor balance system on your gasoline storage tanks that meets the following design criteria (**item 1, as amended 6/25/08**):

- (a) All vapor connections and lines on the storage tank shall be equipped with closures that seal upon disconnect;
- (b) The vapor line from the gasoline storage tank to the gasoline cargo tank shall be vapor-tight, as defined in § 63.11132;
- (c) The vapor balance system shall be designed such that the pressure in the tank truck does not exceed 18 inches water pressure or 5.9 inches water vacuum during product transfer;
- (d) The vapor recovery and product adaptors, and the method of connection with the delivery elbow, shall be designed so as to prevent the over-tightening or loosening of fittings during normal delivery operations;
- (e) If a gauge well separate from the fill tube is used, it shall be provided with a submerged drop tube that extends the same distance from the bottom of the storage tank as specified in § 63.11117(b);
- (f) Liquid fill connections for all systems shall be equipped with vapor-tight caps;
- (g) Pressure/vacuum (PV) vent valves shall be installed on the storage tank vent pipes. The pressure specifications for PV vent valves shall be: a positive pressure setting of 2.5 to 6.0 inches of water and a negative pressure setting of 6.0 to 10.0 inches of water. The total leak rate of all PV vent valves at an affected facility, including connections, shall not exceed 0.17 cubic foot per hour at a pressure of 2.0 inches of water and 0.63 cubic foot per hour at a vacuum of 4 inches of water;
- (h) The vapor balance system shall be capable of meeting the static pressure performance requirement of the following equation:

$$Pf = 2c^{.500 887v}$$

Where:

- Pf = Minimum allowable final pressure, inches of water.
- v = Total ullage affected by the test, gallons.
- c = Dimensionless constant equal to approximately 2.718.
- 2 = The initial pressure, inches water; and

(i) if you own or operate a new or reconstructed GDF, or any storage tank(s) constructed after November 9, 2006, at an existing affected facility subject to § 63.11118, then you must equip your gasoline storage tanks with a dual-point vapor balance system (**item 2, as amended 12/15/09**), as defined in § 63.11132, and comply with the requirements of item 1 in Table 1.

2. The management practices specified in Table 1 of 40 CFR Part 63, Subpart CCCCCC are not applicable if you are complying with the requirements in § 63.11118(b)(2), except that if you are complying with the requirements in § 63.11118(b)(2)(i)(B), you must operate using management practices at least as stringent as those listed in Table 1 of 40 CFR Part 63, Subpart CCCCCC.

D. PERFORMANCE TEST REQUIREMENTS

Source Type	Initial Test Date	Additional Testing	Citation
A New or Reconstructed Source (commenced construction after 11/9/06) with a monthly throughput ¹ of ≥ 100,000 gal/mo	By 01/10/08 if start up precedes this date	One additional compliance test within 365 days of the most recent test	20.11.41.18.B.(9) NMAC
	Upon startup after 01/10/08		
	By 9/23/08 if startup is on or before this date and you are complying with Table 1 of 40 CFR Part 63, Subpart CCCCCC	Every three years §63.11120(a)	63.11113(a)(1), (2) 63.11113(d)(1), (2)
	Upon startup after 9/23/08 if you are complying with Table 1 of 40 CFR Part 63, Subpart CCCCCC		

¹ Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each Gasoline Dispensing Facility (GDF) during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

1. §63.11118(e) - You must comply with the applicable testing requirements contained in §63.11120.

2. §63.11120(a) - Each owner or operator, at the time of installation, as specified in §63.11113(e), of a vapor balance system required under §63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) as follows:

(a)(1) - 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 tanks using the test methods identified in paragraph (a)(1)(i) or paragraph (a)(1)(ii) as follows:

(a)(1)(i) - 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);

(a)(1)(ii) - Use alternative test methods and procedures in accordance with the alternative test method requirements in §63.7(f); and

(a)(2) - 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 balance system by conducting a static pressure test on your gasoline storage tanks using the test methods identified in paragraph (a)(2)(i) or paragraph (a)(2)(ii) as follows:

(a)(2)(i) - 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); and

(a)(2)(ii) - Use alternative test methods and procedures in accordance with the alternative test method requirements in §63.7(f).

§63.11120(b) - Each owner or operator choosing, under the provisions of §63.6(g), to use a vapor balance system other than that described in Table 1 of 40 CFR Part 63, Subpart CCCCCC must demonstrate to the Administrator or delegated authority under paragraph §63.11131(a) of this subpart, the equivalency of their vapor balance system to that described in Table 1 of 40 CFR Part 63, Subpart CCCCCC using the procedures specified in paragraphs (b)(1) through (3) as follows:

(b)(1) - You must demonstrate initial compliance by conducting an initial performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure 1P-201.1---Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (incorporated by reference, see §63.14);

(b)(2) - You must, during the initial performance test required under paragraph (b)(1) of this section, determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 1 of 40 CFR Part 63, Subpart CCCCCC and for the static pressure performance requirement in item 1(h) of Table 1 of 40 CFR Part 63, Subpart CCCCCC; and

(b)(3) - You must comply with the testing requirements specified in paragraph §63.11120 (a).

§63.11120(c) - Conduct of Performance Tests. Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

§63.11126 - Each owner or operator subject to the management practices in §63.11118 shall report to the Administrator the results of all volumetric efficiency tests required under §63.11120(b). Reports submitted under this paragraph must be submitted within 180 days of the completion of the performance testing.

E. NOTIFICATIONS.

1. **§63.11118(f)** requires that you must submit the applicable notifications as required under §63.11124.

2. **§63.11124(b)** requires that each owner or operator subject to the control requirements in §63.11118 must comply with paragraphs (b)(1) through (5) of §63.11124 as follows:

(b)(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in §63.11118. 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 (b)(1)(i) through (iii) of this section as follows:

(i) the name and address of the owner and the operator;

(ii) the address (i.e., physical location) of the GDF; and

(iii) a statement that the notification is being submitted in response to this subpart and identifying the requirements in paragraphs (a) through (c) of §63.11118 that apply to you;

(b)(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in §63.13, in accordance with the schedule specified in §63.9(h). 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 (b)(1) 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 (b)(1) of this section;

(b)(3) You are not required to submit an Initial Notification or a Notification of Compliance Status under paragraph (b)(1) or paragraph (b)(2) of this subsection if, prior to January 10, 2008, you satisfy the requirements in both paragraphs (b)(3)(i) and (ii) of this section as follows:

(i) You operate a vapor balance system at your gasoline dispensing facility that meets the requirements of either paragraphs (b)(3)(i)(A) or (b)(3)(i)(B) of this section as follows:

(b)(3)(i)(A) achieves emissions reduction of at least 90 percent; or

(b)(3)(i)(B) operates using management practices at least as stringent as those in Table 1 of 40 CFR Part 63, Subpart CCCCCC;

(ii) Your gasoline dispensing facility is in compliance with an enforceable State, local, or tribal rule or permit that contains requirements of either paragraphs (b)(3)(i)(A) or (b)(3)(i)(B) of this section;

(b)(4) You must submit a Notification of Performance Test, as specified in §63.9(c) [60 calendar days before the performance test is scheduled to allow the Administrator to review and approve the site-specific test plan required under §63.7(c), if requested by the Administrator, and to have an observer present during the test], prior to initiating testing required by §63.11120(a) and (b); and

(b)(5) You must submit additional notifications specified in §63.9, as applicable.

3. Sources in Bernalillo county that are in compliance with a 20.11.41 NMAC, Authority to Construct permit 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.**

F. RECORDKEEPING.

1. **§63.11118(g)** - You must keep records and submit reports as specified in §§ 63.11125 and 63.11126.

2. **§63.11125(a)** - Each owner or operator subject to the management practices in §63.11118 must keep records of all tests performed under §63.11120(a) and (b).

3. **§63.11125(b)** - Records required under paragraph (a) of this section shall be kept for a period of 5 years and shall be made available for inspection by the Administrator's delegated representatives during the course of a site visit.

11. **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.

12. **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. (20.11.41.19A and B NMAC)

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

- Forms are available at <http://www.cabq.gov/airquality/businessapplicationspermitsandforms.html> or at the Air Quality Division Office located at 1 Civic Plaza -- Room 3047 (8:00am -- 4:30pm Mon. - Fri. except city holidays).

- 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 Division
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 Division
Attention Enforcement Supervisor
P.O. Box 1293
Albuquerque, New Mexico 87103

- All reports shall be submitted to:

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