

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

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IN THE MATTER OF THE PETITION
FOR A HEARING ON THE MERITS
REGARDING AIR QUALITY PERMIT
NO. 1677-M2

2013-6

PETITION FOR HEARING

The Petitioners in this matter, Dempsey Powers, Andy Carrasco, and Pat Toledo, by and through undersigned counsel of record, pursuant to Section 74-2-7 NMSA 1978 and 20.11.81 NMAC, hereby petition the City of Albuquerque Environmental Health Department (EHD) and the Albuquerque-Bernalillo County Air Quality Control Board for a hearing as authorized by law with reference to Air Quality Permit No. 1677-M2 issued on April 30, 2013 to Smith's Food & Drug Centers, Inc. (Smith's), effective that date. A copy of Permit No. 1677-M2 is attached hereto as Exhibit 1. The permit modification authorized Smith's to increase the annual throughput to 5 million gallons per year at its fuel dispensing station located at 200 Tramway Blvd. SE, Albuquerque, New Mexico. In accordance with 20.11.81.14 NMAC, the Petitioners provide the following information.

- I. **Names, addresses, telephone number, and other contact information with reference to the Petitioners in this matter.**
 - A. Dempsey Power
13649 Wenonah SE
Albuquerque, New Mexico 87123
 - B. Pat Toledo
3404 Calle Del Ranchero NE
Albuquerque, New Mexico 87106
 - C. Andy Carrasco
6505 Cyprus Point Way NE
Albuquerque, New Mexico 87106

II. Petitioner's participation in permitting action and how Petitioners were adversely affected by permitting action

Petitioner Dempsey Power lives in the neighborhood near the Smith's Tramway location. Because he lives in the vicinity of the Tramway location, the his quality of life would be adversely affected by the increased throughput of gasoline proposed by the requested permit modification. Mr. Power did not receive notice of the permitting action and was first made aware of it when he signed the attached "Petition to appeal Smith's permit for increase throughput." (Exhibit 2, attached). Mr. Power signed the Petition as a concerned citizen living in the neighborhood. If adequate notice had been provided and if a public information hearing had been held, Mr. Power would have participated and voiced his concerns about the proposed permit modification. Mr. Power was hindered in participating in the permitting process because of the City's failure to provide adequate notice of the permitting action. *Martinez v. Maggiore*, 2003-NMCA-043, ¶19, 133 N.M. 472.

On April 24, 2013, Petitioners Pat Toledo and Andy Carrasco participated in the permitting action by requesting, in writing, that a public information hearing be held regarding the Smith's Air Quality Permit No. 1677-M2 to the City of Albuquerque Environmental Health Department (EHD) Air Quality Division (AQD). (Exhibit 3, attached). The request was denied on May 14, 2013 by Mary Lou Leonard, Director of EHD. (Exhibit 4, attached). The revised permit was issued to Smith's on April 30, 2013, two weeks prior to the notice of denial of the request for a public information hearing. On May 23, 2013, Acting Deputy Director Danny Nevarez notified Mr. Toledo and Mr. Carrasco that the requested permit modification was issued "because the application was complete, the public notice requirements were met, the Department

conducted its review as required and there was no legal basis for the Department to deny the modification.” (Exhibit 5, attached).

Mr. Toledo and Mr. Carrasco are adversely affected by the permitting action because they are members of the Albuquerque community who have an important interest in ensuring that the modifications to Smith’s permit do not adversely affect the quality of life in Albuquerque. *Martinez v. Maggiore*, 2003-NMCA-043, ¶19, 133 N.M. 472. The Petitioners believe that the increased throughput at the Smith’s Tramway location poses serious health, safety, and environmental hazards to any citizens who happen to be travelling near the facility. The various Smith’s locations throughout the City of Albuquerque are managed through a common entity, the gasoline products are marketed jointly through the use of Smith’s cards, and the impacts at this location are cumulative with the impacts from other locations.

III. Specific permitting action appealed from, permitting action to which Petitioners object and factual and legal basis of Petitioners’ objections to the permitting action

The Petitioners are appealing the issuance of Permit 1677-M2, issued to Smith’s on April 30, 2013, with notice provided to Petitioners Mr. Toledo and Mr. Carrasco on May 23, 2013. The Petitioners object to the issuance of the permit allowing for an increase in throughput from 3.9 million gallons a year to 5.0 million gallons at the Smith’s location on Tramway and Central. The permit was issued without providing adequate notice and without allowing the public the opportunity to be heard at a public hearing prior to issuance of the modified permit. Permit No. 1677-M2 was issued pursuant to §20.11.41 NMAC, Authority to Construct. §20.11.41.14 requires public notice of the permitting action and requires a public hearing on permits involving a significant public interest.

Prior to reaching a final decision on the permit modification, the EHD did not take adequate measures to provide notice to individuals living in the vicinity of the Smith's Tramway facility, as evidenced by the Petition attached as Exhibit 2. The Petition states that "[t]he neighbors want a say in this decision as there was no public hearing and not adequate or proper notice." (Exhibit 2). Despite the fact that Mr. Toledo and Mr. Carrasco requested a public hearing, Mary Lou Leonard, the Director of the EHD refused to hold a hearing because she determined that "the Tramway GDF [gasoline dispensing facility] has not generated significant public interest." (Exhibit 4). Ms. Leonard states that she contacted "two neighborhood associations, three home owners' associations and one neighborhood coalition in the area surrounding the Tramway and Central SE gas station." (Exhibit 4). Because she only received "a few inquiries" from the associations, she determined that there was not significant public interest. (*Id.*).

There is no evidence that the EHD attempted to provide notice to individuals who live in the vicinity of the gas station. As shown by the Petition, there is in fact public interest in the matter. Because the EHD knew that there has been significant public interest in other similar permit modifications requested by Smith's at other Albuquerque locations, particularly in high volume, high impact retail gas stations, EHD should have taken additional measures to ensure that notice was provided to potentially interested persons. If such notice had been given, there would have been more public input, including requests for hearings and comments. Additionally, because the EHD was aware of the public interest generated by the proposals at other locations, the request for hearing made by Mr. Toledo and Mr. Carrasco should have been granted. However, because adequate notice was not provided and a hearing was not held, members of the public who are interested in proposed permit modification and who would have

participated in the process, were not provided the opportunity. *Martinez v. Maggiore*, 2003-NMCA-043, ¶19.

The purpose of regulatory provisions regarding public notice and hearings is to ensure that persons with an interest in the matter before the EHD be allowed to participate before a final decision is made. *Colonias Dev. Council v. Rhino Enviro. Services*, 2005-NMSC-024, 21, 138 N.M. 133. The New Mexico Supreme Court has recognized that “the public plays a vital role” in an administrative environmental permitting process and must be allowed a reasonable opportunity to be heard. *Id.* Administrative proceedings conducted subsequent to the failure to follow the requirements for public notice and hearing are invalid and cannot be upheld. *Martinez v. Maggiore*, 2003-NMCA-043, ¶13.

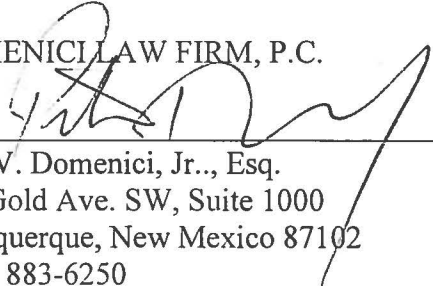
IV. Remedies sought by Petitioners, legal basis therefor, and basis for jurisdiction of Board in this matter

Based on *Martinez v. Maggiore*, 2003-NMCA-043, ¶13, and pursuant to 20.11.81 NMAC, the Petitioners request that the Permit 1677-M2, issued on April 30, 2013, be set aside and the matter remanded with directions to provide adequate notice and to hold a hearing pursuant to 20.11.41.14 NMAC.

Alternatively, also pursuant to 20.11.81 NMAC, the Petitioners request that Board set aside Permit 1677-M2 and hold a hearing on the merits of the Smith’s permit application.

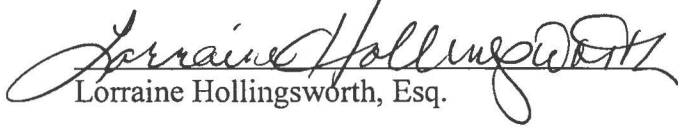
Respectfully Submitted,

DOMENICI LAW FIRM, P.C.



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

I hereby certify that a true and correct copy of the foregoing Petition for Hearing was served on the Albuquerque Environmental Health Department, Mary Lou Leonard, Director, on the 24th day of June, 2013, pursuant to 20.11.81.14.A(2).


Lorraine Hollingsworth, Esq.



AIR QUALITY AUTHORITY TO CONSTRUCT PERMIT # 1677-M2
FACILITY CDS # NM/001/00972
 Facility ID: FA0003035 Record ID: PR0005874



Richard J. Berry, Mayor

Mary Lou Leonard, Director

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

Certified Mail # 7010 3090 0001 4395 9906
 Return Receipt Requested

1550 South Redwood Road
 Mailing Address

Salt Lake City
 City

UT
 State

84104
 Zip

Responsible Official: Roger Gough, Construction Manager
 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 1677-M2 has been issued based on the review of the application information received by the Albuquerque Environmental Health Department (Department), Air Quality Division (Division) on March 1, 2013, which was deemed complete on March 4, 2013, and on the National Ambient Air Quality Standards, New Mexico Ambient Air Quality Standards, and Air Quality Control Regulations for Albuquerque/Bernalillo County, as amended. This permit supersedes all portions of Air Quality Permit #1677-M1 issued on January 20, 2012. As these standards and regulations are updated or amended, the applicable changes will be incorporated into this Air Quality Permit Number 1677-M2 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. 200 Tramway Boulevard SE Albuquerque, NM 87123	363503 Easting 3881542 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 30th day of April, 2013
Israel L. Tovar Israel L. Tovar
 Print Name Sign Name

Air Quality Protection Programs - Permitting Section
 Air Quality 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
1	Underground Storage Tank	20,000	2003	Regular Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling
2	Underground Storage Tank	8,000	2003	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 1 Vapor Recovery 5,000,000	32.5 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:

multiplying the actual, annual gallons of gasoline throughput for the previous calendar year (January 1st through December 31st) for Units 1 and 2 in the Section 4 Gasoline Unit Emission Limits table above, by 0.013 pounds/gallon if Stage 1 Vapor Recovery or 0.0031 pounds/gallon if Stage II Vapor Recovery. An electronic emission inventory form is available at 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)] Monitor and Maintain a log of the total monthly gasoline throughput for the facility. These records must be retained for the most recent five-year period for the facility.

8. REPORTING.

A. The following reporting requirements, in accordance with 20.11.41.18, 20.11.41.20, 20.11.41.47 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.

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

9. 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, *Volatle 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-BCAQC 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:

$$Pf = 2e^{-500.887v}$$

Where:

- Pf = Minimum allowable final pressure, inches of water.
- v = Total ullage affected by the test, gallons.
- e = 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 PERFORMANCE TEST REQUIREMENTS

Source Type	Initial Test Date	Additional Testing	Citation
Existing Source (commenced construction on or prior to 11/9/06) with a recorded monthly throughput ¹ of $\geq 100,000$	By 01/10/11	Every three years §63.11120(a)	63.11113(b)

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 TP-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

CCCCC:

(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(e) [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)]**

- 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

Petition to appeal Smith's permit for increase throughput

Petition summary and background: If this throughput is granted, the Four Hills Neighborhood will be subject to approximately 30 tons of cancer causing VOC's. The neighbors want a say in this decision as there was no public hearing and not adequate or proper notice

Action petitioned for: We, the undersigned, are concerned citizens who urge our leaders to act now to stop this increase in gas volume.

Printed name	Signature	Address	Comment	Date
PAT TOLEDO	<i>Pat Toledo</i>	3404 Calle del RANCHERO	NO MORE FUEL INCREASE!	6/19/13
ANDY CAROASCO	<i>[Signature]</i>		ditto	6/19/13
Clay Terry	<i>Clay Terry</i>	13604 Shaffer Ct	''	6/13/13
Larry Nicholson	<i>[Signature]</i>	210 High St SE 87102	''	6/19/13
Emily DeWald	<i>[Signature]</i>	318 KAYLA DR SE	''	6/19/13
Tom Sanford	<i>[Signature]</i>	13500 Central Ave SE	''	6/19/13
Fred Atencio	<i>[Signature]</i>	13160 Central	''	6/19/13
Aeffery Vanchut	<i>Aeff Vanchut</i>	9000 Trumbull SE #109	''	6-19-13
Marie Fernandez	<i>Marie R. Fernandez</i>	327 Kaylyn Dr S.E.	''	6/13/13
Bennie ENGLISH	<i>Bennie English</i>	301 Lanier Dr SE		6/13/13
Gay Meyer	<i>[Signature]</i>	318 KAYLA ST		6/13/13
Dempsey Power	<i>Dempsey Power</i>	13649 Wenonah SE		6/13/13
Emily DeWald	<i>Emily DeWald</i>	318 Kaylyn SE.		6/13/13



4/24/13

To AIR Quality Division

WE (PAT TOLEDO & ANDY CARRASCO, members of the Summit neighborhood association and in alliance with the 4-hills neighborhood association) request a public information hearing on the Smith's GAS STATION AT TRAMWAY & CENTRAL to increase there fuel throughput to 5 million gallons. The permit # is 1677-M1. We completely oppose this request by Smith's to increase there throughput to protect the public and abate air pollution. Also the size of the station is way to small and congested already and will only lead to completely unsafe and dangerous conditions for the public. There are also current problems with record keeping and there recent modification in 2012.

Pat Toledo 4/24/13 8:45 AM

~~ANDY CARRASCO~~

RECEIVED ENVIRONMENTAL HEALTH
APR 24 PM 8:51

AG



CITY OF ALBUQUERQUE

Albuquerque Environmental Health Department

Mary Lou Leonard, Director



Mr. Pat Toledo
Member, Summit Park N.A
3404 Calle Del Ranchero NE
Albuquerque, NM 87106

May 14, 2013
Certified Mail No. 7010 3090 0001 4486 5473
Return Receipt Requested

**Re: April 24, 2013 Request for Public Hearing for Air Quality Permit No. 1677-M2,
Smith's Food & Drug Centers, Inc.**

Dear Mr. Toledo:

This letter is in response to the April 24, 2013 document that you submitted to the City of Albuquerque Environmental Health Department (Department) Air Quality Division requesting a public hearing regarding the application for modification of Air Quality Permit No. 1677-M1 that was issued to Smith's Food & Drug Centers, Inc. in 2012. The application is regarding the gasoline dispensing facility (GDF) that is located at 200 Tramway Blvd SE in Albuquerque, NM. The Tramway GDF application is identified for tracking purposes as Air Quality Permit No. 1677-M2.

Albuquerque-Bernalillo County Air Quality Board regulation 20.11.41.14.B. NMAC is regarding the informal public information hearings (PIHs) that may be held before the Department makes a decision regarding a pending permit application. 20.11.41.14.B. NMAC states: "The Department shall hold a public hearing if the director determines that there is significant public interest." The Four Hills Village Neighborhood Association and the Four Hills Village Homeowners Association are located south of the Tramway GDF. No officer or member of either association – or any other entity or individual from the vicinity of the Tramway GDF – contacted the Department by the April 24, 2013 deadline to ask for a PIH. You and Mr. Carrasco state in your April 24 request that you are members of the Summit Park Neighborhood Association (Summit Park NA), which is located north of Lomas and west of Carlisle NE. Other than you and Mr. Carrasco, no officer or member of the Summit Park NA has contacted the Department asking for a PIH. No one in addition to you and Mr. Carrasco has requested a PIH.

As the Director of the Department, I have determined that the Tramway GDF permitting activity has not generated significant public interest. Therefore, this letter is to inform you that your request for a PIH regarding the Tramway GDF application for modification has been denied.

If you have any questions regarding this permit application or require any additional information, please feel free to contact Danny Nevarez at (505) 768-2639.

Sincerely,

Mary Lou Leonard, Director
City of Albuquerque Environmental Health Department



cc: Danny Nevarez, Acting Deputy Director, City of Albuquerque, Environmental Health Department
Isreal L. Tavarez, P. E., Environmental Manager, Air Quality Permitting & EI
Dario Rocha, Supervisor, Air Quality Permitting & EI Section
Matt Stebleton, Supervisor, Air Quality Compliance
Damon Reyes, Supervisor, Air Quality Enforcement Section
Adelia Kearny, Deputy City Attorney, City of Albuquerque, Legal Department

Albuquerque - Making History 1706-2006

Environmental Health Dept.
Air Quality Division

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

CITY OF ALBUQUERQUE



May 29, 2013

7003 1680 0001 4880 0879
Mr. Andy Carrasco
6505 Cyprus Point Way, NE
Albuquerque, NM 87111

7003 1680 0001 4880 0886
Mr. Pat Toledo
Member Summit Park N.A.
3404 Calle del Rancho NE
Albuquerque, NM 87106



Re: "Appeal" of EHD Director's Decision Not to Hold Public Information Hearing About Smith's Application to Modify (Increase) Gasoline Throughput at Tramway and Central SE Gas Station

Gentlemen:

This letter is in response to your letter to me that is dated May 23, 2013, in which you stated you "are appealing the decision not to initiate a public hearing on the Smith's gas station request at Tramway and Central to increase there [*sic*] throughput from 3.9 million gallons a year to 5.0 million gallons..." As has been discussed with you several times, and as was stated by the hearing officer when you both attended the public information hearing (PIH) regarding Smith's Food & Drug Centers, Inc. (Smith's) application for an increase in gasoline throughput at the separate Smith's gas station at Carlisle and Constitution NE: a PIH is not a formal hearing on the merits. No findings or recommendations are made at the end of the PIH. The assigned City of Albuquerque (City) Environmental Health Department (Department) permit writer does not make a decision at the end of a PIH. The decision regarding whether a PIH is warranted under the circumstances is in the sole discretion of the Department Director.

The New Mexico Air Quality Control Act (Air Act), the City Joint Air Quality Control Board (Air Board) Ordinance (City Ordinance) and the applicable minor stationary source Air Board permitting regulation do not require a hearing or meeting before the permit writer makes a final decision regarding the pending application. The permitting regulation does require an application that is administratively complete, public notice published in the *Albuquerque Journal* and opportunity for public comment. The public notice must include specific information regarding the proposed permit or permit modification and must identify the manner in which comments or evidence on the application may be submitted to the Department. All legal requirements were met. The Department also included additional information in the public notice, such as the availability of the application for inspection and the deadline for public comment and requesting a public information hearing.

As you know from the May 14, 2013 letter that I sent to you, Air Board regulation 20.11.41.14.B NMAC states: "The department shall hold a public hearing if the director determines that there is significant public interest." Although the Department was not required to do so by the permitting regulation, the Department sent an email with an attached 8 1/2" x 11" copy of the public notice to two neighborhood associations, three home owners' associations and one neighborhood coalition in the area surrounding the Tramway and Central SE gas station. As a result of the public notice and emails, the Department received a few inquiries from an officer with the Executive Hills Home Owners' Association and the President of the Four Hills Village Neighborhood Association. The Department responded to the inquiries and heard nothing more from any of the organizations that

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

Mr. Toledo
May 29, 2013
Page 2

surround the Tramway and Central SE gas station. No individual residing in the area submitted public comment or requested a PIH. As you know, the only requests for a PIH regarding the Tramway and Central SE gas station application for modification came from: Andy Carrasco, who owns a commercial property near the Smith's Carlisle and Constitution NE gas station, and Pat Toledo, who is a resident of the Summit Park NA in the area of the Carlisle and Constitution NE gas station.

Regarding your request for a PIH re the Tramway and Central SE gas station, and as I stated in the May 14 letter, I determined that the Tramway and Central SE application for modification did not generate "significant public interest". My decision in this matter is discretionary. No formal appeal process applies to the Department Director's decision not to hold a PIH. As you also know from the May 23, 2013 participant notification letter to you that was signed by Acting Deputy Director Danny Nevarez, the requested modification was issued because the application was complete, the public notice requirements were met, the Department conducted its review as required and there was no legal basis for the Department to deny the modification.

In Mr. Carrasco's challenge to the Carlisle and Constitution NE Smith's gas station application for modification, Mr. Carrasco was represented by attorney Pete V. Domenici, Jr. Mr. Domenici also submitted an extensive Inspection of Public Records Act request to the Department regarding all of the Smith's gas stations in Bernalillo County. We have received no notice that Mr. Domenici has withdrawn as Mr. Carrasco's attorney in the Carlisle and Constitution NE matter. We are sending Mr. Domenici a copy of this response letter so you can consult with him regarding the Smith's Tramway and Central SE matter, if appropriate.

Thank you.

Sincerely,



Mary Lou Leonard, Director
City of Albuquerque Environmental Health Department

cc: Pete V Domenici, Jr., Esq.
Danny Nevarez, Acting Deputy Director, Air Programs, Env. Health Dept., City of Albuquerque
Isreal L. Tavarez, P.E., Environmental Manager, Air Quality Permitting
Regan V. Eyerma, P.E., Environmental Scientist & Permitting Specialist, Air Quality Permitting
Dario Rocha, Supervisor, Air Quality Permitting
Matt Stebleton, Supervisor, Air Quality Compliance
Damon Reyes, Supervisor, Air Quality Enforcement
Adelia Kearny, Deputy City Attorney, Legal Department, City of Albuquerque