

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

IN THE MATTER OF THE PETITION FOR
A HEARING ON THE MERITS REGARDING
AIR QUALITY PERMIT NO. 3135

Margaret Freed, Mary Ann Roberts,
Pat Toledo, Petitioners

No. AQCB 2014-2

SMITH'S FOOD & DRUG CENTERS, INC.'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 1-056 NMRA, Smith's Food & Drug Centers, Inc. ("Smith's") moves the Albuquerque-Bernalillo County Air Quality Control Board ("Board") for summary judgment and dismissal of the Petition For Hearing ("Petition") with prejudice. As grounds, Smith's states that none of the material facts are in dispute and Smith's is entitled to judgment as a matter of law. Specifically, it is undisputed that Permit No. 3135 was issued in accordance with applicable air quality permitting statutes and regulations. The Board should therefore dismiss the Petition with prejudice.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On November 5, 2013, Smith's filed with the Air Quality Division of the City of Albuquerque Environmental Health Department ("EHD") an application for an authority-to-construct permit for a proposed gasoline dispensing facility ("GDF") to be located at 6941 Montgomery Boulevard NE (the "Montgomery GDF"). AR 3, pp. 9-10; AR 5, p. 15.

2. Smith's requested authorization to pump up to 7,000,000 gallons of gasoline per year (also known as "throughput"), which equates to 45.5 tons per year of Volatile Organic Compounds ("VOCs"). AR 3, p.10; AR 7, p. 17.

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3. EHD evaluated Smith's application and ruled it complete on December 3, 2013. EHD assigned No. 3135 to the proposed permit. AR 9, p. 19.

4. On December 6, 2013, EHD published in the Albuquerque Journal a notice of the proposed permitting action. AR 11, p. 24.

5. On December 3, 2013, and on January 22 and 23, 2014, Petitioner Toledo and others submitted to EHD requests for a public information hearing. AR 6, p. 16; AR 12, p. 25-31.

6. EHD granted the request and held a public information hearing on April 3, 2014. AR 52, p. 143. EHD made available to the public a number of documents, including: (1) Smith's application for Permit No. 3135, AR 51, pp. 128-42, (2) a draft of the proposed Permit No. 3135, AR 48, pp. 117-21, and (3) the EPA's Summary of Regulations Controlling Emissions from GDFs ("EPA Summary"). AR 48, pp. 122-23.

7. Representatives of Smith's gave a presentation at the public information hearing to describe the proposed GDF and to explain the steps Smith's took to apply for Permit No. 3135. AR 53, p. 149; PIH 4/3/14 Audio at 10:52 to 22:30; AR 52, p. 143.

8. EHD Air Quality Program Manager Isreal Tavarez and permit writer Regan Eyerman spoke at the public information hearing about how GDF emissions are regulated pursuant to EPA and local regulations. Tavarez and Eyerman explained that GDF emissions are controlled through performance standards, which require, among other things: (1) management practices to minimize gasoline spills and to clean them expeditiously, (2) submerged filling of gasoline storage tanks to reduce splashing and release of vapors, and (3) use of Stage I vapor recovery and vapor balance systems. See National Emission Standards for Hazardous Air Pollutants for Source Category:

Gasoline Dispensing Facilities, 40 CFR Part 63, Subpart CCCCCC (“Hex C”). Tavarez and Eyerman explained that GDFs are not regulated by imposing limits on the quantity of pollutants that GDFs may emit. AR 53, p. 149; AR 55, pp. 159-62; PIH 4/3/14 Audio at 22:35 to 39:09; AR 52, p. 143.

9. Members of the public gave comments and asked questions at the public information hearing. AR 53, p. 149; PIH 4/3/14 Audio at 39:46 to 01:50:13; AR 52, p. 143. Some individuals submitted written comments, articles and other documents to the hearing officer. AR 58, pp. 181-183; AR 59, pp. 184-195; AR 60, pp. 196-97; AR 61, pp. 198-99; AR 62, pp. 200-227; AR 63 pp. 229-31; AR 64, p. 232; AR 65, p. 233. EHD also received written submissions following the public information hearing. AR 67, p. 297; AR 69, p. 299; AR 70, p. 300; AR 76, p. 315. EHD did not prevent anyone from testifying or submitting evidence.

10. None of the verbal or written public comments identified any aspect of the permitting process that failed to comply with the applicable statutes and regulations for GDF air permitting. Only Petitioner Freed suggested that Smith’s and EHD did not follow applicable regulations. On April 19, 2014, Freed sent a letter to EHD erroneously claiming that the Montgomery GDF will be a “Major Source” (and, therefore, subject to different regulations) if it is permitted to emit up to 45.5 tons of VOCs per year. AR 76, p. 315. Freed claimed the EPA Summary that EHD provided at the public information hearing supported her assertion. *Id.*

11. The EPA Summary defines a major source as “a facility that emits, or has the potential to emit in the absence of controls, at least 10 tons per year (TPY) of individual *hazardous air pollutants* or 25 TPY of combined *HAP*.” AR 48, p. 123

(emphasis added); see also 20.11.42.7(S)(1) NMAC (defining the term “Major source” using the same 10 TPY single HAP and 25 TPY combined HAP thresholds). Freed is conflating HAPs with VOCs. As Mr. Tavaréz explained at the public information hearing, HAPs comprise between 2% and 11% of VOCs. AR 55, p. 160. Therefore, combined HAP emissions under the Permit No. 3135 would reach a maximum of 5 tons per year,¹ which is well below the 25 TPY threshold for a major source. 20.11.42.7(S)(1) NMAC.

12. EHD considered all of the documents and comments it received at the public information hearing and during the public comment period. AR 79, p. 327. EHD determined that the permit application met all of the requirements of the federal Clean Air Act, the New Mexico Air Quality Control Act, and the applicable air quality ordinances and regulations. *Id.*

13. On April 30, 2014, EHD issued Permit No. 3135 to Smith’s. AR 78, pp. 320-24. Among other things, Section 10 of Permit No. 3135 incorporates all of the performance standards that are mandated under Hex C. AR 78, pp. 322-23.

14. Petitioners filed their Petition on June 2, 2014. The Petition does not identify any aspect of the permitting process that failed to comply with applicable statutes and regulations.

15. Smith’s served petitioners with discovery requests on July 1, 2014. Petitioners served responses and objections to Smith’s discovery requests on August 1, 2014. See Exhibit A. Smith’s determined that Petitioners’ discovery responses were evasive and their objections were meritless, and on August 5, 2014, counsel for Smith’s

¹ 45.5 TPY of VOCs x 0.11 [combined HAP concentration of 11%] = 5 TPY combined HAPs.

sent Petitioners' counsel a letter asking Petitioners' to supplement their discovery responses to correct these deficiencies. See Exhibit B.

16. On August 8, 2014, Petitioners filed their Notice of Intent to Present Technical Testimony ("Petitioners' NOI") and accompanying exhibits. On the same date, Petitioners served supplemental discovery responses which mostly refer back to petitioners' NOI. See Exhibit C.

17. Petitioners' NOI sets forth the following conclusion of Petitioners' sole technical witness, Dr. Dana Rowangould:

In light of the high throughput that is expected at the proposed Smith's gas station (and the resulting potential for greater than normal emissions), the potential health impacts associated with vehicle traffic and vapor losses, and the facility's proximity to residents and at least one school, we recommend conducting additional analysis to ensure that the potential air quality and health impacts associated with the proposed Smith's fueling station are better understood. If the facility is found to result in air quality and/or health impacts that exceed levels that are acceptable (based on regulatory levels, health risks, and/or community sentiment), mitigations and/or alternatives should be explored.

Exhibit 1 to Petitioners' NOI at 4.

18. Neither Petitioners' NOI nor any of their discovery responses identifies any aspect of the permitting process that failed to comply with applicable statutes and regulations. See Petitioners' NOI; Exhibit A (e.g. Int. Nos. 15-17 and RFA Nos. 11, 12, 15, 17, 18) and Exhibit C (e.g. Int. Nos. 15-16 and RFA Nos. 11, 12, 15, 18).

ARGUMENT

1. **Smith's Is Entitled To Summary Judgment Because Permit No. 3135 Unquestionably Complies With Applicable Statutes and Regulations.**

"Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Perea v. Snyder*, 1994-

NMCA-064, ¶ 9, 117 N.M. 774, 877 P.2d 580; *see also* Rule 1-056(C). “The movant need only make a prima facie showing that he is entitled to summary judgment.” *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331, 825 P.2d 1241. “Upon the movant making a prima facie showing, the burden shifts to the party opposing the motion to demonstrate the existence of specific evidentiary facts which would require trial on the merits.” *Id.* None of the material facts in this case are in dispute and Smith’s is entitled to judgment as a matter of law because Permit No. 3135 undeniably complies with all applicable statutes and regulations.

Air quality permitting in New Mexico is governed by the Air Quality Control Act, NMSA 1978, §§ 74-2-1 through -17 (“Air Act”), and by the regulations promulgated pursuant to the Air Act. Permit No. 3135 was issued pursuant to 20.11.41 NMAC (2002, prior to 2014 amendments) (“Part 41”). Part 41 incorporates by reference 20.11.64 NMAC (“Part 64”), which is entitled “Emissions Standards for Hazardous Air Pollutants for Stationary Sources.” *See* 20.11.41.2(B)(2)(a) NMAC (2002). Part 64, in turn, incorporates the EPA’s National Emission Standards for Hazardous Air Pollutants (“NESHAP”), which includes the regulation governing GDF emissions known as “Hex C.” 20.11.64.12 NMAC. Hex C employs a performance-based approach to controlling GDF emissions and does not set specific pollutant limits. *See* UMF No. 8.

The Air Act expressly prohibits the Air Board from deviating from Hex C by providing that “[r]egulations adopted by the [Air Board] may . . . prescribe standards of performance for sources and emission standards for hazardous air pollutants that . . . *shall be no more stringent than but at least as stringent as* required by federal standards of performance[.]” Section 74-2-5(C)(2) (emphasis added). The Air Board’s wholesale

adoption of Hex C in Part 64 is consistent with this legislative mandate. 20.11.64.12 NMAC. The Air Board has also promulgated variance regulations stating that “the [Air Board] cannot grant a variance from federal requirements in . . . [Part 41] . . . and [Part 64].” 20.11.7.2, .6 NMAC. These authorities leave the Air Board with no room to depart from Part 41, Part 64 or Hex C. See *City of Albuquerque v. State Labor & Indus. Comm’n*, 1970-NMSC-037, ¶ 5, 81 N.M. 288, 466 P.2d 565 (holding that an administrative agency “is bound by its own rules and regulations.”).

The question before the Board in this case is whether the emissions authorized by Permit No. 3135 “will or will not meet applicable local, state and federal air pollution standards and regulations[.]” Section 74-2-7(L) (2003). Petitioners have the burden of proving by a preponderance of the evidence that Permit No. 3135 does not meet those standards. Section 74-2-7(K); 20.11.81.16(C) NMAC. Petitioners fail in their Petition, in their discovery responses and in their NOI to identify any facts that would enable Petitioners to carry that burden. UMF Nos. 14, 17-18. To the contrary, Permit No. 3135 imposes upon Smith’s all of the federal and local requirements for record-keeping, testing and emissions reduction. AR 78, pp. 321-24 (¶¶ 5-10). Accordingly, there is no need for a hearing on the merits and Smith’s is entitled to judgment as a matter of law.

2. The Board Cannot Address Petitioners’ Concerns That Lack A Nexus To Applicable Regulations.

Petitioners raise a number of issues that fall outside of the existing GDF permitting framework. Petitioners rely on a solid waste permitting case, *Colonias Dev. Council v. Rhino Env’tl. Servs.*, 2005-NMSC-024, 138 N.M. 133, 117 P.3d 939, to circumvent New Mexico’s well-established law on the limits of agency power and to open up the Board’s permit appeal process to any issue petitioners apparently seek to

advance. See Petition at 3-4, 6. Rather than supporting Petitioners' standardless approach, *Colonias* actually forbids it. Specifically, the New Mexico Supreme Court held that an agency's authority to address community concerns "requires a nexus to a regulation." *Colonias*, 2005-NMSC-024, ¶ 29. The solid waste regulations at issue in *Colonias* expressly required the Environment Department to consider whether the proposed landfill would cause a public nuisance or create a potential hazard to public health, welfare or the environment. *Id.* ¶¶ 30-32. The Court held that the nearby community's concerns about the landfill's impact on their quality of life had a nexus to these specific factors. *Id.*

Petitioners' stated concerns in the present case have no such nexus to the applicable air quality regulations, which contain standards that are much more specific than those at issue in *Colonias*. For example, Petitioners claim that they "are likely to be adversely affected by increased VOC emissions, odors, fumes, increased traffic and other negative impacts[.]" Petition at 2. However, even if these vague allegations had an evidentiary basis in fact, which Smith's disputes, the Board cannot address the allegations beyond what is already required under the existing permitting framework. As explained above, the Board regulates VOC emissions by imposing, among other things, the performance measures required under Hex C. See also 20.11.65 NMAC. These performance measures protect public health and welfare by reducing GDF emissions and associated health risks. The question before the Board in this case is not whether more could be done to reduce or prevent VOC emissions, fumes, odors, traffic, "other negative impacts" or health risks; the question is whether Permit No. 3135

complies with existing standards and regulations. Section 74-2-7(L). There is no dispute that it does.

The performance measures required under Hex C reflect the EPA's policy decision concerning the appropriate methods for reducing GDF emissions. The New Mexico Legislature and the Board have adopted the EPA's regulatory approach and it is the law applicable to this case. Petitioners may disagree with the policy choice to regulate GDF emissions through performance measures, but that disagreement does not change the law. If Petitioners wish to change the law, they must go through the legislative and rulemaking processes. Petitioners are not entitled to raise these issues in a full-blown evidentiary hearing concerning a permit that unquestionably complies with applicable law. Petitioners' proposed evidence is now before the Board and none of it is even marginally sufficient to justify a full-blown hearing. Accordingly, the Board should grant summary judgment to Smith's and dismiss the Petition with prejudice.

3. Petitioners Cannot Carry Their Burden Of Proof Because Their Proposed Evidence Is Inconclusive.

Petitioners presume that the Board can consider the issues raised in the Petition under the Board's general authority to prevent or abate air pollution. Petition at 4, 6. That argument overlooks both the *Colonias* nexus requirement as well as the Board's inability to deviate from the federal standards regulating HAPs. Section 74-2-5(C)(2). Moreover, the grounds for permit denial set forth in Section 7 of the Air Act and in Part 41 emphasize whether the proposed permitting action will comply with applicable standards and regulations. See Section 74-2-7(C)(1); 20.11.41.16(A) NMAC (2002). Thus, Petitioners cannot circumvent the applicable standards and regulations based on the Board's general authority to prevent or abate air pollution; otherwise there would be

no point in having standards and regulations. But, even if the Board could address issues lacking a nexus to the applicable regulations, which Smith's disputes, Petitioners cannot carry their burden of proving Permit No. 3135 would lead to "air pollution" because their proposed evidence as set forth in Petitioners' NOI is inconclusive and merely suggests that additional studies are necessary.

The Air Act defines air pollution as "the emission . . . of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property[.]" Section 74-2-2(B). The New Mexico Supreme Court has interpreted this provision in the context of a variance procedure under Section 8 of the Air Act. *Duke City Lumber Co. v. NM Env'tl. Imp. Bd.*, 1984-NMSC-042, ¶ 17, 101 N.M. 291, 681 P.2d 717. Unlike Section 7 (which governs permits), Section 8 expressly allows the Board to consider: (1) whether the granting of a variance will "result in a condition injurious to health or safety[.]" and (2) "the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public." Section 74-2-8(A)(2)(a), (B). The *Duke City Lumber* Court held that the definition of air pollution requires the opponent of a variance to show a "reasonable probability" of harm, not just a condition which "tends to cause harm." 1984-NMSC-042, ¶ 17. The Court further held that administrative agencies must apply the legal residuum rule, which requires "that an administrative action be supported by some evidence that would be admissible in a jury trial." *Id.* ¶ 19.

Petitioners do not purport to have evidence establishing a reasonable probability of harm. Instead, Petitioners' sole proposed technical expert, Dr. Dana Rowangould,

will testify that operation of the Montgomery GDF “has the potential” to lead to air pollution from two types of sources: (1) direct emissions from vehicles in the vicinity of the GDF, and (2) vapor losses from fueling activities at the GDF. Exhibit 1 to Petitioners’ NOI at 1. Regarding vehicle emissions, Dr. Rowangould does not point to any regulation requiring EHD to consider the effect of mobile sources, nor does Dr. Rowangould claim to know what impact, if any, operation of the Montgomery GDF will have on mobile source emissions in the area. With regard to vapor losses from fueling activity, Dr. Rowangould does not assert that Permit No. 3135 fails to comply with applicable regulations. To the contrary, Dr. Rowangould admits that Smith’s Stage I vapor recovery system “can be expected to capture most Stage I vapors” and that “[f]ueling stations in Albuquerque are not currently required to have Stage II vapor recovery at the pump[.]” Exhibit 1 to Petitioners’ NOI at 1-2.

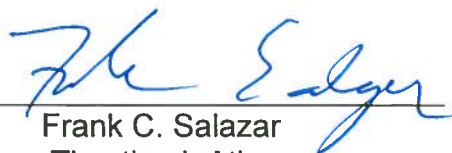
Dr. Rowangould does not specify what quantity of pollutants emitted from the Montgomery GDF, and of what duration, would “with reasonable probability injure human health[.]” Section 74-2-2(B). Instead, Dr. Rowangould “recommend[s] conducting additional analysis to ensure that the potential air quality and health impacts associated with the [Montgomery GDF] are better understood.” Exhibit 1 to Petitioners’ NOI at 4; UMF No. 17. Dr. Rowangould provides no hint as to what type of analysis should be done or what standards should apply to the analysis. Even if Dr. Rowangould could give such details, it is the Petitioners’ burden to establish a reasonable probability of harm under the *Duke City Lumber* standard. Petitioners cannot carry that burden simply by raising questions and calling for additional analysis.

CONCLUSION

In sum, Petitioners' answers to Smith's discovery requests provide no evidentiary basis to conduct a hearing. Additionally, Petitioners' proposed technical evidence finds no support in the existing permitting framework and is inconclusive in any event. Allowing Petitioners to present this evidence at full-blown hearing on the merits can lead to nothing more than confusion of the issues and the needless waste of time and resources. The Board now having before it Petitioners' evidence should dismiss the Petition with prejudice.

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A Professional Corporation

By _____



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CERTIFICATE OF SERVICE

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

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

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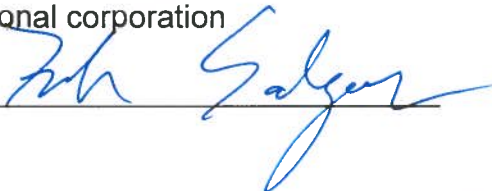
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on the 19th day of September, 2014.

SUTIN, THAYER & BROWNE
A Professional corporation

By 

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

IN THE MATTER OF THE PETITION
FOR A HEARING ON THE MERITS
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Margaret M. Freed, Mary Ann Roberts
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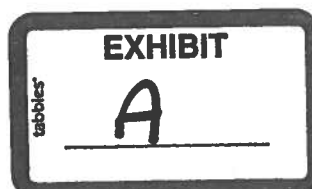
**PETITIONERS' RESPONSES TO SMITH'S INTERROGATORIES,
REQUESTS FOR ADMISSIONS AND REQUEST FOR PRODUCTION**

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

INTERROGATORIES

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

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



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

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

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

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

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

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

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

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

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

See Answer to Interrogatory No. 10.

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

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

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

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

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

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

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

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

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

ANSWER:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANSWER: See Answer to Interrogatory No. 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUESTS FOR ADMISSION

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

RESPONSE: Admit x Deny ___

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

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

RESPONSE: Admit ___ Deny x

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

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

RESPONSE: Admit x Deny ___

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

RESPONSE: Admit x Deny

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

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

RESPONSE: Admit Deny x

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

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

RESPONSE: Admit Deny x

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

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

RESPONSE: Admit Deny x

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

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

RESPONSE: Admit Deny x

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

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

RESPONSE: Admit ___ Deny **x**

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

RESPONSE: Admit ___ Deny **x**

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

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

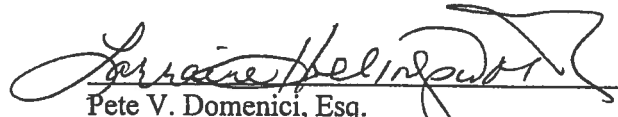
RESPONSE: Admit x Deny

REQUEST FOR PRODUCTION OF DOCUMENTS

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

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

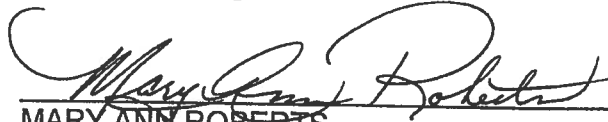
DOMENICI LAW FIRM, P.C.


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

VERIFICATION

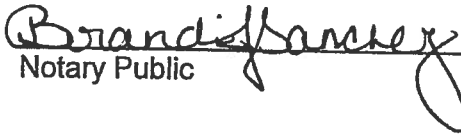
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

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



MARY ANN ROBERTS

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



Notary Public

My Commission Expires:

2/13/16



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 2/13/16

VERIFICATION

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


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

Margaret M. Freed
MARGARET M. FREED

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

Brandi Sanchez
Notary Public

My Commission Expires:
2/13/16

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

VERIFICATION

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

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

Pat Toledo
PAT TOLEDO

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

Brandi Sanchez
Notary Public

My Commission Expires:

2/13/14
3282855.doc



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/14

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August 5, 2014

**BY ELECTRONIC MAIL
AND FIRST CLASS MAIL**

Pete V. Domenici, Jr.
Lorraine Hollingsworth
Domenici Law Firm, P.C.
320 Gold Ave. SW, Suite 1000
Albuquerque, New Mexico 87102

Smith's Air Permit No. 3135;
AQCB No. 2014-2

Dear Counsel:

Pursuant to Rule 1-037 NMRA we make this good faith effort to resolve a discovery dispute. Petitioners' responses to Smith's discovery requests are evasive and non-responsive and petitioners' objections to the vast majority of discovery requests are without merit. In light of the limited time remaining before the September 10, 2014 hearing, we ask that petitioners serve supplemental responses by email by close of business on Friday, August 8, 2014, in order to avoid a motion to compel. We address the specifics of our discovery dispute below.

Objections to discovery seeking information that relates to petitioners' Notice of Intent

Petitioners object to Interrogatory Nos. 1, 3, 9, 10, 11, 14 and 20, Request for Admission No.10 and Request for Production No. 1 on the ground that these requests seek information that will be disclosed in petitioners' forthcoming NOI. We disagree that petitioners have the right to evade discovery on the basis that some of the requests seek information that relates to information that could also be disclosed in an NOI. Hearing Officer Orth told Petitioner Toledo during a recent conference call relating to the Smith's 4th street permit that Smith's can properly discover the factual and legal bases for claims set forth in the petition, even if that information relates to what might be disclosed in an NOI.



Pete V. Domenici, Jr.
Lorraine Hollingsworth
August 5, 2014
Page 2

We recognize that our disagreement with you on this issue could soon be moot given that petitioners' NOI is due on August 8. Nevertheless, we are entitled to verified answers to interrogatories, even if those answers incorporate portions of the NOI by reference. We therefore ask that petitioners supplement their responses by identifying the portion(s) of petitioners' NOI that is/are responsive to each discovery request. If petitioners' NOI is not responsive to all of the requests, please supplement the answers to those requests to which the NOI does not respond.

Objections to discovery requesting application of the law to the facts

Petitioners object to Interrogatory Nos. 7, 13, 15, 16, 18 and 19, and Request for Admission Nos. 2, 6, 7, 8, 11, 12, 14, 15, 16, 17 and 18 on the ground that the requests call for legal conclusions. This objection is without merit. As an initial matter, some of these requests ask whether petitioners are making certain contentions (e.g. INT No. 7) or whether they have certain evidence (e.g. RFA No. 18), which are fact questions to which petitioners must respond.

To the extent that Smith's requests require petitioners to apply the law to the facts, these requests are also proper. Both Rule 1-033 and 1-036 NMRA contemplate that interrogatories and requests for admissions, respectively, can request the answering party to apply the law to the facts. See Rule 1-033(D) ("An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the *application of law to fact*["]) (emphasis added); Rule 1-036(A) ("A party may serve upon any other party a written request for the admission . . . of the truth of any matters . . . that relate to statements or opinions of fact or of the *application of law to fact*["]) (emphasis added).

Smith's expressly requested written discovery in this matter in order to, among other things, narrow the issues and evidence that the Air Board will hear in September and determine whether dispositive motion practice is appropriate in this case. The Hearing Officer granted the request. Smith's is entitled to know what specific claims petitioners will or will not attempt to prove at the hearing, as well as the factual and legal bases for these claims. For example, Smith's seeks in Interrogatory No. 13 to discover the law upon which Petitioner Freed relies to support her claim that the proposed GDF will be a major source. Petitioner Freed cannot hide this information from Smith's under the guise that she is not required to make legal conclusions in discovery.

Interrogatory No. 12

This interrogatory seeks information supporting Petitioner Freed's claim that Smith's proposed GDF will violate zoning regulations. Freed answered that she "does not have information responsive to this Interrogatory at this time and reserves the right to supplement her answer." With all due respect, Freed does not have a right to

Pete V. Domenici, Jr.
Lorraine Hollingsworth
August 5, 2014
Page 3

supplement her answer at some unknown date of her choosing. The Prehearing Order set July 25, 2014 as the deadline for parties to respond to discovery. As a professional courtesy we extended that deadline for petitioners to August 1, 2014. Please provide us with a final, definitive answer to this interrogatory by the deadline set forth above or have the courtesy of withdrawing the allegation and claim.

Request for Admission No. 2

This request asks petitioners to admit that Petitioner Toledo will not suffer a direct injury in fact as a result of the issuance of Permit No. 3135. Petitioner Toledo objected that the request calls for a legal conclusion. The request does not call for a legal conclusion but instead asks Toledo to admit that he will not, as a matter of fact, suffer an injury. However, even if this request does call for a legal conclusion, Toledo needs to admit or deny the request (and explain the denial) for the reasons set forth above. See Rule 1-036(A).

Request for Admission No. 13

This request asks petitioners to admit that they have no specific evidence supporting their repeated claims of "cumulative impacts" of Smith's fuel centers in Albuquerque. Smith's has understood petitioners' claims to mean that the operation of multiple fuel centers leads to an alleged "cumulative impact" on the community. Petitioners deny the request by relying on the Air Board's decision in the Carlisle case. However, the Carlisle decision made no mention of cumulative impacts. Please supplement petitioners' answer to this request to include responsive information or have the courtesy of withdrawing this allegation and claim.

Very truly yours,

SUTIN, THAYER & BROWNE
A Professional Corporation

By _____



Frank C. Salazar
Timothy J. Adler
Albuquerque Office

cc: Carol Parker (by email)

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

IN THE MATTER OF THE PETITION
FOR A HEARING ON THE MERITS
REGARDING AIR QUALITY PERMIT
NO. 3135

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

No. AQCB 2014-2

Petitioners.

**PETITIONERS' SUPPLEMENTAL RESPONSES TO SMITH'S INTERROGATORIES,
REQUESTS FOR ADMISSIONS**

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

INTERROGATORIES

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

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



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

Without waiving this objection, Petitioners supplement (pursuant to Petitioner's August 8, 2014 filed NOI):

- 1) the direct vehicle emission is a function of number of vehicles entering and exiting the station and the degree to which their entry and exit slows traffic on adjacent streets. Applied to the specific permit of annual throughput of 7,000,000 gallons vs. the typical permit of annual throughput of 1,000,000, greater number of vehicles exiting and entering the Smith's gas station is expected to cause greater emissions from those vehicles and from other vehicles experiencing delays on adjacent streets. As a result, elevated levels of pollutants that are linked to health impacts increase the risk of respiratory inflammation, including asthma and related lung/ breathing disorders, non-fatal heart attacks, increased risk of cancer, premature death due to pre-existing conditions, and other neurophysiological symptoms among other health effects.

The elevated levels of pollutants of concern include carbon monoxide, nitrogen oxide, and toxic air pollutants including some volatile organic compounds and increased particulate matter.

- 2) Vapor losses which are not captured contain volatile organic compounds. Although the Smith station allows for "Stage I" recovery, the station is not required to have a "Stage II" vapor recovery at the pump, thus older vehicles without onboard vapor recovery systems will likely emit VOCs from the gas tanks into the air. Vapor losses are associated with health risks, and particularly the release of benzene is determined to elevate cancer risk among other health effects. Applying the quantitative study (South Coastal Air Quality Management District (CA)), increased cancer risk is multiplied by a factor of 7 under the Smith permit.
- 3) Location of potential receptors are identified near the Smith's gas station on the basis of available data, including aerial imagery. These receptors include homes, and at least one school. Distance of receptors relevant to the Smith's station is a key factor in determining health impacts from vehicle pollution. Health risks from vehicle pollution/emissions are greater on vulnerable populations that include children, elderly, and people with respiratory conditions.

In conclusion and in light of the above technical testimony supported by the reliance materials attached to the NOI, Dr. Rowangould (intended witness providing technical testimony) recommends additional analysis be conducted to ensure potential air quality and health impacts associated with the proposed Smith's fueling station are better understood. If impacts are found to exceed acceptable levels on the basis of regulations,

increased health risks and community sentiment then mitigation and or other alternatives should be explored.

Please note that supporting reliance materials and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental response to Rog. # 1, above.

Please note that supporting reliance materials and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

ANSWER: The Petitioners object to Interrogatory No. 7 in that it requests a legal conclusion, which is not the proper subject of interrogatories. In addition, the Petitioners have not made any such claims and that is not the basis for the Petition for Hearing before the Board. See Answer to Interrogatory No. 4.

Without waiving these objections Petitioners further supplement and object that Interrogatory No. 7 is not relevant. Without waiving the foregoing objections, Petitioners state that the *Carlisle* decision Air Quality Control Board Nos. 2012-1 and 2012-2 indicates secondary impacts and other evidence to determine no detriment to the public is relevant to the application of any regulatory or statutory regime that may permit construction of gas stations. Further, city planning investigation, guidance, zoning, other study, research and review protocol can provide a reasonable basis to not construct or operate more than two gas stations at a single intersection in Albuquerque or in Bernalillo County.

Interrogatory No. 9: With regard to the allegation on page 5 of the Petition that the “construction of the [Montgomery GDF] will result in significantly increased traffic, which will cause an increase in air pollution[,]” please identify: (1) the specific factual basis for the allegation, (2) all witnesses and exhibits petitioners will present at the Hearing in support of the allegation, and (3) if petitioners contend that an actual or potential increase in traffic from mobile sources, such as motor vehicles, can be a basis for denying an application for a minor stationary source permit, all legal authority supporting that contention.

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

Without waiving these objections, Petitioners supplement and refer Smith's to its supplemental response to Rogs. # 1, 7, above.

Please note that supporting reliance materials and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

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

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

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

Ms. Freed has experienced the impacts from odors and fumes from a gasoline station first hand. On July 11, 2014, Ms. Freed and her granddaughter were at the intersection of Montgomery and Wyoming, stopped at a red light. The car air conditioning pulled odors and fumes from the adjacent GDF into the car. The pollutants had an immediate effect on Ms. Freed

and her granddaughter, making Ms. Freed feel as though she was suffocating. The traffic light changed and she was able to leave the situation.

Without waiving this objection, Petitioners supplement and refer Smith's to its supplemental response to Rogs. ## 1, 7 above.

Please note that supporting reliance materials and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental response to Rogs. ## 1, 7, above.

Please note that supporting reliance materials and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

Interrogatory No. 12: With regard to the statement by Petitioner Freed in Exhibit 2 of the Petition that Smith's request for throughput at the Montgomery GDF "is in violation of proper zoning regulations[.]" please state: (1) the specific portion of the Albuquerque Zoning

Ordinance that Petitioner Freed claims has been violated, and (2) the specific factual basis for that claim.

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

Without waiving this objection Petitioners supplement and state that to the extent the proposed gas station is located in a residential zone (R-1), it is prohibited. Ord. 14-16-2-6. To the extent the proposed gas station is located in a neighborhood commercial zone (C-1), the proposed station upon information and belief is in violation of access, buffer and landscape requirements among others. Ord. 14-16-2-16 (K) (2). Upon information and belief, gasoline station design requirements under C-1 apply to C-2 zoning designation. Please also see supp. response to Rog. # 7, above.

Interrogatory No. 13: With regard to the claim by Petitioner Freed in Exhibit 2 of the Petition that Smith's permit request for the Montgomery GDF "is not for an 'Area Source' but is instead for a 'Major Source' due to their stated 45.5 tons of VOC's" please identify what specific legal authority, including but not limited to any provision of the New Mexico Air Quality Control Act, the federal Clean Air Act or the Albuquerque-Bernalillo County Air Quality Control Board's ("Air Board") regulations, supports Petitioner Freed's claim that a gasoline dispensing facility emitting up to 45.5 tons of VOCs annually is a major source.

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental response to Rogs. # # 1, 7, above. Petitioners further state that table 2.2, p.2. of the attached *Technical Support Document for Potential to Emit Guidance Memo: Documentation*

of Emission Calculations. (Tim Smith, USEPA/OAQPS. April 1998) supports that 45.5. tons of VOCs annually can constitute major source emissions relative to Stage I annual recovery. For further response, the underlying petition was a layman's petition. The term "Major Source" is a legal term of art. The use and mention of the term "major source" should also be considered in the light of commonly understood language.

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

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental response to Rog. # 1, above.

Please note that supporting reliance materials and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

Interrogatory No. 15: Do Petitioners contend that the construction and operation of the Montgomery GDF in accordance with Permit No. 3135 will: (1) not meet applicable standards, rules or requirements of the New Mexico Air Quality Control Act or the federal Clean Air Act, (2) cause or contribute to air contaminant levels in excess of a national or state standard or, within the boundaries of the City of Albuquerque and Bernalillo County, applicable local

ambient air quality standards, or (3) violate any other provision of the New Mexico Air Quality Control Act or the federal Clean Air Act? If so, please state the specific factual basis supporting the contention.

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental responses to Rogs. ## 1, 7, 13, above.

Please note that supporting reliance materials and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

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

Without waiving this objection Petitioners supplement and affirmatively state that the legal basis of providing sufficient notice implicates due process and protected property rights under state and federal constitutions. For further response *see* supp. response to Rog # 7, above.

Interrogatory No. 18: Do Petitioners contend that the annual throughput limits set forth in minor stationary source permits for gasoline dispensing facilities in Albuquerque and Bernalillo County serve any purpose other than to enable EHD to determine annual fees and to forecast an emissions inventory of VOCs in Albuquerque and Bernalillo County? If so, please identify: (1) what other specific purpose(s) petitioners contend the throughput limit serves, (2) all legal authority upon which petitioners rely in support of the contention, and (3) all witnesses and exhibits petitioners will present at the Hearing in support of the contention.

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental responses to Rogs. ## 1, 7, 13 above.

Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental responses to Rogs. # # 1,7, 13, above.

Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

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

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

Without waiving this objection Petitioners supplement and refer Smith's to its supplemental responses to Rogs. # 1, above.

Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

SUPPLEMENTED REQUESTS FOR ADMISSION

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

RESPONSE: Admit ___ Deny x

Petitioner Toledo objects to this Request for Admission because it requires a legal conclusion and therefore denies the same. For further supplementation, Respondent is referred to supplemental response to Rogs ## 1, 7, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same. For further supplementation, respondent is referred to supplemental response to Rogs ## 1, 7, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

RESPONSE: Admit ___ Deny X

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same to the supplemented extent that design requirements regarding the proposed gas station are not met under the zoning code or fail to consider evidence of secondary impacts and fail to establish lack of detriment to public health welfare and safety. *See also* supplemented response to Rogs. ## 1, 7, 12.

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

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same to the supplemented extent that 45.5. tons of VOCs annually can constitute major source emissions relative to Stage I annual recovery. *See also* supplemented response to Rogs. ## 1, 7, 13.

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

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same and further supplement that upon information and belief there is no such 20.11.41.14 (A) (3) NMAC (2002) (emphasis added). Upon information and belief, the 2002 compilation of this chapter and section of the administrative code (authority to construct) was repealed effective 1/1/2014 and replaced by the current version.

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

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same. For further supplementation, Respondent is referred to supplemental response to Rogs ## 1, 7, above. Please note that supporting reliance

materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

RESPONSE: Admit ___ Deny x

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

For further supplementation, Respondent is referred to supplemental response to Rogs ## 1, 7, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same. For further supplementation, Respondent is referred to supplemental response to Rogs. ## 1, 7, 13 above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

RESPONSE: Admit ___ Deny x

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

For further supplementation, Respondent is referred to supplemental response to Rogs ## 1, 7, 13, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

Request for Admission No. 16: Admit that in promulgating Hex C, the federal Environmental Protection Agency chose to regulate VOC emissions by requiring gasoline dispensing facilities to use Stage I vapor recovery systems and other performance measures rather than by setting ambient air standards for VOCs.

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same. For further supplementation, Respondent is referred to supplemental response to Rogs. ## 1, 7, 13, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same. For further supplementation, Respondent is referred to supplemental response to Rogs. ## 1, 7, 13, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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

RESPONSE: Admit ___ Deny x

Petitioners object to this Request for Admission in that it calls for a legal conclusion and therefore deny the same. For further supplementation, Respondent is referred to supplemental response to Rogs. ## 1, 7, 13, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

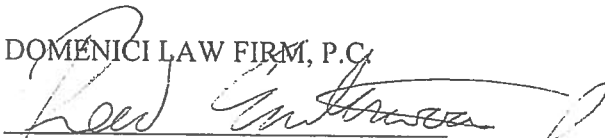
Request for Admission No. 19: Admit that the hazardous air pollutants ("HAPs") that tend to be present in gasoline collectively constitute anywhere from 2% to 11% of VOCs emitted from gasoline.

RESPONSE: Admit ___ Deny x

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

For further supplementation, Respondent is referred to supplemental response to Rogs. ## 1, 7, 13, above. Please note that supporting reliance materials, witness information and other exhibits were previously provided to counsel on August 8, 2014 under cover of Petitioner's submitted NOI.

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Hereby certify that a true and correct copy of Petitioner's supplemented responses were delivered to opposing counsel and counsel for the City of Albuquerque on August 8, 2014.


Pete V. Domenici, Jr.