

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

IN THE MATTER OF THE PETITION  
FOR A HEARING ON THE MERITS  
REGARDING AIR QUALITY PERMIT  
NO. 3136

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

No. AQCB 2014-3

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**PETITIONERS' REQUEST TO AIR BOARD TO DISCLOSE POSSIBLE  
CONFLICTS OF INTEREST AND MOTION TO DISQUALIFY**

**COME NOW** the Petitioners, by and through undersigned counsel of record, and in support of their Request to Air Board to Disclose Possible Conflicts of Interest and Motion to Disqualify, state as follows.

1. NMAC 20.11.81.12 B (3) states in part,

“Board member and hearing officer disqualification-recusal-withdrawal:

(a) A board member or a hearing officer shall not perform any function authorized by 20.11.81 NMAC regarding any matter in which a board member or a hearing officer:

- (i) has a personal bias or prejudice concerning a party or the outcome of a proceeding ....
- (v) has a financial interest in the proceeding or facility that is the subject of the proceeding or has any other conflict of interest...”

*Id.*

2. For the purpose of determining potential conflicts of interest, Petitioners request the individual members of the Air Board disclose any permit matters outside of the Air Board

members' official capacities where any such members have a professional or financial interest in proceedings and facilities that are subject to the Air Board's jurisdiction.

3. The Air Board's jurisdiction in granting air permits is argued by Petitioners to include issues regarding quality-of-life concerns, character and degree of injury to or interference with health, welfare, visibility and property; the public interest, including the social and economic value of the sources and subjects of air contaminants; and technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved. The determination of the application of these issues to air permits may involve board members whom also act in their professional or corporate capacities in the assistance or pursuit of air permits.

Petitioners request the individual members of the Air Board disclose any third-party permittees-applicants, of which any individual board members have assisted or are assisting regarding permits under the Air Board's jurisdiction.

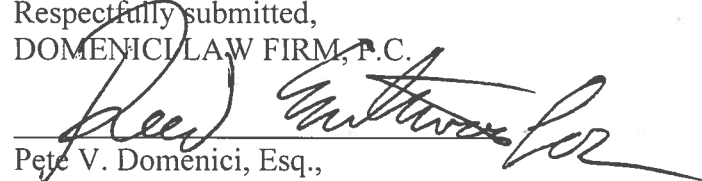
4. Petitioners hereby motion to disqualify any board members before the completion of the evidentiary hearing that disclose 1) any professional or financial interest in proceedings and facilities that are subject to the Air Board's jurisdiction, including Smith's gas stations located throughout Albuquerque, and 2) personal bias or prejudice concerning Petitioners or the outcome of this proceeding. 20.11.81.12 (B) (3) (c) NMAC.

5. The Air Quality Board has intervened to support its decision in one of two decisions on Appeal in the New Mexico Court of Appeals. The decision to intervene on only one of two appeals indicates bias or prejudice by the Air Board and its attorney who serves as the Hearing Officer.

**WHEREFORE**, Petitioners pray for

- A.       recusal or withdrawal of any Air Board member that discloses a conflict of interest under NMAC 20.11.81.12 B (3); and/or
- B.       that a quorum of the Air Board without such challenged member(s) thereafter vote to disqualify such members from proceeding further in this matter; and
- C.       that the Board and Hearing Officer disqualify themselves on the basis of bias and prejudice as the selective intervention on one appeal before the New Mexico Court of Appeals shows the Board and Hearing Officer have prejudiced the issues and parties in this matter.

Respectfully submitted,  
DOMENICI LAW FIRM, P.C.

  
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Petitioners.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing with attachments was e-mailed to counsel for the City of Albuquerque and Smith's Food & Drug Centers, Inc. on the 22nd day of October, 2014.

I further certify that a true and correct copy of the same was e-mailed to the Hearing Officer and that requisite hard copies of the same were hand delivered to the hearing clerk on October 22nd, 2014.

  
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Pete V. Domenici, Jr., Esq.