

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  
ISSUED TO SMITH'S FOOD AND DRUG CENTERS, INC.

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

No. AQCB 2014-

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**ORDER GRANTING DISMISSAL**

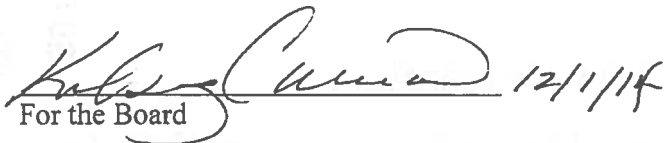
This matter comes before the Board upon Motions for Summary Judgment filed by the City of Albuquerque Environmental Health Department and Smith's Food & Drug Centers on October 3, 2014. Petitioners filed a Consolidated Response to both Motions on October 17, 2014. The Department and Smith's each filed a Reply on October 22, 2014. Because the Motions, if granted, would effectively dispose of the matter, the Hearing Officer referred it to the Board for decision in accordance with Section 20.11.81.12.H (6) NMAC.

On October 22, 2014, the Board heard public comment and extensive oral argument, including responses to Board questions, from counsel for Smith's, the Department, and Petitioners, and received advice from the Hearing Officer.

Having considered the Motions, the Response, the Replies and the oral arguments presented, the Board granted the Motions for Summary Judgment on a vote of 4-2.

The Board found no genuine issue of material facts of the case; no support for a contention that a standard, rule or statute would be violated by the permit, or construction under the permit; no authority for the Board to address the Petitioners' stated concerns; and no nexus between the Petitioners' stated concerns and the air quality permitting rules.

The Petition for Hearing was therefore DISMISSED with prejudice, and the hearing on the merits scheduled for November 12-13, 2014 was VACATED.

 12/1/14  
For the Board