

**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.**

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

No. AQCB 2014-2

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ORDER GRANTING DISMISSAL

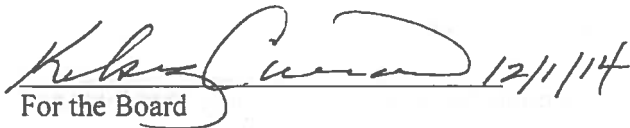
This matter comes before the Board upon a Motion for Summary Judgment filed by the City of Albuquerque Environmental Health Department on September 17, 2014 and by Smith's Food & Drug Centers on September 19, 2014. Petitioners filed a Response to the Department's Motion on October 2, 2014, and a Response to Smith's Motion on October 3, 2014. The Department filed a Reply on October 3, 2014 and Smith's filed a Reply on October 7, 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 8, 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 Responses, the Replies and the oral arguments presented, the Board granted the Motions for Summary Judgment on a vote of 6-1.

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 5-6, 2014 was VACATED.

 12/11/14
For the Board