

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

RECEIVED  
ENVIRONMENTAL HEALTH

15 MAY -6 AM 8:10

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

**AGREED ORDER DENYING PETITIONERS' REQUEST FOR HEARING  
ON PETITIONERS' MOTION TO RECONSIDER**

This matter came before the Board for discussion on January 21, 2015, upon a Motion to Reconsider filed by Petitioners on December 11, 2014. Smith's Food & Drug Centers ("Smith's") and the City of Albuquerque ("City") filed a Joint Response in Opposition to Petitioners' Motion to Reconsider on January 9, 2015. The Board heard oral argument regarding whether the Board has authority to hear the Motion to Reconsider and whether a hearing on the merits of the Motion would be set. The Board was fully advised.

Having considered the pleadings, oral arguments presented and the advice of Board Counsel, the Board declines to hear the merits of Petitioners' Motion for Reconsideration, because Petitioners have already filed a Notice of Appeal and a Docketing Statement in the New Mexico Court of Appeals and the Board lacks jurisdiction to hear Petitioners' Motion to Reconsider.

THEREFORE, the Board denies Petitioners' request for a hearing on their Motion to Reconsider.



Felicia Orth  
Hearing Officer

Submitted by:

SUTIN, THAYER & BROWNE  
A Professional Corporation

By Frank C. Salazar  
Frank C. Salazar  
Timothy J. Adler  
*Attorneys for Smith's Food & Drug Centers, Inc.*  
Post Office Box 1945  
Albuquerque, New Mexico 87103-1945  
Telephone: (505) 883-2500

Approved as to form:

CITY OF ALBUQUERQUE  
Jenica L. Jacobi, Interim, City Attorney

By Telephonically approved 4/17/15

Carol M. Parker  
Donna Griffin  
Assistant City Attorney  
P.O. Box 2248  
Albuquerque, New Mexico 87103  
Telephone: (505) 768-4500  
Facsimile: (505) 768-4525  
[cparker@cabq.gov](mailto:cparker@cabq.gov)

By Telephonically approved 4/17/15

Pete V. Domenici, Jr.  
Reed Easterwood  
Domenici Law Firm, PC  
320 Gold Avenue SW, Suite 1000  
Albuquerque, NM 87102  
[pdomenici@domicilaw.com](mailto:pdomenici@domicilaw.com)  
[reasterwood@domicilaw.com](mailto:reasterwood@domicilaw.com)  
*Attorneys for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that I have e-mailed a true and correct copy of the foregoing AGREED ORDER DENYING PETITIONERS' REQUEST FOR HEARING ON PETITIONERS' MOTION TO RECONSIDER on this 6<sup>th</sup> day of May, 2015, to the following:

**E-mailed**

Felicia Orth  
Attorney and Hearing Officer for Air Quality Control Board  
[orthf@yahoo.com](mailto:orthf@yahoo.com)

**E-mailed**

Carol M. Parker, Assistant City Attorney  
[cparker@cabq.gov](mailto:cparker@cabq.gov)  
Attorney for City of Albuquerque,  
Air Quality Program

**E-mailed**

Pete V. Domenici, Jr., Esq.  
Lorraine Hollingsworth, Esq.  
Reed Easterwood  
Domenici Law Firm, P.C.  
[pdomenici@domicilaw.com](mailto:pdomenici@domicilaw.com)  
[lhollingsworth@domicilaw.com](mailto:lhollingsworth@domicilaw.com)  
[REasterwood@domicilaw.com](mailto:REasterwood@domicilaw.com)  
Attorneys for Petitioners

**E-mailed**

Frank Salazar, Esq.  
Tim Adler, Esq.  
Sutin, Thayer & Browne, APC  
[TJA@sutinfirm.com](mailto:TJA@sutinfirm.com)  
[FCS@sutinfirm.com](mailto:FCS@sutinfirm.com)  
Attorneys for Applicant

Respectfully submitted,



---

Andrew Daffern, AQCB Hearing Clerk