

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

RECEIVED  
ENVIRONMENTAL HEALTH  
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PETITION FOR HEARING

The Petitioners in this matter, Arthur Gradi, Ruth A. McGonagil, Jerri Paul-Seaborn, Bernice Ledden, Susan Kelly, Americo Chavez, and Pat Toledo, pursuant to Section 74-2-7 NMSA 1978 and 20.11.81 NMAC, hereby petition the City of Albuquerque Environmental Health Department (EHD) and the Albuquerque-Bernalillo County Air Quality Control Board for a hearing as authorized by law with reference to Air Quality Permit No. 3136 issued effective June 3, 2014 to Smith's Food & Drug Centers, Inc. (Smith's). The notification letter and the permit are attached as Exhibit 1. The permit authorizes Smith's to have an annual throughput of 7 million gallons per year at a fuel dispensing station Smith's proposes to build at 6310 4<sup>th</sup> St. NW, Albuquerque, New Mexico. In accordance with 20.11.81.14 NMAC, the Petitioners provide the following information:

- I. Petitioners' names and addresses:
  - A. Arthur Gradi  
4<sup>th</sup> Street NW  
Los Ranchos, NM 87107  
505-350-5867

- B. Ruth A. McGonagil  
505 Camino Español NW  
Albuquerque, NM 87107  
505-340-9455
- C. Jerri Paul-Seaborn  
610 Camino Español NW  
Albuquerque, NM 87107  
505-344-8170
- D. Bernice Ledden  
427 Mullen Rd NW,  
Los Ranchos, NM 87107  
505-345-6686
- E. Susan Kelly  
713 Camino Español NW  
Albuquerque, NM 87107  
505-720-6651
- F. Americo Chavez  
721 Camino Español NW  
Albuquerque, NM 87107  
505-345-1565
- G. Pat Toledo  
3404 Calle Del Rancho NE  
Albuquerque, NM 87106  
505-256-0848

**II. Petitioners' participation in permitting action and how Petitioners were adversely affected by permitting action**

Petitioner Arthur Gradi owns property located at 6338 4<sup>th</sup> St NW, next door to the property on which Smith's proposes to construct the fuel dispensing station.

Petitioner Ruth A. McGonagil owns property located at 505 Camino Español NW, on the opposite side of 4<sup>th</sup> Street, located in close proximity to the property on which Smith's proposes to construct the fuel dispensing station.

Petitioner Jerri Paul-Seaborn owns property located at 610 Camino Español NW, located on the street directly adjacent to the property on which Smith's proposes to construct the fuel dispensing station.

Petitioner Bernice Ledden owns property located at 427 Mullen Rd NW, which is located within several blocks of the property on which Smith's proposes to construct the fuel dispensing station.

Petitioner Susan Kelly owns property located at 713 Camino Español NW, which is located within ½ mile of the site on which Smith's proposes to construct the fuel dispensing station and her property can only be accessed from the intersection of Camino Español and 4<sup>th</sup> Street at the proposed Smiths fuel station site.

Petitioner Americo Chavez owns property located at 721 Camino Español NW, which is located within ½ mile of the site on which Smith's proposes to construct the fuel dispensing station and his property can only be accessed from the intersection of Camino Español and 4<sup>th</sup> Street at the proposed Smiths fuel station site.

Petitioner Pat Toledo is involved in the matter of the Smith's fuel station at Carlisle and Constitution which is on appeal. He is also involved in a court case regarding the site at Tramway and Central, where standing is an issue. As Smith's presented 2400 signatures on a petition submitted in the 4<sup>th</sup> Street application with no indication of the addresses of those signatories, Smith's has indicated it views that the broad public has standing. Pat Toledo has standing in this matter.

Each of the Petitioners participated in either or both of the Public Information Hearings **(PIH)** held on March 25, 2014 and April 23, 2014. Each of the Petitioners is adversely affected by the permitting action because the Air Program refused and failed to take into consideration quality-of-life concerns raised by the participants at the PIH. In addition, each of the Petitioners are likely to be adversely affected by increased VOC emissions, odors, fumes, increased traffic and resulting pollution, and other negative impacts on their persons, property

and quality of life resulting from the construction of the Smith's fuel dispensing station at the proposed location.

**III. Specific permitting action appealed from, permitting action to which Petitioners object and factual and legal basis of Petitioners' objections to the permitting action**

The Petitioners are appealing the issuance of Permit 3136, issued to Smith's with notice provided to Petitioners by letter dated June 3, 2014. (*See Exhibit 1, attached*). The Petitioners object to the issuance of the permit allowing for a throughput of 7 million gallons at a fuel dispensing station proposed to be constructed at 6310 4<sup>th</sup> St NW, Albuquerque, New Mexico. Permit No. 3136 was issued pursuant to §20.11.41 NMAC, Authority to Construct. The first PIH was held on March 25, 2014. Approximately 75 people attended the meeting in opposition to the issuance of the permit, with approximately 20 people providing public comments opposing the issuance of the permit. No one from the public spoke in favor of the permit. The PIH was continued due to the inability to hear all public comment within the allotted time and a second hearing was held April 23, 2014. At that meeting, approximately 70 people attended the meeting and approximately 20 spoke against the issuance of the permit. Again, no one from the public spoke in favor. In addition, petitions with approximately 60 signatures of nearby residents objecting to the issuance of the permit were submitted to the administrative record.

The purpose of regulatory provisions regarding public notice and hearings is to ensure that persons with an interest in environmental permitting matters be allowed to participate before a final decision is made. *Colonias Dev. Council v. Rhino Enviro. Services*, 2005-NMSC-024, 21, 138 N.M. 133. The New Mexico Supreme Court has recognized that "the public plays a vital role" in an administrative environmental permitting process and must be allowed a

reasonable opportunity to be heard. *Id.* Pursuant to the *Colonias* decision, adverse impacts on a community's social well-being and quality of life may be raised during public hearings concerning permit applications and the final decision maker must take such concerns into consideration when deciding whether to approve or deny a permit. *Id.* at ¶24. Quality of life issues may include concerns about public health and welfare and other impacts on the community not addressed by specific technical regulations. *Id.* Such concerns may also include impacts on private property. Adverse public testimony, whether in the form of technical testimony or public comment, must be taken into account when reaching a final decision. *Id.* at ¶¶24, 41, 43. The New Mexico Supreme Court specifically found that the hearing officer was incorrect in stating that the only determination to be made was whether the permit application met the technical requirements of the regulations. *Id.* at ¶¶7, 8, 24.

The Air Quality Board has already held, in regard to Smith's Permit No. 2037-M1 for the Smith's fuel dispensing station located at 1313 Carlisle Blvd. NE, Albuquerque, NM, that the Air Quality Act and regulations require permitting decisions to take into account quality-of-life issues. The Air Quality Act mandates that the Board "shall prevent or abate air pollution." NMSA §74-2-5. In addition, Part 41 of the Air Quality Control Board Regulations, which governs authority to construct permits, states that the objective of the part "is to insure that new facilities or modified existing facilities will not emit air pollution, which will cause violations of air pollution control regulations upon operation following construction. This procedure will protect the source owner's investment as well as uphold public concern and desire for input prior to commencement of air pollution sources in Bernalillo County." 20.11.41.6 NMAC. The Air Quality Act and the Board's regulations, as well as the Board's decision in the Carlisle permitting matter, clearly express that

the issuance of permits must be made in the context of impacts to public welfare and the reasonable use of property.

In issuing Permit No. 3136, the City of Albuquerque Air Quality Program (Air Program) refused to take into consideration the concerns raised by the public comments at the PIH. The Air Program stated: "An air quality permit cannot address zoning, non-air-quality building issues, road and traffic control and public safety." (Exhibit 1, attached hereto). The Program further 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 the particular issue." *Id.*

It should be noted there is nothing in the record to indicate that the Air Program did, in fact, convey concerns to appropriate City Departments. Also, "duly noted" is not equivalent to preparation of a response to the serious concerns of the public. The Air Program dismissal of public concerns by stating the concerns were "duly noted" and "in some cases" conveyed to City Departments, is an insufficient response to a meaningful public input process.

Permit No. 3136 is for a fuel dispensing station that has not been built on property that is currently developed as a car wash. The car wash is no longer operational. The property is within the City of Albuquerque, but is on the boundary with the Village of Los Ranchos. Fourth Street is a busy arterial with volumes approaching 20,000 cars per day. There is a Giant gas station about 300 feet from the proposed site; another gas station on the east side of Fourth

Street at the nearby intersection with Montano; and a Phillips 66 station on the northwest corner of that intersection. The proposed fuel station is allowed to pump 7 million gallons per year. This would be the largest throughput volume in the Albuquerque metropolitan area.

The location borders residential areas and is close to Taft Middle School. The construction of the Smith's station will result in significantly increased traffic, which will cause an increase in air pollution. The property owned by Mr. Gradi is immediately north and east of the proposed Smith's location and would be impacted by the VOCs, fumes and increased traffic. The proposed fuel dispensing station 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. All Petitioners live near the proposed Smith's fueling station and would be directly impacted by the VOC's, fumes and increased traffic and pollutants. There are residents in the vicinity that have breathing difficulties, and some are on oxygen. There are low income residents nearby with small children and elderly populations. These and other concerns (including an unreadable site plan; the safety of fuel tanker deliveries; conflicts with North Fourth Street Rank III Corridor Plan, which plans for North Fourth Street to be a transit/pedestrian oriented corridor; nuisance issues similar to what occurs at other Smith's stations; safety and operational issues concerning how drainage will be handled; the lack of need for an additional gas station in the area; fuel station operational considerations; cell tower proximity; and other concerns) were raised at the PIH.

The Air Program's refusal to take into consideration issues regarding quality of life, public health, impacts to private property and impacts to the community is inconsistent with the holding in *Colonias*, with the applicable statutes and regulations, and with the Board's decision

in the Carlisle permitting matter. "Duly noting" the concerns raised by the public is insufficient. Petitioners were informed by the Air Program officials during the PIH that Smith's application 3136 essentially met technical requirements and that only those technical requirements would be considered in making a decision on the application. The Air Program is incorrect in stating that they may only rely on technical requirements. If the concerns of the public are not addressed, including quality of life issues, impacts to the community, and impacts to property, then the requirements for public participation are merely a *pro forma* process that has no meaning and no relation to the actual permit decision. Public participation is rendered meaningless, despite statutory and regulatory provisions for public input and numerous decisions by the New Mexico appellate courts emphasizing the importance of public participation in environmental permitting.

**V. Remedies sought by Petitioners, legal basis therefor, and basis for jurisdiction of Board in this matter**

Pursuant to §74-2-7 NMSA and 20.11.81 NMAC, the Petitioners, persons who participated in the permitting action before the Department, request that the Air Quality Board hold an evidentiary hearing on Permit No. 3136, including but not limited to the failure of the Air Quality Program to properly take into consideration public comments and concerns regarding quality of life and impacts on the community, impacts on air quality, cumulative effects of the permitting action, impacts on private property and other issues raised by the public. As stated above, pursuant to *Colonias Dev. Council v. Rhino Enviro. Services*, 2005-NMSC-024, 138 N.M. 133, NMSA §74-2-5., 20.11.41.6 NMAC, and the Board's decision in the Smith's Carlisle permitting matter, permitting decisions must take into consideration community concerns and cannot rely solely on technical considerations. The requested remedy is within the Board's jurisdiction to



review decisions made by the Air Quality Program and to prevent and abate air pollution set forth in §74-2-5 and the applicable air quality regulations.

**V. Air Program improperly considered Smith's petition signatures**

In the second hearing, Smith's proposed for inclusion as part of the record a petition in favor of the fueling station. Petitioner's objected because, as admitted by Smith's representatives on the record, the signatories on the petition did not provide any information about the signatory. There was no indication of whether the signatories were neighborhood residents, whether they lived in the North Valley, or whether in fact they even lived in the state of New Mexico. These petition signatures should not have been considered by the Air Program. They were simply the signatures of sporadic customers who would not be impacted by the Air Program decision; they might have been only indicating support for cheap gasoline prices and were unaware of the proposed fuel station location. They should not have been considered by the Air Program.

**VI. Air Program did not attempt to provide adequate notice to the affected public**

Smith's is required to provide public notice of application and notice of public hearing in a newspaper, to persons on a mailing list developed by the AQD and "by other means if necessary to assure adequate notice to the affected public." Clearly, this standard has not been met. The Air Program stated on the record at the first hearing on 3136 that notice was only given to three recognized neighborhood associations in the area based on a google search. Notice should have been given to individuals and neighborhoods directly adjacent to the proposed site. In approving the Permit 3136, the Air Program states that Spanish Walk

Homeowner's Association, even though it is directly adjacent to the site, was not notified because it is not a recognized neighborhood association.

There has been a history of faulty notice regarding fueling stations in the Albuquerque area. This resulted in a new regulation taking effect January 1, 2014. Since then, a large yellow sign is required to be posted at the site of a proposed fuel station. The subject application 3136, managed to be completed in December 2013, just prior to the new requirements taking effect. Given the past record of lack of notice and associated problems, the Air Program and Smiths were obligated to give actual notice to nearby residents.

In the case of an application for a Smith's fueling station at Tramway and Central in Albuquerque, the Air Program is on record as having notified several homeowner's associations (not registered neighborhood associations) of the proposed application. The Spanish Walk Homeowner's Association is adjacent to the site and it would have been easy for the Air Program or Smith's to provide nearby residents with notice. The Air Program chose not to do so.

**VII. Air Program improperly approved a permit for an applicant (Smiths) that is a chronic violator of the conditions of its other permits within the City of Albuquerque**

Smith's routinely pays fines related to exceeding the pumping quantities allowed under its permits. The Air Program should refuse to issue Smiths additional permits until Smith's can demonstrate that it has a good track record of compliance. The enforcement tools and regulatory programs appear insufficient to deter future violations by the applicant. Smith's appears to be treating penalties and other sanctions as merely an on-going business expense and the Air Program should view this as symptomatic of underlying compliance problems and,

potentially, threats to the City's environment that should be addressed and corrected. Since violations of the throughput volumes by Smith's appears to be a routine matter, it raises the question of whether there are other violations of the terms and conditions of Smith's permits that might be occurring that the City is either unaware of, or aware of, that could result in the release of harmful pollutants into the air or create dangerous conditions.

Respectfully Submitted,



Arthur Gradi



Ruth A. McGonagil



Terri Paul-Seaborn



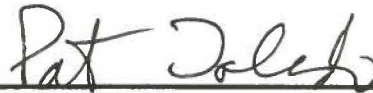
Bernice Ledden



Susan Kelly



Americo Chavez



Pat Toledo

PAT TORO

Pat Toro

I hereby certify that a true and correct copy of the foregoing Petition for Hearing was served on the Albuquerque Environmental Health Department, Mary Lou Leonard, Director; Frank Salazar and Tim Alter, Attorneys for Applicant; Felicia Orth, Attorney for the Air Quality Board; and Carol Parker, Assistant City Attorney, City of Albuquerque.

Pat Toro

VERIFICATION

Arthur A. Gradi, being of legal age, hereby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Arthur A. Gradi

Name: Arthur Gradi

VERIFICATION

Ruth A. McGonigil, being of legal age, hereby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Ruth A McGonigil

Name: Ruth A. McGonigil

VERIFICATION

Jerri Paul-Seaborn, being of legal age, hereby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Jerri Paul-Seaborn

Name: Jerri Paul-Seaborn

VERIFICATION

Bernice Ledden, being of legal age, herby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Bernice Ledden  
Name: Bernice Ledden

VERIFICATION

Susan Kelly, being of legal age, herby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Susan Kelly  
Name: Susan Kelly

VERIFICATION

Americo Chavez, being of legal age, herby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Americo Chavez  
Name: Americo Chavez

VERIFICATION

PAT TOLEDO, being of legal age, herby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Pat Toledo  
Name: Pat Toledo



**CONSTRUCTION PERMIT #3136  
FACILITY CDS # NM/001/02261  
Facility ID: FA0003035 Record ID: PR0006343**



Richard J. Berry, Mayor

Mary Lou Leonard, Director

Issued to: Smith's Food & Drug Centers, Inc.  
Company Name

Certified Mail # 7010 3090 0001 4395 9326  
Return Receipt Requested

1550 South Redwood Road  
Mailing Address

Salt Lake City  
City

UT  
State

84104  
Zip

Responsible Official: Roger Gough, Construction Manager  
Authorized Representative

Pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2 New Mexico Statutes Annotated 1978 (as amended); the Joint Air Quality Control Board Ordinance, 9-5-1 to 9-5-99 ROA 1994; the Bernalillo County Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5; the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) regulation, Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 40 (20.11.40 NMAC), Source Registration; and AQCB regulation, Title 20, NMAC, Chapter 11, Part 41 (20.11.41 NMAC), Construction Permits,

Smith's Food & Drug Centers, Inc. ("permittee") is hereby issued this **CONSTRUCTION PERMIT** as a **NEW STATIONARY SOURCE**.

This CONSTRUCTION Permit Number 3136 has been issued based on the review of the application information received by the Albuquerque Environmental Health Department (Department), Air Quality Program (Program) on November 5, 2013, which was deemed complete on December 3, 2013, and on the National Ambient Air Quality Standards, New Mexico Ambient Air Quality Standards, and Air Quality Control Regulations for Albuquerque/Bernalillo County, as amended. As these standards and regulations are updated or amended, the applicable changes will be incorporated into this Air Quality Permit Number 3136 and will apply to the facility. This facility is authorized to construct and operate the following type of process at:

Facility Name & Address	UTM Coordinates	Process Description	SIC	NAICS
Smith's Food & Drug Centers, Inc. 6310 4 <sup>th</sup> St. NW Albuquerque, NM 87107	350700 Easting 3890810 Northing	Gasoline Dispensing Facility (GDF) <sup>1</sup>	5541	447190

<sup>1</sup>Gasoline dispensing facility (GDF) means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

Issued on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Sign Name

Air Quality Protection Programs - Permitting Section  
Air Quality Program  
City of Albuquerque Environmental Health Department

**1. CONSTRUCTION PERMIT THRESHOLD [74-2-7.A.(1) NMSA].** By regulation, the local board shall require a person intending to construct or modify any source, except as specifically provided by regulation, to obtain a construction permit from the local agency prior to such construction or modification. This permit recognizes the construction and operation of the following equipment:

Unit Number	Unit Description	Storage Capacity in gallons	Installation Date	Product Stored	Minimum Required Emissions Control <sup>1</sup>
1	Underground Storage Tank	20,000	2014	Regular Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling
2	Underground Storage Tank	8,000	2014	Premium Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling

<sup>1</sup> **GASOLINE HANDLING AND HOLDING AT RETAIL OR FLEET SERVICE STATIONS:** No person shall allow loading of gasoline into an underground storage tank with greater than 3,000 gallons capacity, unless it is equipped with an approved vapor loss control system, including a submerged fill pipe, in which the displaced vapors are either continuously contained or processed such that the emission of gasoline vapors to the atmosphere do not exceed 1.15 pounds of gasoline per 1,000 gallons loaded into said tank. Liquid gasoline dispensing from the underground storage tank as well as momentary opening of the system for gasoline gauging purposes shall not be considered as vapor loss in the requirement of this Section. [Albuquerque-Bernalillo Air Quality Control Board Regulation 20.11.65.15 NMAC, Volatile Organic Compounds.]

**2. COMPLIANCE ASSURANCE.**

- A. All air pollution emitting facilities within Bernalillo County are subject to all applicable Albuquerque/Bernalillo County Air Quality Control Regulations, whether listed in this permit or not.
- B. The issuance of a construction permit does not relieve the Company from the responsibility of complying with the provisions of the state air quality control act, federal clean air act, or any applicable regulations of the board. (20.11.41.17 NMAC)
- C. Any term or condition imposed by the department in a construction permit shall apply to the same extent as a regulation of the board. (20.11.41.18.C NMAC)
- D. Whenever two or more parts of the Air Quality Control Act, or the laws and regulations in force pursuant to the Act, limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern. (20.11.41.18B NMAC)
- E. The department is authorized to issue a compliance order requiring compliance and assessing a civil penalty not to exceed Fifteen Thousand and no/100 Dollars (\$15,000) per day of noncompliance for each violation, commence a civil action in district court for appropriate relief, including a temporary and permanent injunction. (74-2-12 NMSA).

**3. SUBSTITUTION.** Substitution of equipment is authorized provided the equipment has the same or lower process capacity as the piece of equipment being substituted. The department shall be notified in writing within 15 days of equipment substitution. Equipment that is substituted shall comply with the requirements in the Section 4 Gasoline Unit Emission Limits table.

**4. GASOLINE UNIT EMISSION LIMITS. Allowable monthly and annual gasoline throughput. Allowable ton per year (tpy) emissions.**

Unit	Unit Description	Allowable Average Monthly Throughput of Gasoline (in gallons) <sup>1</sup>	Allowable Annual Throughput of Gasoline (in gallons) <sup>2</sup>	Allowable Annual Emissions of Volatile Organic Compounds (VOC's) <sup>2</sup> (in tons per year)
1	Underground Storage Tank	≥100,000	For Stage I Vapor Recovery 7,000,000	45.5 tons per year
2	Underground Storage Tank			

<sup>1</sup> Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each Gasoline Dispensing Facility (GDF) during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

<sup>2</sup> Based on the annual gasoline throughput requested in the permit application. There is no restriction on individual tank throughput.

**5. EMISSIONS INVENTORY REQUIREMENTS (20.11.47 NMAC).** Subsection 20.11.47.14A.(1) – Applicability - requires an emissions inventory of any stationary source in Bernalillo county that has an active permit issued pursuant to 20.11.41 NMAC Construction Permits. Subsection 20.11.47.14B.(1) – Reporting Requirements – requires the submittal of an emissions inventory report annually. Therefore, an annual emissions inventory (in pounds per calendar year) shall be submitted to the department by March 15 each year by:

multiplying the actual, annual gallons of gasoline throughput for the previous calendar year (January 1<sup>st</sup> through December 31<sup>st</sup>) for Units 1 and 2 in the Section 4 Gasoline Unit Emission Limits table above, by 0.013 pounds/gallon if Stage I Vapor Recovery or 0.0031 pounds/gallon if Stage II Vapor Recovery. An electronic emission inventory form is available at [cabq.gov/airquality](http://cabq.gov/airquality), under Business Resources - Business Applications, Permits and Forms.

**6. MODIFICATION.** Any future physical changes or changes in the method of operation which result in an increase in the pre-controlled emission rate may constitute a modification. Change in the method of control of emissions or in the character of emissions shall not be made unless submitted to the department as a modification to this permit. 20.11.41.7H NMAC defines proposed changes to a facility that may constitute a permit modification. Compliance will be based on department inspections and the submittal of a new permit application for any modification. No modification shall begin prior to issuance of a permit and shall be processed in accordance with 20.11.41 NMAC.

**7. MONITORING and RECORDKEEPING [20.11.41.18.B(8)]** Monitor and Maintain a log of the total monthly gasoline throughput for the facility. These records must be retained for the most recent five-year period for the facility.

**8. REPORTING.**

A. The following reporting requirements, in accordance with 20.11.41.18, 20.11.41.20, 20.11.41.47 and 20.11.41.49 NMAC, to allow the department to determine compliance with the terms and conditions of the permit. Compliance will also be based on timely submittal of the reports. The permittee shall notify the department in writing of:

- 1. Any change in control or ownership, within 15 days of the change in control or ownership. In the event of any such change in control or ownership, the permittee shall notify the succeeding owner of the permit. The permit conditions apply in the event of any change in control or ownership of the facility. At minimum, an administrative permit modification is required to address any change in control or ownership of the facility;
- 2. Any substitution of equipment, within 15 days of equipment substitutions. Equipment may only be substituted if it has the same or lower process capacity as the piece of equipment being substituted, and there are no other federal, state, or local air quality permit requirements triggered by the introduction of the substituted piece of equipment. Substituted equipment shall comply with the Section 4 Gasoline Unit Emission Limits table;
- 3. The annual (January 1 through December 31 of previous year) throughput of gasoline and emission inventory, by March 15 of every year; and
- 4. Any breakdown of equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by permit conditions. Any breakdown or abnormal operating conditions shall be reported to the department by submitting the following reports on forms provided by the department:

a) Initial Report: The permittee shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission pursuant to 20.11.49.15.A(1) NMAC;

b) Final Report: The permittee shall file a final report, no later than 10 days after the end of the excess emission. If the period of an excess emission extends beyond 10 days, the permittee shall submit the final report to the department within 72 hours of the date and time the excess emission ceased. This condition is pursuant to 20.11.49.15.A(2) NMAC and 20.11.49.15.C NMAC; and

c) Alternative Reporting: If the facility is subject to the federal reporting requirements of 40 CFR Parts, 60, 61, or 63 and the federal requirements duplicate the requirements of 20.11.49.15 NMAC, then the federal reporting requirements shall suffice. This condition is pursuant to 20.11.49.15.D NMAC.

B. The emission of a regulated air pollutant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action. The owner or operator of a source having an excess emission shall, to the extent practicable, operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. This condition is pursuant to 20.11.49.14 NMAC.

#### 9. INSPECTION (74-2-13 NMSA).

A. The department may conduct scheduled and unscheduled inspections, and, upon presentation of credentials:

1. Shall have a right of entry to, upon, or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the board or by any permit condition are located; and

2. May, at reasonable times:

a) Have access to and copy any records required to be established and maintained by regulations of the board or any permit condition;

b) Inspect any monitoring equipment and method required by regulations of the board or by any permit condition; and

c) Sample any emissions that are required to be sampled pursuant to regulation of the board or any permit condition.

B. Any credible evidence may be used to establish whether the facility has violated or is in violation of any regulation of the board, or any other provision of law. Credible evidence and testing shall include, but is not limited to 20.11.41.26(A) and (B) NMAC as follows:

1. A monitoring method approved for the source pursuant to 20.11.42 NMAC, Operating Permits, and incorporated into an operating permit;

2. Compliance methods specified in the regulations, conditions in a permit issued to the facility, or other provision of law;

3. Federally enforceable monitoring or testing methods, including methods in 40 CFR parts 51, 60, 61, 63 and 75; and

4. Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the department and the USEPA.

C. Compliance will be based on department inspections of the facility, reviews of production records, submission of appropriate permit applications for modification, and timely notification to the department regarding equipment substitutions and relocations.

10. **FEDERAL RULEMAKING.** In addition to Albuquerque-Bernalillo Air Quality Control Board Regulation 20.11.65 NMAC, *Volatile Organic Compounds*; 40 CFR Part 63, Subpart CCCCCC – National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Dispensing Facilities apply to this facility. Based on the requested annual throughput for gasoline, this facility's monthly throughput would amount to 100,000 gallons or more of gasoline. Therefore, the permittee shall ensure the applicable requirements of 40 CFR Part 63, Subpart CCCCCC, §63.11116, §63.11117, and §63.11118 are met as well as the Subpart A – General Provisions of 40 CFR Part 63.

A. **GENERAL APPLICABLE REQUIREMENTS (§63.11116).**

1. You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time.

2. §63.11116(a) requires that measures to be taken include, but are not limited to, the following:

(a)(1) Minimize gasoline spills;

(a)(2) Clean up spills as expeditiously as practicable;

(a)(3) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; [ §63.11116(d)

Portable gasoline containers that meet the requirements of 40 CFR Part 59, Subpart F, are considered acceptable for compliance with this requirement]; and  
(a)(4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

3. §63.11116(b) requires that records be made available within 24 hours of request by the department to document your gasoline throughput.

B. **SUBMERGED FILLING OF GASOLINE STORAGE TANKS (§63.11117).**

1. §63.11117(b) requires that except as specified in §63.11117(c), you must only load gasoline into storage tanks at your facility by utilizing submerged filling, as defined in §63.11132, and as specified in paragraph (b)(2) of this section:

(b)(2) Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the storage tank.

4. §63.11117(c) Gasoline storage tanks with a capacity of < 250 gallons are not required to comply with the submerged fill requirements in paragraph (b) of this section.

C. **CONTROL REQUIREMENTS**

1. §63.11118(b) requires that you must the requirements in paragraph (b)(1) of this section:

(b)(1) Each management practice in Table 1 of 40 CFR Part 63, Subpart CCCCCC that applies to your GDF by installing and operating a vapor balance system on your gasoline storage tanks that meets the following design criteria:

a) All vapor connections and lines on the storage tank shall be equipped with closures that seal upon disconnect;

b) The vapor line from the gasoline storage tank to the gasoline cargo tank shall be vapor-tight, as defined in § 63.11132;

c) The vapor balance system shall be designed such that the pressure in the tank truck does not exceed 18 inches water pressure or 5.9 inches water vacuum during product transfer;

d) The vapor recovery and product adaptors, and the method of connection with the delivery elbow, shall be designed so as to prevent the over-tightening or loosening of fittings during normal delivery operations;

e) If a gauge well separate from the fill tube is used, it shall be provided with a submerged drop tube that extends the same distance from the bottom of the storage tank as specified in § 63.11117(b);



- f) Liquid fill connections for all systems shall be equipped with vapor-tight caps;
- g) Pressure/vacuum (PV) vent valves shall be installed on the storage tank vent pipes. The pressure specifications for PV vent valves shall be: a positive pressure setting of 2.5 to 6.0 inches of water and a negative pressure setting of 6.0 to 10.0 inches of water. The total leak rate of all PV vent valves at an affected facility, including connections, shall not exceed 0.17 cubic foot per hour at a pressure of 2.0 inches of water and 0.63 cubic foot per hour at a vacuum of 4 inches of water;
- h) The vapor balance system shall be capable of meeting the static pressure performance requirement of the following equation:

$$Pf = 2e^{-500.887/v}$$

Where:

- Pf = Minimum allowable final pressure, inches of water.
- v = Total ullage affected by the test, gallons.
- e = Dimensionless constant equal to approximately 2.718.
- 2 = The initial pressure, inches water; and

i) If you own or operate a new or reconstructed GDF, or any storage tank(s) constructed after November 9, 2006, at an existing affected facility subject to § 63.11118, then you must equip your gasoline storage tanks with a dual-point vapor balance system as defined in § 63.11132, and comply with the requirements of item 1 in Table 1.

2. The management practices specified in Table 1 of 40 CFR Part 63, Subpart CCCCCC are not applicable if you are complying with the requirements in § 63.11118(b)(2), except that if you are complying with the requirements in § 63.11118(b)(2)(i)(B), you must operate using management practices at least as stringent as those listed in Table 1 of 40 CFR Part 63, Subpart CCCCCC.

**D. PERFORMANCE TEST REQUIREMENTS PERFORMANCE TEST REQUIREMENTS**

Source Type	Initial Test Date	Additional Testing	Citation
New or Reconstructed Source (commenced construction after 11/9/06) with a monthly throughput <sup>1</sup> of ≥ 100,000 gal/month	Upon startup after 09/23/08	Every three years §63.11120(a)	63.11113(d)(2)

<sup>1</sup> Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each Gasoline Dispensing Facility (GDF) during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

1. §63.11118(e) - You must comply with the applicable testing requirements contained in §63.11120.
  2. §63.11120(a) - Each owner or operator, at the time of installation, as specified in §63.11113(c), of a vapor balance system required under §63.11118(b)(1), and every 3 years thereafter, must comply with the requirements in paragraphs (a)(1) and (2) as follows:
    - (a)(1) - You must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 1 of 40 CFR Part 63, Subpart CCCCCC, for pressure-vacuum vent valves installed on your gasoline storage tanks using the test methods identified in paragraph (a)(1)(i) or paragraph (a)(1)(ii) as follows:
      - (a)(1)(i) - California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,—Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (incorporated by reference, see §63.14);
      - (a)(1)(ii) - Use alternative test methods and procedures in accordance with the alternative test method requirements in §63.7(f); and
      - (a)(2) - You must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 1 of 40 CFR Part 63, Subpart CCCCCC, for your vapor balance system by conducting a static pressure test on your gasoline storage tanks using the test methods identified in paragraph (a)(2)(i) or paragraph (a)(2)(ii) as follows:
        - (a)(2)(i) - California Air Resources Board Vapor Recovery Test Procedure TP-201.3,—Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporated by reference, see §63.14); and
        - (a)(2)(ii) - Use alternative test methods and procedures in accordance with the alternative test method requirements in §63.7(f).
    - (a)(2) - Each owner or operator choosing, under the provisions of §63.6(g), to use a vapor balance system other than that described in Table 1 of 40 CFR Part 63, Subpart CCCCCC must demonstrate to the Administrator or delegated authority under paragraph §63.11131(a) of this subpart, the equivalency of their vapor balance system to that described in Table 1 of 40 CFR Part 63, Subpart CCCCCC using the procedures specified in paragraphs (b)(1) through (3) as follows:
      - (b)(1) - You must demonstrate initial compliance by conducting an initial performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1,—Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (incorporated by reference, see §63.14);
      - (b)(2) - You must, during the initial performance test required under paragraph (b)(1) of this section, determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 1 of 40 CFR Part 63, Subpart CCCCCC and for the static pressure performance requirement in item 1(h) of Table 1 of 40 CFR Part 63, Subpart CCCCCC; and
      - (b)(3) - You must comply with the testing requirements specified in paragraph §63.11120 (a).
- §63.11120(c) - **Conduct of Performance Tests.** Performance tests conducted for this subpart shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.
- §63.11126 - Each owner or operator subject to the management practices in §63.11118 shall report to the Administrator the results of all volumetric efficiency tests required under §63.11120(b). Reports submitted under this paragraph must be submitted within 180 days of the completion of the performance testing.

**E. NOTIFICATIONS.**

1. §63.11118(f) requires that you must submit the applicable notifications as required under §63.11124.
2. §63.11124(b) requires that each owner or operator subject to the control requirements in §63.11118 must comply with paragraphs (b)(1) through (5) of §63.11124 as follows:
  - (b)(1) You must submit an Initial Notification that you are subject to this subpart upon startup. The notification must be submitted to the applicable EPA Regional Office and the delegated State authority as specified in §63.13. The Initial Notification must contain the information specified in paragraphs (b)(1)(i) through (iii) of this section as follows:
    - (b)(1)(i) the name and address of the owner and the operator;
    - (b)(1)(ii) the address (i.e., physical location) of the GDF; and
    - (b)(1)(iii) a statement that the notification is being submitted in response to this subpart and identifying the requirements in paragraphs (a) through (c) of §63.11118 that apply to you;
  - (b)(2) You must submit a Notification of Compliance Status to the applicable EPA Regional Office and the delegated State authority, as specified in §63.13, in accordance with the schedule specified in §63.9(h). The Notification of Compliance Status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of this subpart. If your facility is in compliance with the requirements of this subpart at the time the Initial Notification required under paragraph (b)(1) of this section is due, the Notification of Compliance Status may be submitted in lieu of the Initial Notification provided it contains the information required under paragraph (b)(1) of this section;
  - (b)(4) You must submit a Notification of Performance Test, as specified in §63.9(e) [60 calendar days before the performance test is scheduled to allow the Administrator to review and approve the site-specific test plan required under §63.7(c), if requested by the Administrator, and to have an observer present during the test], prior to initiating testing required by §63.11120(a) and (b); and
  - (b)(5) You must submit additional notifications specified in §63.9, as applicable.
3. Sources in Bernalillo county that are in compliance with a 20.11.41 NMAC, construction permit should be meeting the 20.11.65 NMAC, Volatile Organic Compounds requirements for submerged fill pipe and vapor loss control system for loading of fuel storage tanks and vapor recovery, and therefore should not have to submit an Initial Notification or a Notification of Compliance Status. **Since all gasoline dispensing facilities permit through 20.11.41 NMAC, Initial Notifications and Notifications of Compliance Status are met through the permitting process and through the inspection program.**

**F. RECORDKEEPING.**

1. §63.11118(g) - You must keep records and submit reports as specified in §§ 63.11125 and 63.11126.
  2. §63.11125(a) - Each owner or operator subject to the management practices in §63.11118 must keep records of all tests performed under §63.11120(a) and (b).
  3. §63.11125(b) - Records required under paragraph (a) of this section shall be kept for a period of 5 years and shall be made available for inspection by the Administrator's delegated representatives during the course of a site visit.
11. **FEES (20.11.2 NMAC).** Every owner or operator of a source that is required to obtain a construction permit shall pay an annual emission fee pursuant to 20.11.2 NMAC. The annual emission fee for maintenance of this permit will be based on the greater of a base annual fee or a per ton fee rate based on the per ton allowable annual emissions of volatile organic compounds (VOC's) given in the Section 4 – Gasoline Unit Emission Limits table.
12. **PERMIT CANCELLATION.** The department may cancel any permit if the construction or modification is not commenced within one (1) year from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year. (20.11.41.19A and B NMAC)
13. **INFORMATION SUBMITTALS [Air Quality Program contact numbers: (505) 768-1972 (voice); 1-800-659-8331 (NM Relay)]**

- Completed forms can be hand delivered to 1 Civic Plaza – Room 3047 (8:00am – 4:30pm Mon. – Fri. except city holidays) or can be mailed to:

Albuquerque Environmental Health Department  
Air Quality Program  
Permitting Section  
P.O. Box 1293  
Albuquerque, New Mexico 87103

- Test protocols and compliance test reports shall be submitted to:

Albuquerque Environmental Health Department  
Air Quality Program  
Attention Enforcement Supervisor  
P.O. Box 1293  
Albuquerque, New Mexico 87103

- All reports shall be submitted to:

Albuquerque Environmental Health Department  
Air Quality Program  
Attention Compliance Officer  
P.O. Box 1293  
Albuquerque, New Mexico 87103

# CITY OF ALBUQUERQUE

Environmental Health Department

Mary Lou Leonard, Director



June 03, 2014

## **RE: Air Quality Permit No. 3136 ~ Smith's Food & Drug Centers, Inc. (Smith's) – Authority-to-Construct Permit – 6310 4<sup>th</sup> ST NW NE**

Dear Interested Person:

This letter is to notify you that the Air Quality Program (Air Program) of the City of Albuquerque (City) Environmental Health Department (Department) has issued the above referenced permit. Smith's had submitted an application requesting a permit that would authorize Smith's to have an annual gasoline throughput of 7,000,000 gallons per year for a fuel dispensing (gas) station proposed to be located at 6310 4<sup>th</sup> St. NW (Smith's Gas Station).

### **Applicable Laws and Regulations for Air Quality Permits**

When the Department receives an application for an air quality permit, it can only deny the application for the permit if (1) it will not meet the standards, rules or requirements of the Clean Air Act or the Air Quality Control Act (Air Act); (2) it will cause or contribute to an exceedance of an air quality standard; or (3) it will violate any other provision of the Clean Air Act or the Air Act. NMSA 1978, § 74-2-7(C)(1). As such, in reaching a decision on the permit, the Air Program can only address air quality issues and only to the extent authorized by the Clean Air Act, the Air Act, and applicable air quality ordinances and regulations. An air quality permit cannot address zoning, non-air-quality building issues, road and traffic control and public safety. Issues not related to air quality have been brought to the attention of the appropriate City departments by written, telephonic, or oral communication by interested participants and, in some cases, communication by Air Program staff.

The decision of the Department regarding Smith's application for a permit is based on the requirements of the Clean Air Act, the Air Act, and the applicable air quality ordinances and regulations. The applicable regulations include, in addition to the substantive regulations discussed below, 20.11.41 NMAC (2002) *Authority to Construct*, also known as "Part 41."

### **Regulation of Air Quality at Gas Stations**

The primary regulated air pollutants emitted at gas stations are volatile organic compounds (VOCs). There are no ambient air standards for VOCs. VOCs are not controlled in the same manner as pollutants that are subject to the national ambient air

Environmental Health Dept.

Air Quality Program

PO Box 1293

Albuquerque, NM 87103

www.cabq.gov

quality standards (NAAQS). Therefore, a VOC emission standard cannot be “exceeded” in the same manner as a NAAQS standard. Air dispersion modeling is not required by the United States Environmental Protection Agency (EPA) when an application for a gas station air quality permit or modification is submitted to the Air Program. Unlike NAAQS, there are no ambient VOC emission standards that can be the basis for denying a VOC permit or an application for modification of an existing gas station VOC permit pursuant to Section 74-2-7(C)(1).

Instead, for purposes of air quality, VOC emissions from gas stations are controlled by using federally-required “performance based” standards, which are found at 40 CFR 63 Subpart CCCCCC and locally-required 20.11.65 NMAC and 20.11.64 NMAC. Performance based standards for a gas station like the Smith’s Gas Station proposed at 6310 4<sup>th</sup> St. NW include vapor recovery systems and work practice standards. The VOC tons-per-year numbers in such permits are not emission maximums. Rather, they are used for calculating emission fees pursuant to 20.11.2 NMAC.

#### **Public Notice and Public Information Hearing**

Once Smith’s permit application was complete, the Air Program published notice of the application in the Albuquerque Journal and sent copies of the information from the public notice to surrounding neighborhood associations registered with the Office of Neighborhood Coordination and to permitting staff at EPA Region 6 and the New Mexico Environment Department (NMED). Neighborhoods, such as Spanish Walk, that are not represented by a neighborhood association are not registered with the Office of Neighborhood Coordination and so their contact information is not provided to the Air Program. The Air Program received requests for a Public Information Hearing (PIH) and the Director granted permission for the PIH. Notice of the March 25, 2014 PIH was published in the Albuquerque Journal and sent to those who requested the PIH. The Air Program placed the following documents on the Department’s Air Program website for public access: the Smith’s air quality permit application, the draft Smith’s Gas Station air quality Permit No. 3136; the PIH flyer; and a summary of federal regulations controlling air emissions from gas stations.

The Air Program held the PIH on March 25, 2014 to solicit relevant testimony and documents and to provide an opportunity for interested participants to ask questions. City staff and supervisory/management personnel, including the Air Program permit writer assigned to primary review of the Smith’s permit application, attended the PIH. After the allotted two and one-half hours for the hearing, there were still persons with questions and comments, so the PIH was continued. The Air Program published notice of the April 23, 2014 PIH Continuation in the Albuquerque Journal and sent approximately 90 letters and 32 emails providing notice of the PIH Continuation.

As explained by the Hearing Officer at both of the PIHs, the PIHs are not adjudicatory hearings and the Hearing Officer does not make a decision or recommendation relating to the application. 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 the particular issue.

In particular, during the PIH, Smith's submitted a petition signed by approximately 2400 people in favor of the Smith's application. An air quality permit application decision is not based on whether a particular application is or is not supported by the public. Instead, the Air Program is statutorily authorized to deny an application only if the proposed construction will (1) not meet applicable regulations; (2) will cause or contribute to violations of ambient air standards (e.g., violations of NAAQS); or (3) will violate any other provision of the Air Act or the Clean Air Act. NMSA 1978, § 74-2-7(C). While petitions pro or con may serve other functions, they cannot be the basis for a decision on an air quality permit application.

#### **Application Review Process**

As a part of the application review process, the Air Program established an "administrative record" regarding the permit application. The administrative record includes the application, evidence submitted by the applicant, all written comments and evidence received by the Air Program, and all written and oral questions, testimony and exhibits submitted at the PIH (the PIH record). Before the Department made a decision, Air Program staff reviewed the administrative record.

As stated by the Hearing Officer at both of the PIHs, and as authorized by Subsection C of 20.11.41.15 NMAC (2002), the Department can make three different decisions regarding an application for an air quality permit or modification.

1. The permit may be issued as requested in the application;
2. The permit may be issued with additional authorized air quality conditions not requested in the application; or
3. The permit may be denied as authorized by the Air Act or the applicable air quality ordinances or regulations

The Air Program determined the permit application met all requirements of the Clean Air Act, the Air Act, and the applicable air quality ordinances and regulations. In addition, the Air Program determined that, if the Smith's Gas Station is operated as required by Permit No. 3136, it will satisfy all applicable air quality laws and regulations.

#### **Decision**

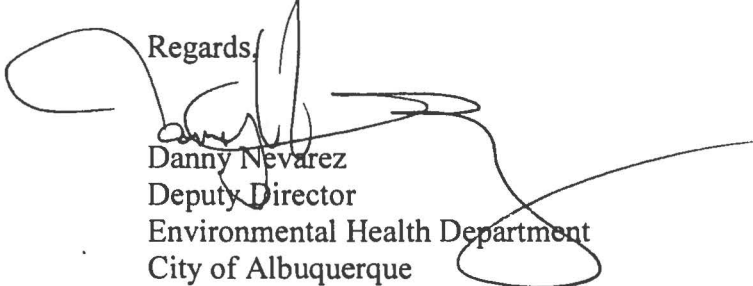
The Department issued Air Quality Permit No. 3136 effective May 29, 2014. If you have any questions concerning this permit issuance, or the permitting process, please contact Regan Eyerman at (505)767-5625 or at [reyerman@cabq.gov](mailto:reyerman@cabq.gov).

**Appeal Process**

Persons who participated in a permitting action and who are adversely affected by the permitting action may file a petition for a hearing on the merits before the Air Board, as provided by NMSA 1978, § 74-2-7(H) and 20.11.81 NMAC *Adjudicatory Procedures-AQCB* available at:

<http://www.nmcpr.state.nm.us/nmac/parts/title20/20.011.0081.htm>. At the time the petition is filed, the board hearing fee of \$125 shall be paid. 20.11.2.22(C) NMAC and 20.11.81.14(B)(1) NMAC.

Regards,



Danny Nevarez  
Deputy Director  
Environmental Health Department  
City of Albuquerque

cc: File

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~~ 3136

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petition for Hearing in the above-captioned matter was served on the following by the method indicated:

1. Mary Lou Leonard, Director  
City of Albuquerque  
Environmental Health Department  
Air Quality Program  
PO Box 1293  
Albuquerque, New Mexico 87103  
Hand-Delivered on ~~June 25~~, 2014.

JULY 1

2. Felicia Orth, Esq.  
ABC-AQCB Attorney  
One Civic Plaza  
3<sup>rd</sup> Floor, Room 3023  
Albuquerque, New Mexico 87103  
By ~~US Mail~~ on ~~June 25~~, 2014.

JULY 1

HAND-DELIVERED

3. Frank C. Salazar, Esq.  
Timothy J. Atler, Esq.  
Sutin, Thayer & Browne, P.C.  
P.O. Box 1945  
Albuquerque, New Mexico 87103-1945

6565 Ameresco Pkwy NE  
#1000  
87110-8181

Counsel for Smith's Food and Drug Centers, by ~~US Mail~~, 2014.

HAND DELIVERED JULY 1

4. Carol Parker, Esq.  
Assistant City Attorney  
One Civic Plaza  
P. O. Box 1293  
Albuquerque, New Mexico 87103  
By ~~US Mail~~ on ~~June 25~~, 2014.

HAND DELIVERED JULY 1

I hereby certify that a true and correct copy of the foregoing were hand-delivered on the 1st day of July 2014  
Atty. A. Casdi  
Cynthia A. Casdi  
Pat Toledo Pat Toledo

State of N.M.,  
Alb. - Bernalillo County  
Air Quality Control Board

In the matter of the petition for  
a hearing on the merits regarding  
Air Quality Permit NO. 3136

- A. Arthur Gradi, Petitioner
- B. Ruth McGonagil, Petitioner
- C. Jerri Paul - Seaborn, Petitioner
- D. Bonice Ledden, Petitioner
- E. Susan Kelly, Petitioner
- F. Americo Chavez, Petitioner
- G. Pat Toledo, Petitioner

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