

**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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PREHEARING ORDER

The Hearing Officer, Counsel for Petitioners, City staff and Counsel, and Counsel for Permittee participated in a teleconference on June 18, 2014 to discuss the scheduling of the hearing in this matter and deadlines for pre-hearing submittals. Teleconference participants were in agreement with the scheduling and pre-hearing deadlines set out below; no party identified a conflict.

Permittee's Counsel expressed a desire for additional discovery prior to the hearing. The Hearing Officer did not approve pre-hearing depositions, but agreed to limited written discovery. The written discovery and the early filing of technical testimony in full narrative are intended to obviate the need for depositions.

It is therefore ordered:

1. The hearing in this matter will begin 9 a.m. September 10, 2014 and continue through the day and potentially the evening on September 11, 2014 in the Albuquerque Convention Center in Albuquerque, New Mexico.
2. The order of presentation follows: Petitioners, with the burden of proof under Section 74-2-7.K, will present their evidence first. The City will present its

evidence second. Permittee Smith's will present its evidence third. Rebuttal will occur in the same order as necessary.

3. Public comment of a non-technical nature: Public comment will be accepted starting at 5 p.m. September 10 regardless of the progress in the technical case. The Hearing Officer will take public comment at other times throughout the hearing as necessary.
4. Motions, the number of copies required for any document filed with the Hearing Clerk, proper service and any other matter not specifically addressed in this Order are governed by the Board's Adjudicatory Procedures in Section 20.11.81 NMAC.
5. The City shall file with the Hearing Clerk the Administrative Record in this matter, with an Index and list of interested parties, on July 3, 2014. The City shall file an Answer to the Petition by July 10, 2014. The City shall publish and mail notice of the hearing by August 8, 2014. The City is encouraged to explore the possibility of making substantive materials in this matter available on the Internet.
6. Notices of Intent: Any Petitioner who intends to present technical evidence or testimony at the hearing must file a notice of intent to present technical testimony (NOI) by August 8, 2014. If the City or Permittee intend to present technical evidence or testimony, the NOI must be filed by August 29, 2014. Technical evidence or testimony means scientific, engineering, economic or other specialized evidence or testimony. It does not mean legal argument, general comments or statements of policy. NOIs must identify the person

filing the statement; identify each witness, including name, affiliation, education and work background; include the testimony of each witness in full narrative fashion, particularly any opinion to be offered by each witness and an explanation of the basis for the opinion; include technical materials relied upon by each witness in forming opinions; estimate the length of each witness' presentation; and identify all exhibits that are part of the administrative record maintained by the City and attach a copy of any exhibit not in the administrative record. Powerpoint and other slide presentations or displays which are demonstrative and based on technical evidence timely submitted may be shown at the hearing regardless of inclusion in the NOI. Copies no larger than 8 ½ by 11 inches shall replace large charts and maps in the record after the hearing. Failure to file a timely and complete NOI will preclude a person from presenting that technical evidence or testimony sought to be offered. The deadline for entries of appearance is August 29, 2014.

7. Interrogatories and requests for admission, no more than 20 each, may be propounded by any party until close of business July 1, 2014, and may include a request for production for documents substantiating the answers to the interrogatories. Responses are due no later than close of business July 25, 2014.


Felicia L. Orth, Hearing Officer