

**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. 1677-M2

Andy Carrasco and Pat Toledo,

Petitioners,

v.

No. AQCB 2013-6

The City of Albuquerque and Smith's Food
& Drug Centers, Inc.,

Respondents.

SMITH'S FOOD & DRUG CENTERS, INC.'S WITNESS AND EXHIBIT LIST

Smith's Food & Drug Centers, Inc. ("Smith's") hereby submits its witness and exhibit list pursuant to the Hearing Officer's May 19, 2015 Order Scheduling Remand Hearing ("Scheduling Order"). The Scheduling Order set a hearing before the Board for July 8, 2015 ("Remand Hearing") to consider the narrow question of "whether Petitioners Toledo and Carrasco's request for a public hearing, together with the emailed questions received by the EHD from the local neighborhood associations, constituted 'significant public interest' to necessitate a public hearing." Scheduling Order at 1 (quoting the Court of Appeals' November 26, 2014 Memorandum Opinion at 12, ¶ 17). The Scheduling Order provides that "the evidence and testimony presented at the [Remand Hearing] *shall be limited to that which is relevant to this specific question.*" Scheduling Order at 1 (emphasis added).

The Scheduling Order also establishes a process for the parties to identify proposed witnesses and exhibits, to file written objections, and to obtain rulings on

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those objections from the Hearing Officer in advance of the Remand Hearing. *Id.* at 2. Petitioners timely filed their Exhibit and Witness List on June 10, 2015. Smith's and the City timely filed their objections to Petitioners' Exhibit and Witness List on June 17, 2015, pointing out that Petitioners' proposed evidence and testimony vastly exceeds the scope of the Remand Hearing and should be disallowed. The Hearing Officer will hear argument and will rule upon those objections at a telephonic hearing scheduled for July 2, 2015. *Id.*

In light of this background, Smith's identifies its proposed witnesses and exhibits as follows:

Smith's Proposed Witnesses

The Hearing Officer has not yet had an opportunity to rule on Smith's and the City's objections to Petitioners' proposed witnesses and exhibits. It is therefore unclear how much of Petitioners' proposed evidence and testimony will be allowed at the Remand Hearing. But, the language of the Scheduling Order and of the Memorandum Opinion concerning the limited scope of the Remand Hearing is unambiguous. Smith's should not be required to identify witnesses and exhibits concerning the myriad issues Petitioners raise which fall outside that scope. Moreover, Smith's understands that the City will identify witnesses to testify regarding EHD's process for determining whether significant public interest exists to justify holding a public hearing. Permit applicants like Smith's play no role in EHD's decision-making process concerning whether to hold a public hearing. See 20.11.41.14(B) NMAC (2002) and 20.11.41.15(A) NMAC (2014) (giving EHD Director sole discretion to determine whether significant public interest exists). Given these considerations, Smith's does not intend to call its own witnesses at

the Remand Hearing but will instead cross-examine any of the Petitioners' or the City's witnesses who are allowed to testify. Smith's may call rebuttal witnesses if necessary depending on the evidence and testimony Petitioners are allowed to present at the Remand Hearing.

Smith's Proposed Exhibits

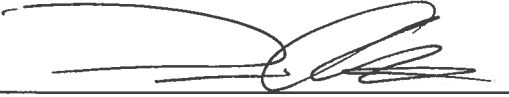
Smith's stipulates to the admission of, and at the Remand Hearing may rely upon, the following exhibits that Petitioners already identified:

1. March 8, 2013 email from Ms. Eyerman to various neighborhood and homeowners' associations in the vicinity of the Smith's Tramway gas station and the public notice attached thereto [AR 5, pp. 25-27];
2. March 8, 2013 email exchange between Mr. Barsis and Ms. Eyerman [AR 6, pp. 32-33];
3. March 11-13, 2013 email exchange between Ms. Underhill and Ms. Eyerman [AR 9, p. 37];
4. April 24, 2013 written request for a public hearing submitted by Toledo and Carrasco [AR 10, p.38];
5. EHD Director's May 14, 2013 letters to Toledo and Carrasco denying their request for a public hearing [Exhibit 4 to June 24, 2013 Petition for Hearing], and
6. EHD Director's May 29, 2013 letter to Toledo and Carrasco denying their "appeal" of the denial of their request for a public hearing [Exhibit 5 to June 24, 2013 Petition for Hearing].

Depending on the Hearing Officer's rulings concerning Smith's and the City's objections to Petitioners' proposed witnesses and exhibits, Smith's conditionally identifies the following additional exhibits, which are attached hereto:

- Smith's Ex. A: Petitioners' Responses to Smith's Discovery Requests; and
- Smith's Ex. B: Petitioners' Responses to the City's Discovery Requests.

SUTIN, THAYER & BROWNE
A Professional Corporation

By 

Frank C. Salazar
Timothy J. Atler

*Attorneys for Smith's Food & Drug
Centers, Inc.*

Post Office Box 1945

Albuquerque, New Mexico 87103-1945

Telephone: (505) 883-2500

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served on the following parties, counsel and other individuals by the method indicated:

The original pleading was filed with the Hearing Clerk in this matter along with nine copies, all of which were delivered to the Hearing Clerk by hand delivery.

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Hearing Officer/Board Attorney

on the 24th day of June, 2015

SUTIN, THAYER & BROWNE
A Professional corporation

By  _____

**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. 1677-M2 ISSUED TO
SMITH'S FOOD AND DRUG CENTERS, INC.**

**Dempsey Power, Pat Toledo, and Andy
Carrasco, Petitioners,**

No. AQCB 2013-6

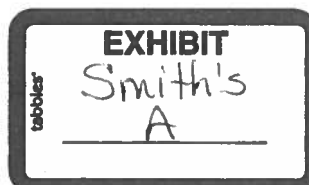
**PETITIONERS' RESPONSES TO
SMITH'S FOOD & DRUG CENTERS, INC.'S
DISCOVERY REQUESTS**

Andy Carrasco, Dempsey Power and Pat Toledo, by and through undersigned counsel of record, hereby provide their joint Responses to Smith's Food and Drug Centers, Inc.'s Discovery Requests.

INTERROGATORIES

Interrogatory No. 1: State the specific factual basis for the allegation on page 2 of the Petition that Petitioner Power's "quality of life would be adversely affected by the increased throughput of gasoline proposed by the requested permit modification" and identify every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, in support of that allegation.

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput.



Interrogatory No. 2: State the specific factual and legal bases for allegations at page 2 of the Petition that the City of Albuquerque Environmental Health Department (“City”) “fail[ed] to provide adequate notice of the permitting action[,]” and at page 4 of the Petitioner that the City “should have taken additional measures to ensure that notice was provided to potentially interested persons[,]” and describe specifically what actions Petitioners contend the City failed to take that would have provided “adequate notice of the permitting action[,]” and identify every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, in support of the contention.

ANSWER: The City failed to provide public notice of the permitting action in a manner “necessary to assure adequate notice to the affected public.” 20.11.42.13.B(2). The failure to provide adequate public notice prevented interested persons from having the opportunity to submit written comments, evidence or request a hearing, as provided by 20.11.41.14.A NMAC.

20.11.41.14.B states that the Department “shall hold a public hearing if the director determines that there is significant public interest.” Because the Department did not provide notice adequate to the affected public, the Department could not reasonably determine if there was significant public interest such that a public hearing should be held.

The Petitioners will be presenting expert testimony regarding proper and adequate public notice, which will be provided as part of the Petitioners Notice of Intent to Present Technical Testimony, due August 30, 2013.

Interrogatory No. 3: For every neighborhood association (“NA”) or homeowners association (“HOA”) that Petitioners believe opposes Permit No. 1677-M2, identify the official name of the NA or HOA, the name(s) of any individual representative(s) of the NA or HOA with

whom Petitioners have communicated about Permit No. 1677-M2, the position(s) or title(s) of the individual representative(s), the dates on which Petitioners communicated with the individual representative(s) about Permit No. 1677-M2, and describe the substance of those communications including, without limitation, the terms of any agreement or "alliance" (see Exhibit 3 to the Petition) through which the NA or HOA authorized the Petitioners to challenge Permit No. 1677-M2 on behalf of the NA or HOA.

ANSWER: The Petitioners do not have any information responsive to this Interrogatory.

Interrogatory No. 4: With regard to the statement in Exhibit 2 of the Petition that "[i]f this throughput is granted, the Four Hills Neighborhood [sic] will be subject to approximately 30 tons of cancer causing VOC's[.]" identify every source of information currently known to Petitioners, including without limitation published research, news articles or medical records or reports, that contain an opinion or conclusion that Volatile Organic Compounds emitted from a Gas Dispensing Facility ("GDF") have caused or might cause cancer in humans.

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput.

Interrogatory No. 5: State the specific factual and legal bases for the allegation in Exhibit 3 of the Petition that "the size of the station is way too small and congested already and will only lead to completely unsafe and dangerous conditions for the public[.]" and identify

every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, in support of the allegation.

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the topics identified in this Interrogatory.

Interrogatory No. 6: State the specific factual and legal bases for allegation in Exhibit 3 of the Petition that "[t]here are also current problems with record keeping and there [sic] recent modification in 2012[,]" and identify every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, in support of the allegation.

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the topics identified in this Interrogatory.

Interrogatory No. 7: Describe specifically any injury in fact, either to person or property, that each of the Petitioners have suffered or expect to suffer as a result of the issuance of Permit No. 1677-M2, and identify every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, regarding the alleged injury.

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and

public participation. The Petitioners will not be presenting evidence or argument on the topics identified in this Interrogatory.

Interrogatory No. 8: State the specific factual and legal bases for allegation at page 3 of the Petition that “the increased throughput at the Smith’s Tramway location poses serious health, safety and environmental hazards to any citizens who happen to be traveling near the facility[,]” and identify every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, in support of the allegation.

ANSWER: Pursuant to the Petitioners’ Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the topics identified in this Interrogatory.

Interrogatory No. 9: With regard to the allegation at page 3 of the Petition that “the impacts at this location are cumulative with the impacts from other [Smith’s] locations[,]” describe specifically the “impacts” to which Petitioners refer, identify each location and the specific “impacts” to which Petitioners refer at that location, and identify every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, in support of the allegation.

ANSWER: Pursuant to the Petitioners’ Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the topics identified in this Interrogatory.

Interrogatory No. 10: Apart from Petitioners' allegations concerning improper or inadequate notice, describe specifically any other factual or legal basis upon which Petitioners contend the City should deny Permit No. 1677-M2 and identify every person whom Petitioners will call to testify, and every exhibit Petitioners will introduce, in support of that contention.

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation.

Interrogatory No. 11: If the Albuquerque-Bernalillo County Air Quality Control Board ("Board") remands this case with instructions for the City to hold a Public Information Hearing ("PIH"), summarize what information, testimony, public comment or questions that Petitioners propose to submit at the PIH or that Petitioners would have submitted had a PIH been held prior to the issuance of Permit No. 1677-M2.

ANSWER: The Petitioners object to this Interrogatory as being beyond the scope of the present appeal. The Petitioners and other members of the public are not required to identify the information, testimony, public comment or questions that would be submitted as part of a PIH prior to a PIH being scheduled.

Interrogatory No. 12: Identify by date of issuance, permittee name and permit number all air quality permitting actions in Albuquerque/Bernalillo County in which any of the Petitioners participated in any way (for example, by submitting a request for a PIH pursuant to 20.11.41.15(F) NMAC or for a hearing on the merits before the Board pursuant to 20.11.81.14

NMAC), other than the permitting actions concerning Permit Nos. 2037, 2037-M1 and 1677-M2 issued to Smith's.

ANSWER: The Petitioners have not participated in any such permitting actions.

Interrogatory No. 13: If any of the Petitioners have called an emergency or non-emergency number to report a problem or concern at any GDF in Albuquerque/Bernalillo County since January 1, 2008, identify each such call by date, the name and location of the GDF, the name of any government agency(ies) dispatched to the GDF, and the specific nature of the problem or concern and describe the results of any subsequent investigation by any government agency or official dispatched to the GDF as a result of the call.

ANSWER: The Petitioners object to this Interrogatory as being overly broad, not likely to lead to evidence admissible at the hearing in this matter, and beyond the scope of the present appeal which is limited to issues regarding public notice and public hearing on the requested permit modification.

Interrogatory No. 14: If any of the Petitioners have communicated with elected officials, either in writing, in person or during testimony or public comment at a public meeting or hearing, to report a problem or concern at any GDF in Albuquerque/Bernalillo County since January 1, 2008, identify each such communication by date, the name and location of the GDF, the name(s) of the government official(s), the specific nature of the problem or concern and describe the substance of the communication.

ANSWER: The Petitioners object to this Interrogatory as being overly broad, not likely to lead to evidence admissible at the hearing in this matter, and beyond the scope of the

present appeal which is limited to issues regarding public notice and public hearing on the requested permit modification.

Interrogatory No. 15: If any of the Petitioners have communicated with any federal agency to report a problem or concern at any GDF in Albuquerque/Bernalillo County since January 1, 2008, identify each such communication by date, the name and location of the GDF, the name(s) of the government agency(ies), the name(s) of the individual(s) with whom Petitioners communicated, the position(s) or title(s) of the individual(s), the specific nature of the problem or concern and describe the substance of the communication.

ANSWER: The Petitioners object to this Interrogatory as being overly broad, not likely to lead to evidence admissible at the hearing in this matter, and beyond the scope of the present appeal which is limited to issues regarding public notice and public hearing on the requested permit modification.

Interrogatory No. 16: If any of the Petitioners have communicated with the news media, including print, internet, radio and television media, to report a problem or concern at any GDF in Albuquerque/Bernalillo County since January 1, 2008, identify each such communication by date, the name and location of the GDF, the name of the news media organization, the name and position of the media contact with whom the Petitioner(s) communicated, the specific nature of the problem or concern and describe the substance of the communication and whether an article, report or announcement was published or broadcast as a result of or in connection with the communication.

ANSWER: The Petitioners object to this Interrogatory as being overly broad, not likely to lead to evidence admissible at the hearing in this matter, and beyond the scope of the present appeal which is limited to issues regarding public notice and public hearing on the requested permit modification.

Interrogatory No. 17: Did Petitioner Power first learn of the permitting action at issue in this case from Petitioner Carrasco and/or Petitioner Toledo? If so, describe the the substance of the communications in which Petitioners Carrasco and/or Toledo informed Petitioner Power of the permitting action, the dates of all such communications and the method of communication (e.g. phone, email, in person conversation). If not, describe in detail how Petitioner Power first learned of the permitting action at issue.

ANSWER: Petitioner Power learned of the permitting action from Petitioners Toledo and Carrasco in person. The substance of the communication was that the City refused to hold a public hearing and had already approved the permit modification.

Interrogatory No. 18: Identify who authored or created the "petition to appeal" attached the Petition as Exhibit 2 and describe how each signature contained in Exhibit 2 was obtained, including the substance of any communications between any of the Petitioners and the persons who signed Exhibit 2.

ANSWER: Petitioner Pat Toledo authored the petition. The signatures were obtained by a door-to-door canvassing over the space of about 15 minutes on the final day for filing an appeal. The Petitioners explained the issues regarding lack of notice and talked about the effects

of the increased throughput at another Smith's location on the neighborhood at Carlisle and Constitution.

Interrogatory No. 19: State whether Petitioners intend to offer technical testimony on any of the following topics and, for each topic, identify the person whom Petitioners presently anticipate calling as a technical witness to testify regarding that topic:

- A. Public notice requirements for air quality permitting actions;
- B. Public participation requirements for air quality permitting actions;
- C. The relationship between gasoline throughput and the quality of life of Albuquerque residents, either in the vicinity of the GDF or throughout the city and county;
- D. Whether VOCs emitted from GDFs pose "serious health, safety and environmental hazards to any citizens who happen to be traveling near the [GDF,]" including without limitation whether VOCs emitted from GDFs have caused or might cause cancer in humans;
- E. Issues relating to other permits and government entitlements, such as for building, zoning and traffic.

ANSWER: The Petitioners intend to offer technical testimony on A and B, above. Technical witnesses will be disclosed as part of the Notice of Intent to Present Technical testimony, as required by the July 24, 2013 Prehearing Order.

Interrogatory No. 20: If Petitioners' response to any of the requests for admission set forth below is anything other than an unqualified admission, then for each such response, state:

- A. Every reason, factual or legal, why Petitioners do not admit the request without qualification;
- B. The name, position or job title, and current or last known address of every person Petitioners will call to testify as a witness in support of Petitioners' position on that matter; and
- C. A detailed description of every document or other item that Petitioners will offer as an exhibit in support of Petitioners' position on that matter.

ANSWER: See responses to Requests for Admissions, below.

REQUEST FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1: Produce all documents, including without limitation written email or other electronically stored documents, substantiating Petitioners' answers to the interrogatories set forth above and, for each document produced, identify the corresponding interrogatory(ies) to which that document is responsive.

RESPONSE: At this time, the Petitioners do not have any documents responsive to this request other than the documents in the Administrative Record in this matter. The Petitioners reserve their rights to identify additional documents as part of their Notice of Intent to Present Technical Testimony.

REQUESTS FOR ADMISSION

Request for Admission No. 1: Admit that neither Petitioner Carrasco nor Petitioner Toledo owns, rents or otherwise has an interest in real property within a two-mile radius of the Smith's GDF located at 200 Tramway Blvd SE.

RESPONSE: Admit x Deny

Request for Admission No. 2: Admit that the Petitioners have never participated in or otherwise challenged an air quality permitting action regarding a GDF not owned or operated by Smith's.

RESPONSE: Admit x Deny

Request for Admission No. 3: Admit that the Petitioners are not aware of any specific evidence supporting the allegation on page 2 of the Petition that Petitioner Power's "quality of life would be adversely affected by the increased throughput of gasoline proposed by the requested permit modification."

RESPONSE: Admit Deny

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput and therefore are not answering this Request for Admission.

Request for Admission No. 4: Admit that the public notice provided by the City for the permitting action in this case complied with the requirements of 20.11.41.14(A)(3) NMAC.

RESPONSE: Admit x Deny ___

Request for Admission No. 5: Admit that the public notice requirements set forth in the New Mexico Solid Waste Act and its implementing regulations are not applicable to the public notice requirements set forth in the New Mexico Air Quality Control Act and its implementing regulations.

RESPONSE: Admit x Deny ___

Request for Admission No. 6: Admit that nothing in the New Mexico Air Quality Control Act or in its implementing regulations requires the City to provide direct notice of a GDF permitting action to individual residents or businesses located in the vicinity of the subject GDF.

RESPONSE: Admit ___ Deny x

20.11.42.13.B(2) NMAC requires the Department to provide public notice of the permitting action in a manner "necessary to assure adequate notice to the affected public," which may include individual residences or businesses located in the vicinity of the subject GDF.

Request for Admission No. 7: Admit that nothing in the New Mexico Air Quality Control Act or in its implementing regulations requires Smith's to provide direct notice of a GDF permitting action to individual residents or businesses located in the vicinity of the subject GDF.

RESPONSE: Admit ___ Deny x

20.11.42.13.B(2) NMAC requires the Department to provide public notice of the permitting action in a manner "necessary to assure adequate notice to the affected public," which may include individual residences or businesses located in the vicinity of the subject GDF.

Request for Admission No. 8: Admit that no NA or HOA has authorized any of the Petitioners to challenge the issuance of Permit No. 1677-M2 on its behalf.

RESPONSE: Admit x Deny ___

Request for Admission No. 9: Admit that the Petitioners are not aware of any specific evidence that Volatile Organic Compounds emitted from a GDF have caused or might cause cancer in humans.

RESPONSE: Admit ___ Deny ___

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput and therefore are not answering this Request for Admission.

Request for Admission No. 10: Admit that the Petitioners are not aware of any specific evidence supporting the allegation at page 3 of the Petition that "the increased throughput at the Smith's Tramway location poses serious health, safety and environmental hazards to any citizens who happen to be traveling near the facility."

RESPONSE: Admit ___ Deny ___

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput and therefore are not answering this Request for Admission.

Request for Admission No. 11: Admit that the Petitioners are not aware of any deficiency in Smith's application to modify Permit No. 1677-M1 (AR 3, pp.0017-18).

RESPONSE: Admit ___ Deny ___

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on possible reasons for denial of the application.

Request for Admission No. 12: Admit that the Petitioners are not aware of any evidence that Smith's failed to meet one or more requirements under the Air Quality Control Act or its implementing regulations for receiving the increase in throughput requested in Smith's application to modify Permit No. 1677-M1.

RESPONSE: Admit ___ Deny ___

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on possible reasons for denial of the application.

Request for Admission No. 13: Admit that the Petitioners are not aware of any evidence that Smith's does not fully comply with all vapor recovery and vapor balance system requirements under Permit No. 1677-M2.

RESPONSE: Admit ___ Deny ___

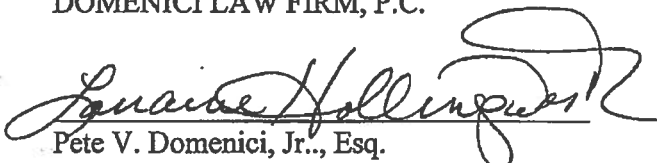
Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on possible reasons for denial of the application.

Request for Admission No. 14: Admit that the Petitioners are not aware of any evidence that the increases in throughput the City has granted to Smith's in the past three years are more harmful to the quality of life, health, safety and welfare of the residents of Albuquerque and Bernalillo County than the increases in throughput the City has granted to other GDFs in the same time period.

RESPONSE: Admit ___ Deny ___

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput and therefore are not answering this Request for Admission.

DOMENICI LAW FIRM, P.C.



Pete V. Domenici, Jr., Esq.
320 Gold Ave. SW, Suite 1000
Albuquerque, New Mexico 87102
(505) 883-6250

VERIFICATION

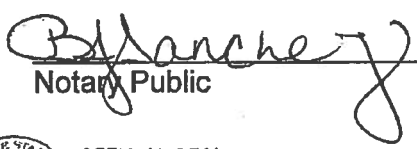
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Pat Toledo, being of legal age, having been first duly sworn upon his oath, states that he participated in answering and has read, knows and understands the contents of Petitioners' answers to the following interrogatories set forth in Smith's Discovery Requests to Petitioners: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 All [circle as applicable], and the statements and information provided therein are true of his own knowledge and belief.




PAT TOLEDO

SUBSCRIBED AND SWORN TO before me on this 22nd day of August 2013, by Pat Toledo.



Notary Public

My Commission Expires:
2/13/16

 OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/16

VERIFICATION


STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Andy Carrasco, being of legal age, having been first duly sworn upon his oath, states that he participated in answering and has read, knows and understands the contents of Petitioners' answers to the following interrogatories set forth in Smith's Discovery Requests to Petitioners: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 All [circle as applicable], and the statements and information provided therein are true of his own knowledge and belief.



ANDY CARRASCO

SUBSCRIBED AND SWORN TO before me on this 22nd day of August 2013, by Andy Carrasco



Notary Public

My Commission Expires:
2/13/16



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/16

VERIFICATION


STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

Dempsey Power, being of legal age, having been first duly sworn upon his oath, states that he participated in answering and has read, knows and understands the contents of Petitioners' answers to the following interrogatories set forth in Smith's Discovery Requests to Petitioners: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 All [circle as applicable], and the statements and information provided therein are true of his own knowledge and belief.



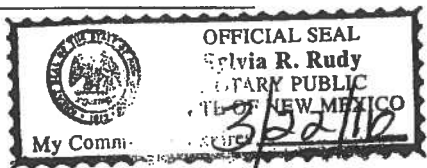
DEMPSEY POWER

SUBSCRIBED AND SWORN TO before me on this 10th day of
September 2013, by Dempsey Power



Notary Public

My Commission Expires:



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. 1677-M2 ISSUED TO
SMITH'S FOOD AND DRUG CENTERS, INC.

Dempsey Power, Pat Toledo, and Andy
Carrasco, Petitioners,

No. AQCB 2013-6

PETITIONERS' RESPONSES TO
THE CITY OF ALBUQUERQUE'S DISCOVERY REQUESTS

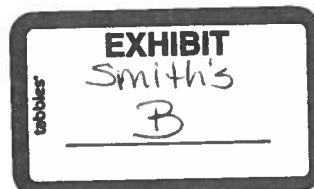
Andy Carrasco, Dempsey Power and Pat Toledo, by and through undersigned counsel of record, hereby provide their joint Responses to the City of Albuquerque's Discovery Requests.

Part 1- INTERROGATORIES

INTERROGATORY NO. 1: Petitioner Dempsey Power, also referred to in the Request for Hearing as Dempsey Powers (Petitioner Power), Pat Toledo (Petitioner Toledo,) and Andy Carrasco (Petitioner Carrasco), please state the names, addresses and telephone numbers of the person or persons who answered any interrogatory on your behalf; refer by number to the individual interrogatory each person answered and state why that person, instead of the Petitioner or Petitioners to whom the interrogatory was directed, answered that specific interrogatory.

ANSWER: Each of the Petitioners answered the questions directed to them on their own behalf with the assistance of Counsel.

INTERROGATORY NO. 2: Petitioner Power, please identify the person or persons who first discussed with you the proposed or already-approved increase in gasoline that may be delivered to, available for sale at or sold at the Smith's Tramway GDF.



ANSWER: Pat Toledo and Andy Carrasco.

INTERROGATORY NO. 3: Petitioner Power, identify the first document you saw that included information regarding the proposed or already-approved increase in gasoline that may be delivered to, available for sale at or sold at the Smith's Tramway GDF.

ANSWER: The Petition to appeal Smith's permit for increase throughput, attached as Exhibit 2 to the Petition for Hearing.

INTERROGATORY NO. 4: Petitioner Power, describe in detail the facts that support or evidence how you are or will be adversely affected by the permitting action in which Smith's Food & Drug Centers, Inc. (Smith's) applied for modification of its Authority-to-Construct (20-11-41 NMAC) Permit #1677-M and the Department published public notice, reviewed the application and related issues and ultimately issued Permit #1677-M2 (hereinafter "permitting action).

ANSWER: Petitioner Power lives in the neighborhood near the Smith's Tramway location and will be impacted by the negative effects of the increased throughput, including increased traffic and increased emissions. Because of the lack of adequate public notice, Mr. Power was not provided the opportunity to participate in the permitting process in a meaningful way, including the opportunity to voice his concerns about the increased throughput through written comments and participation at a public hearing.

INTERROGATORY NO. 5: Petitioner Power, describe in detail the facts that support or evidence how you are or will be adversely affected by the permitting action.

ANSWER: See response to Interrogatory No. 4.

INTERROGATORY NO. 6: Petitioner Power, describe in detail the facts that support or evidence your allegation in the Petition for Hearing that your “quality of life would be adversely affected by the increased throughput of gasoline” at the Smith’s @[sic] Tramway GDF.

ANSWER: See response to Interrogatory No. 4.

INTERROGATORY NO. 7: Petitioner Power, state the legal basis of your objections to the permitting action taken by the Department and cite to specific sections of the federal Clean Air Act, 42 U.S.C. §741 et seq. (Clean Air Act); the Code of Federal Regulations; the New Mexico Air Quality Control Act, NMSA 1978, §§74-2-1 to -17 (1967, as amended through 2009)(NM Air Act); and the Albuquerque-Bernalillo County Air Quality Control Board regulations, Title 20, Chapter 11 NMSA (Air Board Regulations) that support your allegations.

ANSWER: See response to Interrogatory No. 4. The Department failed to provide public notice in a manner that assures adequate public notice to the affected public as required by 20.11.42.13.B(2) NMAC. *See also* 20.11.41.14(A) NMAC. Because of lack of adequate notice, Mr. Power, as an interested person, was not given the opportunity to submit written comments, evidence or to request as public hearing on the application, as provided by 20.11.41.14 NMAC.

INTERROGATORY NO. 8: Petitioner Toledo and Petitioner Carrasco, describe in detail the facts that support or evidence how you are or will be adversely affected by the permitting action.

ANSWER: The Petitioners, as citizens and taxpayers in the City of Albuquerque, have a right to receive proper notice of permitting actions undertaken by the Department and have a right to participate in the permitting process as interested persons. They are also vindicating the general public's right to participate in the permitting process.

Smith's has multiple locations throughout the City of Albuquerque and, as part of their pattern of business within the City, are requesting increased throughput at the gasoline stations at various locations within the City. The Petitioners have already participated in one permitting action in which Smith's requested a similar permit modification. The Petitioners travel in the vicinity of the Smith's at Tramway. The Petitioners are concerned with Smith's operations and the overall impact the increased throughput may have on their quality of life as citizens of Albuquerque, including increases in traffic, air emissions and air pollution.

INTERROGATORY NO. 9: Petitioner Toledo and Petitioner Carrasco, describe the source or sources of your authority to assert the interests of the members of the Albuquerque community in addition to your individual interests and provide citations to the specific sections of the Clean Air Act, the Code of Federal Regulations, the NM Air Act, the Air Board regulations, and cases that support your answer.

ANSWER: The Air Quality Control Board regulations reflect a policy favoring public participation in permitting actions. Section 20.11.41.14 NMAC requires the City to allow interested persons the opportunity to have input into the permitting process and Section 20.11.42.13.B NMAC requires the City to provide such public notice as is "necessary to assure adequate notice to the affected public." The Petitioners have an important interest in insuring that the proposed permit modification does not adversely affect the quality of life in

Albuquerque. Because of the lack of adequate notice, potential opponents of the modification have been hindered in participating in the permitting process. As citizens of the City of Albuquerque who are aware of the permitting action being proposed, the Petitioners have the right to vindicate the general public's right to participate in the permitting process and ensure that the City of Albuquerque provides adequate notice to the affected public, as required by 20.11.42.13.B NMAC. *Martinez v. Maggiore*, 2003-NMCA-043, ¶¶14-20, 133 N.M. 472.

INTERROGATORY NO. 10: Petitioner Toledo and Petitioner Carrasco, describe in detail the facts that support your allegation in the Petition for Hearing that the increase in gasoline throughput authorized by Permit #1677-M2 “poses serious health, safety, and environmental hazards to any citizens who happen to be travelling near” the Smith’s at Tramway GDF.

ANSWER: Pursuant to the Petitioners’ Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput.

INTERROGATORY NO. 11: Petitioner Toledo and Petitioner Carrasco, in reference to your June 24, 2013 written request to the Department’s Air Quality Division for a public information hearing (PIH), which is Petition for Hearing Exhibit 3, and the statement in Exhibit 3 that the request is being made “in alliance with the 4-Hills neighborhood association”: identify the officers or board members of the neighborhood association (the full name of which is the “Four Hills Village Neighborhood Association” [hereafter, the “Four Hills Village NA]),

who authorized you to request a PIH on behalf or "in alliance with" the Four Hills Village NA or state the date on a majority of the members of the Four Hills Village NA authorized you to request a PIH on behalf of or "in alliance with" the Four Hills Village NA.

ANSWER: The Petitioners became aware of the permitting action on the very last day that public comments were allowed. Based on initial conversations on that day with the Four Hills Village NA, the Petitioners understood that the Four Hills Village NA would be joining them in their request for a public hearing. However, in subsequent discussions, the Four Hills Village NA confirmed that they were not going to participate in the permitting action.

INTERROGATORY NO. 12: Petitioner Toledo and Petitioner Carrasco, in reference to your June 24, 2013 request for a PIH, describe in detail the facts that support your allegations in Exhibit 3 of the Petition for Hearing that issuing Permit #1677-M1 will "lead to completely unsafe and dangerous conditions for the public."

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput.

INTERROGATORY NO. 13: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, in reference to the document that is attached to the Petition for Hearing as Exhibit 2, describe in detail the facts that support your allegation in the first sentence of the sign-up sheet that "the Four Hills Neighborhood will be subject to approximately 30 tons of cancer causing VOC's."

ANSWER: Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput.

INTERROGATORY NO. 14: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, describe in detail the legal basis of your objections to the permitting action taken by the Department and provide citations to specific sections of the Clean Air Act, the Code of Federal Regulations, the NM Air Act, and the Air Board Regulations, and to specific cases that support your answer.

ANSWER: The City failed to provide public notice of the permitting action in a manner "necessary to assure adequate notice to the affected public." 20.11.42.13.B(2). The failure to provide adequate public notice prevented interested persons from having the opportunity to submit written comments, evidence or request a hearing, as provided by 20.11.41.14.A NMAC.

20.11.41.14.B states that the Department "shall hold a public hearing if the director determines that there is significant public interest." Because the Department did not provide notice adequate to the affected public, the Department could not reasonably determine if there was significant public interest such that a public hearing should be held.

Martinez v. Maggiore, 2003-NMCA-043, ¶¶14-20, 133 N.M. 472.

INTERROGATORY NO. 15: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, cite each and every section of the Clean Air Act, the Code of Federal Regulations, the

NM Air Act, and the Air Board Regulations that requires the Department to provide public notice in addition to the public notice required by 20.11.41.14.A(3) NMAC.

ANSWER: 20.11.42.13.B(2) NMAC. The Department has already admitted and recognized, by the action of contacting representatives of neighborhood groups, that additional notice, other than publication in the Albuquerque Journal, is required.

INTERROGATORY NO. 16: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, cite each and every section of the Clean Air Act, the Code of Federal Regulations, the NM Air Act, and the Air Board Regulations that requires the Department to provide a public information hearing or a hearing of any type before the Department makes a final decision regarding a pending application for an Authority-to-Construct (20.11.41 NMAC) permit or permit modification.

ANSWER: 20.11.41.14.B states that the Department “shall hold a public hearing if the director determines that there is significant public interest.” Because the Department did not provide notice adequate to the affected public, the Department could not reasonably determine if there was significant public interest such that a public hearing should be held.

INTERROGATORY NO. 17: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, cite each and every section of the Clean Air Act, the Code of Federal Regulations, the NM Air Act, and the Air Board Regulations that you believe supports your allegation that the Department was required to deny the application for modification of Permit #1677-M1.

ANSWER: Pursuant to the Petitioners’ Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public

participation. The Petitioners will not be presenting evidence or argument on possible reasons for denial of the application.

INTERROGATORY NO. 18: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, describe in detail the public notice that you allege the Department was required to provide in order for public notice to be “proper and adequate” public notice, and include citations to the legal authorities that support your allegation.

ANSWER: The Petitioners will be presenting expert testimony regarding proper and adequate public notice, which will be provided as part of the Petitioners Notice of Intent to Present Technical Testimony, due August 30, 2013.

INTERROGATORY NO. 19: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, describe in detail the public participation opportunities that the Department was required to provide during the permitting action and include in your answer citations to the legal authorities that support your allegations.

ANSWER: The Department was required to provide adequate notice to the affected public such that all interested persons would be provided the opportunity to submit written comments, evidence or request a public hearing on the application. 20.11.42.13.B NMAC; 20.11.41.14.A(4).

20.11.41.14.B states that the Department “shall hold a public hearing if the director determines that there is significant public interest.” Because the Department did not provide notice adequate to the affected public, the Department could not reasonably determine if there was significant public interest such that a public hearing should be held.

INTERROGATORY NO. 20: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, if the Petitioners file their Notice Limiting Issues on Appeal, describe in detail the meaning of the words in Paragraph 1 of the Notice: "status of review and permit determination in relation to Smith's Air Quality Permit No. 1677-M2 permit application."

ANSWER: This refers to the timing of the Department's public notice and decision not to hold a public hearing in relation to the Department's review and approval of the requested permit modification.

Part II – REQUEST FOR PRODUCTION

Please attach every document that supports or evidences each of your answers to the City's Interrogatories and, on each document, identify by number the interrogatory or interrogatories to which each document responds.

RESPONSE: At this time, the Petitioners do not have any documents responsive to this request other than the documents in the Administrative Record in this matter. The Petitioners reserve their rights to identify additional documents as part of their Notice of Intent to Present Technical Testimony.

Part III – REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Petitioner Power, admit that you did not state in the Petition for Hearing how you are or will be adversely affected by the permitting action taken by the Department, and you did not cite to an Air Board regulation other than 20.11.81 NMAC that authorized you to request a hearing on the merits pursuant to 20.11.81 NMAC.

ADMIT _____

DENY X _____

REQUEST FOR ADMISSION NO. 2: Petitioner Power, admit that you did not state in the Petition for Hearing the factual basis for your objections to the permitting action taken by the Department.

ADMIT _____

DENY X _____

REQUEST FOR ADMISSION NO. 3: Petitioner Power, admit that you did not state in the Petition for Hearing the legal basis of your objections to the permitting action taken by the Department.

ADMIT _____

DENY X _____

REQUEST FOR ADMISSION NO. 4: Petitioner Toledo and Petitioner Carrasco, admit that you did not state in the Petition for Hearing how you are or will be adversely affected by the permitting action taken by the Department, and you did not cite to an Air Board regulation

other than 20.11.81 NMAC that authorized you to request a hearing on the merits pursuant to 20.11.81 NMAC.

ADMIT _____ DENY X

REQUEST FOR ADMISSION NO. 5: Petitioner Toledo and Petitioner Carrasco, admit that you did not state in the Petition for Hearing the factual basis for your objections to the permitting action taken by the Department.

ADMIT _____ DENY X

REQUEST FOR ADMISSION NO. 6: Petitioner Toledo and Petitioner Carrasco, admit that you did not state in the Petition for Hearing the legal authority that authorizes you to assert the interests of the members of the Albuquerque community other than yourselves.

ADMIT _____ DENY X

REQUEST FOR ADMISSION NO. 7: Petitioner Toledo and Petitioner Carrasco, admit that no officer, board member or vote of a majority of the membership of the Four Hills Village NA authorized you to request a PIH on behalf of or "in accord with" the Four Hills Village NA.

ADMIT X DENY _____

REQUEST FOR ADMISSION NO. 8: Petitioner Toledo and Petitioner Carasco,

admit that you hold no interest in any residence, commercial or other real property within a three mile radius of the Smith's at Tramway GDF.

ADMIT X

DENY

REQUEST FOR ADMISSION NO. 9: Petitioner Power, Petitioner Toledo and

Petitioner Carrasco, admit that you have no factual or technical basis for the statement in the first sentence of Exhibit 2 of the Petition for Hearing that "the Four Hills Neighborhood will be subject to approximately 30 tons of cancer causing VOC's" as a result of the issuance of Permit #1677-M2.

ADMIT

DENY

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput and therefore are not answering this Request for Admission.

REQUEST FOR ADMISSION NO. 10: Petitioner Power, Petitioner Toledo and

Petitioner Carrasco, admit that you have no factual or technical basis for the assertion in the first sentence of Exhibit 2 of the Petition for Hearing that, if the increase in gasoline throughput proposed in the application for modification of Permit #1677-M1 is granted, the annual emissions from Smith's at Tramway GDF will consist of "approximately 30 tons of cancer causing VOCs."

ADMIT

DENY

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on the impacts of the increased throughput and therefore are not answering this Request for Admission.

REQUEST FOR ADMISSION NO. 11: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, admit that the Clean Air Act, the Code of Federal Regulations, the NM Air Act, and the Air Board Regulations do not require the Department to provide public notice of a pending application for modification of an Authority-to-Construct permit in addition to the public notice required by 20.11.41.14.A(3) NMAC.

ADMIT _____

DENY X

REQUEST FOR ADMISSION NO. 12: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, admit that the Clean Air Act, the Code of Federal Regulations, the NM Air Act, and the Air Board Regulations do not require the Department to provide a public information hearing or hearing of any kind every time an application for modification of an Authority-to-Construct Permit is pending before the Department.

ADMIT _____

DENY X

20.11.41.14:B states that the Department "shall hold a public hearing if the director determines that there is significant public interest." Because the Department did not provide notice adequate to the affected public, the Department could not reasonably determine if there was significant public interest such that a public hearing should be held.

REQUEST FOR ADMISSION NO. 17: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, admit that you have no evidence that the Department failed to comply with any public notice requirement of the NM Air Act or 20.11.41 NMAC.

ADMIT _____ DENY X

REQUEST FOR ADMISSION NO. 18: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, admit that the Clean Air Act, the Code of Federal Regulations, the NM Air Act, and the Air Board Regulations did not require the Department to deny the application for modification of Permit #1677-M1.

ADMIT _____ DENY _____

Pursuant to the Petitioners' Notice Limiting Issues on Appeal, filed July 30, 2013, the only issues to be addressed at the hearing are those involving public notice and public participation. The Petitioners will not be presenting evidence or argument on possible reasons for denial of the application.

REQUEST FOR ADMISSION NO. 19: Petitioner Power, Petitioner Toledo and Petitioner Carrasco, admit that the Department's issuance of Permit #1677-M2 does not violate any requirement or prohibition of the Clean Air Act, the Code of Federal Regulations, the NM Air Act, or the Air Board Regulations.

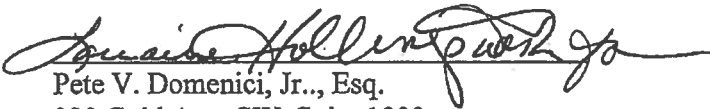
ADMIT _____ DENY X

REQUEST FOR ADMISSION NO. 20: Petitioner Power, Petitioner Toledo and
Petitioner Carrasco, admit that you have no evidence that the Department failed to comply with
any applicable statute or and [sic] regulation when the Department issued Permit #1677-M2.

ADMIT _____

DENY X

DOMENICI LAW FIRM, P.C.



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320 Gold Ave. SW, Suite 1000
Albuquerque, New Mexico 87102
(505) 883-6250

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Pat Toledo, being first duly sworn, upon my oath, state that my answers to the City's Interrogatories are true and correct.

Pat Toledo
PAT TOLEDO

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 22nd day of August, 2013, by Pat Toledo.

Brandi J. Sanchez
NOTARY PUBLIC

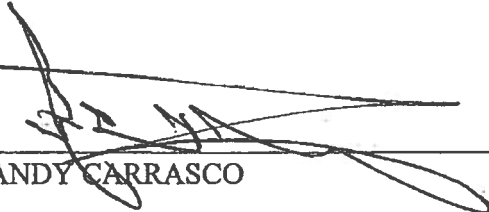
My Commission Expires:
2/13/16



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/16


STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Andy Carrasco, being first duly sworn, upon my oath, state that my answers to the City's Interrogatories are true and correct. .



ANDY CARRASCO

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 22nd day of August, 2013, by Andy Carrasco.



NOTARY PUBLIC

My Commission Expires:
2/13/16



OFFICIAL SEAL
Brandi J. Sanchez
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 2/13/16

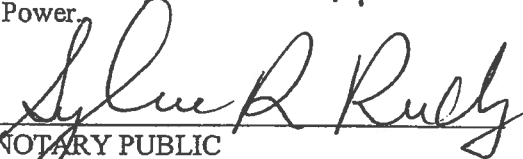
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Dempsey Power, being first duly sworn, upon my oath, state that my answers to the City's Interrogatories are true and correct.



DEMPSEY POWER

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 10th day
of Sep., 2013, by Dempsey Power.



NOTARY PUBLIC

My Commission Expires: _____

