

**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.

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

Respondents

AQCB Petition No. 2013-6

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PREHEARING ORDER ON OBJECTIONS TO WITNESSES AND EXHIBITS

This matter comes before the Board's Hearing Officer upon Objections filed by the City's Environmental Health Department (EHD) and Smith's to Petitioners' Witnesses and Exhibits, and Objections filed by Petitioners to EHD's and Smith's Witnesses and Exhibits.

The Hearing Officer, Counsel for Petitioners and Petitioner Toledo, City staff and Counsel, and Smith's Counsel participated in a teleconference on July 2, 2015 to discuss the respective objections and plans for the hearing on July 8. Although some disputes remain to be argued at the hearing, many of the objections were resolved by agreement on instructions that will be offered at the appropriate times by the Hearing Officer.

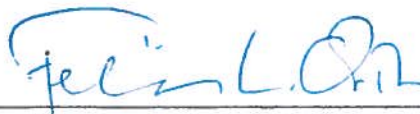
It is ordered as follows:

1. As to Petitioners' first objection, the Hearing Officer will prior to taking evidence advise the Board as to the difference between Petitioners' standing to appeal EHD's decision on a public information hearing, which is not disputed; and whether their request for hearing, considered with the emails from the

Neighborhood Associations, constituted “significant public interest” to necessitate a public hearing, which is disputed.

2. The Hearing Officer will, as necessary, remind the Parties and the Board that the focus of their inquiry should be what EHD Director Ms. Leonard knew at the time she made her decision in May 2013.
3. Although the Petitioners asserted in the teleconference that the waiver they filed with the Board after May 2013 limiting issues to public notice and significant public interest does not apply to the remand hearing, the Hearing Officer will also, as necessary, remind the Parties and the Board that the Memorandum Opinion from the Court of Appeals expressly contemplated the limitation of issues as part of the remand hearing, and further already resolved the public notice question; the only question before the Board is whether EHD improperly refused to hold a public hearing.
4. Petitioners’ second objection to Smith’s planned exhibits is not well taken, and Smith’s offer of discovery responses from Petitioners during the proceeding below as exhibits during the remand hearing will be accepted.
5. As to Smith’s and the City’s objections to Petitioners’ exhibits and witnesses, the following was generally agreed upon and is so ordered:
 - a. Mr. Toledo and Mr. Carrasco will be heard as to their personal knowledge of the facts and circumstances known to Ms. Leonard that constituted significant public interest at the time she made her decision. They will be instructed to avoid hearsay and testimony without foundation.

- b. Mr. Barsis and Ms. Underhill will be heard as to their email communications with EHD staff; Petitioners agreed that although their Witness List submittal refers to “other communications” that may not be in the record, evidence of other communications were not found, and the record already contains those communications that were had. They will be instructed to avoid hearsay and testimony without foundation.
 - c. All other witnesses listed, including Mr. Sanderoff, will be presented as “public commenters” and limited to 3 minutes each. They will be instructed as to scope, and to avoid hearsay, testimony without foundation, and redundancy.
6. All of the exhibits specifically identified by Petitioners and by EHD are already part of the Administrative Record or Pleading File in this matter and should not be offered as exhibits during the hearing. They may be referred to freely by witnesses and in argument by Counsel to the extent they are relevant to the question before the Board in the remand hearing. The Hearing Officer and Board would be greatly assisted if the Parties were to use the AR page numbers in making their references during the hearing.



Felicia L. Orth, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that I have e-mailed a true and correct copy of the foregoing PREHEARING ORDER ON OBJECTIONS TO WITNESSES AND EXHIBITS on this 7th day of July, 2015, to the following:

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Respectfully submitted,



Andrew Daffern, AQCB Hearing Clerk