

**BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY  
CONTROL BOARD**

**IN THE MATTER OF THE TWO PETITIONS FOR A HEARING ON THE  
MERITS REGARDING AIR QUALITY PERMIT NO. 2037-M1 ISSUED TO  
SMITH'S FOOD AND DRUG CENTERS, INC.**

**Georgianna E. Pena-Kues, Petitioner**

**No. AQCB 2012-1**

**and**

**Andy Carrasco, James A. Nelson and Summit  
Park Neighborhood Association, Petitioners**

**No. AQCB 2012-2**

**Air Quality Control Board Resolution # 2013-1**

**Reversing the City of Albuquerque's April 17, 2012 Issuance of Minor Source Air  
Quality Authority-to-Construct Permit No. 2037-M1 with Conditions to Smith's  
Food and Drug Centers, Inc.**

**Whereas**, the New Mexico Air Quality Control Act (Air Act), NMSA 1978, Section 74-2-1, et seq.; Section 20.11.41 NMAC, *Authority- to-Construct*; Section 20.11.81 NMAC, *Adjudicatory Procedures-AQCB*; Albuquerque Code of Ordinances, Air Quality Control Board, Section 9-5-1-7; Bernalillo County Ordinance § 30-36, Air Pollution; and additional law set out in Smith's and the City's post-hearing submittals are the primary laws applicable to the Hearing on the Merits regarding Air Quality Permit No. 2037-M1 issued to Smith's Food and Drug Centers, Inc.; and

**Whereas**, after the City of Albuquerque Environmental Health Department, Air Quality Division has reviewed a permit application and made a decision, a person who participated in a permitting action before the Department and who is adversely affected by the permitting action may file a timely petition for an adjudicatory hearing before the Air Board; and

**Whereas,** Smith's Food and Drug Centers, Inc. was issued an Authority-to-Construct Permit Modification No. 2037-M1 on April 17, 2012 by the Air Quality Division of the City of Albuquerque's Environmental Health Department; and the Petitioners Appellants filed a timely Petition for a Hearing; and

**Whereas,** the Air Board is required to respond to a 'timely request' by holding a hearing within 30 days of the receipt of a properly filed request; and

**Whereas,** the Air Board designated a hearing officer to take evidence in the hearing; directed the Hearing Officer to provide the Air Board with a recommended decision containing the Hearing Officer's findings of fact; conclusions regarding all material issues of law or discretion, as well as reasons therefore; and a proposed final order; and

**Whereas,** the Hearing Officer conducted the hearing on August 21-23, 2012; and

**Whereas,** the Air Board has reviewed the record, including all post-hearing submittals and the Hearing Officer's report and findings; and

**Whereas,** the Air Board met on January 9, 2013 to deliberate and decide whether to adopt, modify or set aside the recommended decision and provide reasons;

**Now, therefore, it is resolved by the Board that:**

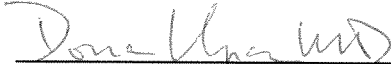
- 1. The Air Board hereby sets aside the Hearing Officer's Recommended Findings of Fact and Conclusions of Law and Recommended Decision.**
- 2. The Air Board hereby reverses the City's April 17, 2012 issuance of minor stationary source air quality Authority-to-Construct Permit Modification No. 2037-M1 with conditions to Smith's Food and Drug Centers, Inc. , and provides reasons therefore:**

*1) The Air Quality Control Board is required to protect public health and welfare. Increases in throughput increase risks to public health.*


- 2) The Quality of Life concerns raised by the community could be indirectly related to air quality.
- 3)

3. The Air Board directs [a board member, the hearing officer, board counsel, or a party] to prepare a proposed final order consistent with these reasons and with 20.11.81.18 NMAC.

PASSED AND ADOPTED THIS 9th DAY OF January, 2013  
BY A VOTE OF 4 FOR AND 2 AGAINST.  
ABSTAINED: 1, ABSENT: 0

  
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Dr. Dona Upson, MD, Chair  
Albuquerque-Bernalillo County  
Air Quality Control Board

Attest:

  
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Margaret Nieto, Secretary to the Board