

STATE OF NEW MEXICO  
ALBUQUERQUE-BERNALILLO COUNTY  
AIR QUALITY CONTROL BOARD

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IN THE MATTER OF THE PETITION  
FOR A HEARING ON THE MERITS  
REGARDING AIR QUALITY PERMIT  
NO. 3135

PETITION FOR HEARING

The Petitioners in this matter, Margaret Freed, Mary Ann Roberts, and Pat Toledo, by and through undersigned counsel of record, 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. 3135 issued effective April 30, 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 6941 Montgomery Blvd. NE., Albuquerque, New Mexico. In accordance with 20.11.81.14 NMAC, the Petitioners provide the following information.

**I. Petitioners' names and addresses**

- A. Margaret M. Freed  
6921 Montgomery Blvd. NE  
Albuquerque, New Mexico 87109  
505-884-1449
- B. Mary Ann Roberts  
6940 Montgomery Blvd. NE  
Albuquerque, New Mexico 87109  
505-881-9399
- C. Pat Toledo  
3404 Calle Del Rancho NE

Albuquerque, New Mexico 87106  
505-256-0848

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

Petitioner Margaret Freed owns property located at 6921 Montgomery Blvd. NE, which is adjacent to the property on which Smith's proposes to construct the fuel dispensing station.

Petitioner Mary Ann Roberts owns property located at 6940 Montgomery Blvd. NE, which is directly across the street from the property on which Smith's proposes to construct the fuel dispensing station.

Petitioner Pat Toledo's 94-year-old father, Joe Toledo, resides at 3232 La Ronda NE, close to the property on which Smith's proposes to construct the fuel dispensing station. Pat Toledo provides regular assistance and care for his father, is regularly in the area of the proposed fuel dispensing station and is concerned regarding the impact of the fuel dispensing station on his father's property and quality of life.

Each of the Petitioners participated in the April 3, 2014 Public Information Hearing (PIH).

Each of the Petitioners are 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 other negative impacts on their property and quality of life resulting from the construction of the Smith's fuel dispensing station at the proposed location. In addition, see Exhibit 2, attached hereto, from Petitioner Margaret Freed.

**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 3135, issued to Smith's on April 30, 2014, with notice provided to Petitioners by letter dated April 30, 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 6941 Montgomery NE, Albuquerque, New Mexico. Permit No. 3135 was issued pursuant to §20.11.41 NMAC, Authority to Construct. The PIH was held on April 3, 2014 and approximately 25 people attended the meeting in opposition to the issuance of the permit, with approximately 14 people providing public comments opposing the issuance of the permit. Approximately 12 Smith's employees appeared at the PIH in support of the permit issuance. In addition, a petition with over 100 signatures objecting to the issuance of the permit was 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. 3135, 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.*

Permit No. 3135 is for a fuel dispensing station that has not yet been built. Smith’s proposes to build the station at the intersection of Montgomery and Louisiana, one of busiest intersections in New Mexico. There are already two gas stations at the intersection, one of which is owned by Petitioner Mary Ann Roberts. The Chevron station owned by Ms. Roberts has an annual throughput of 800,000 gallons, as compared to the 7 million gallons approved for the proposed Smith’s station. The location borders residential areas and is close to Cleveland 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 Ms. Freed is immediately adjacent to 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. These and other concerns were raised at the PIH. Exhibit 2, attached, includes the specific concerns of Petitioner Margaret Freed.

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. 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.

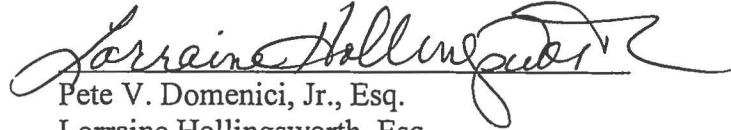
**IV. Remedies sought by Petitioners, legal basis therefor, and basis for jurisdiction of Board in this matter**

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. 3135, 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, including those raised by Petitioner Margaret Freed, in Exhibit 2, attached hereto. 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.

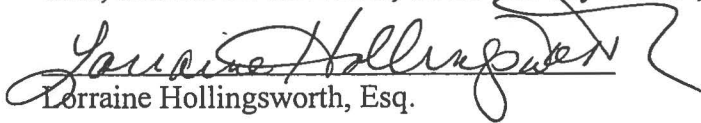
Respectfully Submitted,

DOMENICI LAW FIRM, P.C.



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

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, and Felicia Orth, counsel for the Board, on the 2nd day of June, 2014.



Lorraine Hollingsworth, Esq.

VERIFICATION

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

Margaret M. Freed, being of legal age, hereby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Margaret M. Freed  
Margaret M. Freed

SUBSCRIBED AND SWORN TO before me on this 2<sup>nd</sup> day of June  
2014, by Margaret M. Freed

Brandi 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



VERIFICATION

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

Mary Ann Roberts, being of legal age, hereby affirm and testify to the truth of the information contained in the foregoing Petition for Hearing.

Mary Ann Roberts  
Mary Ann Roberts

SUBSCRIBED AND SWORN TO before me on this 2<sup>nd</sup> day of June  
2014, by PAULA ALVARADO aka  
Mary Ann Roberts

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

VERIFICATION

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

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

*Pat Toledo*

\_\_\_\_\_  
Pat Toledo

SUBSCRIBED AND SWORN TO before me on this 2<sup>nd</sup> day of June  
2014, by Pat Toledo.

*Brandi Sanchez*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

2/13/14



OFFICIAL SEAL  
Brandi J. Sanchez  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 2/13/14

# CITY OF ALBUQUERQUE

Environmental Health Department  
Mary Lou Leonard, Director



April 30, 2014

**RE: Air Quality Permit No. 3135 ~ Smith's Food & Drug Centers, Inc.  
(Smith's) – Authority-to-Construct Permit – 6941 Montgomery Blvd. NE**

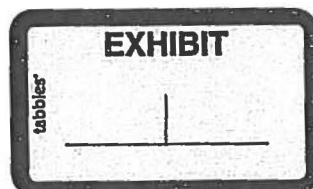
Dear Interested Person:

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 6941 Montgomery Blvd NE (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, and 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 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 enforceable 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 6941 Montgomery Blvd NE 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 and to permitting staff at EPA Region 6 and the New Mexico Environment Department (NMED). The Air Program received requests for a Public Information Hearing (PIH) and published notice of the April 3, 2014 PIH in the Albuquerque Journal and sent approximately 65 letters providing notice of 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. 3135; the PIH flyer; and a summary of federal regulations controlling air emissions from gas stations.

The Air Program held the PIH on April 3, 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.

As explained by the Hearing Officer at the PIH, the PIH was not an adjudicatory hearing and the Hearing Officer has not made 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.

### 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 the PIH, 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. 3135, it will satisfy all applicable air quality laws and regulations.

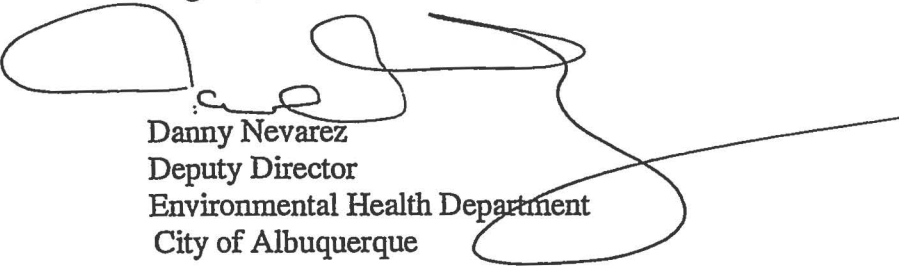
### Decision

The Department issued Air Quality Permit No. 3135 effective April 30, 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 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, *Adjudatory 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



**AIR QUALITY AUTHORITY TO CONSTRUCT PERMIT #3135**  
**FACILITY CDS # NM/001/02260**  
**Facility ID: FA0003035 Record ID: PR0006342**



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 Albuquerque-Bernalillo County Air Quality Control Board (AQCB) regulation, Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 41 (20.11.40 NMAC), Source Registration; and AQCB regulation, Title 20, NMAC, Chapter 11, Part 41 (20.11.41 NMAC), Authority to Construct,

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

This **AUTHORITY TO CONSTRUCT** Permit Number 3135 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 Albuquerque/Bernalillo County, as amended. As these standards and regulations are updated or amended, the applicable changes will be incorporated into Air Quality Permit Number 3135 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. 6941 Montgomery Blvd. NE Albuquerque, NM 87110	357035 Easting 3888720 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, landscape equipment, generators, pumps, and other gasoline-fueled engines and equipment.

Issued on the 30th day of April, 2014  
Isreal L. Tovar Print Name      Isreal L. Tovar Sign Name

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

**1. AUTHORITY TO CONSTRUCT 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 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
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 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 an Authority to Construct permit does not relieve the Company from the responsibility of complying with the provisions of 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 an Authority to Construct 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.
- E. The department is authorized to issue a compliance order requiring compliance and assessing a civil penalty not to exceed Fifteen Thousand 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 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 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 20.11.47.14.A.(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 Authority to Construct. Subsection 20.11.47.14.B.(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 a 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 Application 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 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. 20.11.41.7.H 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 until 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)NMAC).** Monitor and maintain a log of the total monthly gasoline throughput at 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, 20.11.47 and 20.11.49 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 at 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 file 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 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];

(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:

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

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 aff 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 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 manage practices at least as stringent as those listed in Table 1 of 40 CFR Part 63, Subpart CCCCCC.

**D. 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)

Monthly throughput means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each Gas Dispensing Facility (GDF) during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed f all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline stc 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(e), of a vapor balance system required i §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 i CFR Part 63, Subpart CCCCCC, for pressure-vacuum vent valves installed on your gasoline storage tanks using the test methods identified in parag (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 Pressu 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 Part 63, Subpart CCCCCC, for your vapor balance system by conducting a static pressure test on your gasoline storage tanks using the test met 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 S Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporate 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(i)

§63.11120(b) - Each owner or operator choosing, under the provisions of §63.6(g), to use a vapor balance system other than that descri in Table 1 of 40 CFR Part 63, Subpart CCCCCC must demonstrate to the Administrator or delegated authority under paragraph §63.11131(a) of subpart, the equivalency of their vapor balance system to that described in Table 1 of 40 CFR Part 63, Subpart CCCCCC using the procedures specifi 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 the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1,—Volum Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (incorporated by refere see §63.14);

(b)(2) - You must, during the initial performance test required under paragraph (b)(1) of this section, determine and document altern; 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 fo 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 conditor the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine 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 o volumetric efficiency tests required under §63.11120(b). Reports submitted under this paragraph must be submitted within 180 days of the completio 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 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 applicable EPA Regional Office and the delegated State authority as specified in §63.13. The Initial Notification must contain the information specific 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 requirement 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 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 person 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 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, Authority to Construct should be meeting the 20.11.41 NMAC. Volatile Organic Compounds requirements for submerged fill pipe and vapor loss control system for loading of fuel storage tanks and recovery, and therefore should not have to submit an Initial Notification or a Notification of Compliance Status. **Since all gasoline dispensing facilities meet 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 in accordance with §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 an Authority to Construct 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 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. (20.11.41.19.A 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

Plaza Del Oso  
6921 Montgomery Blvd. NE  
Albuquerque, NM 87109

City of Albuquerque, Environmental Health Department  
Air Quality Program, One Civic Plaza, Albuquerque, NM 87104

April 19, 2014

**Re: Permit Application Request #3135**

This permit request has been made by Smith's Food and Drug Centers, Inc. for 6941 Montgomery Blvd. NE, Albuquerque, NM 87109. The requested annual gasoline throughput of 7,000,000 gallons per year, results in 45.5 tons per year of emissions of Volatile Organic Compounds (VOC'S). The area in question is a C-2 zone and therefore their request is in violation of proper zoning regulations. This permit would be more properly permitted in an industrial (C-3) zone; not in this C-2 zone.

According to the summary of "Regulations Controlling Air Emissions from Gasoline Dispensing Facilities," the permit request is not for an "Area Source" but is instead for a "Major Source" due to their stated 45.5 tons of VOC's. The rules and regulations listed are for permitting "Area Source" and not for "Major Source" facilities.

Therefore, I request that the permit #3135 be denied and be re-submitted as an "Area Source" which is limiting emissions to less than 10 tons of VOC's per year.

My property, 6921 Montgomery Blvd. NE, is right next door to 6941 (the permit request property) where we would receive a large portion of the 45.5 tons per year of VOC's. Also, one block away is a middle school and their students and parents would be greatly affected. There is a group of 3/4 story apartment homes next door to the NW of the permit property. Were they notified of the requested permit #3135? I understand that some of Smith's gasoline dispensing facilities have been quite heavily fined by the City of Albuquerque and this ignores health issues.

Could you please expedite my request since I come late to this process because I was never notified that this permit had been requested or that the land had even been sold for this reason? I learned about the request from a concerned citizen the last week in March that the permit process was started 11-5-13. I attended the public meeting on April 3, 2014 which did not produce any answers to our concerns about health issues. I would think that because of the health issues of the very high amounts of pollutants that it would be required that I be notified of this permit request #3135.

I cannot stress enough how important it is for the City of Albuquerque not to make the mistake of permitting this "Major Source" gasoline dispensing facility in the wrong zone which will result in polluting the area with the very large amount of VOC's per year at the location proposed.

I do not believe that such a decision should be allowed to stand.

Sincerely,

Margaret M. Freed, Owner  
Plaza Del Oso

cc: EPA, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 76202-2733

