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. 1655-M1-RV1

PETITION FOR HEARING

The Petitioner in this matter, Pat Toledo, 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. 1655-M1-RV1 issued effective early 2016 to Smith's Food & Drug Centers, Inc. (Smith's). The permit authorizes Smith's to have an annual throughput of 5 million gallons per year at a fuel dispensing station Smith's bought from Robert's Oil at 9201 Golf Course Road NW, Albuquerque, New Mexico. In accordance with 20.11.81.14 NMAC, the Petitioner provides the following information:

I. Petitioner name and address:

A. Pat Toledo
3404 Calle Del Ranchero NE
Albuquerque, NM 87106
505-504-2614
505-256-0848

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

Petitioner Pat Toledo is involved in the matter of the Smith's fuel station at Carlisle and Constitution which is on appeal. He is also involved in a court case regarding the site at Montgomery and Louisiana. He has standing based on earlier victory on Tramway and Central. Mr. Toledo is an environmental activist and organized neighborhoods in several other Albuquerque locations against what he regards a violation of citizen's rights to safely protect their neighborhoods from intrusions by Smiths mega gas stations and the excess VOC's and conditions created by their marketing methods that are not addressed by air quality regulations in New Mexico.

The Petitioner participated held on Thursday, October 22nd, 2015 from 6 p.m. to 8 p.m. at the Paradise Hills community center, 6001 Paradise Blvd NW. The Petitioner is 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 resulting pollution, and other negative impacts on their persons, property and quality of life resulting from the construction of the Smith's fuel dispensing station at the proposed location.

III. Specific permitting action appealed from, permitting action to which Petitioner objects and factual and legal basis of Petitioner's objections to the permitting action.

The Petitioners are appealing the issuance of Permit 1655-M1-RV1, issued to Smith's with notice provided to Petitioners by letter dated February 4, 2016. (See Exhibit 1Aattached). The Petitioner objects to the issuance of the permit allowing for a throughput of 5 million gallons at a fuel dispensing station proposed to be operated at 9201 Golf Course Road NW, Albuquerque, New Mexico. Permit No. 1655-M1-RV1 was issued pursuant to 20.11.41 NMAC, Authority to Construct. The first PIH was held on Thursday, October 22, 2015. Approximately 8 people attended the meeting in opposition to the issuance of the permit, with approximately 4 people providing public comments opposing the issuance of the permit. No one from the public spoke in favor of the permit. In addition, a petition with approximately 15 signatures of nearby residents objecting to the issuance of the permit were 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 P.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 PP24, 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 PP7, 8, 24.

In issuing Permit No. 1655-M1-RV1, the city of Albuquerque, Air Quality Program (Air Program) refused to take into consideration the concerns raised by the public comments at the PH. 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.*

It should be noted there is nothing in the record to indicate that the Air Program did, in fact, convey concerns to appropriate City Departments. Also, "duly noted" is not equivalent to preparation of a response to the serious concerns of the public. The Air Program dismissal of public concerns by stating the concerns were "duly noted" and "in some cases" conveyed to City Departments, is an insufficient response to a meaningful public input process.

The location borders residential areas and is a few hundred feet away from two churches that have classes for school children. The church pastors both attended the PIH. One neighbor, who is on the petition requesting the first public information hearing, house backs up to the Smiths Gas Station within 50 ft. of the pumps and would be impacted by the VOC's, fumes and increased traffic. The proposed mega gas station would have negative and cumulative impacts of 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. Most of the Petitioners live near the proposed Smith's fueling station and would be directly impacted by the VOC's, fumes and increased traffic and pollutants. There are residents in the vicinity that have breathing difficulties, and some are on oxygen. There are low income residents nearby with small children and elderly populations.

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. Petitioners were informed by the Air Program officials during the PIH that Smith's application 1655-M1-RV1 essentially met technical requirements and that only those technical requirements would be considered in making a decision on the application. 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. Was there a legal basis for the transfer of ownership from Karon Roberts (the owner of the gas station in question) to Smiths?

Introduction

Pat Toledo has been a resident of Albuquerque all his life, 59 years. Mr. Toledo lives near Carlisle & Constitution where Smith's gas station opened up a mega gas station that was not properly sized nor environmentally friendly to the neighbors who lived within 100ft of the station. It has created havoc in his neighborhood because of the increased traffic and pollution that created a situation in which he and neighbors felt unsafe and unhealthy. There is still pending litigation that he thinks will end up in their favor. He does not want to see this happen in other neighborhoods, so he is within his rights as a Bernalillo Citizen to challenge permit increases anywhere in Bernalillo County as long as he

participates in the permitting process.

Concerns

1. Pat and his wife have been friends of Karon Roberts (The Owner of the Gas Station in question). A few months ago they were having lunch with Karon Roberts who was selling all her gas stations, upon the unfortunate passing of her Husband, Bill Roberts. The subject of the Golf Course Rd. gas station came up and Karon said to them that Smith's was interested in buying the station but only if she would get a permit increase to Five Million Gallons. She said this was a condition of their purchase. She also said that they were afraid that if they bought the station at their existing permit of Three Million Gallons they would need to increase the permit and that they were afraid that Pat Toledo would get involved and cause them problems.

2. So now our question is, is this permit for Karon Roberts gas station or a new Smith's gas station? Is this legal for a gas station to apply for a permit that is going to be of no use to themselves because they have never needed that volume? At the PIH, one of the church pastors asked Mr. Tavarez how much throughput Roberts Oil had used last year. Mr. Tavarez said he didn't know but he thought it was two to three million gallons. Mr. Tavarez checked later during the meeting and found it was about 500,000 gallons, not even close to one million. Why on earth would a gas station operator request 10 times the volume they had ever pumped? The only correct answer is because they were filing the permit for Smiths. On the attachment to notification letter, for Robert's Oil/Smith's Air Quality Permit Application #1655-M1-RV1, February 4, 2016, exhibit 2, they respond that they Air Quality Program does not require an applicant to provide a reason for increasing throughput. If this is so, then why do they require a permit in the first place? If a big company can manipulate the regulations to hide the fact that they are the new operator, this is a denial of public notice because the two operators are not at all equivalent. You have an elephant taking over for an ant sized operator. The public is denied all access to this information and this is wrong and we want the courts to decide or the Air Quality Board to decide if this is proper. We were never given the process by which the Air Quality Board has authority to do the change of ownership without informing the public. Mr. Tavarez stated that it was an administrative revision but never specified the regulation where this is contained. The only place where we found evidence of a regulation providing change of ownership providing no public notice was as an administrative amendment only used by major source operators. From what we interpret this is only used in an emergency. We will present evidence that there was plenty of time for Smiths and Ms. Roberts to notify the city of the change of ownership and also we believe that the city knew of the change of ownership 3 to 5 months before the PH on October 22nd, 2015. We also state that Mr. Tavarez' statement at the public information hearing regarding that they had found out about Smiths buying the property a mere week before the public information hearing to be false.

3. The bottom of the public notice photo of the yellow city's water proof sign is supposed to be a minimum of two feet from the floor and, as you can see in the photo, is one foot only which was measured by Mr. Toledo, posted as exhibit No. 3.

4. Because of the controversy concerning Smith's marketing methods in other parts of the city (Hypermarketing of gas and coupon memberships) we think the neighborhood should know who the operator of the station will ultimately be.

5. All of the public notice by the city published in the Albuquerque Journal and posted within the city confines state that employees of Roberts Oil will be there to answer questions at the PIH. Not one Roberts Oil employee was there, they were all Smiths' employees. All the city had to do, and they had

(See Exhibit 5)

this information available, was to put "pending purchase by Smiths." This is what public notice is. It is not deceptive acts so obvious as to be embarrising as regards what was going on here.

6. Mr. Tavarez was asked at the PIH if Smiths had been fined for any violations. Mr. Tavarez answered that he was not in charge of that and he had no information. This was a preposterous answer. Mr. Tavarez has been involved with the Smiths Carlisle and Constitution issues for the past two years and is well aware of the over $200,000 in fines that has been levied against Smiths. His refusal to answer that question amounts to misinformation and deception.

7. According to the Air Quality Board rules, Mr. Toledo sites specifically (10.11.41.15 PIH paragraph B) the department shall make an arrangements and pay all expenses of the hearing including,

1. Arranging for a location for the PIH, which shall be held near the purposed source if reasonably feasible.

There is a church across the street from the gas station, where there is plenty of space and more importantly fulfills the Air Quality Board regulation cited here, was he contacted or asked about the use of the church, if not why? As this was the ideal setting for the public information hearing. This violates one of the most important Air Quality Board Regs of convenience and ease for the participants to show public interest by making it easy for them to walk over from their houses to have their voices heard. Many in the neighborhood are elderly and work 8 to 5 jobs and it it just creates another hardship for them to publicly participate in a hearing, that is supposed to be for their benefit. Does Air Quality Board really want public participation or do they want to silently go about their business at the expense of the public? This is a very important issue and it says again, that a location shall be held near the proposed source if reasonably feasible. Our own Petitioner has a church across the street, and he has neither been contacted or asked for the use of his building, which he would have acceded in a second. We consider this a violation of the Air Quality Act and shall propose canceling this hearing or continuing for a second day at the church.

8. the gas station sits on a very busy and active street, if this gas station is going to be increasing its volume of gas, where both Smith's and Wal-Mart Hypermarket their gas and the traffic will be considerably more congested and dangerous. Was a traffic study done or considered? You are supposed to be the custodians of the safety of the neighborhood and the formula you use for warranting a traffic study are outmoded and obsolete considering the kind of marketing, corporations that sell gas, now initiate, but you have known from the situation that occurred at Carlisle & Constitution with a Smith's gas station. Where there are huge problems, where the city has spent hundreds and thousands of dollars trying to remedy the situation after the fact. So even if we grant you that the formula that you use for a new gas station was not triggered at this site. Even if it was not required, wouldn't it maybe have been a good idea to do one? Just because something is not required doesn't mean that it might not have been a good idea to have done it.

9. What standard should be applied in assessing whether a petitioner has met its burden? We argue that the actual standard specified in Abq Air Quality Board Regs are **ADVERSE HEALTH EFECTS** and that the hearing examiner should consider many factors in addition to NAAQS, including the World Health Organization (WHO) Air Quality Guideline. Meeting (the NAAQS) standard alone does not satisfy the broader requirements of the ABQ Air Quality Board Regs and also pending litigation about quality of life issues and adverse effect by increased VOC emissions, odors, and fumes.

SEE Exhibit 4

10. **AIR PROGRAM DID NOT ATTEMPT TO PROVIDE ADEQUATE NOTICE TO THE**

AFFECTED PUBLIC. Smith's is required to provide public notice of application and notice of public hearing in a newspaper, to persons on a mailing list developed by the AQD and "by other means of necessary to assure adequate notice to the affected public." Clearly, this standard has not been met. Not only has it not been met, it was discouraged and hidden. All the public notices said it was for a Robert's Oil and that their employees would be there and through some administrative chicanery Smiths and the city avoided public notice and disclosure required by other means of necessary to assure adequate notice to the affected public. There has been a history of faulty notice regarding the fueling stations in the Albuquerque area. This resulted in a new regulation taking effect Janurary 1, 2014.

11. Air Program improperly approved a permit for an applicant (Smiths) that is a chronic violator of the conditions of its other permits within the City of Albuquerque. Smith's routinely pays fines related to exceeding the pumping quantities allowed under its permits. The air Program should refuse to issue Smiths additional permits until Smith's can demonstrate that it has a good track record of compliance. The enforcement tools and regulatory programs appear insufficient to deter future violations by the applicant. Smith's appears to be treating penalties and other sanctions as merely an on-going business expense and the Air Program should view this as symptomatic of underlying compliance problems and, potentially, threats to the city's environment that should be addressed and corrected. Since violations of the throughput volumes by Smith's appears to be a routine matter, it raises the question of whether there are other violations of the terms and conditions of Smith's permits that might be occurring that the city is either unaware of, or aware of, that could result in the release of harmful pollutants into the air or create dangerous conditions.

Respectfully submitted,

Pat D. Toledo

Pat D. Toledo 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, Frank Salazar and Tim Alter, Attorneys for the Applicant, Felicia Orth, Attorney for the Air Quality Board; and Carol Parker, Assistant City Attorney, City of Albuquerque; Hank Bohnoff attorney for applicant. ON THIS DAY OF 3/4/16

VERIFICATION

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

Pat D. Toledo 3/4/16

Name: Pat D. Toledo

EXHIBIT 1

CITY OF ALBUQUERQUE

Environmental Health Department
Mary Lou Leonard, Director

February 4, 2016

Mr. Pat Toledo
3404 Calle de Rancho NE
Albuquerque, NM 87106

RE: Air Quality Permit No. 1655-M1-RV1

Environmental Health Dept

Air Quality Program

PO Box 1293

Albuquerque, NM 87103

www.cabq.gov

Mr. Toledo:

Thank you for your interest in the permit application process for the gas station formerly owned by Roberts Oil Company, Inc. ("Robert's Oil") and now owned by Smith's Food & Drug Centers, Inc. ("Smith's"). The application requested to modify the existing air quality permit for the Robert's Oil gas station at 9201 Golf Course Rd. NW ("gas station"). The Environmental Health Department Air Quality Program has granted the requested permit which is identified as No. 1655-M1-RV1. The process that the Air Quality Program followed is summarized below and additional technical and administrative details are provided in the enclosed attachment:

1. The Robert's Oil application requested to increase the annual throughput of gasoline from 3,000,000 gallons per year to 5,000,000 gallons per year. During the Air Quality Program's evaluation of the Robert's Oil application Smith's submitted an application which requested to transfer the ownership from Robert's Oil to Smith's[1].
2. Members of the public requested a Public Information Hearing which was held by the Air Quality Program on October 22, 2015 from 6-8:00 p.m. At the request of the some of the attendees, the administrative record was held open after the Public Information Hearing until December 2, 2015.
3. After the administrative record closed, the Air Quality Program evaluated all of the information submitted relating to the application. The Air Program concluded that the application met all legal requirements and determined that, if the gas station is operated as required, it would comply with all requirements and there was no legal basis to deny the permit application.

Per the Air Act, NMSA 1978, § 74-2-7(H), any person who participated in a permitting action[1] and who is adversely affected may file a petition for a hearing before the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board").

[1] Note that in this case, the Air Quality Program took two actions: (1) granting a permit modification requested by Roberts Oil and (2) processing an administrative revision to change the ownership from Robert's Oil to Smith's. Before these actions, the Robert's Oil Permit No. was 1655. The first step, granting the permit modification, changed the permit number to No. 1655-M1. The second step, processing the administrative revision to change ownership, changed the permit to No. 1655-M1-RV1.

The regulations for the petition process may be found at 20.11.81 NMAC, *see* http://164.64.110.239/nmac/parts/title20/20.011.0081.htm. Compliance with those regulations is required. The petition must be submitted in writing to the Air Board in care of Mary Lou Leonard, Director of the Environmental Health Department, to the following address within thirty (30) days from the date notice is given of the action.

Albuquerque – Bernalillo County
Air Quality Control Board
Attention: Mary Lou Leonard, Director
Albuquerque Environmental Health Department
Air Quality Program
PO Box 1293
Albuquerque, NM 87103

Unless a timely petition for a hearing is received, the decision of the Air Quality Program is final. A filing fee of $125 must be included with the petition per 20.11.2.22(C) NMAC. At the hearing before the Air Board, the burden of proof is on the petitioner to demonstrate that a source will not meet applicable air pollution standards and regulations per NMSA 1978, § 74-2-7(K, L).

Thank you for your interest. Further information about the Air Quality Program's decision and certain concerns which were raised during the permitting process is addressed by the Attachment to this letter. If you have any questions concerning the permit or the permitting process, please contact Isreal Tavarez at (505)768-1965 or at itavarez@cabq.gov.

Regards,

Isreal L. Tavarez, P.E.
Environmental Health Manager
Permitting Division
Air Quality Program
Environmental Health Department
City of Albuquerque

Enclosure
Attachment to Notification Letter

cc: File
Mary Lou Leonard, Director, Environmental Health Department
Danny Nevarez, Deputy Director, Environmental Health Department
Carol Parker, Assistant City Attorney, Legal Department
Paul Puckett, Environmental Health Scientist, Air Quality Program

Exhibit 1A

AIR QUALITY CONSTRUCT PERMIT #1655-M1
FACILITY CDS # NM/001/00967
Facility ID: FA0003358 Record ID: PR0007340

Richard J. Berry, Mayor

Mary Lou Leonard, Director

Issued to: Robert's Oil Company, Inc. (Company Name)
Certified Mail # 7010 3090 0001 4486 9433
Return Receipt Requested

408 Arizona St. SE	Albuquerque,	NM	87108
Mailing Address	City	State	Zip

Responsible Official: M.J. Wheeler, Contoller
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; the Albuquerque-Bernalillo County Air Quality Control Board (AQCB) regulation, Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 40 (20.11.40 NMAC), Source Registration; and AQCB regulation, Title 20, NMAC, Chapter 11, Part 41 (20.11.41 NMAC), Construction Permits,

Robert's Oil Company, Inc.**("permittee")** is hereby issued this **CONSTRUCTION PERMIT** as a **MODIFIED STATIONARY SOURCE.**

This CONSTRUCTION Permit Number #1655-M1 has been issued based on the review of the application information received by the Albuquerque Environmental Health Department (Department), Air Quality Program (Program) on May 29, 2015 and on the National Ambient Air Quality Standards, New Mexico Ambient Air Quality Standards, and Air Quality Control Regulations for Albuquerque/Bernalillo County, as amended. Permit Number #1655-M1 is to modify the annual throughput for the Phillips Gasoline Dispensing Facitlity (GDF) from 3,000,000 to 5,000,000. As these standards and regulations are updated or amended the applicable changes will be incorporated into this Air Quality Permit Number #1655-M1 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
Phillips 66 9201 Golf Course NW Albuquerque, NM 87107	346492 Easting 3894985 Northing	Gasoline Dispensing Facility (GDF)[1]	5541	447190

[1]**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, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.**

Issued on the _____ day of _____, 20___

_____ Print Name

_____ Sign Name

Permitting Division
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 such 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]
1	Underground Storage Tank	12,000	7/2002	Regular Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling
2	Underground Storage Tank	6,000	7/2002	Super Unleaded Gasoline	Stage I Vapor Balanced, Submerged Filling

[1] **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 this 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 the state air quality control act, federal clean air act, or any applicable regulations of the board. (20.11.41.18 NMAC)

C. Any term or condition imposed by the department in a Construction permit shall apply to the same extent as a regulation of the board. (20.11.41.19.D 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 and 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 the 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)[1]	Allowable Annual Throughput of Gasoline (in gallons)[2]	Allowable Annual Emissions of Volatile Organic Compounds (VOC's)[2] (in tons per year)
1	Underground Storage Tank	Throughput ≥ 100,000	For Stage I Vapor Recovery 5,000,000	32.5 tons per year

[1] 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 each GDF during the previous 364 days, and then dividing that sum by 12.

[2] 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, Construction Permits. 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 1st through December 31st) for Units 1 and 2 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, under Business Resources - Business Applications, 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 rate 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.U 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 prior to issuance of a permit and shall be processed in accordance with 20.11.41 NMAC.

7. **MONITORING and RECORDKEEPING (20.11.41.19.C.(8) and (9) NMAC). Monitor and maintain a log of the total monthly gasoline throughput for 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 20.11.41.19, 20.11.41.21, 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 of 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 forms

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 20.11.41.27.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 and 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]; and

(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:

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

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 affected 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, and 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 management 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[1] of ≥ 100,000 gal/month	Upon startup after 09/23/08	Every three years §63.11120(a)	63.11113(d)(2)

[1] **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 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 under §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 of 40 CFR Part 63, Subpart CCCCCC, for pressure-vacuum vent valves installed on your gasoline storage tanks using the test methods identified in paragraph (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 Pressure of 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 CFR Part 63, Subpart CCCCCC, for your vapor balance system by conducting a static pressure test on your gasoline storage tanks using the test methods 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 Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporated by 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(f).

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

(b)(2) - You must, during the initial performance test required under paragraph (b)(1) of this section, determine and document alternative 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 for the 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 conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the 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 of all volumetric efficiency tests required under §63.11120(b). Reports submitted under this paragraph must be submitted within 180 days of the completion of

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)(1) 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 the applicable EPA Regional Office and the delegated State authority as specified in §63.13. The Initial Notification must contain the information specified in 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 requirements in 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, as 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 official 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 to 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, Construction Permits should be meeting the 20.11.65 NMAC, Volatile Organic Compounds requirements for submerged fill pipe and vapor loss control system for loading of fuel storage tanks and vapor recovery, and therefore should not have to submit an Initial Notification or a Notification of Compliance Status. **Since all gasoline dispensing facilities permit 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 under §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 per 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 two (2) years from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year. (20.11.41.20.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

DRAFT

Exhibit 2

Attachment to Notification Letter
for
Robert's Oil/Smith's Air Quality Permit Application #1655-M1-RV1
February 4, 2016

During the public participation process, concerns were raised about hazardous air pollutants, certain business arrangements, traffic, proximity to the Petroglyph National Monument, the location of the public information hearing and notice. Detailed responses to each concern are provided below.

I. Hazardous air pollutants (also known as toxic air pollutants)

Hazardous air pollutants from gas stations are effectively controlled by imposing the emission controls which are imposed in local and federal regulations. Permit No. 1655-M1-RV1 imposes all of those requirements. Below, the Air Quality Program provides historical background relating to hazardous air pollutants and scientific details about the effectiveness of the required emission controls.

A) The Environmental Protection Agency Integrated Urban Air Toxics Strategy

The 1990 Clean Air Act Amendments required the Environmental Protection Agency to take actions to reduce risks from air toxics, also known as hazardous air pollutants. Air toxics are pollutants known or suspected to cause certain health impacts. Air toxics in Bernalillo County ambient air may come from mobile sources (e.g., cars, trucks and construction equipment); major sources (e.g., factories and power plants); smaller sources (e.g., gas stations and dry cleaners); background sources (e.g., long-range transport of pollutants and natural emissions such as wildfires) and secondary pollutants (hazardous air pollutants that are formed in ambient air when other pollutants react with each other during transport). An example of an air toxic is the benzene which makes up about 4% of the volatile organic compounds in gasoline vapor.

In 1990, the United States Congress required the Environmental Protection Agency to develop a national strategy to reduce risks from hazardous air pollutants. The Environmental Protection Agency considered the number of persons exposed and the risks of adverse health impacts. The Environmental Protection Agency determined that to reduce public health risks in urban areas, aggregate exposures from all sources had to be comprehensively addressed to effectively impact public health. Benzene is a good example of why a comprehensive approach is important (see below). The Environmental Protection Agency developed its Integrated Urban Air Toxics Strategy in 1999 for reducing cumulative public health risks in urban areas posed by the aggregate exposure from all sources.

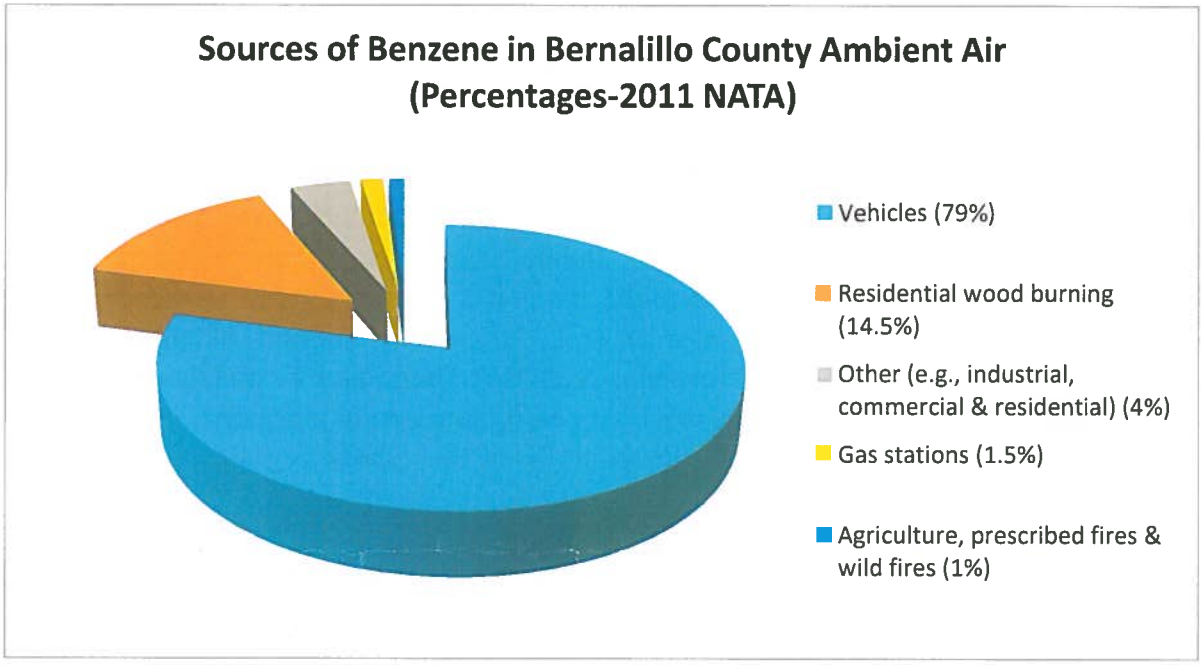
The Environmental Protection Agency's most recent progress report, titled, "National Air Toxics Program: The Second Integrated Urban Air Toxics Report to Congress" was published on August 12, 2014 and is available at http://www.epa.gov/urban-air-toxics/second-integrated-

urban-air-toxics-report-congress. One of the highlighted accomplishments of Environmental Protection Agency's report included that since 1994, ambient levels of benzene have declined 66 percent. This significant reduction could not have been achieved without the integrated approach used by Environmental Protection Agency which addressed sources of benzene comprehensively.

B) Environmental Protection Agency 2011 National Air Toxics Assessment

The National-Scale Air Toxics Assessment is the Environmental Protection Agency's ongoing comprehensive evaluation of air toxics in the United States. The National-Scale Air Toxics Assessments are designed to help guide efforts to cut toxic air pollution and build upon the already significant emissions reductions achieved in the United States since 1990.

Based on the Environmental Protection Agency 2011 National Air Toxics Assessment released December 2015, the sources of benzene in Bernalillo County air are illustrated in the pie chart below:



This pie chart demonstrates the wisdom of Environmental Protection Agency's Integrated Urban Air Toxics strategy—benzene levels in urban air could not have been effectively reduced by focusing only on businesses or only on gas stations because they represent only a minor source of benzene in Bernalillo County. By far, the largest contributors to benzene in ambient air are vehicles, followed by residential wood burning. To achieve a meaningful reduction of benzene concentrations in urban air, all significant sources had to be factored in and appropriate control measures applied (where possible). The 1.5% portrayed for gas stations is for all (approx. 200) Bernalillo County gas stations in the aggregate. The contribution to benzene levels in urban ambient air from any one gas station is truly miniscule.

To reduce benzene in urban air, Environmental Protection Agency imposed requirements which, among other things, reduce benzene emissions from: (1) the large gasoline terminals that supply cities, (2) gas stations, (3) gas cans and (4) motor vehicles. In addition, Environmental Protection Agency has required refineries to reduce the concentration of benzene in gasoline so when gasoline vapor escapes, less benzene is emitted. The substantial reduction that has occurred in benzene levels in urban air is due to this Integrated National Strategy and has occurred despite the fact that total vehicle miles traveled has increased significantly over the years.

The Air Quality Program has studied the levels of benzene in Bernalillo County air and the expected impact of those concentrations on health. Between September 1, 2007 and March 31, 2009, EHD conducted an air toxics monitoring study funded by Environmental Protection Agency. That study concluded that the levels of benzene and other toxic air pollutants found in Bernalillo County ambient air did not present a health concern. Albuquerque-Bernalillo County Community-Scale Air Toxics Monitoring and Risk Assessment Project p. 109 (Feb. 2010). That study is available at http://documents.cabq.gov/environmental-health/airquality/documents/community-scale-air-toxics-report-february-2010.pdf.

Finally, the New Mexico Legislature has required that regulations for sources of hazardous air pollutants may not be any more stringent than federal regulations. NMSA 1978, § 74-2-5(C)(2). Based on the factual information above, the Air Quality Program does not believe more stringent regulations are necessary to control hazardous pollutants from gas stations. Even if they were, it would require an amendment of the Air Quality Act to remove the statutory restriction concerning hazardous air pollutants before more stringent controls could be adopted.

C) Regulation of Gas Station Emissions

The federal requirements to reduce benzene emissions from gas stations include practices and equipment which reduce emissions by at least 90%. These requirements include requiring submerged filling of the storage tanks and operation of a vapor balance system to capture gasoline vapors when storage tanks are being filled per 20.11.64.12 NMAC (incorporating 40 C.F.R. Part 63, Subpart CCCCCC). These federal regulations are part of Environmental Protection Agency's Integrated National Strategy to reduce toxic air emissions in urban air. In addition, local regulations imposed by the Air Board require that the equipment at a gas station limit emissions to the atmosphere below 1.15 pounds of gasoline per 1000 gallons of gasoline loaded per 20.11.65.15 NMAC. These controls effectively limit the emissions of hazardous air pollutants from gas stations.

II. Robert's Oil Air Quality Permit Application and Smith's Request to Change Ownership

A) Applications

The Robert's Oil application requested to increase the annual throughput of gasoline from 3,000,000 gallons per year to 5,000,000 gallons per year. During the Air Quality Program's evaluation of the Robert's Oil application Smith's submitted an application which requested to transfer the ownership from Robert's Oil to Smith's.

B) Air Quality Program Review and Final Decision

The Quality Program evaluated all of the information submitted relating to the application, including material submitted during at the Public Information Hearing and up until the administrative record closed. The Air Quality Program concluded that the application met all legal requirements, including those of the Clean Air Act (CAA), the Air Act, the City Joint Air Quality Control Board Ordinance (Ordinance), and applicable Albuquerque – Bernalillo County Air Quality Control Board (Air Board) regulations. The Air Quality Program determined that, if the Facility is operated as required, it would comply with all requirements and there was no legal basis to deny the permit application.

The Air Quality Program took two actions: (1) granting a permit modification requested by Roberts Oil and (2) processing an administrative revision to change the ownership from Robert's Oil to Smith's. Before these actions, the Robert's Oil Permit No. was 1655. The first step, granting the permit modification, changed the permit number to No. 1655-M1. The second step, processing the administrative revision to change ownership, changed the permit to No. 1655-M1-RV1.

The New Mexico Air Quality Control Act ("Air Act") imposes limits on the length of time that the Air Quality Program may consider an application. In this case, the Air Quality Program was required to make a final decision within 180 days of deeming the application complete. The deadline for that decision was December 22, 2015 and the permit was issued on that date.

The Air Act imposes limits on permit denials and conditions. A construction permit may only be denied if the construction (1) will not meet applicable standards and regulations of the Clean Air Act, the Air Act and the Air Board's Regulations; (2) will cause or contribute to air contaminant levels in excess of an ambient air quality standards; or (3) will violate any other provision of the Air Act or the Clean Air Act per NMSA 1978, § 74-2-7(C)(1). None of the information submitted relating to the application demonstrated that any of those denial criteria would be met.

The Air Act also limits conditions requiring the use of certain technology and those imposing emission limits. The Air Quality Program's authority must be exercised within these limitations and Permit No. 1655-M1-RV1 was issued with those constraints in mind.

III. Business Decisions

Concerns regarding various business decisions by Robert's Oil and Smith's were raised. Business decisions such as when to apply for an increase in gasoline throughput and how much throughput to request, putting a business up for sale, and business marketing methods are not controlled by the air quality regulations. However, if a business applies for a modification to increase its permitted annual gasoline throughput, then the Air Quality Program evaluates what the air quality requirements should be for the higher throughput. In some cases, a higher throughput can require more stringent air quality controls. In the case of Permit No. 1655-M1-RV1, the most stringent controls in federal regulations of gas stations were imposed.

A) Change of ownership

Shortly before the Public Information Hearing was to occur, the Air Quality Program received notification that Smith's was going to purchase the Robert's Oil Gas Station which was the subject of the upcoming Public Information Hearing. Smith's and Robert's Oil submitted a complete request to change the ownership of the gas station and the Air Quality Program has processed that request.

B) Number of gallons of gasoline being sold at the gas station at 9201 Golf Course Rd NW

Based on the 2014 Emissions Inventory submitted by Roberts Oil for the gas station located at 9201 Golf Course Rd NW, the amount of gas sold in calendar year 2014 was 512,609 gallons.

C) Why does Roberts Oil need an increase in its permitted gasoline throughput?

The Air Quality Program does not require an applicant to provide a reason for increasing throughput.

D) Is there a purchase agreement or notice of intent to buy this gas station by Smith's or Wal-Mart?

The Air Quality Program does not require submission of purchase agreements or notices of intent to process a change of ownership form. The Air Quality Program change of ownership form must be signed by both the existing permit holder as well as the proposed new permit holder, assuring that both parties are aware of and in agreement with the change of ownership.

IV. Notice

A) Location of the Public Information Hearing

The Air Quality Program schedules public meetings in public facilities if possible. This minimizes the cost to the Air Quality Program and assures that all members of the public feel welcome and comfortable attending the meeting.

The Air Quality Program identified the nearest City of Albuquerque or Bernalillo County community center to the proposed source. The two nearest community centers to the proposed location, 9201 Golf Course Rd NW, are the Bernalillo County Paradise Hills Community Center and the City of Albuquerque Taylor Ranch Community Center. Each of these community centers is within 2½ miles from 9201 Golf Course Rd NW. The Air Quality Program staff contacted each community center and was able to reserve the Bernalillo County Paradise Hills West Annex for the October 22, 2015 Public Information Hearing and decided to hold it in that venue.

B) Were the proper signs used and posted for the public notice requirements?

Yes, the proper sign was used and posted for the public notice requirements. The application submitted by Roberts Oil included a picture of the sign posted at the gas station located at 9201 Golf Course Rd NW. An Air Quality Program inspector verified on August 14, 2015 that the public notice sign was posted at the gas station located at 9201 Golf Course Rd NW.

C) What are the size requirements of the sign?

The Construction Permits regulation, 20.11.41 NMAC does not specify size requirements. Instead, it requires that applicants use a weather-proof sign provided by the Environmental Health Department, assuring the consistency of such signs. The Air Quality Program is currently using signs that are 22 inches by 28 inches and Robert's Oil used the sign that the Air Quality Program provided to it.

D) Notification of the Date, Time and Place of the Public Information Hearing

The Public Information Hearing was held on October 22, 2015 at the Paradise Hills Community Center West Annex, 6001 Paradise Blvd, NW. Official notice of the date and time and place of the Public Information Hearing was provided. Each individual petitioner that had requested the Public Information Hearing was sent an individual letter with the information about the date, time and place of the Public Information Hearing by regular mail. All neighborhood associations for whom notice was required by the regulations were sent emails about the Public Information Hearing which also stated the date, time and place of the Public Information Hearing. A legal notice was published in the Albuquerque Journal on October 10,

2015 which stated the date, time, and place of the Public Information Hearing. The Public Information Hearing was properly noticed.

V. Traffic and Traffic Related Emissions

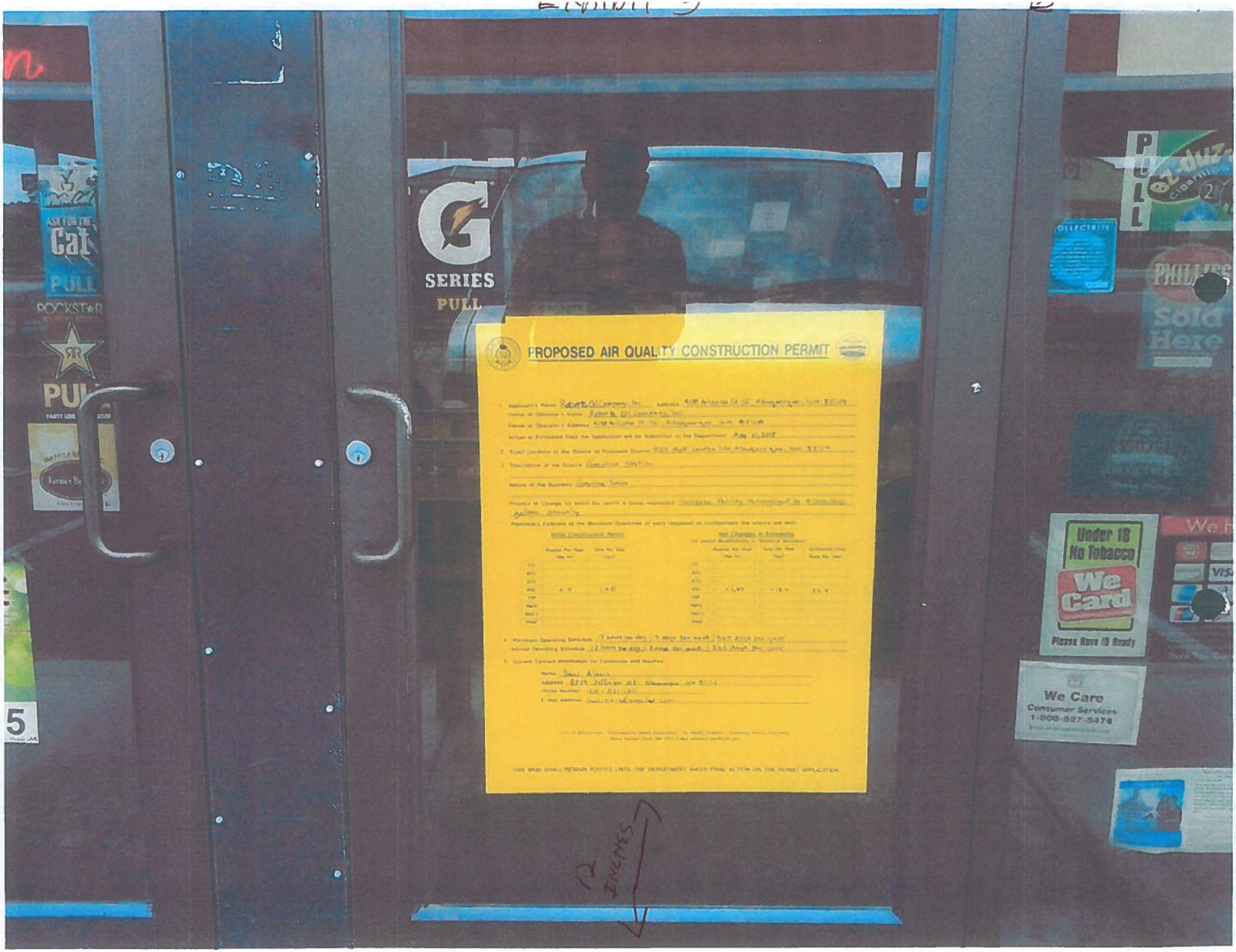
An air quality permit can address only air pollution issues and only to the extent that those issues have a connection to the applicable air quality regulations. An air quality permit cannot address non-air quality traffic related impacts.

With respect to traffic related emissions, they are monitored as part of the ongoing air quality monitoring program operated by the City of Albuquerque Environmental Health Department Air Quality Program. That network complies with all U.S. Environmental Protection Agency monitoring and quality assurance/quality control standards. All of Bernalillo County meets all health based air quality ambient air quality standards.

Furthermore, the U.S. Environmental Protection Agency has determined that in areas having populations between 500,000 and 1,000,000, like the Albuquerque-Bernalillo County area, nitrogen oxide ("NO_2") emissions expected in near-road environments are significantly lower than the federal health based standard.

VI. Proximity to Petroglyph National Monument

There are no regulations that limit the location of a gas station within any particular distance from a National Monument.


SERIES
PULL
PROPOSED AIR QUALITY CONSTRUCTION PERMIT
Under 18
No Tobacco
We Card
Please Have ID Ready
We Care
Consumer Services
1-800-827-5478
12 INCHES

City of Albuquerque

Environmental Health Department
Air Quality Program

Public Notice Sign Guidelines

Any person seeking a permit under 20.11.41 NMAC, Authority-to-Construct Permits, shall do so by filing a written application with the Department. *Prior to submitting an application, the applicant shall post and maintain a weather-proof sign provided by the department. The applicant shall keep the sign posted until the department takes final action on the permit application; if an applicant can establish to the department's satisfaction that the applicant is prohibited by law from posting, at either location required, the department may waive the posting requirement and may impose different notification requirements.* **A copy of this form must be submitted with your application.**

Applications that are ruled incomplete because of missing information will delay any determination or the issuance of the permit. The Department reserves the right to request additional relevant information prior to ruling the application complete in accordance with 20.11.41 NMAC.

Name: Saul Alanis
Contact: 505-821-1801
Company/Business: Roberts Oil Company, Inc.

☑ The sign must be posted at the more visible of either the proposed or existing facility entrance (or, if approved in advance and in writing by the department, at another location on the property that is accessible to the public)

☑ The sign shall be installed and maintained in a condition such that members of the public can easily view, access, and read the sign at all times.

☑ The lower edge of the sign board should be mounted a minimum of 2' above the existing ground surface to facilitate ease of viewing

☑ Attach a picture of the completed, properly posted sign to this document

☐ **Check here if the department has waived the sign posting requirement.**
Alternative public notice details:

City of Albuquerque- Environmental Health Department
Air Quality Program- Permitting Section
Phone: (505) 768-1972 Email: aqd@cabq.gov

Exhibit 4

TO THE ABQ AIR QUALITY BOARD

Golf Course Rd Neighbors objections and concerns regarding permit application 1655-M1

Introduction

My name is Pat Toledo I have been a resident of Albuquerque all my life, 58 years. I live near Carlisle & Constitution where Smith's gas station opened up a mega gas station that was not properly sized nor environmentally friendly to the neighbors who lived within 100ft of the station. It has created havoc in our neighborhood because of the increased traffic and pollution that created a situation that we felt was unsafe and unhealthy. There is still pending litigation that we think will end up in our favor. I do not want to see this happen in other neighborhoods, so I am in within my rights as a Bernalillo Citizen to challenge permit increases anywhere in Bernalillo County as long as I participate in the permitting process.

(A)Concerns

1. My Wife and I have been friends of Karen Roberts (The Owner of the Gas Station in question). Over two months ago we were having lunch with Karen Roberts who was selling all her gas stations, upon the unfortunate passing of her Husband, Bill Roberts. The subject of the Golf Course Rd gas station came up and Karen said to us that Smith's was interested in buying the station but only if she would get a permit increase to Five Million Gallons. She said this was a condition of there purchase. She also said that they were afraid that if they bought the station at her existing permit of Three Million Gallons they would need to increase the permit and that they were afraid that Pat Toledo would get involved and cause them problems.
2. So now our question is, is this permit for Karen Roberts gas station or a new Smith's gas station? Is this legal for a gas station to apply for a permit that is going to be a no use to themselves because they have never needed that volume? Can this be a condition for a sale of a gas station for the previous owner to apply for an increase of volume that will only serve the new purchaser? If so, this appears to be at the very least deceptive and at the worst a fraudulent act.
3. Is this permit being applied for under the guise of the Administrative permit amendments?
4. Because of the controversy concerning Smith's marketing methods in other parts of the city (Hypermarketing of gas and coupon memberships) we think the neighborhood should know who the operator of the station will ultimately be.

(B)Health Impacts, Standards, Sources, and Causes

1. Which pollutants may create significant health risks in this case?
2. What standard should be applied in assessing whether Petitioner has met its burden?
3. What are the sources of pollution increases that may affect health?
4. What methodologies are acceptable in determining the potential adverse health effects?
5. The Pollutant Levels of NO2, PM25, CO and VOCs.
6. Assessing all the evidence, has Petitioner met its burden on the health issue?

1. Which Pollutants May Create Significant Health Risks in this Case?

A variety of air pollutants were studied in this case.

The Clean Air Act requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for air toxics with public health and environmental impacts. The six primary pollutants are carbon monoxide (CO); lead; nitrogen dioxide (NO2); ozone (O2); particulate matter (PM2.5 and PM10); and sulfur dioxide (SO2). Each toxic has specific national ambient air quality standards. The particular pollutants we are concerned with are VOCs (volatile organic compounds), NOx (nitrogen oxides, including especially, NO-nitric oxide, and NO2 – Nitrogen dioxide), PM25 (particulate matter at or under 2.5 microns in diameter) and CO (carbon monoxide). It is not disputed that each of these pollutants is known to have potentially harmful health effects at sufficient levels, and the VOCs (especially Benzene, 1, 3 butadiene, Formaldehyde and Acetaldehyde) are known carcinogens depending on concentrations. Thus, the central question addressed at this hearing with regard to adverse health effects came down to determining what levels of these pollutants can reasonably be expected at various locations and what levels are potentially harmful.

This question will be discussed after we address issues relating to the appropriate standard to apply in assessing the health issue, the potential sources of these pollutants and the methodologies used to assess the pollution levels. A few words should be said here about which of these pollutants are of the greatest concern I this case. The air toxics of most concern are those associated with automobile idling – carbon monoxide (CO), particulate matter (OM2.5), and nitrogen dioxide (NO2).

Actually, two of the listed pollutants become the major focus of attention at this hearing – NO2 and PM2.5. Nitrogen dioxide (NO2) is highly reactive gas that forms when fuel is burned at high temperatures, and comes principally from motor vehicle exhaust and stationary sources such as electric utilities and industrial boilers. Particulate matter is the general term used for a mixture of solid particles and liquid droplets found in the air, and the chemical composition and physical properties of these particles vary widely. PM2.5 is a form of particulate matter known as "fine particles" those whose diameter is less than or equal to 2.5 microns (or micrometers). That category includes

even smaller ultrafine particles because the EPA has not established a separate category for ultrafine particles.

We now turn to the question of what standard is appropriate to apply in assessing the health effects evidence in this case.

2. What Standard should be Applied in Assessing Whether Petitioner Has Met its Burden?

As mentioned from the statement of basis from Paul Puckett this facility is subject to the requirements of the Federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) found in 40 CFR 63 Subpart CCCCCC – National Emissions Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities. Pursuant to Clean Air Act, the federal Environmental Protection Agency (EPA) has establishes National Ambient Air Quality Standards (NAAQS) for air pollutants with public health and environmental impacts. Petitioner argues that the NAAQS are the only objective standard that can be fairly applied here, and to vary from them would be arbitrary.

We argue that the actual standard specified in Abq Air Quality Board Regs are **ADVERSE HEALTH EFFECTS,** and that the hearing examiner should consider many factors in addition to NAAQS, including the World Health Organization (WHO) Air Quality Guideline. Meeting (the NAAQS) standard alone does not satisfy the broader requirements of the Abq Air Quality Board Regs and also pending litigation about quality of life issues and adverse effect by increased VOC emissions, odors, and fumes.

While the NAAQS are set on an individual pollutant basis, an operating gas station does not expose anyone to just nitrogen dioxide, or just fine particulate matter, or any of the other components of tailpipe emissions; it exposes them to the whole complex mixture often referred to as "traffic-related pollution" or "TRP". To answer whether this station with its dozens of idling cars will affect the "health, safety, and general welfare" of those exposed thereto, the entire combination of emissions becomes relevant – whether or not governed by the NAAQS. While, it would be simpler for the Applicant if it need only address the NAAQS issues and demand the right to refuse to address anything else, the Special Exception requirements are not so narrowly limited. We believe that there is no established level at which **SOME POLLUTANTS ARE SAFE**, so again how do we determine to apply a fair standard in this case?

In an effort to answer this question, let us first turn to EPA's NAAQS standards to see if they can supply us with a self-sufficient standard to assess this application. The Clean Air Act requires the EPA to set NAAQS that protect the public health with an adequate margin of safety, even considering the most sensitive populations, such as those with asthma. EPA reviews and updates the NAAQS every five years, and the NAAQS process is strenuous and thorough, involving extensive input from the public, as well as the recommendations from stakeholders in environmental groups, industry, academia, and the EPA's Clean Air Scientific Advisory Committee ("CASAC").

Petitioner correctly stated that this process allows the EPA to determine standards based on established scientific and medical literature. The review process is so thorough and lengthy, that a standard in place for five years could end up being six to seven years

behind the times in terms of the scientific literature. After the cutoff for the submissions of studies to the EPA, it takes a year for review before the standard is issued. By the end of its cycle, there could be five or six years worth of literature that is not reflected in the current standard. That is the case with NO2, occurred since then.

This concern about the currency of the standards is not the only issue in directly applying the NAAQS standards as the only measure of the potential for adverse health effects. There is also an issue of what standard to apply at a distance from the pollution source. Petitioner argues that if its modeling estimates for a location indicate that a pollutant will not exceed the NAAQS standard for the pollutant, it has met a burden no matter how far the measured location is from the pollutant source. The NAAQS standards should not be applied in this manner because the EPA designed the standards to apply at the source, in order to ensure lower pollution away from the source.

The EPA says that the evidence suggests that, that safe level of a one-hour NO2 exposure, in general, should be somewhere around 75 to 85 per billion, but readings close to sources can be high, while farther away, they can be lower. The EPA cant put monitors everywhere, but by putting monitoring equipment next to roadways (a high source) and specifying that the level cannot exceed 100 parts per billion, the peak value far from that roadway will be less than 75 to 80 per billion. So it's a little bit nuanced because the standard says 100 parts per billion, but if you read the evidence, its very clear that the EPA administrator thinks that the health threshold for one hour NO2 is clearly 75 to 85 parts per billion, and they even say in their record that there's pretty good evidence that its down to 50 part per billion. That's really the EPA's target; however, the evidence becomes less certain down to 50.

One should not treat the one-hour NO2 standard as 100 parts per billion everywhere because it really just represents the peak value. That's the approach that CASAC recommended to EPA for this kind of spatial regulation dealing with the spatial heterogeneity, and that's the approach the administrator took. From a health perspective, no National Ambient Air Quality Standards are not fine lines. As stated by the EPA Administrator, "Given these considerations, epidemiologic evidence provides strong support for setting a standard that limits the 98th percentile of the distribution of one-hour daily maximum area-wide NO2 concentrations to below 85 parts per billion. In consideration specific standard levels supported by the epidemiologic evidence, the administrator notes that the level of 100 parts per billion would expect to maintain the area-wide NO2 concentrations well below 85 parts per billion near a roadway, he would expect concentrations be 8550 feet from a roadway to be in the range of roughly half to 70 percent of what's at the roadway.

This testimony is buttressed by the statements of the EPA Administrator in the *Final Rule [Establishing] Primary National Ambient Air Quality Standards for Nitrogen Dioxide,*

For example, given that near-road NO2 concentrations can be 30% to 100% higher than area-wide concentrations, an area-wide concentration of 50 ppb could correspond to near-road concentrations from 65 to 100 ppb.

Given these uncertainties, the Administrator concluded in the proposal that controlled human exposure studies provide support for limiting exposures at or somewhat below 100 ppb NO2

The Administrator concluded that these studies provide support for a 1-hour standard that limits the 99th percentile of the distribution of 1-hour daily maximum area-wide NO2 concentrations to below 90 ppb (corresponds to a 98th percentile concentration of 85 ppb), and that limiting area-wide concentrations to considerably below 90ppb would be appropriate in order to provide an adequate margin of safety. The Administrator noted that, based on available information about the NO2 concentration gradient around roads, a standard level at or somewhat below 100 ppb set in conjunction with the proposed approach would be expected to accomplish this. Specifically, she noted that given available information regarding NO2 concentration gradients around roads a standard level at or below 100 ppb (with either a 99th or 98th percentile form) would be expected to limit peak area-wide NO2 concentration to approximately 75 ppb or below.

In addition to the wrinkle on how to apply the NAAQS standards outlined by the EPA the NAAQS standards are just not designed to cover this kind of situation, and that adverse health effects will be experienced below the NAAQS standards.

> ...the EPA standards are not the be-all/end-all of effects. I mean, just because the the standard is a particular level doesn't mean that there is zero, absolutely no risk related to that level. But I think what we're trying to show here is that there are effects below levels and that adding sources of pollution to a particular area, based on these scientific studies, are going to be associated with increased risk to those who are being exposed in that area and an increased risk of adverse health effects. So that just because you're within an EPA standard doesn't guarantee that there's not going to be any effects....
>
> The EPA standards are designed to protect public health. There is no possible way that regulations can cover every possible situation. This is an incredibly unique situation here and an incredibly unique community given, you know, the residents and the other surrounding people who are going to be affected. So I don't think that the EPA standards are going to be the be-all/end-all of this. I think its going to have to be based on the scientific evidence of the adverse health effects.
>
> Well, I think you have to look at individual aspects of their particular application and the location, the population that's going to be affected and the particular sensitivities. You know, when the – the EPA is trying to set standards nationally and they cant possibly cover every potential specific situation. Its not going to be completely protective, but they're using the scientific evidence and and they have certain requirement for the amount of evidence that they need to be able to set it at a particular level.
>
> With respect to this particular situation, I think we really have to, we cant rely on the EPA standards because they don't get down into the weeds of what the situation is. I think you need to look at the sensitivities of the population. I mean, you know, 1 in 12 people have asthma which is from the EPA standards, a sensitive population for which they specifically set a lower level for the standard but in addition to that, there are the other people with chronic illnesses in the

community, children at the Church across the street, which is a very unique population to our neighborhood, are extremely vulnerable.

This station, with its size and the amount of idling that's going to be occurring with the number of, the volume of gas station, gas buyers, is going to create a source of added pollution in, in close proximity to this neighborhood, in close proximity to all these sensitive populations. These people in the neighborhood are not going to have a choice, like mall patrons or gas patrons, to just go and then leave the site. They're going to be chronically exposed and several studies, and the scientific evidence is growing that health effects do exist at levels well below the EPA standards and this community is going to have a chronic exposure which is going to be cumulative.

... Studies .... Show that the effects of PM2.5 depostition deep into the lungs can go systemic and can last long after initial exposure event, and you're going to be cumulatively be adding to that for these people who live here and have no choice but to be near the station all the time.

Considering all this evidence, we conclude that even though Abq Air Board accepts the NAAQS standards as the yardstick to help measure compliance in this case, those standards must be applied in a more nuanced manner than suggested by Petitioner. While the NAAQS standards may be applied directly in an EPA permit procedure where the NAAQS is the specified statutory standard, applying the NAAQS standards in that fashion in this case would not be appropriate. They are just not designed to be applied "off the shelf" to this kind of situation, where you have very vulnerable populations in the vicinity of the source; nor should it be assumed that, for example, a level of 100 ppb of one-hour NO2 (the NAAQS standard) is safe when the EPA Administrator has clearly stated that, that level was established as the standard at the source to result in lower safer levels, away from the source.

Moreover, the NAAQS standards do not address the adverse synergistic effects on health that may occur from the combination of pollutants. A mixture of pollutants, such as NO2 and PM2.5 (minute particulate matter), can result in health effects even though the individual components are below the applicable NAAQS standards. Some of the chemicals interact with each other in the air, and that it is theoretically possible for a combination of NO, NO2, ozone and PM2.5 to exacerbate health effects.

Another factor to be considered is the high level of uncertainty involved in the use air quality modeling results. This point will be discussed in greater detail later in this part of the report, but it should be mentioned that the strict application of the NAAQS standards cannot fairly be a determining factor when the air modeling numbers to be measured against that standard are subject to a 10-40% error rate, according to the EPA's Appendix W, Section 9.1.2.a.

We are is not suggesting that the NAAQS standards should be ignored; in fact the NAAQS standards are the best tool we have for estimating the potential health impacts of the proposed gas station. But they are just that – a tool to be used. They are a yardstick to help us to determine whether Petitioner has met its burden of proving that the proposed gas station will not cause adverse health effects, but they are not themselves the standard. The standard is, adverse health effects. The Hearing Examiner should consider evidence

in addition to the NAAQS standard in determining whether Petitioner has met its burden of proving that the proposed gas station will not cause adverse health effects.

3. What are the Sources of Pollution Increase that May Affect Health?

The addition of the proposed auto filling station will create a number of potential sources of pollution.

a) The number of idling cars waiting to pump gas
b) Emissions from the filling of the underground storage tanks. (Stage 1 emissions)
c) Underground tank vent breathing losses.
d) Emissions from dispensing of the gasoline into vehicles and spillage (Stage 2 emissions)
e) Roadway emissions along Golf Course Rd and adjacent roadways from additional cars.

This section addresses mostly the issues regarding the number of cars that will Queuing while waiting to fill up, since the idling cars are the main source of *incremental* air pollution in this case. Even though Petitioner may be responsible for only the incremental impacts from the proposed gas station, the Hearing Examiner must consider those incremental impacts in conjunction with other sources of pollution in the area (including background levels) in order to determine whether Petitioner has met its burden of demonstrating that the addition of the proposed gas station will not create adverse health effects.

There are two sources of potentially significant air pollution from automobile emissions (i.e., mobile sources) listed above. They are Item "a," the number of idling cars queuing at the pumps and Item "e," roadways emissions from additional cars. We now turn to the issue of cars queuing at the pumps as a source of pollution.

It is not disputed that slow moving or idling cars will produce higher levels of harmful pollutants than rapidly moving cars. Our air quality expert, Dr. Henry Cole has told us that for all the pollutants of concern – CO, NOx, VOCs and PM2.5, emissions all go up as speed goes down. Cars that are idling, or running at slow speeds, are less efficient than cars that are moving freely. Idling vehicles and slower moving vehicles produce greater emission levels than rapidly moving cars.

Traffic congestion in this area is already bad, and will only get worse if this gas station pumps at the higher level, especially if it graduates into a Smith's gas station that employs Hypermarketing gas sales (i.e., sales below cost or at cost). In addition added congestion would result in slower speeds, and that would increase the emission rate for things like oxides of nitrogen and other pollutants a well, including particulate matter. These factors would be additive, and some of these effects interact in synergistic fashion, compounding the impact.

4. What Methodologies are Acceptable in Assessing Potential Adverse Health Effects?

We dispute the application of the EPA's NAAQS standards as the sole litmus test

of adverse health effects. We should not blindly apply the NAAQS standards to the exclusion of other health evidence when those standards alone may not give the complete answer.

5. The Pollutant Levels of NO2, PM2.5, CO and VOCs

The NAAQS standard for one-hour NO2 is 190μg/m3 (which is also expressed as 100 ppb). The nearest residents, we claim will be directly impacted by the close proximity of this gas station. Tests need to be undertaken to make sure that one-hour NO2 levels do not exceed the NAAQS standard. A Costco gas station in Maryland where a fierce battle is going on between a Costco that purposed a gas station near a residence. Costco has spent close to five million dollars with its experts and the opposition has had the help of many scientists and there is a gold mine of information that is now becoming available in regards to the safety of neighborhoods to mega gas stations. Two of those experts Dr. Henry Cole who's resume I have included and Patrick Breysse will appear as witnesses if we can get to a Hearing with the Air Quality Board of ABQ or at the Appeals Court. One-hour NO2 levels below the 100ppb NAAQS standard can adversely affect health, and that fact is recognized by the EPA.

VOC levels

Most likely the gas station operation will be a greater source of VOC levels in the neighboring residential area than the emissions from automobiles. The greatest contribution of VOCs comes from the underground storage tanks breathing and loading.

EXHIBIT 5

~~NOTICE~~

PUBLIC INFORMATION HEARING

THE CITY OF ALBUQUERQUE
ENVIRONMENTAL HEALTH DEPARTMENT
AIR QUALITY PROGRAM
WILL HOLD A PUBLIC HEARING ON

Thursday, October 22, 2015
from 6:00 PM to 8:00 PM

at the
Paradise Hills Community Center West Annex
6001 Paradise Blvd NW

FOR THE PROPOSED AIR QUALITY PERMIT APPLICATION #1655-M1 FOR ROBERTS OIL GAS STATION LOCATED AT 9201 GOLF COURSE RD NW ALBUQUERQUE, NM

Notice to persons with disabilities: If you have a disability and require special assistance, please call 311 (voice). TTY users, please call the New Mexico Relay at 1-800-659-8331.

Please Feel Free to Copy and Distribute

Exhibit S

NOTICE OF PUBLIC INFORMATION HEARING FOR PROPOSED CONSTRUCTION AIR QUALITY PERMIT APPLICATION #1655-M1 FOR ROBERTS OIL COMPANY INC. GASOLINE DISPENSING FACILITY

A Public Information Hearing (hearing) will be held on Thursday, October 22, 2015 from 6:00 p.m. to 8:00 p.m. at the Paradise Hill Community Center West Annex, 6001 Paradise Blvd NW, Albuquerque, NM 87114. The purpose of the hearing is to provide information and answer questions regarding Construction Air Quality Permit Application #1655-M1 for a proposed modification of the air quality permit for the Roberts Oil Company Inc. (Roberts Oil) gasoline dispensing facility. The location was chosen to accommodate the significant public interest that has been expressed in this matter.

Roberts Oil has submitted a Construction Permit Application to the Air Quality Program (Program) of the City of Albuquerque Environmental Health Department, for the proposed modification of the air quality permit for the facility at 9201 Golf Course Rd. NW in Albuquerque, New Mexico. A modification to the construction permit is required before Roberts Oil can increase the annual gasoline throughput in the air quality permit.

Roberts Oil has requested to increase the gasoline throughput in the air quality permit from 3,000,000 gallons per year to 5,000,000 gallons per year, which increases the permitted volatile organic compound emissions from 19.5 tons per year to 32.5 tons per year.

Representatives for Roberts Oil will speak regarding the proposed Construction Permit Application. The public will have an opportunity to voice concerns, submit data or arguments, orally or in writing, for the public record regarding the application. Program staff will be available to answer questions regarding the review process for air quality permits and the status of the Roberts Oil Construction Permit Application #1655-M1. Community members who wish to testify at the October 22, 2015 hearing should sign the registry upon their arrival at the hearing. A hearing officer will direct the proceedings and is authorized to limit the length of the testimony.

Program staff will consider relevant testimony and documentation submitted at the hearing before making a decision on the Construction Permit Application.

The hearing is open to the public. Information regarding the hearing and the application can be found on the City of Albuquerque website at http://www.cabq.gov/airquality. A summary of the Construction Permit Application file is available for review at the Program offices, which are located at One Civic Plaza, Room 3047. For information regarding the application file, call 768-1972.