

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. 2037-M1

PETITION FOR HEARING

The Petitioners in this matter, Andy Carrasco, James A. Nelson, and the Summit Park Neighborhood Association, by and through their attorney Robert McNeill, 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. 2037-M1 issued on April 17, 2012 to Smith's Food & Drug Centers, Inc. (Smith's) effective that date. The permit modification authorized Smith's to increase the annual throughput of gasoline from 3,369,925 gallons per year to 4,500,000 gallons per year at its fuel dispensing station located at 1313 Carlisle Blvd, NE, in Albuquerque. In accordance with 20.11.81.14 NMAC, Petitioners provide the following information:

Names, addresses, telephone numbers, and other contact information with reference to the Petitioners in this matter

- A. Andy Carrasco
3420 Constitution Avenue, NE, Unit A
Albuquerque, NM 87106
Tel: 505-688-2789

- B. James A. Nelson
P.O. Box 16028
Albuquerque, NM 87191
Tel: 505-319-1916

- C. Summit Park Neighborhood Association
By: Judy Jennings, its President
P.O. Box 30893
Albuquerque, NM 87190-0893
Tel: 505-268-4168

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

Petitioners testified at the public information hearing conducted February 27, 2012 by the City Environmental Health Department Air Quality Division regarding Permit No. 2037-M1. On April 17, 2012, the City Environmental Health Department issued Air Quality Permit No. 2037-M1 to the applicant effective that date. The decision granted Smith's a permit modification notwithstanding that it was in existing violation of the terms of its original permit by repeatedly exceeding allowed throughput limits.

Petitioners Carrasco and Nelson own real property immediately adjacent to the Smith's facility which is the subject of not only Smith's failure to comply with existing

permit requirements, but also highly inappropriate and impermissible permitting conditions as to this facility. Fumes generated during customer refueling and the unsafe and potentially dangerous wholesale refueling activity on the site just a few feet from Petitioners' business and their property have created a hazardous and environmentally undesirable situation. The business property has been rendered economically obsolete and has suffered a significant diminution in value.

Petitioners' real property was extensively remodeled at the owners' significant expense in order to accommodate medical offices prior to the permitting action in this case. Petitioners have lost a tenant at their property as a direct result of the hazardous and serious air quality degradation that has occurred as a direct result of the Smith's facility which is in an entirely inappropriate location by any reasonable standard. Any minimal, cursory examination of the site makes it obvious that the decision to permit this Smith's facility was a result of a lack of sufficient investigation, extremely poor judgment, and a failure of the political and governmental processes to function effectively.¹

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An article published in the May 3-9, 2012 issue of the *Weekly Alibi* newspaper titled "Fuel to the Fire" and written by Elise Kaplan discusses the broader, deleterious impact of the Smith's gas facility on the immediate area and surrounding neighborhood. Further, testimony submitted for the February 27, 2012 hearing record on the part of Georgianna E. Pena-Kues provided EHD with

The Petitioner Summit Park Neighborhood Association has carefully considered the impact of the Smith's facility on its neighborhood and its residents, and has concluded that the facility is a significant liability to their neighborhood. The Association also believes the facility poses serious health, safety, and environmental hazards to any citizens who happen to be traveling near the intersection of Constitution and Carlisle Blvd, NE, in Albuquerque.

Specific permitting action appealed from, permitting action to which Petitioners object, and factual and legal basis of Petitioners' objections to the permitting action

On October 14, 2011, Notice of Violation (NOV) was issued to Smith's by the EHD Air Quality Division with reference to Smith's Fuel Center #496 located at 1313 Carlisle Blvd, NE, Albuquerque, New Mexico. A penalty was imposed in the form of a fine in the amount of \$38,400.00. The Post Inspection Notification issued Smith's cited five violations, including:

- exceeding gasoline underground storage tanks annual throughput limit;
- exceeding tons per year emission limits on underground tanks;
- failure to submit a notification letter stating the

substantial evidence of the scope of the disaster created by the permitting action that is the subject of this proceeding.

anticipated date of initial startup of the source;

- failure to submit a notification letter stating the actual date of initial startup for each affected facility;

- exceeding gasoline underground storage tanks annual throughput limit based on a 12 month rolling total of 3,369,925 gallons; and

- a failure to conduct the initial compliance test pursuant to 40 CFR 63.

The NOV cited specific Permit conditions and federal Code of Federal Regulations (CFR) provisions with reference to the listed violations.

A Compliance Agreement (No. EA11-014) was executed by Smith's vice president and its fuel manager on November 4, 2011 and accepted by EHD on November 10, 2011. Corrective action required by EHD in the NOV was directed at the above listed violations; however, Smith's failed to comply with the Compliance Agreement. As one example, Smith's was required and agreed to submit a Standard Operating Procedure (SOP) detailing how it will ensure that future modifications will be in compliance with its existing permit and applicable New Mexico Administrative Code (NMAC) regulations. The SOP was to be submitted to the Air Quality Division Enforcement Section by October 10, 2011. However, as of May 4, 2012, EHD reported in

writing that no such SOP had been submitted to EHD by Smith's. The EHD report is signed by Suzan M. Hutchinson, Records Custodian of EHD, in response to a records request submitted by Georgianna E. Pena-Kues on April 30, 2012. Ms. Hutchinson asked Bill Westmoreland, Israel Tavarez, Damon Reyes, Dario Rocha, and Matt Stebleton in writing if they had any records pertaining to Ms. Pena-Kues' request for a copy of the SOP. None of the individuals had any record of the required SOP.

NMAC 20.11.41.2 (B)(3)(c) states:

...applications for Authority-to-Construct permits shall be filed prior to the commencement of construction, modification, or installation [and] ... no construction, modification, or installation shall begin prior to issuance of the permit.

In this case, EHD approved Air Quality Authority to Construct Permit #2037-M1 on April 17, 2012. However, Smith's was already in violation of their existing permit, and they had increased the gasoline throughput volumes allowed by their existing permit (while already exceeding the allowable amounts as specified in their existing permit) prior to the issuance of Authority to Construct Permit #2037-M1 on April 17, 2012. Smith's clearly increased its gasoline throughput volumes and thereby modified their gasoline throughput amounts prior to the issuance of a permit, which is a violation of NMAC 20.11.41.2(B)(3)(c). This increase was a modification of

Smith's "...pre-controlled emission rate of [a] regulated air contaminant emitted by the source..." as the term "Modification or To Modify" is defined in NMAC 20.11.41.7H. Further, the Authority-to-Construct Permit issued by the City to Smith's for the facility in question on November 30, 2009 included a "Condition 7 [which was] placed in the permit in accordance with NMAC 20.11.41.7H. to enable the Division to review proposed changes to the facility which may constitute a permit modification prior to such changes." The NOV includes as an attachment a reference to such condition which stated that

Any future physical changes or changes in the method of operation which results in an increase in the pre-controlled emission rate may constitute a modification as defined by 20.11.41.7H. NMAC. No modification shall begin prior to issuance of a permit.

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

The remedy requested is within the authority and jurisdiction of the Air Quality Board. NMAC 20.11.81.2(A) provides:

20.11.81 NMAC governs the following adjudicatory proceeding of the [Albuquerque-Bernalillo County Air Quality Control] [B]oard, which are proceedings in which the board makes final, binding determinations that directly affect legal rights:

(1) petitions for hearing on the merits before the board made by permit applicants,

permittees or other persons who participated in a permitting action before the department and who are adversely affected by the permitting action, as provided by the New Mexico Air Quality Control Act, Subsection H of Section 7402-7 NMSA 1978.

This matter involves numerous violations of the New Mexico Administrative Code and the New Mexico Air Quality Control Act. These regulatory and statutory measures are in place for sound reasons, and it is the responsibility of the City, the Environmental Health Department, and the Air Quality Division to ensure their vigorous enforcement. That obviously has not occurred in this case. Now that this totally inappropriate for the location facility is in place and operating, government officials respond by saying it is too late to remedy the problem. This is hardly an acceptable governmental response.

It would have been far easier to remedy this problem by not permitting it to occur in the first place. However, that is not the situation in which Petitioners now find themselves and other citizens who are very unhappy with the official action that has allowed this environmental disaster and hazardous situation to be created. The existence of this facility does not excuse its continued existence and ongoing violation of law, and the City and County are obligated to aggressively enforce the laws that apply and require bold and vigorous enforcement action.

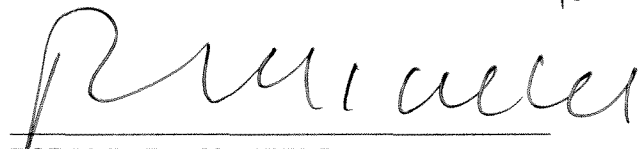
Remedy Sought by Petitioners

Petitioners seek a rescission of the issuance of Air Quality Permit No. 2037-M1. Petitioners further request that EHD, the Air Quality Division, and the Air Quality Control Board review existing Permit No. 2037 and take immediate action consistent with the failure of Smith's to comply with the terms and conditions of Permit No. 2037 and the Compliance Agreement which was effective November 10, 2011. Appropriate action in such circumstances would be the revocation of the Permit.

Copies of permitting actions are attached

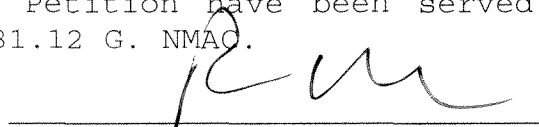
Copies of Permit No. 2037-M1 and the original Authority-to-Construct Permit No. 2037 which are the subject of the requested hearing are attached.

Respectfully submitted,



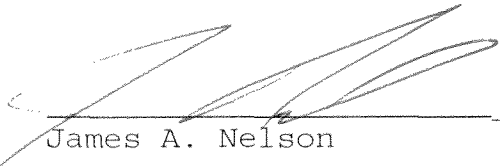
ROBERT P. McNEILL
Attorney for Petitioners
Sycamore Square; Suite 2000
1400 Central Avenue, SE
Albuquerque, NM 87106
Tel: 505-247-4440

Copies of the foregoing Petition have been served on all parties as required by 20.11.81.12 G. NMAC.



Verification

Petitioner James A. Nelson attests and states that he has read the foregoing Petition for Hearing, and that the content thereof is true and correct to the best of his knowledge and belief.


James A. Nelson

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

SUBSCRIBED AND SWORN TO before me this 17th day of May, 2012 by
James A. Nelson.



Notary Public

My Commission Expires:

August 31, 2014

Verification

Petitioner Andy Carrasco attests and states that he has read the foregoing Petition for Hearing, and that the content thereof is true and correct to the best of his knowledge and belief.



Andy Carrasco

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

SUBSCRIBED AND SWORN TO before me this 15th day of May, 2012
by Andy Carrasco

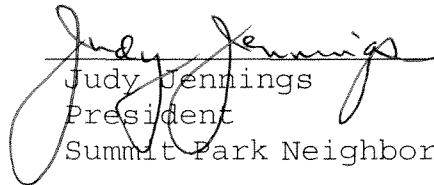


Notary Public

My Commission Expires:
August 31, 2014

Verification

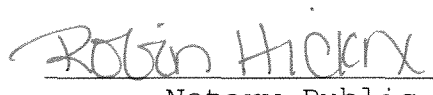
Petitioner Summit Park Neighborhood Association, by its President Judy Jennings, attests and states that she has read the foregoing Petition for Hearing, and that the content thereof is true and correct to the best of her knowledge and belief.



Judy Jennings
President
Summit Park Neighborhood Association

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

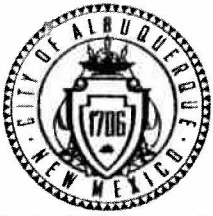
SUBSCRIBED AND SWORN TO before me this 16th day of May, 2012
by Judy Jennings.



Notary Public

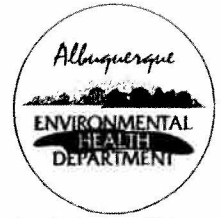
My Commission Expires:

August 31, 2014



Martin J. Chávez, Mayor

AIR QUALITY AUTHORITY-TO-CONSTRUCT PERMIT #2037
FACILITY CDS #NM/001/02027



John Soladay, Director

Issued to: Smith's Food & Drug Centers, Inc.
1550 South Redwood Road
Salt Lake City, UT 84116

Certified Mail #7006 2760 0005 1562 3550
Return Receipt Requested

Responsible Official: Steven M. Sorensen, Vice President

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 (A/BCAQCB) Regulation Title 20, New Mexico Administrative Code (20 NMAC), Chapter 11, Part 40 (20.11.40 NMAC), Air Contaminant Source Registration; and A/BCAQCB Regulation Title 20, NMAC, Chapter 11, Part 41 (20.11.41 NMAC), Authority-To-Construct; **Smith's #496 Fuel Center** ("permittee") is hereby issued this **AUTHORITY-TO- CONSTRUCT PERMIT** and authorized to operate the following equipment at:

Facility/Location	Facility Process Description	SIC	NAICS
Smith's Food & Drug Centers 1313 Carlisle Boulevard NE Albuquerque, NM 87106 UTM : 353740E, 3884700N	Gasoline Dispensing Facility	5541	447110

This **AUTHORITY-TO-CONSTRUCT** permit number 2037 has been issued based on the review of the application received by the Albuquerque Environmental Health Department, Air Quality Division ("Division") on August 18, 2009 and deemed complete on September 17, 2009, 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. As these standards and regulations are updated or amended, the applicable changes will be incorporated into permit number 2037 and shall apply to the facility.

Issued on the 30th day of November, 2009

Isreal S. Javarez
Isreal Tavarez, Manager
Air Quality Protection Programs
Air Quality Division
Environmental Health Department
City of Albuquerque

ATTACHMENT "A"

I. **CONDITIONS**—Conditions have been imposed in this permit to assure continued compliance. 20.11.41.18.C NMAC, states that any term or condition imposed by the Division on a permit or permit modification is enforceable to the same extent as a regulation of the Board. Pursuant to 20.11.41 NMAC, the facility is subject to the following conditions.

1. **Construction and Operation**— Compliance will be based on Division 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.

a) This permit authorizes the construction and operation of the following equipment:

Gasoline Dispensing Pumps

Unit Number	Unit Description	Manufacturer	Model Number	Serial Number	Date of Equipment Installation	Rated Process Rate	Unit Subject To NSPS
1	Submersible Pump (Gasoline)	N/A	N/A	N/A	2009	600 gph	No
2	Submersible Pump (Gasoline)	N/A	N/A	N/A	2009	600 gph	No

Gasoline Storage Tanks

Tank Number	Unit Description	Type of Tank/ Vapor Control	Type of Fuel	Date of Equipment Installation	Storage Capacity (gallons)
1	Gasoline Storage Tank	UST/Stage I	Regular Unleaded	2009	20,000
2	Gasoline Storage Tank	UST/Stage I	Super Unleaded	2009	10,000 gas/ 8,000 diesel Split tank

All equipment shall be maintained as per manufacturer specifications to ensure the emissions remain at or below the permitted levels.

b) This facility shall be constructed and operated in accordance with information provided on the permit application dated **August 13, 2009** and received **August 18, 2009**, and in accordance with the legal authority specified above and the conditions of this permit.

c) National Emissions Standard for Hazardous Air Pollutants (NESHAP) found in 40 CFR 63 Subpart CCCCCC – National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities apply to this facility and shall comply with the specific requirements found in this subpart as well as the general requirements of 40 CFR 63 Subpart A- General Provisions. The permittee shall comply with the specific requirements of Subpart CCCCCC applicable to new gasoline dispensing facilities.

- d) The facility must have installed a fully operational vapor recovery system as defined in 20.11.65.15 NMAC. An operational vapor recovery system shall be installed regardless of the monthly throughput thresholds specified by 40 CFR 63 Subpart CCCCCC.
- e) The facility shall maintain in good working order any vapor venting or recovery system and all pressure vent caps shall also be maintained in good working order.
- f) In accordance with 40CFR 63, Subpart CCCCCC §63.11116(a), if the monthly throughput, as calculated on a rolling 30-day average, is less than 10,000 gallons of gasoline, the permittee shall not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:
 - i. Minimize gasoline spills;
 - ii. Clean up spills as expeditiously as practicable;
 - iii. Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; and,
 - iv. Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.
- g) If the monthly throughput, as calculated on a rolling 30-day average, is greater than 10,000 gallons of gasoline, then in addition to Condition I.1.f) the permittee shall do the following:
 - i. In accordance with 40CFR 63, Subpart CCCCCC §63.11117(b), the permittee shall only load gasoline into storage tanks by utilizing submerged filling. Submerged fill pipes installed must be no more than 6 inches from the bottom of the storage tank.
- h) If the monthly throughput, as calculated on a rolling 30-day average, is greater than 100,000 gallons of gasoline, then in addition to Conditions I.1.f) and I.1.g) the permittee shall install and operate a vapor balance system on the gasoline storage tanks. Unless the facility can demonstrate the equivalency of another vapor balance system using the procedures specified in §63.11120(b) of this subpart, the vapor balance system shall meet the following design criteria in accordance with 40CFR 63, Subpart CCCCCC §63.11118(b)(1):
 - i. All vapor connections and lines on the storage tank shall be equipped with closures that seal upon disconnect;
 - ii. The vapor line from the gasoline storage tank to the gasoline cargo tank shall be vapor-tight. As defined by §63.11132, "vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source;
 - iii. 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;
 - iv. 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;

- v. 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 Condition I.1.g);
- vi. Liquid fill connections for all systems shall be equipped with vapor-tight caps;
- vii. 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.
- viii. 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.

- ix. Cargo tanks unloading at this facility must comply with the following management practices in accordance with 40CFR 63, Subpart CCCCCC §63.11118(d):
 - 1) All hoses in the vapor balance system are properly connected;
 - 2) The adapters or couplers that attach to the vapor line on the storage tank have closures that seal upon disconnect;
 - 3) All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight;
 - 4) All tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the gasoline dispensing facility (GDF) storage tank;
 - 5) All hatches on the tank truck are closed and securely fastened; and,
 - 6) The filling of storage tanks at GDF shall be limited to unloading by vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 shall be carried on the cargo tank.
- i) Underground storage tanks #1 and #2 annual throughput shall be limited to 3,369,925 gallons of gasoline per 12-month rolling period.
- j) 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 fifteen (15) days of equipment substitutions. Equipment that is substituted shall comply with the requirements in Condition 2.
- k) Changes in plans, specifications, and other representations proposed in the application documents shall not be made if they will increase the potential to emit or cause a change in the method of control of emissions or in the character of emissions. Any such proposed changes shall be submitted as a modification to this permit. No modification shall begin prior to issuance of a permit.

any 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.

2. **Unit Emission Limits**--Condition 2 Unit Emission Limits has been placed in the permit in accordance with 20.11.41.18.B NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. These were the emission rates stated in the permit application and are the basis of the Division's review. Compliance will be based on Division inspections of the facility.

- a) Underground storage tanks #1 and #2 shall not cause or allow any visible air vapors.
- b) Underground storage tanks #1 and #2 shall not exceed the ton per year (tpy) emission limits stated in the table below.
- c) Volatile Organic Compounds (VOC) pound per hour (lb/hr) emission rate is for inventory purposes only and is therefore not to be considered enforceable.

Regulated Pollutants

Tank Number	VOC lb/hr	VOC tpy	Monitoring Requirements ¹	Reporting Requirements ¹	Compliance Testing ²
1 and 2	10	21.9	Yes	Yes	Yes

¹ Refer to Conditions 3, 4 and 5 for unit specific record keeping/monitoring, and reporting requirements.

² Refer to Condition 6 for unit specific compliance requirements.

3. **Record keeping**--Condition 3 has been placed in the permit in accordance with 20.11.41.18.B(8) NMAC and 40 CFR 63, Subpart CCCCCC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of records and logs.

- a) Maintain monthly throughput records for underground storage tanks #1 and #2. These records must be retained for the most recent two-year period. As defined by §63.11132, "monthly throughput" means the total volume of gasoline that is loaded into all gasoline storage tanks during a month, as calculated on a rolling 30-day average.
- b) If the monthly throughput, as calculated on a rolling 30-day average, is greater than 100,000 gallons of gasoline, then in accordance with 40CFR 63, Subpart CCCCCC §63.11125(b), the facility shall keep records of all tests performed specified in Condition I.6. These records must be retained for the most recent five-year period.

This information shall be made available to Division personnel upon request.

4. **Monitoring**--Condition 4 has been placed in the permit in accordance with 20.11.41.18.B.(4),(6) and (7) NMAC and 40 CFR 63, Subpart CCCCCC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on Division inspection of equipment and logs.

- a) Monitor monthly throughput of underground storage tanks #1 and #2.

5. **Reporting**-- Condition 5 has been placed in the permit in accordance with 20.11.41.20 NMAC and 20.11.90 NMAC, to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on timely submittal of the reports, notifications, and required information and shall be made in accordance with CFR Title 40, Part 63, Subpart CCCCCC – National Emissions Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities, CFR Title 40, Part 63, Subpart A - General Provisions and 20.11.41.20 NMAC.

The permittee shall notify the Division in writing of:

- a) The anticipated date of initial startup of the source not less than thirty (30) days prior to the date pursuant to 20.11.41.20 A. NMAC;
- b) Notification of the actual date of initial startup of each affected facility shall be postmarked within 15 days after such date and submitted to the Division. This shall be conducted pursuant to 20.11.41.20 B. NMAC;
- c) Any change in control or ownership within fifteen (15) days of the change in control or ownership; the permit and conditions apply in the event of any change in control or ownership of the facility. No permit modification is required in such case; however, in the event of any such change in control or ownership, the permittee shall notify the succeeding owner of the permit and the conditions;
- d) Any substitution of equipment which has the same or lower process capacity as the piece of equipment being substituted within fifteen (15) days of equipment substitutions. Equipment that is substituted shall comply with the requirements in Condition 2;
- e) The annual (January 1 through December 31 of previous year) throughput of underground storage tanks #1 and 2 to the Division by March 15 of every year;
- f) The permittee of a source having an excess emission shall provide the department with the following reports on forms provided by the department:
 - i. 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.
 - ii. 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.
 - iii. ALTERNATIVE REPORTING: If the facility is subject to the reporting requirements of 40 CFR Parts, 60, 61, and 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.
- g) If the monthly throughput, as calculated on a rolling 30-day average, is greater than 10,000 gallons of gasoline, then in accordance with 40CFR 63, Subpart CCCCCC §63.11124(a), the facility is subject to Initial Notification and Compliance Status Notification requirements upon startup. The notification shall be submitted to the Division and to the Environmental Protection Agency Region VI office address provided by 40CFR 63, Subpart A §63.13. The Compliance Status Notification may be submitted in lieu of the Initial Notification if the facility is in compliance with the requirements of 40CFR 63, Subpart CCCCCC. Either the Initial or Compliance Status Notification shall contain the following:

- i. The name and address of the owner and the operator;
 - ii. The address of the station location;
 - iii. A statement that the notification is being submitted in response to 40CFR 63, Subpart CCCCCC and that Sections 63.11117(a) and 63.11117(b)(2) apply to the facility; and,
 - iv. In addition, the Compliance Status Notification must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of 40CFR 63, Subpart CCCCCC.
- h) If the monthly throughput, as calculated on a rolling 30-day average, is greater than 100,000 gallons of gasoline, then in accordance with 40CFR 63, Subpart CCCCCC §63.11124(b), the facility is subject to Initial Notification and Compliance Status Notification requirements upon startup. The Compliance Status Notification may be submitted in lieu of the Initial Notification if the facility is in compliance with the requirements of this subpart. Either the Initial or Compliance Status Notification must contain the following in addition to what is required in Condition I.5.g):
- i. A statement that the notification is being submitted in response to this subpart and that Sections 63.11118(a) and 63.11118(b)(1) apply to the facility.

The reports and notifications shall contain the required information and shall be made in accordance with 20.11.41.20 NMAC.

6. **Compliance Tests**-- Condition 6 "Compliance Tests" has been placed in the permit in accordance with CFR Title 40, Part 60, Subpart A General Provisions, 20.11.41.21, and NMAC. Compliance will be based on the satisfactory completion of the compliance tests, the timely submittal of the emission unit test results to the Division, and on meeting the emission limits specified in Condition 2.
- a) If the monthly throughput, as calculated on a rolling 30-day average, is greater than 100,000 gallons of gasoline, the permittee shall conduct the following performance tests at the time of installation of a vapor balance system required under §63.11118(b)(1) and every 3 years after :
 - i. In accordance with 40CFR 63, Subpart CCCCCC §63.11120(a)(1), the permittee shall demonstrate compliance with the leak rate and cracking pressure requirements, specified in Condition I.1.h)vii., for pressure-vacuum vent valves installed on the gasoline storage tanks using one of the methods specified in §63.11120(a)(1)(i) or (a)(1)(ii);
 - ii. In accordance with 40CFR 63, Subpart CCCCCC §63.11120(a)(2), the permittee shall demonstrate compliance with the static pressure performance requirement, specified in Condition I.1.h)viii., for the vapor balance system by conducting a static pressure test on the gasoline storage tanks using one of the methods specified in §63.11120(a)(2)(i) or (a)(2)(ii);
 - iii. In accordance with 40CFR 63, Subpart CCCCCC §63.11120(b), if the permittee chooses to use another vapor balance system than that specified in Condition I.1.h), the facility shall demonstrate the equivalency of the vapor balance system using the procedures specified in §63.11120(b) of this subpart. In accordance with 40CFR 63, Subpart CCCCCC §63.11126, the results of the volumetric efficiency tests must be submitted to the EPA Administrator within 180 days of the completion of testing; and,

In accordance with 40CFR 63, Subpart CCCC §63.11124(b)(4) and Subpart A §63.9(e), the permittee shall provide in writing a Notification of Performance Test at least sixty (60) days prior to the anticipated test date. The notification is to begin to allow the Division, upon request, to review and approve the site-specific test plan required under paragraph 40CFR 63.7(c) and to have an observer present during the test. In accordance with 40CFR 63.7(b), observation of the performance test by the Division is optional.

- b) Upon request, the test plan shall be submitted concurrently with the Notification of Performance test and shall include all elements specified by 40CFR 63.7(c).
- c) One copy of the compliance test results shall be submitted to the Division Compliance Officer within thirty (30) days after the completion of testing.

Unit Specific Compliance Testing

Tank Number	Initial Compliance Test	Frequency of Compliance Test
1 and 2	Yes	Every three (3) years

- 7. **Modifications**-- Condition 7 has been placed in the permit in accordance with 20.11.41.7.H NMAC, to enable the Division to review proposed changes to the facility which may constitute a permit modification prior to such changes. Compliance will be based on Division inspections and the submittal of a new permit application for any modification.
 - a) Any future physical changes or changes in the method of operation which results in an increase in the pre-controlled emission rate may constitute a modification as defined by 20.11.41.7.H NMAC. No modification shall begin prior to issuance of a permit. Modifications or revisions to this permit shall be processed in accordance with 20.11.41 NMAC.
- 8. **Compliance Assurance/Enforcement**-- 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.
 - a) The issuance of a permit or registration does not relieve the Facility from responsibility of complying with the provisions of the Air Quality Control Act, and the laws and regulations in force pursuant to the Act. (20.11.41.17 NMAC).
 - b) Any conditions imposed upon the Facility as the result of an Authority-To-Construct Permit or any other permit issued by the Division shall be enforceable to the same extent as a regulation of the Board. (20.11.41.18.C NMAC).
 - c) 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. (20.11.1.14 NMAC).
 - d) The Division 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).
 - e) Scheduled and Unscheduled Inspection (74-2-13 NMSA) -- The Division will conduct scheduled and unscheduled inspections to insure compliance with the Air Quality Control Act, and the laws and regulations in force pursuant to the Act, and this Permit, and, upon presentation of credentials:

- i. 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;
 - ii. May at any reasonable time have access to and copy any records required to be established and maintained by Regulations of the Board, or any permit condition;
 - iii. May inspect any monitoring equipment and method required by Regulations of the Board or by any permit condition; and,
 - iv. Sample any emissions that are required to be sampled pursuant to Regulation of the Board, or any permit condition.
- f) Any credible evidence may be used to establish whether the Facility has violated or is in violation of any regulation of the Board, or any other provision of law. Credible evidence and testing shall include, but is not limited to (20.11.41.26(A) and (B) NMAC):
- i. A monitoring method approved for the source pursuant to 20.11.42 NMAC "Operating Permits" and incorporated into an operating permit;
 - ii. Compliance methods specified in the Regulations, conditions in a permit issued to the Facility, or other provision of law;
 - iii. Federally enforceable monitoring or testing methods, including methods in 40 CFR parts 51, 60, 61, and 75; and,
 - iv. Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the Division and EPA.
9. **Posting of the Permit**-- Compliance will be based on Division inspections of the facility, which show that a copy of the permit has been posted in a visible location. A copy of this permit shall be posted in a visible location at the plant site at all times. The permit shall be made available to Division personnel for inspection upon request.
10. **Annual Fees**-- Condition 10 has been placed in the permit in accordance with 20.11.2 NMAC to allow the Division to determine compliance with the terms and conditions of the permit. Compliance will be based on the receipt of the annual emissions fee due each year to the Division pursuant to 20.11.2 NMAC. Every owner or operator of a source that is required to obtain a source registration, an Authority-to-Construct permit, an operating permit, or a preconstruction permit shall pay an annual emissions fee pursuant to 20.11.2 NMAC, 20.11.40 NMAC, 20.1.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or 20.11.62 NMAC.

**Facility Wide Fee Pollutants
(Tons Per Year)**

Fee Pollutant	Facility Wide Fee Pollutant Totals in Tons per Year (TPY)
Volatile Organic Compounds (VOC)	22
Facility Wide Fee Pollutants Totals (TPY)	22

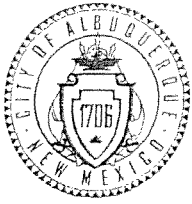
II. ADDITIONAL REQUIREMENTS

1. **Permit Cancellation**-- The Division may cancel any permit if the construction or modification is not commenced within one (1) year from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year (20.11.41.19A and B NMAC).
2. **Division Address**--Application for permit modifications, relocation notices and items listed under **ADDITIONAL REQUIREMENTS** shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Permitting Section
P.O. Box 1293
Albuquerque, New Mexico 87103

Test protocols, compliance tests and all reports shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Attention: Compliance Officer
P.O. Box 1293
Albuquerque, New Mexico 87103



Richard J. Berry, Mayor

AIR QUALITY AUTHORITY TO CONSTRUCT PERMIT #2037-M1
FACILITY CDS # NM/001/02027
Facility ID: FA0003035 Record ID: PR0005211



Mary Lou Leonard, Director

Issued to: Smith's Food & Drug Centers, Inc.
Company Name

Certified Mail # 7010 3090 0001 4395 6530
Return Receipt Requested

1550 South Redwood Road
Mailing Address

Salt Lake City
City

UT
State

84104
Zip

Responsible Official: Steven M. Sorensen, Vice President
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), Authority to Construct,

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

This AUTHORITY TO CONSTRUCT permit number 2037-M1 has been issued based on the review of the application information received by the Albuquerque Environmental Health Department (Department), Air Quality Division (Division) on September 22, 2011, which was deemed complete on October 21, 2011, 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. This permit supersedes all portions of Air Quality Permit #2037 issued on November 30, 2009. As these standards and regulations are updated or amended, the applicable changes will be incorporated into this Air Quality Permit Number 2037-M1 and will apply to the facility. This facility is authorized to construct and operate the following type of process at:

Table with 5 columns: Facility Name & Address, UTM Coordinates, Process Description, SIC, NAICS. Row 1: Smith's Food & Drug Centers, Inc., 1313 Carlisle Blvd NE, Albuquerque, NM 87110; 353740 Easting, 3884700 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 17th day of April, 2012
Isreal L. Tovar (Print Name), Isreal L. Tovar (Sign Name)

Air Quality Programs - Permitting Division
City of Albuquerque Environmental Health Department

I. 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:

Table with 6 columns: Unit Number, Unit Description, Storage Capacity in gallons, Installation Date, Product Stored, Minimum Required Emissions Control1. Row 1: 1, Underground Storage Tank, 20,000, 2009, Regular Unleaded Gasoline, Stage 1 Vapor Balanced, Submerged Filling. Row 2: 2, Underground Storage Tank, 10,000, 2009, Premium Unleaded Gasoline, Stage 1 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.]

ATTACHMENT B

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. (20.11.41.17 NMAC)
- C. Any term or condition imposed by the department in an Authority To Construct permit shall apply to the same extent as a regulation of the board. (20.11.41.18.C NMAC)
- D. Whenever two or more parts of the Air Quality Control Act, or the laws and regulations in force pursuant to the Act, limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern. (20.11.41.18B NMAC)
- 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	≥100,000	For Stage I Vapor Recovery 4,500,000	29.3 tons per year
2	Underground Storage Tank			

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 20.11.47.14A.(1) – Applicability - requires an emissions inventory of any stationary source in Bernalillo county that has an active permit issued pursuant to 20.11.41 NMAC Authority to Construct. Subsection 20.11.47.14B.(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:

using the total Unit #1 and #2 actual gasoline throughputs from January 1st through December 31st of the previous calendar year. The actual gasoline throughput shall be multiplied by 0.013 pounds/gallon if Stage I Vapor Recovery is used or 0.0031 pounds/gallon if Stage II Vapor Recovery is used. An electronic emissions inventory form is available at www.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. 20.11.41.7H 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 [20.11.41.18.B(8)]

- A. Monitor and Maintain a log of the total monthly gasoline throughput for the facility.
 - B. Monitor and Maintain the monthly gasoline fuel purchase records for the facility.
- These records must be retained for the most recent five-year period for the facility.

8. REPORTING.

- A. By the 15th of each month the permittee shall submit to department:
 - 1. The monthly gasoline fuel throughput records for the previous month; and
 - 2. The monthly gasoline fuel purchase invoices records for the previous month.
- B. The following reporting requirements, in accordance with 20.11.41.18, 20.11.41.20, 20.11.41.47 and 20.11.41.49 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.

C. The emission of a regulated air pollutant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action. The owner or operator of a source having an excess emission shall, to the extent practicable, operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. This condition is pursuant to 20.11.49.14 NMAC.

9. INSPECTION (74-2-13 NMSA).

A. The department may conduct scheduled and unscheduled inspections, and, upon presentation of credentials:

1. Shall have a right of entry to, upon, or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the board or by any permit condition are located; and

2. May, at reasonable times:

a) Have access to and copy any records required to be established and maintained by regulations of the board or any permit condition;

b) Inspect any monitoring equipment and method required by regulations of the board or by any permit condition; and

c) Sample any emissions that are required to be sampled pursuant to regulation of the board or any permit condition.

B. Any credible evidence may be used to establish whether the facility has violated or is in violation of any regulation of the board, or any other provision of law. Credible evidence and testing shall include, but is not limited to 20.11.41.26(A) and (B) NMAC as follows:

1. A monitoring method approved for the source pursuant to 20.11.42 NMAC, Operating Permits, and incorporated into an operating permit;

2. Compliance methods specified in the regulations, conditions in a permit issued to the facility, or other provision of law;

3. Federally enforceable monitoring or testing methods, including methods in 40 CFR parts 51, 60, 61, 63 and 75; and

4. Other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method 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) Minimize gasoline spills;

b) Clean up spills as expeditiously as practicable;

c) 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

d) 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)(1) or paragraph (b)(2) of this section.

2. §63.11117(b)(1) requires submerged fill pipes installed on or before November 9, 2006, must be no more than 12 inches from the bottom of the storage tank. [A-BCAQCB regulation 20.11.65 NMAC requires submerged fill pipes to be no more than 6 inches from the bottom of the storage tank.]

3. §63.11117(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. RESERVED

5. §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)(1) – meet 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 (**item 1, as amended 6/25/08**):
- (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:

$$Pf = 2e^{-500 \frac{v}{c} \frac{2}{273+T}}$$

Where:

- Pf = Minimum allowable final pressure, inches of water.
- v = Total ullage affected by the test, gallons.
- c = 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 (**item 2, as amended 12/15/09**), 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
A New or Reconstructed Source (commenced construction after 11/9/06) with a monthly throughput ¹ of ≥ 100,000 gal/mo	By 01/10/08 if start up precedes this date	One additional compliance test within 365 days of the most recent test	20.11.41.18.B.(9) NMAC
	Upon startup after 01/10/08		
	By 9/23/08 if startup is on or before this date and you are complying with Table 1 of 40 CFR Part 63, Subpart CCCCCC	Every three years §63.11120(a)	63.11113(a)(1), (2) 63.11113(d)(1), (2)
	Upon startup after 9/23/08 if you are complying with Table 1 of 40 CFR Part 63, Subpart CCCCCC		

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 §63.114);

(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 §63.1120 (a).

§63.1120(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.

§63.1126 - Each owner or operator subject to the management practices in §63.1118 shall report to the Administrator the results of all volumetric efficiency tests required under §63.1120(b). Reports submitted under this paragraph must be submitted within 180 days of the completion of the performance testing.

E. NOTIFICATIONS.

1. §63.1118(f) requires that you must submit the applicable notifications as required under §63.1124.

2. §63.1124(b) requires that each owner or operator subject to the control requirements in §63.1118 must comply with paragraphs (b)(1) through (5) of §63.1124 as follows:

(b)(1) You must submit an Initial Notification that you are subject to this subpart by May 9, 2008, or at the time you become subject to the control requirements in §63.1118. 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:

(i) the name and address of the owner and the operator;

(ii) the address (i.e., physical location) of the GDF; and

(iii) a statement that the notification is being submitted in response to this subpart and identifying the requirements in paragraphs (a) through (c) of §63.1118 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)(3) You are not required to submit an Initial Notification or a Notification of Compliance Status under paragraph (b)(1) or paragraph (b)(2) of this subsection if, prior to January 10, 2008, you satisfy the requirements in both paragraphs (b)(3)(i) and (ii) of this section as follows:

(i) You operate a vapor balance system at your gasoline dispensing facility that meets the requirements of either paragraphs (b)(3)(i)(A) or (b)(3)(i)(B) of this section as follows:

(b)(3)(i)(A) achieves emissions reduction of at least 90 percent; or

(b)(3)(i)(B) operates using management practices at least as stringent as those in Table 1 of 40 CFR Part 63, Subpart CCCCCC;

(ii) Your gasoline dispensing facility is in compliance with an enforceable State, local, or tribal rule or permit that contains requirements of either paragraphs (b)(3)(i)(A) or (b)(3)(i)(B) 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 §63.1120(a) and (b); and

(b)(5) You must submit additional notifications specified in §63.9, as applicable.

3. Sources in Bernalillo county that are in compliance with a 20.11.41 NMAC. Authority to Construct permit 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. §63.1118(g) - You must keep records and submit reports as specified in §§ 63.1125 and 63.1126.

2. §63.1125(a) - Each owner or operator subject to the management practices in §63.1118 must keep records of all tests performed under §63.1120(a) and (b).

3. §63.1125(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 one (1) year from the date of issuance or if, during the construction or modification, work is suspended for a total of one (1) year. (20.11.41.19A and B NMAC)

13. INFORMATION SUBMITTALS [Air Quality Division contact numbers: (505) 768-1972 (voice); 1-800-659-8331 (NM Relay)]

- Forms are available at <http://www.cabq.gov/airquality/businessapplicationspermitsandforms.html> or at the Air Quality Division Office located at 1 Civic Plaza - Room 3047 (8:00am - 4:30pm Mon. - Fri. except city holidays).
- 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 Division
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 Division
Attention Enforcement Supervisor
P.O. Box 1293
Albuquerque, New Mexico 87103

- All reports shall be submitted to:

Albuquerque Environmental Health Department
Air Quality Division
Attention Compliance Officer
P.O. Box 1293
Albuquerque, New Mexico 87103