



Status of NSR Lawsuit and Impact of Court Decision on Permitting

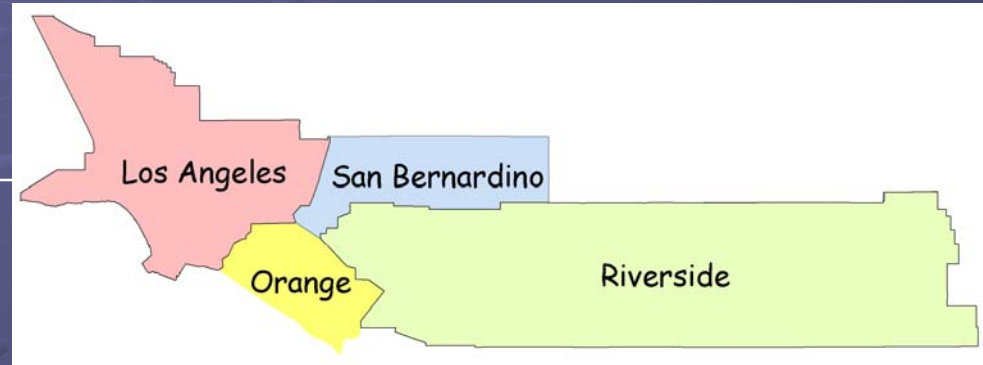
Los Angeles County Solid Waste Management Committee/ Integrated Waste Management Task Force

*Thursday, February 26, 2009
County of Los Angeles Department of Public Works
Alhambra, CA*

Mohsen Nazemi, P.E.
Deputy Executive Officer
South Coast Air Quality Management District



South Coast Air Quality Management District (AQMD)



- Local Air Pollution Control District in Southern California (Counties of LA, Orange, Riverside & San Bernardino)
- Population of over 16 million (about half of State's population)
- Covers 10,743 sq. miles
- **Worst air quality in the nation (Ozone & PM 2.5)**
- **Regulates >28,000 Stationary Sources**
- **Over 80,000 permits**
- **Process and receives about 10,000 permits annually**



AQMD's Permitting Process

- Prior to construction or installation of equipment which releases or controls air emissions, the owner/ operator is required to obtain a written Permit to Construct from AQMD
- Major elements of Permitting are:
 - CEQA Document, if necessary
 - **New Source Review Rules**
 - Toxic Impact Analysis
 - Public Notice, if required
 - Other Rules & Regulations



New Source Review (NSR)

- Federal Law – The Federal Clean Air Act has NSR requirements for **major** sources
- State Law – The California Clean Air Act has NSR (No Net Increase) requirements for **both major and non-major sources**
- NSR Requirements
 - Best Available Control Technology
 - Air Quality Impact Analysis (Modeling)
 - **Emission Offsets**



When are Emission Offsets Required Under Federal & State Laws?

- Emission Offsets are required for permitting of:
 - New Facilities & Relocations
 - Existing Facility Modifications/Expansions by:
 - Installation of New Equipment
 - Replacement of Existing Equipment
 - Modification and/or modernization of existing equipment
- However, under AQMD's NSR Rules certain sources are exempt from providing their own offsets, but AQMD still provides the offsets to comply with Federal & State laws.



Sources Exempt from Offsets under AQMD's NSR Rules (Rule 1309.1 - Priority Reserve)

- Innovative Technology
- Research Operations
- **Essential Public Service**
 - Sewage Treatment facilities; Prison & Police facilities; Fire Fighting facilities; Schools; Hospitals; Construction and operation of a Landfill Gas Control or Processing facility; Water Delivery operations; and Public Transit.
- Limited Power Plants



Sources Exempt from Offsets under AQMD's NSR Rules (cont'd) (Rule 1304 - Exemptions)

- Equipment Replacements
- Facility or Equipment Relocations
- Emergency Equipment or Operations
- Air Pollution Control Strategies
- Regulatory Compliance
- Concurrent Facility Modification
- Small Sources (< 4 Tons per Year)
- Others (Abrasive Blasting & Portable equipment, etc.)



What Are the Sources of Offsets?

● Open Market Credits

- Sources shutdown or over-control emissions and apply to and obtain from AQMD Emission Reduction Credits (ERCs) Certificates
- ERCs traded between companies for offsets

● The AQMD's Offset Credit Bank

- Offset credits are emission reductions created from sources which do not obtain ERCs (Orphan Shutdowns)
- Offsets are provided by AQMD free of charge to Essential Public Services, Smaller Sources and other exempt sources



Environmental Organizations' NSR Law Suits

- The following Environmental Organizations filed two separate law suits in Federal and State courts against AQMD for use of its Offset Credit Bank:
 - Natural Resources Defense Council
 - Communities for a Better Environment
 - Coalition for a Safe Environment
 - California Communities Against Toxics (State suit only)
 - Desert Citizens Against Pollution (Federal suit only)
- In State Court, Judge Ann Jones ruled in June & November 2008 against AQMD and in favor of the Environmental Organizations
- In Federal Court, the case is still pending

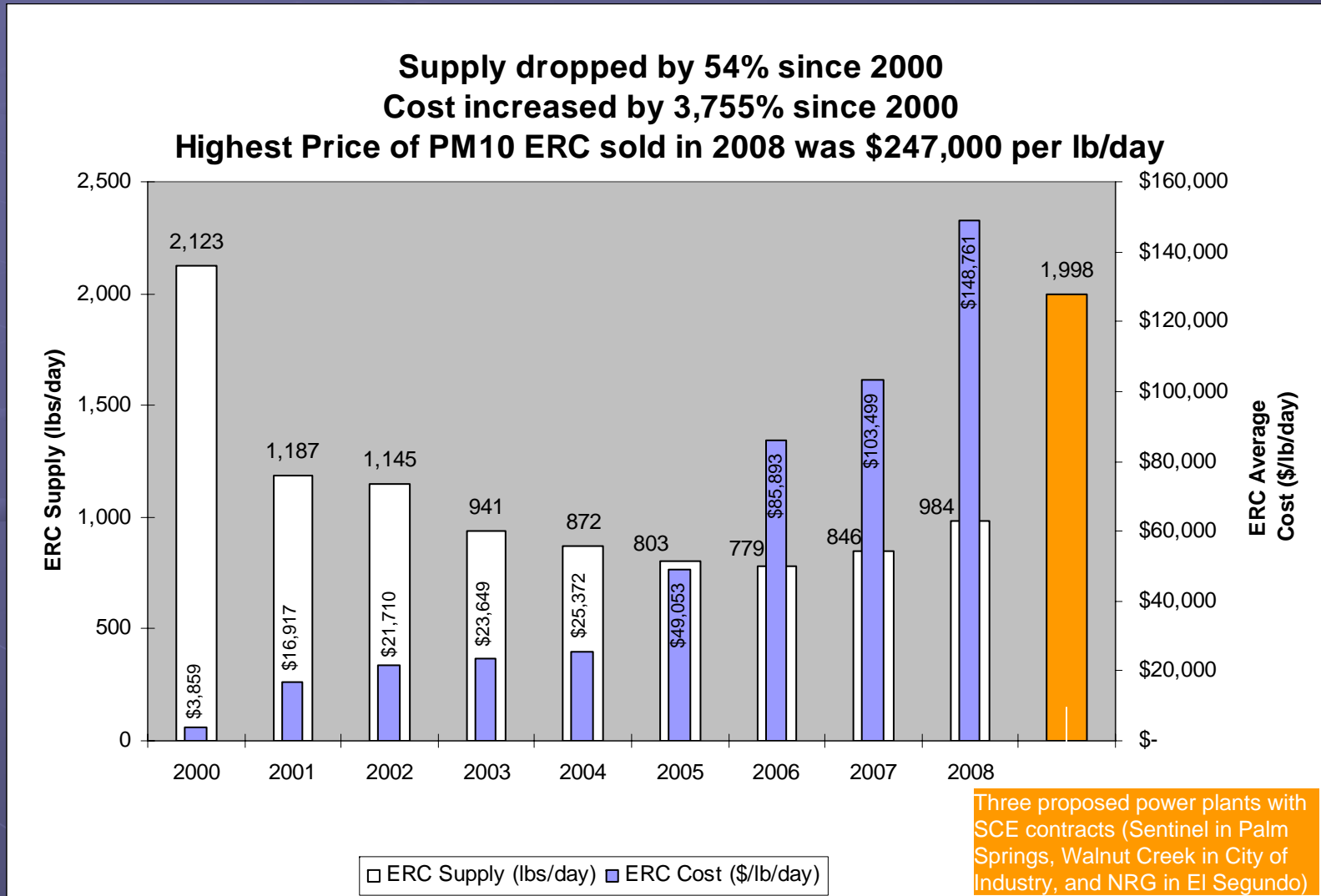


As A Result of the State Court Decision

- Without AQMD's bank of offset credits:
 - No essential public service projects can be permitted
 - No other local government & business permits can be issued
- The only remaining option for local government and business is to purchase ERCs in Open Market
 - **Not enough ERCs in the open market**
 - **ERCs are expensive and potentially unaffordable**



PM10 ERC Supply & Average Cost Trends (2000-2008)





Cost of ERCs for Businesses, If AQMD Does not Provide Offset Credits

Typical Projects

	<u>Cost of ERCs*</u>
● Police Station (Emergency Backup Generator)	\$77,000
● Gas Station	\$234,000
● Printer (Printing Press)	\$358,000
● Auto body Shop (Spray Booth)	\$435,000
● Hospital (Boiler)	\$1.8 million
● Food Processing (Tortilla Fryer & Oven)	\$1.6 million
● Sewage Treatment Plant Expansion	\$2.4 million
● Landfill Gas Recovery (Renewable Energy)	\$115 million
● Power Plants (state-of-the-art)	\$100-200 million

** Based on typical project emissions and average market price of ERCs in 2008/09.
Individual project emissions and ERC purchase prices may vary on a case-by-case basis.*



Examples of Projects Currently on Hold

PROJECT NAME	LOCATION	TYPE OF FACILITY	PROJECT DESCRIPTION
Eastern Municipal Water District	Moreno Valley	Sewage Treatment	Expanding capacity at sewage treatment facility
Eastern Municipal Water District	San Jacinto	Sewage Treatment	Expanding capacity at sewage treatment facility
Riverside Co. Waste Management	Moreno Valley	Landfill	Landfill gas control device consisting of a flare
Los Angeles City	Terminal Island	Sewage Treatment	Digester gas control device consisting of a flare
MM West Covina	West Covina	Landfill	Landfill gas control device consisting of landfill gas to energy turbine (5.7 MW)
Montauk Energy	Irvine	Landfill	Landfill gas control device consisting of landfill gas to energy turbine (23 MW)
Ridgewood Power Management	Brea	Landfill	Landfill gas control device consisting of landfill gas to energy turbine (30 MW)
Sunshine Gas Producers	Sylmar	Landfill	Landfill gas control device consisting of landfill gas to energy turbine (25 MW)
Los Angeles City Sanitation & DWP (SHARE Project)	Los Angeles	Sewage Treatment	Digester gas control device consisting of digester gas to energy turbine (63 MW)
Los Angeles County Sanitation District	Palos Verdes	Landfill	Landfill gas control device consisting of landfill gas to energy turbine and ultra-low emission flare (2.3 MW)
Loma Linda University	Loma Linda	School	2 crematory furnaces



Present Status of Permit Moratorium

- Presently, the following number of permit applications which qualify for offset exemptions are on hold:

■ For Rule 1309.1 Exemption	> 130
■ For Rule 1304 Exemption	>1100
■ Exempt Projects which Purchased ERCs	11

- Actions taken by AQMD :

- Appealed the State court decision
- Initiated work to re-adopt its NSR offset tracking rule which was invalidated by State court order
- Engaged in Mediation with Environmental Organizations



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

Office of the Executive Officer
909.396.2100

January 9, 2009

TO: PERSONS INSTALLING OR OPERATING EQUIPMENT THAT REQUIRES AN AQMD PERMIT

Re: Moratorium on Issuance of Certain Air Permits

This letter is to advise you that the South Coast Air Quality Management District (AQMD) is required to make significant changes to its permitting program as the result of a recent court ruling. This court decision may substantially affect your activities if you plan to install, construct, modify, replace or relocate equipment that emits air pollution. In addition, permits issued by the AQMD since September 8, 2006 may be affected by this court decision. For more detailed information please read the Fact Sheet attached to this letter.

The Court Decision. Under federal and state law, AQMD can issue permits for new, replaced, relocated, or modified equipment only if emission increases are “offset” by emission reductions from other equipment. Emission offsets are generally provided by the permit applicant in the form of Emission Reduction Credits (ERCs). AQMD rules do, however, allow some types of facilities, such as essential public services, to obtain offsets from the District (Rule 1309.1, the “Priority Reserve”). AQMD rules also allow exemptions from the offset requirement for facilities with low emissions, or certain types of actions, such as equipment replacements or some relocations (Rule 1304). A recent court decision invalidated the AQMD rule specifying how the agency accounts for and calculates the amount of emission reductions available to fund the Priority Reserve and offset exemptions. **Because of this decision, the AQMD cannot at this time issue Permits to Construct that rely on credits from the Rule 1309.1 Priority Reserve, or that rely on a Rule 1304 offset exemption.** This situation will exist until the AQMD adopts a new rule or program that addresses the court decision.

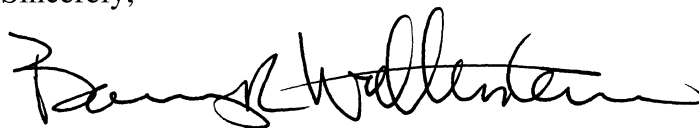
Next Steps. The AQMD plans to readopt the invalidated rule, or other appropriate program, as soon as possible. We expect this will take at least nine to twelve months. **In the meantime, Permits to Construct can only be issued to applicants providing offsets in the form of ERC certificates that are owned by applicants or that are purchased from ERC holders in the open market.**

The AQMD will continue to accept permit applications and will continue to process and issue permits for applicants that provide ERC certificates. To the extent, however, that a permit applicant relies on credits from the Rule 1309.1 Priority Reserve, or on a Rule 1304 exemption, the AQMD cannot issue a Permit to Construct at this time.

Please be advised that any construction, installation, or operation of new, replaced, relocated, or modified equipment without first having obtained a Permit to Construct from AQMD is a violation of AQMD Rule 201 and is subject to a notice of violation and associated penalties and shutdown orders.

We recognize that this situation could create substantial hardships for many facilities. My staff and I will do our utmost to minimize these hardships until this difficult situation is fully resolved. If you have any questions, please do not hesitate to contact Mohsen Nazemi, the agency's Deputy Executive Officer for Engineering and Compliance. He can be reached at 909-396-3447 *or* permitmoratorium@aqmd.gov.

Sincerely,



Barry R. Wallerstein, D.Env.
Executive Officer

BRW:KRW:MN:vmr
Attachment

AQMD's Permit Moratorium Fact Sheet

January 9, 2009

Q: Why is there a moratorium on the South Coast Air Quality Management District (AQMD) issuing hundreds of permits?

A: As the result of a recent court ruling, AQMD is suspending operation of its internal bank of emission reduction credits (ERCs), also known as offset credits. Operation of the internal bank is needed for the AQMD to provide credits to permit applicants from the Rule 1309.1 Priority Reserve, and for AQMD to allow permit applicants exemptions from offset requirements specified in Rule 1304. No offset credits will be provided from the AQMD's internal bank at this time. Accordingly, AQMD will only be able to issue permits to sources that have provided their own offsets in the form of Emission Reduction Credit (ERC) certificates.

Q: Who is affected by this action?

A: All permit applicants intending to obtain credits for essential public services such as hospitals, schools, police stations, landfills or sewage treatment plants through AQMD Rule 1309.1 (Priority Reserve). Any facilities, regardless of size, intending to rely on any of the offset exemptions in AQMD Rule 1304 (Exemptions) are also affected. Examples are auto body shops, service stations, printers, local government and other medium and large businesses. Offset exemptions in Rule 1304 include sources with facility emissions less than four tons per year of any air pollutant, equipment replacements, facility and equipment relocations, facility modifications, and projects seeking to achieve regulatory compliance.

Q: Are previously issued permits affected?

A: Yes, thousands of previously issued permits are affected. The recent court ruling revoked AQMD Rule 1315 and required the agency to discontinue the use of offset credits issued from the AQMD internal bank for permits issued at least since Aug. 3, 2007. Certain aspects of the court ruling may suggest that the use of credits issued on or after Sept. 8, 2006 has been

invalidated as well. AQMD, however, has appealed the court ruling, which will stay the court's action to the extent that it would have required AQMD to cancel credits and revoke permits already issued since at least August 3, 2007.

For this reason, until an appeal is concluded in AQMD's favor, or Rule 1315 or an equivalent replacement has been readopted and any litigation over the readopted rule has been concluded in AQMD's favor—none of which can be guaranteed – **AQMD cannot ensure the long-term validity of permits issued on or after August 3, 2007, or possibly on or after September 8, 2006.**

Q: *What has caused this action?*

A: This action results from a ruling by Los Angeles Superior Court Judge Ann I. Jones in a lawsuit (Case No. BS 110792) brought on August 31, 2007 against AQMD by the Natural Resources Defense Council, Communities for a Better Environment, Coalition for a Safe Environment, and California Communities Against Toxics. The lawsuit challenged the adoption of AQMD Rule 1315 (Federal New Source Review Tracking System) used for tracking the agency's internal credit bank and amendments to Rule 1309.1 (Priority Reserve), which also allowed power plants to access credits in the AQMD's internal credit bank. In her final ruling on Nov. 3, 2008, Judge Jones invalidated the rules and prohibited the agency from taking any action to implement Rule 1315 or the amendments to Rule 1309.1 until it has prepared a new environmental assessment under the California Environmental Quality Act (CEQA).

Q: *What has the AQMD done to address this situation?*

A: AQMD appealed Judge Jones' decision on Nov. 25, 2008. Although this appeal does not allow AQMD to issue any new permits, it puts a stay on canceling thousands of previously issued permits. In addition, AQMD intends to readopt a credit tracking rule or other appropriate program to replace Rule 1315. If the rule or program is adopted, credits will again be available for essential public services, innovative technology and research operations under Rule 1309.1 and for exempt sources under Rule 1304.

Q: How long will readoption of Rule 1315 take?

A: At least nine to 12 months and possibly longer.

Q: Does AQMD intend to readopt the power-plant amendments to Rule 1309.1?

A: The AQMD Governing Board has decided **not** to readopt the amendments to Rule 1309.1 allowing power plants to access credits from the Priority Reserve.

Q: Can I purchase ERCs on the open market?

A: Possibly, although they are scarce and in some cases very expensive, especially for PM₁₀ (particulate matter). The table below illustrates examples of estimated costs* of obtaining ERCs for typical equipment or operations:

Type of Facility	Estimated Cost of ERCs*
Landfill (landfill gas/ renewable energy project with five turbines)	\$140 million
Sewage treatment plant (expansion with new digester and flare)	\$3 million
Food manufacturer (tortilla chip fryer and oven)	\$2 million
Hospital (boiler)	\$2 million
Auto body shop (spray booth)	\$500,000
Printer (printing press)	\$390,000
Gas station	\$255,000
Police station (emergency back-up generator)	\$110,000

** Based on average market price of ERCs in 2008. Individual ERC purchase prices may vary on a case-by-case basis.*

Q: Are there permitting actions not subject to the moratorium?

A: Yes. The moratorium applies to permitting actions involving the AQMD's internal bank. The following permitting actions that do not involve AQMD's internal bank are not affected:

- Permits for new, modified, replaced or relocated equipment where:
 - Applicants provide their own ERCs;

- Project maximum emission increases are less than 0.5 pound per day for all non-attainment air pollutants and precursors;
- Existing permits have an equipment or facility-wide cap for VOCs and the proposed new, modified, or relocated equipment will not increase emissions beyond the cap;
- The application is for air-pollution control equipment and no emission increases of any kind will occur;
- Permits for Change of Operator;
- Permits to operate where the equipment was issued a Permit to Construct before September 8, 2006 or the applicant did not rely on the provisions of Rule 1309.1 or Rule 1304;
- Permits for equipment modification or change of conditions with no increase in emissions;
- Initial Title V permits;
- Title V permits for Administrative and Minor Permit Revisions;
- Applications for Compliance Plans; and
- Applications for ERCs.

For additional information, please contact Mohsen Nazemi, Deputy Executive Officer for Engineering and Compliance. He can be reached at 909-396-3447 or permitmoratorium@aqmd.gov.