

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

EXECUTIVE OFFICE MEMORANDUM

DATE: July 23, 2009

TO: Interested Parties in Air Quality Permit Moratorium

FROM: Barry R. Wallerstein, D.Env.
Executive Officer



SUBJECT: SB 696 PROVIDES A CLEAR PATH TO LIFT
PERMIT MORATORIUM IN THE SOUTH COAST

A recent federal court ruling has cleared the way for proposed SB 696, authored by State Senator Rod Wright, to immediately lift a permit moratorium for air permits in Southern California. That moratorium has blocked over 1,200 permits for planned projects representing more than \$5 billion of lost investment and tens of thousands of jobs.

On July 6, 2009 U.S. District Court Judge George H. Wu dismissed a lawsuit filed by the Natural Resources Defense Council (NRDC) and other environmental groups challenging the validity of the South Coast Air Quality Management District's (AQMD's) emissions offset program, a key feature of the region's air pollution permit system. With this recent federal court ruling, passage of SB 696 would resolve any remaining barriers to restarting AQMD's permitting program. **Therefore, AQMD is ready to restart issuing permits as soon as SB 696 becomes law.**

SB 696 would allow the agency to once again supply needed emissions offsets at no charge to public agencies, small businesses, and other environmentally desirable projects. In addition, a limited number of state-of-the-art low-emission power plants deemed necessary by the State of California and approved by the California Energy Commission could also access emissions offsets otherwise not available by paying a fee which would then be reinvested in emission reduction projects in the areas impacted by the power plants.

Public facilities, small businesses and necessary power plants have been unable to obtain offsets from AQMD since late last year due to a judge's ruling in a separate state court lawsuit. That lawsuit, filed in August 2007 by the NRDC and other

environmental groups, challenged adoption of AQMD's emissions offset tracking rule. The November 2008 state judge's final order in this case required AQMD to set aside two AQMD regulations governing its emissions offset program on California Environmental Quality Act (CEQA) grounds. The judge made such decision even though CEQA compliance would otherwise occur at the individual project approval phase. That in turn put a halt to issuing new permits for facilities that needed emissions offsets from AQMD. The state court ruling also potentially revoked over 3,000 permits issued since September 2006 that relied on offsets from the AQMD.

Whenever a new or modified facility increases its emissions in Southern California, it is required to provide emissions offsets to prevent air quality in an already polluted area from further deteriorating. Offsets are generated when a facility or emission units are permanently shut down or when an active plant controls its emissions to a greater degree than required by air quality regulations. The U.S. Environmental Protection Agency (EPA) in 1996 stated that AQMD's emissions offset program was carefully negotiated with EPA when it was recommended and approved by the AQMD Governing Board.

BRW/drw