

DRAFT – DISCUSSION ONLY

FOR CONSIDERATION BY LEGISLATIVE COMMITTEE

3/11/09

An act to add sections 21080(b)(16) and 21080(b)(17) of the Public Resources Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOW;

SECTION 1. Section 21080 of the Public Resources Code is amended to add paragraphs 21080(b)(16) and 21080(b)(17), to read:

21080(b)(16). No California Environmental Quality Act (CEQA) analysis shall be required of the adoption or implementation of South Coast Air Quality Management District (District) rules establishing offset exemptions, providing Priority Reserve credits, or creating or tracking the credits used for offset exemptions or Priority Reserve projects, when discretionary projects that use such exemptions or credits are subject to CEQA (or exempt therefrom) and all the requirements of this paragraph are satisfied. This paragraph applies only to offset exemptions used under District Rule 1304, as amended June 14, 1996, Priority Reserve Credits pursuant to District Rule 1309.1, as amended May 3, 2002, and implementation of District Rule 1315, as adopted September 6, 2006 and re-

adopted August 3, 2007. This paragraph applies only if all of the following requirements are satisfied:

(i) District rules require use of the best available control technology, as defined in Health & Safety Code Section 40405, and air quality modeling to assure the source will not cause a violation, or make significantly worse an existing violation of any ambient air quality standards, as defined in District Rule 1303, for each new, relocated or modified source with an emissions increase of one pound per day or greater of any air contaminant;

(ii) District rules prohibit the construction of any new, relocated, or modified permit unit if the emissions of any toxic air contaminant, as listed by the District Board, exceed a cumulative increase in maximum individual cancer risk at any receptor location of (A) greater than one in one million, if the permit unit is constructed without best available control technology for toxic air contaminants, or (B) greater than ten in one million, if the permit unit is constructed with best available control technology for toxic air contaminants; or if the permit unit exceeds a chronic or acute non-cancer health effect hazard index of 1.0;

(iii) The District accounts for the use of offset credits pursuant to this paragraph as part of its state implementation plan submissions, and demonstrates that such use will not interfere with attainment or maintenance of ambient air quality standards; and

(iv) District Rules 1304, 1309.1, and 1315, as described in this paragraph, have been submitted to the U.S. Environmental Protection Agency (EPA), and have not been disapproved by EPA.

21080(b)(17). If a thermal power plant is subject to California Environmental Quality Act (CEQA) and the State Energy Resources Conservation and Development Commission (California Energy Commission), or other public agency will act as lead agency for the plant, no additional CEQA analysis is required of the creation or use of Priority Reserve offset credits by such power plants pursuant to South Coast Air Quality Management District (District) Rule 1309.1, as amended August 3, 2007, if all of the following requirements are satisfied:

- (i) District rules include the requirements and prohibitions specified in Section 21080(b)(16)(i) and (ii);
- (ii) The power plant emissions comply with the requirements for best available control technology, air quality modeling impacts, toxics impacts, and emissions levels as specified in District Rule 1309.1 as amended August 3, 2007;
- (iii) The power plant has entered into long-term contracts with Southern California Edison Company, San Diego Gas and Electric Company, or the state of California to provide electricity in Southern California or is a municipal-owned power plant designed and constructed not to exceed its native demand load projections, or otherwise, as specified in District Rule 1309.1;
- (iv) The District accounts for the power plants' use of Priority Reserve offset credits pursuant to this paragraph as part of its state implementation plan submissions, and demonstrates that such use will not interfere with attainment or maintenance of ambient air quality standards;

(v) Rule 1309.1 as amended August 3, 2007, and Rule 1315, as adopted September 6, 2006, and re-adopted August 3, 2007, have been submitted to the U.S. Environmental Protection Agency (EPA) and have not been disapproved by EPA;

(vi) The California Energy Commission has conducted a needs assessment which has determined that the thermal power plant is reasonably necessary to meet future energy needs in Southern California or the District;

(vii) The power plant pays a mitigation fee for Priority Reserve offset credits obtained which shall be at minimum the amount set forth in District Rule 1309.1 as amended August 3, 2007. The District Board may by rule amendment, after a public hearing, increase such fees without affecting the applicability of section 21080(b)(17). The District shall, to the extent technically and economically feasible, use such mitigation fees to mitigate emissions of the relevant pollutant or its precursors in the area impacted by emissions from the power plant, with a minimum of one third to be used for installation of renewable or alternative sources of energy, except that up to 10% may be used by the District for administration of the mitigation program.

SEC. 2

Due to unique circumstances concerning the South Coast Air Quality Management District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 3

This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to a state court CEQA decision, the South Coast Air Quality Management District is unable to issue over a thousand pending permits which are either exempt from offset requirements or qualified to use offset credits from the District's "Priority Reserve."

Among these projects are those such as projects for equipment replacement or relocation, projects which would reduce emissions, essential public services such as hospitals, schools, landfills, and sewage treatment plants, renewable energy projects, and small sources, including small businesses that are unable to locate or afford credits on the open market. It is expected that as time goes on, many other similar projects will have to be placed on hold, or will have to withdraw their applications or not submit any applications to the District, if legislative action is not taken, resulting in significant harm to the economy and jobs. In addition, the District is unable to issue credits from its Priority Reserve to thermal power plants that are necessary to meet the current and future projected electricity needs of the region, to prevent blackouts during peak demand periods, to allow existing power plants to eliminate reliance on once-through cooling and the existing aged higher emitting and less efficient power plants be replaced with new cleaner and more efficient power plants, and to provide necessary peaking power to support increased reliance on renewable energy as will be required by AB32 and other state efforts to reduce greenhouse gases. This legislation will allow such permits to be issued, but will not exempt the projects from CEQA.