

AMENDED IN ASSEMBLY SEPTEMBER 12, 2009

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

SENATE BILL

No. 450

Introduced by Senator Lowenthal

February 26, 2009

An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District; ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 450, as amended, Lowenthal. South Coast Air Quality Management District: CEQA: permits.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air

contaminants are banked prior to use. The South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would authorize the district to issue permits ~~under specified circumstances~~, *in compliance with specified rules promulgated by the district*, notwithstanding this court decision. The provisions of the bill would be repealed on May 1, 2012.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

~~(3) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) As a result of the superior court decision in *Natural*
4 *Resources Defense Council v. South Coast Air Quality*
5 *Management District* (Super. Ct. Los Angeles County, 2007, No.
6 BS 110792) holding that the South Coast Air Quality Management
7 District (district) violated the requirements of the California
8 Environmental Quality Act (CEQA) (Division 13 (commencing
9 with Section 21000) of the Public Resources Code) in the
10 promulgation of certain district rules, the district is unable to issue
11 over a thousand pending permits that rely on the district's internal
12 offset bank to offset emissions.

13 (b) The district may also have to set aside several thousand
14 permits that were previously issued in reliance on the district's
15 internal offset bank.

16 (c) Prompt legislative action is necessary as an interim measure;
17 otherwise projects will be stopped from going forward or frozen
18 in place, representing significant losses to the economy and the
19 loss of numerous well-paying jobs.

1 (d) Nothing in the case described in subdivision (a) requires the
2 setting aside of any permit issued by the South Coast Air Quality
3 Management District to any essential public service, that relied on
4 Rule 1309.1, nor any permit that relied on Rule 1304, between
5 September 8, 2006, and November 3, 2008.

6 (e) *It is the intent of the Legislature that the district process the*
7 *permits of essential public services first when issuing permits*
8 *pursuant to Section 40440.13.*

9 SEC. 2. Section 40440.13 is added to the Health and Safety
10 Code, to read:

11 40440.13. (a) Notwithstanding the decision of the court in
12 Natural Resources Defense Council v. South Coast Air Quality
13 Management District (Super. Ct. Los Angeles County, 2007, No.
14 BS 110792), the south coast district may issue permits in reliance
15 on, and in compliance with, south coast district Rule 1304, as
16 amended on June 14, 1996, and Rule 1309.1, as amended May 3,
17 2002, ~~for essential public services, as defined in subdivision (m)~~
18 ~~of Rule 1302, as amended December 6, 2002. 2002.~~

19 (b) Nothing in this section affects the decision in the case
20 described in subdivision (a) concerning the adoption, readoption,
21 or amendment, or environmental review, of south coast district
22 Rule 1315.

23 (c) In implementing subdivision (a), the south coast district shall
24 rely on the emission reduction credit tracking system used prior
25 to the adoption of Rule 1315, until a new tracking system is
26 approved by the United States Environmental Protection Agency
27 and is in effect, at which point that new system shall be used by
28 the south coast district in implementing subdivision (a). The south
29 coast district shall make information concerning the credits, and
30 the tracking of these credits, available to the public.

31 (d) This section shall remain in effect only until May 1, 2012,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before May 1, 2012, deletes or extends that date.

34 SEC. 3. The Legislature finds and declares that a special law
35 is necessary and that a general law cannot be made applicable
36 within the meaning of Section 16 of Article IV of the California
37 Constitution because of unique circumstances concerning the South
38 Coast Air Quality Management District.

39 ~~SEC. 4. This act is an urgency statute necessary for the~~
40 ~~immediate preservation of the public peace, health, or safety within~~

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 Due to the court decision in Natural Resources Defense Council
4 v. South Coast Air Quality Management District (Super. Ct. Los
5 Angeles County, 2007, No. BS 110792), the South Coast Air
6 Quality Management District is unable to issue over a thousand
7 pending permits that are either exempt from offset requirements
8 or qualified to use offset credits from the district's Priority Reserve
9 and is required to set aside thousands of permits already issued.
10 Therefore, in order to allow the district to issue permits in an
11 expeditious manner as an urgent interim measure, it is necessary
12 that this act take effect immediately.