



# CITY OF CARSON

## PLANNING COMMISSION STAFF REPORT

NEW BUSINESS CONSENT: April 14, 2009

SUBJECT: Extension of Time for Conditional Use Permit No. 616-06

APPLICANT/OWNER: BP West Coast Products, LLC  
Attention: Walter Neil  
2350 East 223<sup>rd</sup> Street  
Carson, CA 90810

REQUEST: A one-year time extension for Conditional Use Permit No. 616-06 for the construction of two 260-foot diameter covered external floating roof tanks to store crude oil on approximately 28 acres at the BP Carson Crude Terminal (CCT).

PROPERTY INVOLVED: 1150 East Sepulveda Boulevard

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### COMMISSION ACTION

Concurred with staff

Did not concur with staff

Other

### COMMISSIONERS' VOTE

AYE	NO		AYE	NO	
		Chairperson Faletogo			Cannon
		Vice-Chair Saenz			Gordon
		Brimmer			Graber
		Brown			Verrett

## I. Introduction

The applicant, BP West Coast Products, LLC, is requesting a one-year extension for Conditional Use Permit No. 616-06, pursuant to Condition No. 1 of Planning Commission Resolution No. 08-2197. The property is located at 1150 East Sepulveda Boulevard and is zoned MH (Manufacturing, Heavy). The item was originally scheduled for the March 24, 2009 Planning Commission meeting.

## II. Background

On March 25, 2008, the Planning Commission approved Conditional Use Permit No. 616-06, for the construction of two 260-foot diameter covered external floating roof tanks to store crude oil on approximately 28 acres at the BP Carson Crude Terminal (CCT). The proposed project includes the installation of supporting piping and ancillary equipment. The conditional use permit became effective on March 25, 2008.

## III. Analysis

As a result of a recent court decision, the Air Quality Management District (AQMD) is required to make significant changes to its permitting program. This change prevents AQMD from issuing permits for new construction, modification, replacement and relocation of equipment that increases air pollution.

Because the proposed tanks are subject to AQMD regulations, the applicant is currently unable to obtain AQMD approval. According to the applicant's letter dated March 11, 2009, the applicant proposed to use "offset" emission credits via the existing site tank farm operation. However, the court's ruling has impacted the project and the applicant's "Authority to Construct" permit requested from the AQMD has been held up indefinitely.

Due to pending AQMD approval, the applicant requests approval of a one-year time extension for Conditional Use Permit No. 616-06 until March 24, 2010.

## IV. Recommendation

That the Planning Commission:


- **APPROVE** the extension of time for Conditional Use Permit No. 616-06 until April 14, 2010; and
- **ADOPT** a minute resolution extending the approval to April 14, 2010.


## V. Exhibits

1. Letter dated March 11, 2009, from BP West Coast Products, LLC
2. Planning Commission Resolution No. 08-2197 adopted on March 25, 2008



Prepared by:   
Max Castillo, Assistant Planner

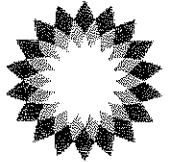
Reviewed by:   
John F. Signo, AICP, Senior Planner

Approved by:   
Sheri Repp-Loadman, Planning Division Manager

Mc/c61606\_BP\_FEIR\_extoftime\_p2



bp



BP West Coast Products LLC  
2350 E 223<sup>rd</sup> Street  
Carson, CA 90810

March 11, 2009

Max Castillo  
City of Carson Planning Division

**Extension Request CUP-616 – BP Crude Logistics Optimization Project (Crude Tanks)**

The attached two documents prepared by the South Coast Air Quality Management District (SCAQMD) describe the court decision that invalidates the SCAQMD practice of allowing the use of "priority reserve" or "offset" emissions for project permitting. The BP project has proposed to use "offset" emission credits via the existing site tank farm operation. This ruling has impacted the project and BP's "Authority to Construct" permit requested from the SCAQMD has been held up indefinitely.

BP requests an extension until the appeals process progresses and the new emissions management options are better understood. Estimates from the attachments imply a potential year delay or longer to resolve.

Sincerely,

Kevin Bradley

Attachments

SCAQMD Permit Moratorium Letter – final 01-08-09  
Fact Sheet on AQMD Permits - final 01-08-09

cc Walter Neil - BP



# 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.**

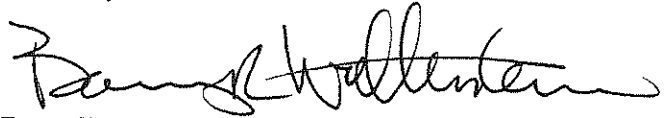
January 9, 2009

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](mailto: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 PM<sub>10</sub> (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](mailto:permitmoratorium@aqmd.gov).*



**CITY OF CARSON**  
**PLANNING COMMISSION**  
**RESOLUTION NO. 08-2197**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF CARSON APPROVING CONDITIONAL USE PERMIT  
NO. 616-06 FOR THE CONSTRUCTION OF TWO PETROLEUM  
STORAGE TANKS TO AN EXISTING TANK FARM LOCATED  
AT 1150 EAST SEPULVEDA BOULEVARD.**

**THE PLANNING COMMISSION OF THE CITY OF CARSON, CALIFORNIA, HEREBY  
FINDS, RESOLVES AND ORDERS AS FOLLOWS:**

**Section 1.** An application was duly filed by the applicant, BP West Coast Products, LLC, with respect to real property located at 1150 East Carson Street as described in Exhibit "A" attached hereto, requesting the approval of two 260-foot diameter covered external floating roof tanks and supporting piping, pumps, and ancillary equipment to store crude oil on approximately 28 acres at the BP Carson Crude Terminal (CCT). A Conditional Use Permit is required for the construction and operation of petroleum storage tanks. The subject property has a General Plan land use designation of Heavy Industry and is zoned MH (Manufacturing, Heavy).

A public hearing was duly held on March 25, 2008, at 6:30 P.M. at the Carson City Hall Council Chambers, 701 East Carson Street, Carson, California. A notice of time, place and purpose of the aforesaid meeting was duly given.

**Section 2.** Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid meeting.

**Section 3.** Pursuant to CMC Section 9141.1, a Conditional Use Permit is required for the construction and operation of a petroleum tank farm in an MH zone. Pursuant to Section 9172.21 (D), the Planning Commission finds that:

- a) The subject property is located within a heavy industrial area. The petroleum storage tanks are consistent with the General Plan Land Use Designation of Heavy Industrial and the MH (Manufacturing, Heavy) zone. The proposed petroleum storage tanks will be consistent with the surrounding heavy industrial uses and is appropriate for the subject property as proposed.
- b) The size of the site is adequate to support the proposed use and all associated piping, pumps, and ancillary equipment. The new tanks will be located on a 28 acre portion of the existing tank farm and will be adequately setback from the roadway. Utilities, including electricity, telephone lines, water, and sewer will be adequately provided.
- c) The project site will have adequate site renovations to assure the convenience and safety of operation vehicles. Vehicular ingress and egress is located on Sepulveda Boulevard on the northern part of the property. Regional access is located to the north on the 405 Freeway via Wilmington Avenue, and to the east on the 710 Freeway via Sepulveda Boulevard. Minimal vehicle trips are expected from the proposed project since much of the product will be transported via underground piping. Furthermore, the property is located near several streets designated as truck routes in the City's General Plan including Sepulveda Boulevard, Wilmington Avenue, and Alameda Street.



- d) An environmental impact report (EIR) has been prepared to disclose potential significant effects that may be generated by the proposed project. The EIR concluded that the proposed project would result in a significant effect for one category, short-term construction related air quality, which cannot be reduced to a less than significant level with mitigation and would be considered significant and avoidable. A Statement of Overriding Considerations and Findings of Fact have been prepared to support the approval of the Conditional Use Permit.
- e) Landscaping improvements will be required along the perimeter wall facing Sepulveda Boulevard and Wilmington Avenue as to soften the industrial appearance as well as screen the operation.

**Section 4.** The Planning Commission further finds that the proposed 2 petroleum storage tanks and related piping, pumps, and ancillary equipment is subject to the provisions of the California Environmental Quality Act (CEQA). An environmental impact report (EIR, State Clearinghouse No. 2007011016) was prepared pursuant to Section 15161 of the CEQA Guidelines to analyze and disclose potential environmental effects associated with construction and operation of the proposed project. The EIR also identified possible ways to minimize the significant impacts (referred to as mitigation) and evaluated reasonable alternatives to the project. The Planning Commission, as the Lead Agency, has reviewed and considered the information in the EIR, determines that the EIR reflects the independent judgment and analysis of the Planning Commission. The Planning Commission hereby certifies the EIR based upon the findings of fact, and adopts the Statement of Overriding Considerations and the Mitigation Monitoring Program.

**Section 5.** Based on the aforementioned findings, the Planning Commission hereby approves Conditional Use Permit No. 616-06 with respect to the real property described in Section 1 hereof, subject to the conditions set forth in Exhibit "B" attached hereto.

**Section 6.** The Secretary shall certify to the adoption of the Resolution and shall transmit copies of the same to the applicant.

**Section 7.** This action shall become final and effective fifteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of the Carson Zoning Ordinance.

**PASSED, APPROVED AND ADOPTED THIS 25<sup>th</sup> DAY OF MARCH, 2008.**

\_\_\_\_\_  
**CHAIRMAN**

ATTEST: \_\_\_\_\_  
**SECRETARY**