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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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10 (caption continued on next page)

11 IN THE U.S. DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 NATURAL RESOURCES DEFENSE
14 COUNCIL, INC., a non-profit corporation;
15 COMMUNITIES FOR A BETTER
16 ENVIRONMENT, a California non-profit
17 corporation; COALITION FOR A SAFE
18 ENVIRONMENT, a California non-profit
19 corporation; and DESERT CITIZENS
20 AGAINST POLLUTION, a California non-
21 profit corporation;

19 Plaintiffs,

20 v.

21 SOUTH COAST AIR QUALITY
22 MANAGEMENT DISTRICT;
23 GOVERNING BOARD OF THE SOUTH
24 COAST AIR QUALITY MANAGEMENT
25 DISTRICT; and BARRY WALLERSTEIN,
Executive Officer;

25 Defendants.

Case No: TBD

CV08-05403 GW PLAx

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF UNDER 42
U.S.C. § 7604(a)**

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1 Plaintiffs Natural Resources Defense Council, Inc. (“NRDC”), Coalition for a Safe
2 Environment (“CFASE”), Desert Citizens Against Pollution (“DCAP”), and
3 Communities for a Better Environment (“CBE”) (collectively “Plaintiffs”) bring this
4 action under the citizen suit provision of the Clean Air Act (42 U.S.C. § 7604(a)) to
5 enforce the Clean Air Act and to protect air quality in the South Coast Air Basin.
6 Plaintiffs allege as follows:

7 NATURE OF ACTION

8 1. This Clean Air Act (“CAA” or “Act”) citizen suit challenges the validity
9 of emission reduction credits (“credits” or “offsets”) accumulated in and distributed
10 from “offset accounts” managed by the South Coast Air Quality Management District,
11 the Governing Board of the South Coast Air Quality Management District, and the
12 Executive Officer, Barry Wallerstein, in his official capacity (collectively
13 “SCAQMD” or “Defendants”). Credits from SCAQMD’s offset accounts violate
14 CAA requirements that credits be real, surplus, enforceable, quantifiable, and
15 permanent. Those credits are, therefore, invalid. Nevertheless, SCAQMD has
16 distributed and sold these invalid credits to countless polluting facilities for almost
17 two decades, introducing unlawful pollution into the South Coast Air Basin (“Basin”).
18 The Basin includes all of Orange County and significant portions of Los Angeles,
19 Riverside, and San Bernardino Counties.

20 2. This case challenges Defendants’ violations of the Act, 42 U.S.C. §
21 7503(c), its implementing regulations and guidance, and corresponding SCAQMD
22 rules (hereinafter “Rules”) in California’s State Implementation Plan (“SIP”), all of
23 which require new or modified facilities to fully offset their emissions with *valid*
24 emission reductions or credits.

25 JURISDICTION AND VENUE

26 3. This Court has subject matter jurisdiction over the claims presented in
27 this Complaint pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42
28 U.S.C. § 7604(a) (CAA citizen-suit provision). The relief sought is authorized by 28

1 U.S.C. § 2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief).

2 4. Venue is proper in the Central District of California under 28 U.S.C. §
3 1391 because (1) Plaintiffs are bringing this action against a local agency that is a
4 legal resident of the Central District and against its officers acting in their official
5 capacities and under the color of legal authority; (2) no real property is involved in
6 this action; and (3) a substantial part of the events giving rise to Plaintiffs' claims
7 occurred here.

8 5. On April 1, 2008, Plaintiffs provided notice of SCAQMD's CAA
9 violations and of Plaintiffs' intent to sue by certified mail to the South Coast Air
10 Quality Management District, the Governing Board of the South Coast Air Quality
11 Management District, and Barry Wallerstein, as required by 42 U.S.C. § 7604(b).
12 Plaintiffs also provided notice to the U.S. Environmental Protection Agency ("EPA")
13 in Washington D.C. and at its local headquarters, to the California Air Resources
14 Board, and to the California Attorney General, in addition to other parties. A copy of
15 the notice is attached as Exhibit A and incorporated by reference herein.

16 6. More than 60 days have elapsed since Plaintiffs provided notice to
17 Defendants, but Defendants remain in violation of the Act. Neither EPA nor the
18 California Air Resources Board has commenced or is diligently prosecuting a civil
19 action in a court of the United States or a State pursuant to 42 U.S.C. § 7604(b)(1)(B)
20 to require that SCAQMD remedy its violations of the Act.

21 7. Plaintiffs and their members and constituents are adversely affected or
22 aggrieved by SCAQMD's distribution and sale of invalid emission reduction credits,
23 and the interests of Plaintiffs and their members and constituents are directly and
24 significantly harmed by Defendants' continuing violations of law. The relief
25 requested will redress those injuries.

26 8. Plaintiffs have no adequate remedy at law. Defendants' past and
27 continuing failure to comply with federal law results in irreparable harm to the
28 residents of the Basin, including Plaintiffs' members and constituents, as well as to the

1 environment. No monetary damages or other legal remedy can adequately
2 compensate Plaintiffs, their members and constituents, or the public for this harm.

3 **PARTIES**

4 9. Plaintiff Natural Resources Defense Council, Inc. ("NRDC") is a national
5 environmental advocacy group organized as a not-for-profit membership corporation
6 under the laws of the State of New York. NRDC is registered to do business in
7 California and maintains offices in San Francisco and Santa Monica. NRDC is
8 dedicated to the preservation, protection, and defense of the environment and actively
9 pursues effective enforcement of air quality rules and regulations and the reduction of
10 air pollution in southern California on behalf of its members. NRDC has
11 approximately 650,000 members nationwide, over 100,000 of whom reside in the
12 State of California.

13 10. Plaintiff Coalition for a Safe Environment ("CFASE") is a not-for-profit
14 membership corporation organized under the laws of the State of California. CFASE
15 is dedicated to environmental justice, public health and public safety, and the
16 reduction, elimination, and mitigation of air, land, and water pollution. CFASE
17 actively pursues the reduction of air pollution in southern California and effective
18 enforcement of air quality laws and regulations.

19 11. Plaintiff Desert Citizens Against Pollution ("DCAP") has worked on air
20 pollution and related issues since its formation in 1986. DCAP works with several
21 coalitions to fight air pollution and challenges decisions by federal, state, and local
22 governments that exacerbate air quality problems in California.

23 12. Plaintiff Communities for a Better Environment ("CBE") is a California
24 not-for-profit public benefit corporation that strives to bring about environmental
25 justice by empowering underrepresented communities. Founded in 1978, CBE
26 organizers, researchers, and lawyers work with community members in low income
27 communities of color to fight pollution. CBE's members in the South Coast Air Basin
28 suffer the cumulative impacts of air pollution that Defendants allow to be emitted in

1 and around their communities.

2 13. Members of Plaintiff organizations live, work, raise their families, and
3 recreate in the Basin. They are adversely affected by exposure to levels of air
4 pollution that exceed the national health-based ozone and particulate matter standards
5 established under the Act. The adverse effects of such pollution include actual or
6 threatened harm to their health, their families' health, their professional, educational,
7 and economic interests, and their aesthetic and recreational enjoyment of the
8 environment in the Basin.

9 14. The CAA violations alleged in this Complaint have injured and continue
10 to injure the interests of Plaintiff organizations and their members. Members of each
11 of the Plaintiff organizations live, work, and recreate in areas that are and would be
12 affected by the unlawful emissions. These members are concerned that they will
13 continue to suffer the direct, indirect, and cumulative negative health impacts of
14 breathing unlawful emissions that result from SCAQMD's reliance on invalid credits.
15 Unlawful emissions from the invalid credits interfere with their use and enjoyment of
16 outdoor activities and harm these members' health, economic, recreational, and
17 aesthetic interests. Granting the relief requested in this lawsuit would redress these
18 harms by compelling SCAQMD to reduce the air pollution that it has unlawfully
19 allowed to be emitted in the Basin. Every pound of pollution removed from the air
20 represents a gain for Basin residents' health.

21 15. Defendant South Coast Air Quality Management District is a local
22 governmental agency that implements federal and state air pollution laws in the South
23 Coast Air Basin. SCAQMD manages the New Source Review ("NSR") program for
24 the Basin and is responsible for ensuring the validity of any emission reduction credits
25 sold to air polluters in the Basin, including credits within SCAQMD's own accounts.

26 16. Defendant Governing Board of the South Coast Air Quality Management
27 District adopts regulations and policies for SCAQMD. The Governing Board is
28 responsible for ensuring that these regulations and policies comply with the Act. The

1 Governing Board must also ensure the validity of any emission reduction credits sold
2 to air polluters in the Basin, including credits within SCAQMD's own accounts.

3 17. Defendant Barry Wallerstein is the Executive Officer of the South Coast
4 Air Quality Management District and directs SCAQMD's operations, including the
5 NSR program. He is responsible for implementation of the Act and for ensuring the
6 validity of any emission reduction credits sold to air polluters in the Basin, including
7 credits within SCAQMD's own accounts. He is sued in his official capacity.

8 STATUTORY BACKGROUND

9 18. The Act requires that EPA promulgate National Ambient Air Quality
10 Standards ("NAAQS") for certain pollutants known as "criteria pollutants." 42 U.S.C.
11 § 7409. The "attainment and maintenance of [the NAAQS] ... [must be] requisite to
12 protect the public health" with "an adequate margin of safety." 42 U.S.C. § 7409(b).
13 EPA has established NAAQS for six pollutants: carbon monoxide, lead, nitrogen
14 dioxide, ozone, particulate matter, and sulfur dioxide. 40 C.F.R. pt. 50.

15 19. The Act directs EPA to designate all air basins in the country as
16 "attainment" or "nonattainment" areas, depending on whether a basin meets the
17 NAAQS for a particular pollutant. 42 U.S.C. § 7407(d).

18 20. Within the nonattainment designation, the Act further divides basins into
19 "moderate" and "serious" classifications for carbon monoxide and particulate matter.
20 42 U.S.C. §§ 7512, 7513. For ozone, the Act has created several nonattainment
21 classifications: marginal, moderate, serious, severe, and extreme. 42 U.S.C. § 7511.
22 The Basin has been consistently designated a nonattainment area for ozone, and due to
23 its continuing inability to identify measures that would bring the Basin into
24 attainment, in June 2007 SCAQMD requested that the Basin's designation be
25 upgraded to "extreme" nonattainment. *See, e.g.*, SCAQMD Final 2007 Air Quality
26 Management Plan, Chapter 12 (June 2007). The Basin has also consistently been
27 designated a nonattainment area for particulate matter 10 microns in diameter or less
28 ("PM₁₀"), for which it is currently in "serious" nonattainment. *See, e.g.* Designations

1 and Classifications for Initial PM-10 Nonattainment Areas, 56 Fed Reg. 11101-11105
2 (Mar. 15, 1991); Reclassification of Moderate PM-10 Nonattainment Areas to Serious
3 Areas, 58 Fed. Reg. 3334 (Jan. 8, 1993). Until 2007, the Basin was also a
4 nonattainment area for carbon monoxide (“CO”). *See, e.g.*, Approval and
5 Promulgation of Implementation Plans and Designation of Areas for Air Quality
6 Planning Purposes: California, 72 Fed. Reg. 26718-26721 (May 11, 2007).

7 21. States must adopt plans that “provide[] for implementation, maintenance,
8 and enforcement of [the NAAQS] in each air quality control region (or portion
9 thereof) within such State.” 42 U.S.C. § 7410(a)(1). The Act requires that these
10 “State Implementation Plans” (“SIPs”) “include enforceable emission limitations and
11 other control measures, means, or techniques (including economic incentives such as
12 fees, marketable permits, and auctions of emissions rights), as well as schedules and
13 timetables for compliance, as may be necessary or appropriate to meet the applicable
14 requirements of this chapter.” 42 U.S.C. § 7410(a)(2).

15 22. In 1990, Congress enacted comprehensive amendments to the Act that
16 established detailed requirements for individual criteria pollutants and for different
17 classes of non-attainment areas (“1990 Amendments”). Under the 1990 Amendments,
18 all nonattainment areas are required to implement an NSR program. The 1990
19 Amendments allow states to adopt “economic incentive programs” as part of an NSR
20 program to ensure “reasonable further progress” toward attainment in non-attainment
21 areas. *See, e.g.*, 42 U.S.C. §§ 7410(a), 7501, 7503(a)(1)(A). In serious and severe
22 non-attainment areas that do not meet the Act’s emission reduction “milestones,”
23 market-based trading programs are one of three allowed methods for complying with
24 the Act. 42 U.S.C. § 7511a(g)(3). Market-based trading programs are required for
25 “extreme” non-attainment areas that do not meet the Act’s milestones. 42 U.S.C. §
26 7511a(g)(5).

27 23. Economic incentive programs may include emission offset trading
28 programs that require new sources to obtain credits for every pound of new pollution

1 that they propose to emit. Emission reduction credits, in theory, represent quantified
2 reductions of criteria pollutants and ozone precursors—CO, nitrogen oxides (NO_x),
3 PM₁₀, volatile organic compounds (VOCs), and sulfur oxides (SO_x)—that result from
4 the installation of new technology at, or shutdowns of, old polluting sources. As part
5 of its NSR program, SCAQMD has adopted a trading system through which all new
6 sources must obtain emission reduction credits before beginning construction. Thus,
7 no new emissions of the specified pollutants may occur in the Basin unless a facility
8 has obtained sufficient credits to offset its projected emissions.

9 24. The owner or operator of a new or modified major stationary source may
10 comply with any offset requirement for increased emissions of any air pollutant only
11 by guaranteeing emission reductions of that pollutant. Emission reductions must be,
12 by the time a new or modified source commences operation, in effect and enforceable
13 and shall assure that the total tonnage of increased emissions of the pollutant shall be
14 offset by an equal or greater reduction, as applicable, in the actual emissions of that
15 pollutant from the same or other sources in the area. Emission reductions otherwise
16 required shall not be creditable as emission reductions for purposes of any such offset
17 requirement. 42 U.S.C. § 7503(c).

18 25. Federal statutory law, regulations, and guidance documents identify and
19 clarify what constitutes a valid credit. *See* 42 U.S.C. § 7503(c); 40 C.F.R. pt. 51, app.
20 S; Emissions Trading Policy Statement: General Principles for Creation, Banking and
21 Use of Emission Reduction Credits, 51 Fed. Reg. 43814 (Dec. 4, 1986). Federally
22 enforceable SCAQMD regulations incorporated into the California SIP further
23 identify and clarify what constitutes a valid credit. *See* Approval and Promulgation of
24 Implementation Plan for South Coast Air Quality Management District, 61 Fed. Reg.
25 64291 (Dec. 4, 1996); SCAQMD Regulation XIII (including, but not limited to, Rules
26 1303(b)(2), 1306, and 1309(b)). A valid emission reduction credit must be *real*,
27 *surplus*, *enforceable*, *quantifiable*, and *permanent*. *See, e.g.*, 40 C.F.R. §§ 51.493,
28 51.852; SCAQMD Regulation XIII. Collectively, the requirements in this paragraph

1 shall hereafter be referred to as the “offset requirements.” A credit that fails to meet
2 the offset requirements is invalid.

3 26. “Real” means that an actual reduction in emissions occurred.

4 27. “Surplus” means that an emission reduction is not required for
5 compliance with a SIP, SIP-related program such as transportation conformity, other
6 State air quality program not covered by a SIP, or federal rule that focuses on reducing
7 precursors of criteria pollutants. 40 C.F.R. § 51.852; *see also* U.S. EPA, EPA-452/R-
8 01-001, IMPROVING AIR QUALITY WITH ECONOMIC INCENTIVE PROGRAMS 38-39, 172
9 (Jan. 2001).

10 28. “Enforceable” means that an emission reduction is independently
11 verifiable; program violations are defined; parties liable for violations can be
12 determined; the State and EPA maintain the ability to apply penalties and require
13 corrective action as necessary; citizens have access to all emissions-related
14 information obtained from the polluting source; citizens can file lawsuits against
15 sources for violations; and an emission reduction is practicably enforceable in
16 accordance with EPA guidance on practicable enforceability. *See* U.S. EPA, EPA-
17 452/R-01-001, IMPROVING AIR QUALITY WITH ECONOMIC INCENTIVE PROGRAMS 35-
18 36, 40 (Jan. 2001).

19 29. “Quantifiable” means that sources can reliably calculate the amount of
20 emissions and reductions that will occur during implementation of the program, and
21 replicate those calculations. The same method of calculating emissions should
22 generally be used to quantify emission levels both before and after the reduction. *See*
23 U.S. EPA, EPA-452/R-01-001, IMPROVING AIR QUALITY WITH ECONOMIC INCENTIVE
24 PROGRAMS 40-41 (Jan. 2001). In addition, the California SIP requires that emission
25 calculations for emission decreases from sources which are modified or removed from
26 service shall be the actual emissions reduced to the amount which would be actual if
27 current BACT were applied, in accordance with the procedure outlined in Rule
28 1306(c)(1)-(4) and (e).

1 services and small emitters) are “exempted” from securing credits on the open market
2 and, instead, receive credits from SCAQMD. Federal law and regulations require
3 SCAQMD to ensure that these facilities obtain the proper quantity of credits to satisfy
4 the Act’s offset requirements. 42 U.S.C. § 7503(c); 40 C.F.R. pt. 51, app. S; 51 Fed.
5 Reg. at 43814; 61 Fed. Reg. at 64291; SCAQMD Regulation XIII.

6 35. SCAQMD provides the aforementioned facilities access to credits under
7 Rules 1304 and 1309.1, which collectively establish SCAQMD’s offset accounts.
8 Those accounts contain credits for PM₁₀, CO, SO_x, and the ozone precursors (VOCs
9 and NO_x). The offset accounts purport to track credits and debits in the aggregate;
10 specific credits are not associated with specific emissions at a specific facility.

11 36. Under its NSR program, SCAQMD has a responsibility to demonstrate
12 the validity of credits distributed from its offset accounts. When a credit from the
13 offset accounts does not satisfy any one or more of the federal validity criteria (real,
14 surplus, enforceable, quantifiable, and permanent), SCAQMD, as the party that
15 generated and distributed the credit, has violated the Act and may be sued by any
16 citizen. 42 U.S.C. § 7604(a).

17 37. In addition, SCAQMD must continuously show that it has not given
18 away more credits than it possesses. In the aggregate, SCAQMD must demonstrate
19 that it: (1) maintains a sufficient quantity of valid credits to provide for the necessary
20 offsets required to meet the appropriate statutory offset ratio; and (2) mitigates
21 emissions from those sources which are exempt from offset requirements under Rule
22 1304 but are not exempt from federal regulation. 61 Fed. Reg. at 64291-64292.

23 38. The credits presently held in SCAQMD’s offset accounts come from a
24 variety of sources. Among these sources is SCAQMD’s state trading program, which
25 existed before the 1990 Amendments. When Congress amended the Act in 1990,
26 SCAQMD purportedly deposited credits from its state accounts into its new federal
27 NSR program accounts. Through NSR, SCAQMD sold and distributed these “pre-
28

1 1990 credits” to facilities from 1990 to the present. Most, if not all, of these credits,
2 however, are invalid, as explained below.

3 39. In the early ‘00s, EPA requested that SCAQMD provide records to
4 confirm the validity of its pre-1990 credits, but after investing more than 6,000
5 person-hours, SCAQMD was unable to provide the necessary verification for a
6 substantial portion of these credits. For many of the credits, SCAQMD offered no
7 documentation at all. Documentation, however, is required to meet the real, surplus,
8 enforceable, quantifiable, and permanent criteria of federal law, and thus many—if not
9 all—of SCAQMD’s pre-1990 credits violate the Act’s offset requirements.

10 40. The quantity of invalid emission reduction credits in SCAQMD’s offset
11 accounts is substantial. SCAQMD holds, or has held, in its offset accounts
12 approximately 53.94 tons per day of pre-1990 VOC credits, 1.88 tons per day of pre-
13 1990 NO_x credits, 10.36 tons per day of pre-1990 SO_x credits, 26.45 tons per day of
14 pre-1990 CO credits, and 31.83 tons per day of pre-1990 PM₁₀ credits (in total,
15 approximately 124.46 tons per day of pre-1990 credits) for which it does not have, and
16 may never have had, records and whose validity it cannot verify.

17 41. SCAQMD also holds, or has held, in its offset accounts approximately
18 38.46 tons per day of pre-1990 VOC credits, 23.92 tons per day of pre-1990 NO_x
19 credits, 8.04 tons per day of pre-1990 SO_x credits, 8.45 tons per day of pre-1990 CO
20 credits, and 2.67 tons per day of pre-1990 PM₁₀ credits (in total, approximately 81.54
21 tons per day of pre-1990 credits) for which it claims to have “some” records. Those
22 records are insufficient to establish the validity of the credits.

23 42. Even assuming that the approximately 2.67 tons per day of pre-1990
24 PM₁₀ credits for which SCAQMD claims to have some records are valid, the offset
25 accounts for PM₁₀ were depleted in or close to 1994. Despite the depletion of PM₁₀
26 credits, SCAQMD nevertheless distributed and continues to distribute non-existent
27 PM₁₀ credits from its offset accounts. Those invalid PM₁₀ credits distributed from
28 SCAQMD’s account are currently in use.

1 56. Under the SIP-approved Rule 1303 in SCAQMD Regulation XIII,
2 emission increases shall be offset by credits approved pursuant to Rule 1309.

3 57. Under the SIP-approved Rule 1309 in SCAQMD Regulation XIII, all
4 emission reduction credits shall be calculated pursuant to Rule 1306 and shall be “real,
5 quantifiable, permanent, federally enforceable, and not greater than the equipment
6 would have achieved if operating with current Best Available Control Technology.”
7 *See* SCAQMD Rule 1309(b)(4).

8 58. Under the SIP-approved Rule 1306 in SCAQMD Regulation XIII,
9 “emission decreases from sources which are modified or removed from service shall
10 be the actual emissions reduced to the amount which would be actual if current [Best
11 Available Control Technology] were applied.” *See* SCAQMD Rule 1306(c).

12 59. Plaintiffs are informed and believe, and on the basis of such information
13 and belief, allege that SCAQMD cannot demonstrate that credits in SCAQMD’s offset
14 accounts comply with the CAA offset requirements, including, but not limited to, the
15 surplus requirement and SCAQMD Regulation XIII. *See* SCAQMD Rule 1309(b)(4).

16 60. Plaintiffs are informed and believe, and on the basis of such information
17 and belief, allege that under Rules 1304 and 1309.1, SCAQMD distributed and sold to
18 polluting facilities invalid credits that were, and continue to be, used to emit unlawful
19 air pollution into the atmosphere in violation of SCAQMD Regulation XIII and offset
20 requirements. Any remaining credits in the offset accounts violate SCAQMD
21 Regulation XIII and offset requirements and cannot be relied upon to offset emissions.

22 61. SCAQMD contends that its credits comply with the Act and SIP-
23 approved requirements of SCAQMD Regulation XIII discussed herein; Plaintiffs
24 contend that the credits violate the Act and SIP-approved requirements of SCAQMD
25 Regulation XIII for the reasons stated above. Therefore, Plaintiffs seek the
26 declaratory and injunctive relief outlined in the prayer for relief, *infra*.

27 ///

28 ///

THIRD CLAIM FOR RELIEF
Request for Declaratory and Injunctive Relief
Violation of the Clean Air Act
Failure to Maintain Positive Account Balances to Ensure
Compliance with Offset Requirements
(42 U.S.C. § 7503(c) and 61 Fed. Reg. 64291-64292)

62. The allegations of Paragraphs 1 through 61 are incorporated herein by reference as if set forth in full.

63. As part of SIP approval, SCAQMD is required to track both emission credits and debits from its offset accounts to ensure that credits are equal to, or greater than, debits, resulting in a positive balance.

64. Plaintiffs are informed and believe, and on the basis of such information and belief, allege that approximately 124.46 tons per day of pre-1990 credits in SCAQMD's offset accounts violate the offset requirements—real, surplus, quantifiable, enforceable, and permanent—and no documents exist, and never have existed, to verify their validity. Approximately 81.54 tons per day of pre-1990 credits in SCAQMD's offset accounts violate the offset requirements because insufficient records exist to verify their validity. *See* 42 U.S.C. § 7503(c); 40 C.F.R. pt. 51, app. S; 51 Fed. Reg. at 43814; 61 Fed. Reg. at 64291; SCAQMD Regulation XIII. Consequently, SCAQMD has a negative balance in its offset accounts.

65. Because SCAQMD's account balances are negative, SCAQMD cannot demonstrate that in the aggregate it has or will provide for the necessary offsets required to meet the appropriate statutory offset ratio, in violation of the requirement outlined in 61 Fed. Reg. at 64291-64292.

66. Because SCAQMD's account balances are negative, SCAQMD cannot demonstrate that in the aggregate it will mitigate emissions from those sources exempted from offsets under Rule 1304 which are not exempt from federal regulation, in violation of the requirement outlined in 61 Fed. Reg. at 64291.

///

- 1 B. that SCAQMD is in violation of the Clean Air Act, implementing
2 regulations, and SCAQMD Regulation XIII for distributing invalid
3 emission reduction credits to polluting facilities in the South Coast
4 Air Basin under Rules 1304 and 1309.1;
5 C. that SCAQMD has a negative balance in its offset accounts for
6 VOC, NO_x, SO_x, PM₁₀, and CO; and
7 D. that SCAQMD fails to apply a tracking system that meets federal
8 requirements and ensures enforceability;

9 2. ISSUE a preliminary and/or permanent injunction directing SCAQMD

10 to:

- 11 A. cease distributing and remove invalid credits from its offset
12 accounts;
13 B. retire invalid credits from its offset accounts that are in use when
14 those facilities shut down, reduce emissions, or otherwise cease to
15 rely on the invalid credit;
16 C. quantify the total amount of unlawful emissions resulting from
17 SCAQMD's prior distribution and sale of invalid credits;
18 D. implement a program, subject to Plaintiffs' approval, that reduces
19 emissions in an amount equivalent to, or greater than, the
20 emissions that were unlawfully allowed by SCAQMD's
21 distribution and sale of invalid credits from its offset accounts;
22 E. reduce, to the maximum extent feasible, emissions in the same
23 communities, as defined by municipal district or subdivision
24 thereof, that hosted the unlawful emissions; and
25 F. adopt a tracking system that complies with the requirements of 42
26 U.S.C. § 7503(c) and 61 Fed. Reg. at 64291;

27 3. RETAIN jurisdiction over this matter until such time as SCAQMD has
28 complied with its duties under the CAA and the Court's injunction;

- 1 4. AWARD to Plaintiffs their costs of litigation, including reasonable
2 attorney and expert witness fees;
3 5. GRANT such additional relief as the Court may deem just and proper.
4

5 Dated: August 18, 2008

Respectfully submitted,

6 NATURAL RESOURCES DEFENSE
7 COUNCIL, INC.

8
9 By: 

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