

US EPA ARCHIVE DOCUMENT

United States Environmental Protection Agency, Region IX

Air Division

Technical Support Document

for

EPA's Notice of Proposed Rulemaking

for the

California State Implementation Plan

Ventura County Air Pollution Control District

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August 23, 1999

Agency Name:

Ventura County Air Pollution Control District (District), submitted the following rule:

Rule 37; Project XL; submitted July 30, 1999.

Rule Summary:

The California Air Resources Board, on behalf of the District, submitted to EPA for adoption into the applicable state implementation plan (SIP) Rule 37 - Project XL. Rule 37 is a site-specific regulation which applies only to the Imation Corp. facility and operations located in Camarillo, CA (Imation). Its primary intent is to regulate emissions of volatile organic compounds in accordance with the CAA and to facilitate implementation of an XL Project at Imation.

EPA is proposing SIP approval of Rule 37 under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. See 40 CFR part 51, appendix V, section 2.3. If the proposed revision is substantially changed in areas other than those identified in the proposed rulemaking, EPA will evaluate those changes and may publish another proposed rule. If no substantial changes are made other than those areas cited in the proposal, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by California and submitted formally to EPA for incorporation into the SIP. On August 23, 1999, EPA reviewed Rule 37 for completeness and found that the rule conforms to the completeness criteria in 40 CFR part 51, appendix V, section 2.3 (criteria for plans submitted explicitly for parallel processing).

The submitted rule authorizes Imation to implement a plantwide applicability limit (PAL) for reactive organic compounds (ROCs). The rule establishes conditions for setting, evaluating, renewing, and complying with the ROC PAL. The rule also establishes requirements for emission reduction credit (ERC) banking and offsetting under the PAL, applying control technology, conducting health risk assessments, and implementing any facility changes that are pre-approved in Imation's part 70 permit. Finally, the rule exempts Imation from District Rules 10 (Permits Required) and 26-26.10 (New

Source Review) for facility changes implemented in accordance with Rule 37.

Background

Rule 37 will facilitate Imation's implementation of a project developed under Project XL, an important EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—for "eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review's and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995).

Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection.

In Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance. The XL program is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be required to undertake changes on a nationwide basis. As part of this experimentation, EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. EPA may also modify rules that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first finding out whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, the Agency expects to adopt only a limited number of carefully selected projects. Pilot projects implemented under the Agency's XL initiative are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, such as sections 101(b) and 103 of the Clean Air Act. In some cases, as in this XL project, such experimentation requires an alternative regulatory approach that, while permissible under the statute, was not the one adopted by EPA historically or for general purposes.

The air quality planning requirements for nonattainment NSR are set out in part D of title 1 of the Clean Air Act. EPA has issued a "General Preamble" describing EPA's views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in parts C and D of title 1 of the Act. [See 61 FR 38249 (July 23, 1996)]. Upon final promulgation of those

regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

Section 110(a)(2)(C) of the Act requires state programs to institute a preconstruction review program, generally referred to as "minor NSR." VCAPCD's NSR program (See VCAPCD Rule 26) requires new source review permitting for "any new, replacement, modified, or relocated emissions unit which would have a potential to emit any . . . Reactive Organic Compounds." Such permitting under Rule 26 would typically require BACT for any ROC emissions (no threshold) and offsets for ROC emission increases at stationary sources with a PTE above 5 tpy. In order to provide Imation flexibility with regard to Rule 26, VCAPCD is proposing a source-specific SIP revision that will apply only to the operations at the Imation Camarillo facility. EPA is proposing to approve the source-specific SIP revision.

Rule Evaluation

Rule 37, which is only applicable to the operations at Imation Camarillo, is a critical element of the XL Project at Imation as it will ensure that operations at the Imation facility that are implemented in accordance with the XL project are not in conflict with federally enforceable SIP requirements.

Rule 37 would establish an alternative approach that would replace the VCAPCD New Source Review (NSR) program for certain new and modified emission sources at Imation. A key element of the rule, and this XL project, is the authorization of a plant-wide applicability limit (PAL) for volatile organic compounds (VOCs). The VOC PAL, a voluntary VOC emissions cap accepted by Imation, is based on actual facility emissions and provides Imation with the flexibility to add and modify emissions units below the PAL level without triggering traditional new source review requirements.

Rule 37 is comprised of several of the most critical terms and conditions from the Imation XL Final Project Agreement, a document that represents the intentions of all parties to the agreement but that is not legally enforceable. By incorporating these terms and conditions into a VCAPCD rule that the VCAPCD Board adopts and which is approved into the California SIP, the main tenets of the FPA will be made

enforceable by EPA, the State, and citizens. Rule 37 authorizes the establishment of a PAL at the Imation facility and requires the source to maintain VOC emissions below the level of the PAL, requires the source to meet strict control technology limits for facility modifications, institutes appropriate notification, record keeping, and reporting requirements, requires the source to follow specified procedures for adding new equipment or modifying existing equipment, and exempts specified Imation activities from VCAPCD Rules 10 (Permits Required) and 26 (New Source Review).

Rule 37 is limited in scope in that it only exempts Imation from Rules 10 and 26 for activities that are pre-approved by and specified in Imation's part 70 permit. Any activity that is not specified in their part 70 permit will remain subject to all existing District rules and regulations, including Rules 10 and 26.

EPA believes that such revision of the SIP on a source-specific basis for this XL Project is an appropriate exercise of regulatory flexibility. The control technology, procedural, and other requirements contained in the source-specific SIP revision, in conjunction with Imation's transfer of VOC emission reduction credits (ERCs) to the District, assure that any new construction or equipment modification allowed under the source's title V permit (in accordance with Rule 37) will result in environmental performance that is at least equivalent to what would be achieved under the existing SIP. A more detailed description of the contents of the proposed site-specific SIP revision is provided below.

Rule 37 would exempt Imation Camarillo from two District rules, however, a number of important requirements from these rules remain intact through their inclusion in the proposed SIP revision. For example, Imation would be exempt from the VCAPCD's NSR program, yet the requirement to apply appropriate control technology to equipment installed or modified at the facility has been carried over as a key element of Rule 37. Under the proposed revision, Imation would be required to conduct a Best Available Control Technology (BACT) analysis for new construction or modifications under this project and to apply new or additional controls (e.g., a thermal or catalytic oxidizer) if the existing controls at the facility did not qualify as BACT. Also, for HAP-emitting new or modified equipment, Rule 37 requires Imation to conduct a Toxics Best Available Control Technology (TBACT) analysis and apply identified controls if such controls are not already in

place. The BACT/TBACT requirement provides an assurance that any equipment that is modified or newly installed as part of this project at Imation Camarillo will have no less degree of emissions control than what it would have had under the VCAPCD's current SIP-approved NSR program.¹

Rule 37 also contains certain banking and offsetting provisions which are key to ensuring that activities at Imation will be carried out in a manner that is at least as environmentally protective as what would have been required under Rules 10 and 26. For example, Rule 37 requires that any emissions banking is done in accordance with the provisions of Rule 26. In addition, it requires Imation to provide offsets for collateral emissions of NO_x, SO_x, and PM from any air pollution control device. Rule 37 does not require offsets for ROC emission increases below the level of the ROC PAL. Offsets are not required for such emission increases because the ROC PAL is based on actual facility emissions so that any emissions increase below the PAL will not represent a net emissions increase. Rule 37 clearly provides that in the event that Imation proposes to increase ROC emissions above the PAL or actually exceeds the PAL, "then such emission increase shall be subject to Rule 26 and all other applicable federal, state and District regulations and requirements," including the Rule 26 offset requirements.

Another important element of Rule 37 is a requirement that Imation Camarillo conduct a tiered health risk assessment prior to implementing any project that would increase emissions of an existing HAP or result in the emission of a HAP not previously emitted by the facility. Moreover, the assessment must demonstrate that the aggregate risk from the facility, factoring in both the proposed new HAP emissions and

¹ Ventura's current SIP-approved NSR program was approved by EPA in the early 1980's. Ventura implements their NSR program according to updated rules (see District Rules 26-26.10) they have adopted in the last few years and that they have submitted to EPA for SIP approval. EPA is in the process of evaluating Ventura's current NSR rules (revision dated 1/13/98) for SIP approval and expects to proceed with a rulemaking in the upcoming months. As such, this document evaluates proposed Rule 37 against Ventura's current Rule 26, which is more stringent than their existing SIP-approved NSR program.

the existing HAP emissions, will not exceed specific human health risk trigger levels established by the VCAPCD. Although this requirement is not found in any of the SIP rules from which Imation Camarillo would be exempted (SIP rules address emissions of criteria pollutants and generally do not contain requirements targeted specifically at HAPs), the tiered health risk assessment is a requirement agreed to by all parties and is written in to the FPA for this project. Inclusion of the tiered health risk assessment requirement in Rule 37 makes it a condition that is enforceable by both EPA, the State, and citizens. In addition, it assures that emissions from any Project XL-related new construction or equipment modifications at Imation will result in risk levels that are acceptable under VCAPCD guidelines.

Rule 37 also contains a fairly detailed set of procedures that Imation Camarillo must follow in order to implement the pre-approved activities that are at the core of this XL project. These procedures are important because Imation will not be subject to the VCAPCD new source review permitting program for most new construction and equipment modifications at the facility. Under typical NSR permitting, Imation would be required to apply to the District for an Authority to Construct (ATC) and would negotiate with the District over the details of their proposed project, prior to moving forward with construction. Once constructed, Imation would then need to apply to the District for a Permit to Operate (PTO) the new equipment, once again negotiating with the District to reach agreement on the parameters of operation in order to assure that the equipment is operated in accordance with all applicable standards and regulations. The ATC and PTO approval processes would require a period of public and EPA notice and review.

The procedures in Rule 37 maintain some similar steps, but allow for a much more streamlined process leading to new construction, equipment modification, and operation by Imation Camarillo. The key elements of the procedures in Rule 37 are: a requirement for Imation to provide, through their Project XL-mandated monthly report, at least 30 days advance notification of any new construction or equipment modifications; requirements for VCAPCD approval of any tiered health risk assessment or BACT/TBACT analysis conducted pursuant to a proposed new construction or equipment modification (unless the facility's existing control device(s) represent BACT/TBACT and the estimated risk is over an order

of magnitude lower than the District's level of concern, approval of these analyses must be gained prior to commencement of any new construction or equipment modifications); a requirement to provide operating and engineering details to VCAPCD prior to commencing construction of certain new control devices; and a requirement for Imation to apply for minor modifications to their title V permit in specific instances where they have installed a new control device. These procedures will allow Imation to take advantage of the flexibilities inherent in this project, while ensuring that a sufficient amount of public notification and an adequate level of oversight by VCAPCD and EPA are still in place.

Documents included in the EPA docket for this review:

1. Submitted Rule 37;
2. Ventura County APCD Staff Report for Rule 37;
3. Imation Project XL Covenant, dated November 12, 1996;
4. Ventura County APCD Staff Report for Imation Covenant;
5. District Rule 10 (version 6/13/95);
6. District Rules 26-26.10 (version 1/13/98);
7. "Regulatory Reinvention (XL) Pilot Projects," EPA's solicitation of proposals and request for comment; 60 FR 27282, May 23, 1995;
8. "Regulatory Reinvention (XL) Pilot Projects," EPA's notice of modifications to project XL; 62 FR 19872, April 23, 1997.