

US EPA ARCHIVE DOCUMENT

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

#### **Subpart GG—New Mexico**

2. Subpart GG is proposed to be amended by adding § 52.1641 to read as follows:

#### **§ 52.1641 Federal Implementation Plan for Four Corners Power Plant, Navajo Nation.**

The Federal Implementation Plan regulating emissions from the Four

Corners Power Plant near Farmington, New Mexico is codified at 40 CFR 49.21.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[CA 229-0177; FRL-6433-9]

#### **Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Project XL Site-specific Rulemaking for Imation Corp. Camarillo Plant**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions, and are applicable only to the Imation Corp. facility in Camarillo, CA (Imation) as part of the EPA's Imation XL Project. See 64 FR 37785, July 13, 1999. By this document, EPA solicits comment on the proposed rule.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) and to facilitate implementation of the XL Project at Imation. Such implementation will result in superior environmental performance and, at the same time, provide Imation with greater operational flexibility.

EPA's final action on this proposed rule will incorporate the rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

**DATES:** Comments must be received on or before October 8, 1999.

**ADDRESSES:** *Comments.* Written comments should be submitted in duplicate to: David Albright, Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Docket.* A docket containing supporting information used in developing this rulemaking, including copies of the State submittal, the rule, and EPA's evaluation report of the rule

are available for public inspection and copying at U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA during normal business hours. Copies of the rule and related documents are also available for inspection at the following location: Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA.

**FOR FURTHER INFORMATION CONTACT:** David Albright, Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1627 or Daniel Reich, Office of Regional Counsel (RC-2-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1343. In addition, the proposed rule and supporting documents are also available on the world wide web at the following location: <http://www.epa.gov/ProjectXL>.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Applicability**

The rule being proposed for approval into the California SIP is Ventura County Air Pollution Control District, VCAPCD, Rule 37 "Project XL." This rule was submitted by the California Air Resources Board to EPA on July 30, 1999.

##### **II. Background**

The proposed California SIP revision is designed to implement a pilot 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). In addition, on April 22, 1997, EPA modified its guidance on Project XL, solicited new XL proposals, clarified EPA definitions, and described changes intended to bring greater efficiency to the process of developing XL projects. See 62 FR 19872 (April 22, 1997). The Imation XL Project was the subject of a recent **Federal Register** notice announcing the proposed implementation of the project, making available the proposed Final Project Agreement (FPA), and soliciting public comment on the FPA and the project overall. See 64 FR 37785, July 13, 1999.

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. 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 (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).<sup>1</sup> The rule establishes conditions for setting, evaluating, renewing, and complying with the VOC 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.

### III. EPA Evaluation and Proposed Action

The proposed SIP revision would establish an alternative approach that would replace the VCAPCD New Source Review (NSR) program for new and modified emission sources at Imation. The SIP revision, which is only applicable to the operations at Imation, is a critical element of the Imation XL Project 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.

The proposed SIP revision is comprised of several of the most critical terms and conditions from the proposed Imation Final Project Agreement (FPA), a document that represents the intentions of all parties to the XL Project 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 SIP, the main tenets of the FPA will be made enforceable by EPA, the State, and citizens. A key element of the proposed SIP revision, and the Imation XL project, is the authorization of a PAL for volatile organic compounds (VOCs). The VOC PAL, a voluntary VOC emissions cap accepted by Imation, is based on actual emissions and provides Imation with the flexibility to add and modify emissions units below the PAL level without triggering traditional new source review requirements. The proposed revision also institutes several unique requirements and procedures for operations at the facility, and exempts specified Imation activities from two existing VCAPCD rules—Rule 10 (Permits Required) and Rule 26 (New Source Review).

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 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 emissions above 5 tpy. In order to provide Imation flexibility with regard to Rule 26, EPA is today proposing approval of this source-specific SIP revision that will apply only to the operations at Imation. The source-specific SIP revision would exempt Imation from the requirements of Rules 10 and 26, but require the source to keep their emissions below the VOC PAL, apply California BACT<sup>2</sup> for facility modifications, and follow specified procedures for adding new equipment or modifying existing equipment. The 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 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. EPA has prepared a Technical Support Document (TSD) for this proposed rulemaking which further describes the requirements of Rule 37 and EPA's evaluation of the rule. The TSD is available as described in the

**ADDRESSES and FOR FURTHER INFORMATION CONTACT** sections of this document.

EPA is proposing to approve the site-specific California SIP revision for Imation, which was submitted on July 30, 1999. This proposed plan revision is not intended to address any outstanding issues with the Ventura County APCD NSR program that will be the subject of a future EPA rulemaking on District Rule 26. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action. Copies of the proposed site-specific SIP revision and EPA's evaluation of the revision are available in the docket for today's action and are also available on the world wide web at <http://www.epa.gov/ProjectXL>.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA and EPA regulations. Therefore, Ventura County APCD Rule 37—Project XL—is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to the relevant statutory and regulatory requirements.

### IV. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

#### B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute

<sup>1</sup> The VCAPCD term reactive organic compound "ROC" is functionally equivalent to EPA's term volatile organic compound "VOC." In this document, the terms "volatile organic compound" and "VOC" are used.

<sup>2</sup> CA BACT, as defined in VCAPCD rules, is equivalent to federally defined lowest achievable emissions rate (LAER).

and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA consults with those governments, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance

costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and

therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 24, 1999.

**David P. Howekamp,**

*Acting Regional Administrator, Region IX.*

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