

US EPA ARCHIVE DOCUMENT

Summary of Public Comments/EPA Responses on the Proposed Final Project Agreement (FPA) for the Imation XL Project

EPA received two sets of comments in response to the Imation XL Project "Notice of Availability" published in the Federal Register on July 13, 1999. The Notice of Availability described the Imation XL Project and solicited public comments on the proposed FPA and the project generally. EPA received comments from the Environmental Coalition of Ventura County and from Imation. These comments are summarized below with EPA's responses.

Comments from the Environmental Coalition (Pat Baggerly, dated August 11, 1999)

Issue #1: Meaningful public comment on the development of the FPA was stifled because the Stakeholder Group did not include an appropriate mix of community interests.

Response: *The initial Stakeholder Group included a range of organizations selected to represent various interests within Ventura County. Members included elected officials from throughout the county, the American Lung Association, and the environmental issues section of the League of Women Voters, as well as business interests. In addition, EPA has attempted to involve all interested parties, whether or not they were part of the initial Stakeholder Group, in the discussions and negotiations on the FPA during the three years since the original FPA precursor (Imation Covenant) was developed. In particular, EPA has provided drafts of the FPA on a regular basis to organizations and individuals who expressed a continued interest in the Project and has encouraged their review and comment. Also, in the last year, a local Stakeholder Committee was convened by the District to develop criteria to be used in determining a key stakeholder issue - the use of emission reduction credits (ERCs) donated to the District by Imation. The Committee included participants from the Sierra Club, Citizens to Preserve the Ojai, and the Environmental Coalition, in addition to representatives from local, state, and federal agencies, and local business interests.*

EPA remains committed to ensuring that opportunities for stakeholder participation in the implementation phase of the Imation XL Project are available for any interested person or organization. The FPA describes several opportunities for any interested party to participate in the implementation of the Project and EPA is confident that a robust stakeholder process will continue to be an integral part of the Imation Project.

Issue #2: Limited technical and no financial assistance was provided to non-profit stakeholders during the FPA development. Stakeholders need to have independent technical

assistance provided during project implementation and Imation should be required to provide a stipend for reasonable expenses (gasoline, lunch, time lost) for stakeholders to attend meetings and participate in a meaningful way.

Response: *EPA is committed to ensuring that opportunities for stakeholder participation in the implementation phase of the Imation XL Project are available for any interested person or organization. However, EPA does not think it is appropriate to require participants in the XL Program to provide a stipend or other financial compensation to stakeholders. None of the companies participating in EPA's Project XL are providing stakeholders with compensation for participation in meetings and related activities, and EPA does not believe that it is appropriate in this case either.*

As for technical assistance, EPA's Office of Reinvention has established a mechanism for a Project XL stakeholder group to receive up to \$25,000 in cases where the stakeholder group identifies a need for independent technical assistance. EPA has provided a grant to the Institute for Conservation Leadership (ICL) for this purpose. Project XL stakeholder groups apply directly to ICL for the grant funds and ICL makes an independent determination on the grant application. EPA believes this is a good mechanism for ensuring that technical support funds are available to Project XL stakeholder groups, and that decisions related to funding technical support requests are fair and impartial.

Issue #3: Explain how the Final Project Agreement will be enforced.

Response: *The FPA is not a legally enforceable agreement, but is a statement of the parties' commitments to the Imation XL Project. However, many of the terms and conditions in the FPA are being made enforceable by incorporating them into Ventura County Rule 37 (which is being proposed as a site-specific revision to the California State Implementation Plan) and/or into Imation's title V operating permit. For example, the VOC PAL and other criteria pollutant caps, the VOC capture and control standards, and all monitoring, recordkeeping, and reporting requirements from the FPA are being carried over into Imation's title V permit as specific, enforceable elements. Violation of any of these standards or requirements will be subject to penalties and injunctive relief.*

On the other hand, some provisions of the FPA reflect the commitments of all parties, but will not be made legally enforceable. For example, the FPA contains provisions requiring Imation to report the results of pollution prevention measures on an annual basis and to establish and implement an environmental management system. There are no federal, state, or local laws or regulations that require Imation to carry out these activities. Imation's XL commitments thus

provide for requirements that go beyond what Imation would have had to do outside of Project XL. EPA believes that there are strong incentives for Imation to meet the voluntary commitments contained in the FPA. First, there is the potential for the regulatory agencies to pull out of the XL agreement and return Imation to all otherwise applicable requirements if the FPA is not effective. Second, Imation's adherence to these voluntary commitments will be widely reported to the stakeholders, through monthly reports as well as in regular stakeholder meetings. The FPA is a statement of all of the parties' commitment, seriously undertaken, to proceed with this project. Legal enforceability is not the sole measure of the seriousness of the commitment.

Issue #4: Using the Ventura County APCD Hearing Board procedures for appealing decisions precludes public participation due to the high costs involved, without any assurance of recovering the money even if the appeal is upheld. Instead, Imation should provide for a new process by funding an unbiased, independent hearing officer, such as an Administrative Law Judge, to be the appeal hearing officer.

Response: *EPA agrees with the principle that if a person appeals a decision to the Hearing Board and the appeal has merit and is successful, then the successful appellant should receive a refund of the fees paid for the appeal. Although EPA is aware that in the past there may have been instances where a successful appellant did not receive a refund of appeal fees, VCAPCD Rule 41 (Hearing Board Fees) states that the Hearing Board may waive all or part of the fees associated with an appeal if the Hearing Board reverses the decision of the Air Pollution Control Officer in an appeal. Thus, EPA believes that the current District rule is sufficient to provide for fee refunds to successful appellants.*

The Environmental Coalition's comments on this issue primarily address the payment of hearing fees, but also questions the Hearing Board process generally. EPA does not agree that an entirely new appeal process should be established for this project. EPA believes that the District's Hearing Board is a neutral body, operating independently of the District staff, which is charged with adjudicating all appeals of District permitting decisions and that the Board should maintain that responsibility for any permit appeal under this project as well. Thus, the District's existing appeal procedures, in accordance with Rule 41 and all other relevant District rules and regulations, will remain applicable to this project. Moreover, EPA believes that for the types of issues that could potentially be raised in an appeal to the Hearing Board (e.g., a significant permit modification), there are existing federal appeal procedures pertaining to title V sources that will also remain in place. These federal procedures, which do not involve the payment of appeal fees, are in place to guarantee citizens' rights to appeal initial title V permits, significant permit modifications, and title V permit renewals.

- Issue#5: The Environmental Coalition included in their comments several excerpts taken from draft memoranda from the California Air Resources Board (CARB) to Ventura County APCD about District Rule 37. Rule 37 (Project XL) is the District's proposed SIP revision that is necessary to implement the Imation XL Project. Although the issues raised preliminarily by CARB on Rule 37 have been satisfactorily resolved, as evidenced by their August 9, 1999 "No Comment Letter" submitted by CARB to Ventura County APCD, EPA believes it is appropriate to address these issues and their resolution since the Environmental Coalition excerpted the key issues in their comments on the proposed Imation XL Project FPA. These issues are addressed in 5a through 5f below.
- Issue #5a: If Imation is going to have a plant-wide applicability limit (PAL) - one limit for the entire facility - then the District should provide a protocol or conditions for verifying compliance with the PAL because it is different from current facility-wide limits.
- Response: *EPA agrees that ensuring compliance with a plant-wide applicability limit (PAL) is different from ensuring compliance with a facility-wide limit comprised of numerous smaller, emission unit-specific limits. District Rule 37 - Project XL contains a requirement for Imation to maintain several types of records that are necessary for assuring compliance with the PAL. Imation's federally-enforceable title V operating permit also contains the necessary protocols and conditions for ensuring compliance with the PAL.*
- Issue #5b: Terms such as "collateral emissions," "tiered health risk assessment," and "pre-approved change" should be defined in Rule 37.
- Response: *The District added definitions for these three terms to Rule 37.*
- Issue #5c: Rule 37 allows any reduction in the ROC PAL to be considered an emission reduction eligible for banking, with the amount of the emission reduction calculated as the difference between the old PAL and the new PAL levels. This suggests that ERCs may be issued based on a reduction in potential to emit/allowable limit. If this is the case, it would not be in conformance with the District's Banking Rule 26.4, Subsection B(1) unless Imation were actually operating at their PTE/allowable limit.
- Response: *EPA agrees that banking emission reduction credits must be done in accordance with the District's Banking Rule. To clarify this, Rule 37 was modified to state that any emission banking shall be conducted pursuant to Rule 26, which contains the District requirements for banking emission reductions. Pursuant to Rule 26, if Imation applies to bank ERCs during the course of the project, the District will*

evaluate the banking request with respect to the actual facility emissions at the time of the request and the proposed reduction from that level, rather than with respect to the level of the PAL at the beginning of the project. To further clarify and ensure the enforceability of this rule requirement, the following statement is contained in Imation's title V permit:

If the permittee proposes to reduce the level of the PAL, any emission banking shall be conducted pursuant to Rule 26, New Source Review. Emission reduction credits shall be determined from emission reduction calculations using the definition of "actual emissions" in Rule 26, at the time of the banking request.

Issue #5d: Rule 37 is unclear as to what happens after the operator ceases an activity begun under a proposed change because the District did not approve the results of the health risk assessment. Should the operator be required to submit a control measure needed to mitigate and/or reduce the risk or simply abandon and never implement the proposal?

Response: *Yes, in such a case the operator may alter the design of the proposed change, notify the District, perform another health risk assessment, and begin the approval process again. Alternatively, the operator may choose to abandon the proposed project. The District's Staff Report on Rule 37 includes this explanation.*

Issue #5e: Rule 37 does not appear to require a new thermal oxidizer to be performance tested to assure it is meeting BACT/TBACT.

Response: *There are actually two requirements that are relevant to this issue. First, there is a requirement for the thermal oxidizer to meet the limit that is determined to be BACT/TBACT. Second, there is the requirement to conduct a performance test to ensure that the limit is being met. Rule 37 contains the following provision pertaining to a newly installed thermal oxidizer:*

Initial operation of the new equipment shall be in accordance with the initial operating conditions for the equipment that are contained in either the operator's Part 70 permit or the BACT/TBACT analysis, whichever is more stringent.

This rule provision, which has been incorporated into Imation's title V permit as a federally enforceable requirement, ensures that a new thermal oxidizer will need to meet at least the BACT/TBACT limit, and possibly a more stringent one.

The requirement to conduct a performance test demonstrating that the control device is meeting its mandated limit is also a federally enforceable requirement contained in Imation's title V permit.

Issue #5f: The FPA allows actual emissions to be defined as the highest consecutive 12 months of emissions during the past 10 years or since November 1990. If this definition is extended broadly it will reverse some of the progress made in emissions reduction in the past 10 years.

Response: *A preliminary draft of the FPA contained this definition of actual emissions, which EPA had proposed in its July 23, 1996 NSR Reform Proposed Rule. However, because the NSR rule has not been finalized, EPA decided that this definition of actual emissions should not be used for this project, even given the experimental nature of the project. Instead, EPA modified the FPA so that the current definition of "actual emissions" is being used for this project. (see 40 CFR 51.165(a)(1)(xii)(B))*

Issue #6: As part of their comments on the proposed Imation FPA, the Environmental Coalition submitted copies of three previous comment letters on the Imation XL Project: 1) September 11, 1996 letter to the Ventura County Air Pollution Control District Advisory Committee; 2) November 12, 1996 letter to the Ventura County Air Pollution Control Board; and 3) June 22, 1999 letter to the Ventura County Air Pollution Control District Advisory Committee.

Response: *EPA reviewed these three letters and believes that the primary issues raised in the letters are the same as those being raised in the Environmental Coalition's new comment letter on the FPA (dated August 11, 1999). EPA's responses to these issues are provided above.*

Comments from Imation Corp. (John F. Metzger, dated August 11, 1999)

Issue #1: Imation requested that several paragraphs in the FPA pertaining to the operational details of their Continuous Emissions Monitoring System using extractive Fourier Transform Infrared Spectrometry (FTIR-CEMS) be deleted and replaced by the following:

Quality assurance/quality control (QA/QC) and related operating requirements for the FTIR-CEMS used for monitoring VOC and HAP emissions will be stated in the Title V operating permit for the Camarillo facility.

Imation expressed a concern that the existing details in the FPA may not be consistent with the more refined operational details that Imation, the District, and EPA ultimately agree to for purposes of the facility's title V permit.

Response: *As noted in the response to Issue #3 above, the FPA is not a legally enforceable document. Rather, the requirements that Imation is legally responsible for are those contained in Rule 37 and/or Imation's title V permit. Thus, EPA agrees with the language change suggested by Imation for the FPA and will make the change accordingly. However, by this change EPA is not making an evaluation of the specific language that is being removed from the FPA, as to its appropriateness for the title V permit. The title V permit will contain QA/QC and other operational requirements for the FTIR-CEMS, whether it is these operational details being removed from the FPA or some other requirements that are deemed more appropriate. The public will have an opportunity to review the operational details for the FTIR-CEMS, and all other permit details, when the Ventura County APCD provides its 30-day public notice on the Imation permit.*