

Dated: September 10, 1999.

**David P. Howekamp,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 99-24843 Filed 9-22-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 217-0180; FRL-6442-8]

### Clean Air Act Approval and Promulgation of California State Implementation Plan for the San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revise the California State Implementation Plan (SIP) by approving rules from the San Joaquin Valley Unified Air Pollution Control District (District). EPA is proposing to approve these rules to meet new source review (NSR) requirements of the Clean Air Act, as amended in 1990 (CAA or Act), for areas that have not attained the National Ambient Air Quality Standards (NAAQS). The State submitted Rules 2020 and 2201 to satisfy these Federal requirements for an approvable NSR SIP. EPA evaluated Rules 2020 and 2201 based on CAA guidelines for EPA action on SIP submittals and general rulemaking authority.

**DATES:** Comments on this proposed action must be received in writing by October 25, 1999.

**ADDRESSES:** Comments must be submitted in writing to Ed Pike at the Region IX mailing address listed below. Copies of the rules and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permits Office (AIR-3), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, Central Region, 1990 E. Gettysburg Avenue, Fresno CA 93726

**FOR FURTHER INFORMATION CONTACT:** Ed Pike, (telephone 415/744-1211), Air Division (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or pike.ed@epa.gov.

#### SUPPLEMENTARY INFORMATION:

#### I. EPA Is Proposing to Approve District Rules 2020 and 2201

EPA is proposing to approve District Rules 2020 and 2201 into the California SIP. Rule 2020 was adopted by the District on September 17, 1998, and submitted to EPA by the California Air Resources Board (CARB) on October 27, 1998. Rule 2201 was adopted by the District on August 20, 1998 and submitted to EPA by CARB on September 29, 1998. This proposed approval does not include §§ 5.9 and 6.0 of Rule 2201, which specify requirements for title V operating permits. The title V requirements in Rule 2201 were addressed in EPA's April 24, 1996 rulemaking on the District's title V operating permits program (see 60 FR 55517 and 61 FR 18083), and the District has not submitted substantive changes to these sections of Rule 2201 since that approval.

The District is composed of Fresno County, a portion of Kern County<sup>1</sup>, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County. The eight former County air pollution management agencies merged to form the unified Valley-wide District in 1992. The District is designated as a serious nonattainment area for ozone and particulate matter less than ten microns in diameter (PM<sub>10</sub>). The District is designated attainment for the nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), and carbon monoxide (CO) NAAQS, although nitrogen oxides (NO<sub>x</sub>) and sulfur oxide (SO<sub>x</sub>) are regulated as precursors to other nonattainment pollutants. For the detailed area designations that apply to the District, please refer to 40 CFR 81.305. The CAA air quality planning requirements for nonattainment NSR are set out in part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165.

The District submitted Rule 2020, Permit Exemptions, and Rule 2201, New Source Review, to replace existing rules in the following SIPs: Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare

<sup>1</sup> This District includes the portion of Kern County described in District rule 1020 § 3.44 (adopted November 13, 1996).

County. As explained below, EPA has evaluated Rule 2020 and 2201 and has determined that they are consistent with the CAA. EPA regulations and EPA policy. Therefore, EPA is proposing to approve Rule 2020 and Rule 2201 under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), and part D of Title I of the Act. Please see the Technical Support Document for a complete list of the SIP NSR and Exemption rules that would be replaced.

This proposed approval will also supercede an obsolete requirement (see 40 CFR 52.232(a)(5), (6), (10), and (11)) to submit regulations meeting the EPA NSR requirements that existed at the time that these sub-sections were established in the 1980s. EPA is proposing to delete these requirements.

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a "General Preamble" describing EPA's preliminary 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 part D of Title I 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.

#### II. Summary of New Source Review Issues

##### A. Lowest Achievable Emission Rate

District rule 2201 (section 4) requires that sources meet the Lowest Achievable Emission Rate (LAER) as defined at 40 CFR 51.165(a)(1)(xiii) for: (1) Any new emission unit with the potential to emit two pounds or more per day; and (2) any existing unit with an increase in permitted emissions of two pounds or more per day. EPA has determined that the two lb/day requirement for LAER is as stringent as the source-wide applicability triggers in title I part D of the CAA. The CAA triggers range from 15 to 70 tons per year for non-attainment pollutants depending on the pollutant and whether the increase occurs at an existing major source.

District Rule 2201 uses the term "Best Available Control Technology" or "BACT" (rather than LAER) to define the emission limits required for new and modified emission units that exceed these District thresholds. Section 3.9 of District Rule 2201 defines BACT to require installation of all controls "achieved in practice" (section 3.9.1) or contained in a SIP unless the SIP limits are technologically infeasible (section 3.9.2). Therefore, the District's "BACT" definition is as stringent as the federal LAER definition at 40 CFR 51.165(a)(1)(xiii). The District confirmed, in a letter dated January 21, 1999, that the District BACT definition requires emissions controls as stringent as EPA's LAER definition.

#### *B. Offset Equivalency Tracking System*

The District has committed to demonstrate that its NSR rules will require offsets that are, in the aggregate, equivalent to federal non-attainment NSR program requirements. The District Governing Board adopted a resolution on August 20, 1998 that requires the District to show program-wide equivalency with federal offset requirements. As part of this demonstration, the District must calculate the quantity of offsets that would be required under federal non-attainment NSR regulations. The District must also calculate the quantity of offsets that meet all Clean Air Act requirements and are required under the District program. The resolution requires that the Air Pollution Control Officer propose amendments to the District NSR rule to correct any shortfall if the total quantity (as an annual aggregate) of offsets that meet all federal requirements is less than the total quantity required by federal regulation. EPA is proposing to approve the offset provisions of the District's NSR regulations based on this commitment and the District's August 24, 1999 agreement on implementing this offset equivalency tracking system. Failure to achieve equivalent offset reductions, or failure to implement the tracking system, would constitute grounds for future EPA rulemaking to require corrective rule amendments.

There are several differences between the District's program and federal offset requirements (offsets are generally referred to as "Emission Reduction Credits" in the District rules). The District rules require offsets for some new sources that do not exceed the federal major source thresholds for offsets (section 4.5 of Rule 2201). Once the potential to emit a source exceeds the District offset applicability thresholds, the source must provide

offsets for both non-major and major emission increases. In addition, ten percent of each credit issued under Rule 2201 is deducted for air quality improvement.

Rule 2201 also differs from federal requirements because it does not ensure that sources provide offsets that are surplus of all regulatory requirements at the time of use. The District rule only requires establishing that credits are surplus when they are generated. In addition, Rule 2201 allows some sources to determine offset applicability and quantities based on potential to emit. It also does not require that new major sources offset their full permitted emissions, as they are required to offset only the quantity of emissions that exceed the District offset trigger. Please see EPA's Technical Support Document (TSD) for additional information on the offset requirements of the District regulation.

EPA has determined that Rule 2201 is equivalent to federal offset requirements because the District's program will, overall, require that sources provide as many offsets meeting federal requirements as are required under federal regulations. The federal requirements for a valid offset program include ensuring that the reductions used to generate the credit are surplus (*i.e.* are not required by the Clean Air Act or otherwise relied on, such as in an attainment plan); are based on real reductions of actual emissions; and are quantifiable and permanent. The District has guaranteed that the tracking system will demonstrate equivalency each year.

EPA believes that it has discretion to approve this program based on the statutory language set forth in section 182(d)(2) of the Act, 42 U.S.C. 7511a(d)(2). The Act provides for offset program approval upon showing that the "the ratio of total emission reductions of VOCs to total increased emissions of such air pollutants shall be at least 1.3 to 1 \* \* \* ." The Act, therefore, allows EPA to approve a SIP program that is based on demonstrating that the total annual aggregated emissions offsets are equivalent to the federal offset requirement.

#### *C. Interpollutant Trading*

Rule 2201 allows for interpollutant trading to meet offset requirements (section 4.13.3). EPA expects that only trades between pollutants (including precursors) contributing to the same NAAQS will be allowed by the District. For instance, the rule states that interpollutant offsets between NO<sub>x</sub> and VOC may be allowed (section 4.13.3.4). The rule does not contain an

interpollutant offset ratio, but states that the Air Pollution Control Officer shall impose appropriate ratios based on an air quality analysis. The District submitted a letter on January 21, 1999 that commits to following EPA guidelines for setting appropriate trading ratios. In addition, the rule requires that the applicant demonstrate that the new or modified source will not cause or contribute to a violation of an Ambient Air Quality Standard (which is defined to include all NAAQS; see sections 3.6 and 4.13.3). Therefore, EPA is proposing to approve this provision of the District rule.

#### *D. Pollution Control Project Exemption*

District Rule 2201 contains an exemption from BACT (*i.e.* EPA LAER) and offsets for "an emission control technique performed solely for the purpose of compliance with the requirements of District, State or Federal air pollution control laws, regulations, or orders" if certain additional qualifications listed in sections 4.2.3 and 4.6.8 are met. EPA's July 1, 1994 guidance entitled "Pollution Control Projects and New Source Review (NSR) Applicability" allows the District to exempt qualifying pollution control projects from certain NSR requirements, including BACT or LAER. The District rule states that the project cannot cause or contribute to a violation of a NAAQS, PSD increment, or an Air Quality Related Value, as required by EPA's policy. The District submitted a letter on January 21, 1999 confirming that the District Rule also excludes replacement or reconstruction of an emission unit as required by EPA's policy. In addition, the District's exemption excludes projects that would result in a significant emission increase of collateral pollutants to ensure that all significant emission increases are mitigated. Therefore, EPA has determined that District rule 2201 is consistent with the requirements of EPA's 1994 guidance and is proposing to approve this exemption. If the District implements Rule 2201 in a manner inconsistent with the 1994 guidance and January 21 letter, EPA may require compliance with the NSR requirements of the SIP and conduct rulemaking to require corrective rule amendments.

#### *E. Removing Conditions Established by Prior NSR SIP Approvals*

In addition to our proposed approval of District Rules 2200 and 2201, we also propose to delete the special SIP obligations listed in the table below. These conditions required the prior County agencies to submit regulations consistent with the EPA regulations that

were current at the time these conditions were established in 1981, 1982, and 1985. These conditions are

moot today because the District has submitted revised NSR rules that

comply with EPA's current regulations and the 1990 CAA amendments.

County	Date of EPA action	Regulatory citation
Kern County .....	November 19, 1981 .....	40 CFR 52.232(a)(5)(i)(A).
SJV Air Basin (all Counties) .....	October 30, 1985 .....	40 CFR 52.232(a)(6)(i)(A).
Kings, Madera, Merced, Stanislaus, and Tulare Counties.	September 7, 1982 .....	40 CFR 52.232(a)(10)(i)(A).
Fresno County .....	November 1, 1982 .....	40 CFR 52.232(a)(11)(i)(A).

#### F. Additional Information

For additional description of how District Rules 2020 and 2201 meet the Act's applicable requirements, please refer to EPA's Technical Support Document for this action.

### III. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 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 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 Executive Order 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 Executive Order 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 Executive Order 13045 because it is 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 consults with those governments, 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 Executive Order 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. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: September 15, 1999.

**Keith Takata,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 99-24841 Filed 9-22-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[CA 013-MSWb; FRL-6440-1]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: California

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the California State Plan for implementing the emissions guidelines applicable to existing municipal solid waste (MSW) landfills. The Plan was submitted by the California Air Resources Board (CARB) for the State of California to satisfy requirements of section 111(d) of the Federal Clean Air Act. In the Final Rules section of this **Federal Register**, EPA is approving the California State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates that it will not receive any significant, material, and

adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

**DATES:** Comments must be received in writing by October 25, 1999.

**ADDRESSES:** Written comments should be addressed to Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the documents relevant to this proposed rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted State Plan are also available for inspection at the following location: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Bowlin, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1188.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Dated: September 10, 1999.

**David P. Howekamp,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 99-24258 Filed 9-22-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-6441-4]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Baxter/Union Pacific Railroad Tie Treating Plant Superfund Site from the National Priorities List; request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region VIII announces its intent to delete the Baxter/Union Pacific Railroad Tie Treating Plant (the Site) located in Laramie, Wyoming from the National Priorities List (NPL), and requests public comment on this action.

The NPL, a list of sites EPA evaluates for priority clean up of hazardous wastes, is found in appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances and Pollutant Contingency Plan (NCP). EPA promulgated the NCP pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

EPA and the State of Wyoming Department of Environmental Quality (the State) propose this deletion under the terms of EPA's policy entitled "The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities." In this policy EPA announced that, consistent with the NCP criteria for deletion of sites from the NPL, the Agency would delete sites if corrective actions proceed under the Resource Conservation and Recovery Act (RCRA). The EPA, in consultation with the State, has determined that all appropriate RCRA response activities conducted at the site to date and scheduled in the future are enforceable and have been and will remain protective of human health and the environment, and that this deferral to RCRA corrective authorities is appropriate.

**DATES:** Comments concerning the proposed deletion of the site may be submitted to EPA on or before October 25, 1999.

**ADDRESSES:** Comments should be mailed to: Mr. Dennis Jaramillo, US Environmental Protection Agency, Region VIII, Mail Code: ENF-T, 999 18th Street, Suite 500, Denver, CO 80202-2466.

Comprehensive information on this site is available at the EPA Region VIII Superfund Records Center and is available for viewing from 8:00 am to 4:30 PM, Monday through Friday excluding holidays. Requests for documents should be directed to the EPA, Region VIII Superfund Records Center. Documents pertaining to this proposed deletion can be found in the deletion docket for the site, located at the Superfund record repository.

The address for the Region VIII Superfund Records Center is: Superfund Records Center, U.S. Environmental Protection Agency, 999 18th Street, 5th