



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA- R05-OAR-2015-0724; FRL-9950-52-Region 5]

**Air Plan Approval; Indiana; Abengoa Bioenergy of Indiana,
Commissioner's Order**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Indiana State Implementation Plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) on October 16, 2015. The submittal consists of an order issued by the Commissioner of IDEM (Commissioner's Order No. 2015-01) approving alternative control technology requirements for Abengoa Bioenergy of Indiana (Abengoa). These requirements include the use of a carbon adsorption/absorption hydrocarbon vapor recovery system with a minimum overall control efficiency of 98% to control volatile organic compound (VOC) emissions from the ethanol loading racks at Abengoa. A continuous emissions monitoring system (CEMS) must be used to monitor the carbon adsorption/absorption hydrocarbon vapor recovery system for breakthrough of VOC emissions. For the reasons discussed below, EPA is approving this submittal as a revision to Indiana's SIP.

DATES: This direct final rule will be effective [**insert date 60 days after date of publication in the Federal Register**], unless EPA receives adverse comments by [**insert date 30 days after date of publication in the Federal Register**]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0724, at <http://www.regulations.gov> or via email to aburano.douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the

web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6832, Liljegren.Jennifer@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What SIP Revision is Indiana Requesting and Why?
- II. What Action is EPA Taking and Why?
- III. Incorporation by Reference.
- IV. Statutory and Executive Order Reviews.

I. What SIP Revision is Indiana Requesting and Why?

IDEM requested on October 16, 2015, that EPA approve as a revision to the SIP alternative control technology requirements for Abengoa. These requirements include the use of a carbon

adsorption/absorption hydrocarbon vapor recovery system with a minimum overall control efficiency of 98% to control VOC emissions from the ethanol loading racks at Abengoa. A CEMS must be used to monitor the carbon adsorption/absorption hydrocarbon vapor recovery system for breakthrough of VOC emissions. These requirements are contained in Commissioner's Order No. 2015-01 issued by the IDEM Commissioner on September 8, 2015.

In Abengoa's initial construction and operating permit issued by IDEM, the ethanol loading racks were subject to the statewide case-by-case Best Available Control Technology (statewide BACT) determination required under SIP-approved Title 326 Article 8 Rule 1-6 of the Indiana Administrative Code (326 IAC 8-1-6). The statewide BACT for Abengoa's ethanol loading racks was determined to be enclosed flares with a minimum overall control efficiency of 98%. Since then, Abengoa has modified its plant design, including the ethanol loading racks, and is now subject to a newer SIP-approved state rule, 326 IAC 8-5-6, Fuel Grade Ethanol Production at Dry Mills, which created an industry-specific statewide BACT standard and which replaced the statewide case-by-case BACT rule (326 IAC 8-1-6) for fuel grade ethanol production dry mills that have no wet milling

operations. EPA approved this rule into the SIP on February 20, 2008 (73 FR 9201).

The three VOC control options under 326 IAC 8-5-6 are: (1) a thermal oxidizer with a minimum overall control efficiency of 98% or resulting in a VOC concentration of not more than ten (10) parts per million (ppm), (2) a wet scrubber with a minimum overall control efficiency of 98% or resulting in a VOC concentration of not more than twenty (20) ppm, and (3) an enclosed flare with a minimum overall control efficiency of 98%. The VOC control options under 326 IAC 8-5-6 do not include a carbon adsorption/absorption hydrocarbon vapor recovery system. Abengoa has opted to use a carbon adsorption/absorption hydrocarbon vapor recovery system rather than one of the VOC control options under 326 IAC 8-5-6. However, like the VOC control options under 326 IAC 8-5-6, Abengoa's carbon adsorption/absorption system has a minimum overall control efficiency of 98%. IDEM considers the system Reasonably Available Control Technology (RACT) under SIP rule 326 IAC 8-1-5 (Petition for a site-specific reasonably available control technology (RACT) plan).

As a result, pursuant to 326 IAC 8-1-5, Indiana has issued Commissioner's Order No. 2015-01 approving Abengoa's use of this

system as an alternative site-specific RACT in lieu of the industry-specific statewide BACT options under 326 IAC 8-5-6. The carbon adsorption/absorption system will control VOC emissions at a minimum overall control efficiency of 98%, which is the same level of control of the industry-specific BACT options under 326 IAC 8-5-6; therefore, there will be no relaxation of the emission reduction requirements at Abengoa as a result of this SIP revision. As an added benefit, Abengoa's use of the carbon adsorption/absorption system is expected to result in fewer criteria air pollutant emissions, since, unlike enclosed flares, carbon adsorption/absorption does not involve the combustion of natural gas.

It should be noted that Condition #3 of the "Conditions of Approval" in Commissioner's Order 2015-01 states: "The overall efficiency for the carbon adsorption/absorption hydrocarbon vapor recovery system (C-2101), including the capture efficiency and adsorption/absorption efficiency, shall be at least 98%. The Petitioner shall demonstrate compliance using methods approved by the department. Testing shall be conducted in accordance with the provisions of 326 IAC 3-6 (Source Sampling Procedures)". IDEM has confirmed in an email to EPA dated June

6, 2016, that this provision requires testing using EPA Method 25 (40 CFR part 60, appendix A-7).

II. What Action is EPA Taking and Why?

EPA is approving the requirements in Commissioner's Order No. 2015-01 as a revision to the Indiana SIP. This is based on EPA's finding that the 98% minimum overall control efficiency adsorption/absorption system with a CEMS qualifies as alternative site-specific RACT under 326 IAC 8-1-5 of the Indiana SIP for Abengoa's ethanol loading racks. EPA also finds that this system constitutes statewide BACT under 326 IAC 8-1-6 of the Indiana SIP in lieu of the industry-specific statewide BACT options under 326 IAC 8-5-6 of the Indiana SIP. There will be no relaxation of the emission reduction requirements at Abengoa as a result of this SIP revision. Since this is not a relaxation, section 110(1) of the Clean Air Act (CAA) is satisfied and no backsliding is occurring as a result of this SIP revision. As an added benefit, Abengoa's use of the carbon adsorption/absorption system is expected to result in fewer criteria air pollutant emissions, since, unlike enclosed flares, carbon adsorption/absorption does not involve the combustion of natural gas.

We are publishing this action without prior proposal

because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of publication in the Federal Register]** without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

III. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these documents generally available through www.regulations.gov and/or at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

¹ 62 FR 27968 (May 22, 1997).

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as

added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a

comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 1, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

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.*

2. In § 52.770 the table in paragraph (d) is amended by adding a new entry for “Abengoa Bioenergy of Indiana” to the end of the table, to read as follows:

§ 52.770 Identification of plan.

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(d) * * *

EPA--APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS

CO date	Title	SIP rule	EPA approval	Explanation
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9/8/2015	Abengoa Bioenergy of Indiana	N.A.	<u>[insert the date of publication in the Federal Register]</u> , [Insert Federal Register citation]	Alternative control technology requirements.

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