

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R05-OAR-2007-0293; FRL-8529-8]

**Approval and Promulgation of Air Quality Implementation Plans; Indiana; VOC Emissions From Fuel Grade Ethanol Production Operations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a March 30, 2007, request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP) by adding a volatile organic compound (VOC) rule for fuel grade ethanol production at dry mills as amendments to 326 IAC 8-5. This rule revision creates an industry-specific Best Available Control Technology (BACT) standard for new fuel grade ethanol production dry mills that replaces the otherwise required case-by-case SIP BACT determination for new facilities with the potential to emit 25 tons or more of VOC per year. Indiana believes that this rule will increase the clarity, predictability and timeliness of its air permits for this particular group of sources. These rules were proposed for approval on September 13, 2007, and comments were received on October 8, 2007.

**DATES:** This final rule is effective on March 21, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2006-0293. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886-6052 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052, [rosenthal.steven@epa.gov](mailto:rosenthal.steven@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 Public Comments Were Received on the Proposed Approval and What Is EPA’s Response?
- II. What Action Is EPA Taking and What Is the Reason for This Action?
- III. Statutory and Executive Order Reviews

**I. What Public Comments Were Received on the Proposed Approval and What Is EPA’s Response?**

EPA received three comments on its September 13, 2007, proposal from The Natural Resource Group (NRG), as follows:

*Comment 1.* NRG is concerned that the amendments do not address technologies other than those specifically identified (i.e., thermal oxidizers, wet scrubbers, and flares). This rule should still allow a dry-mill ethanol plant to perform a case-by-case BACT determination if the facility believes that it has a technology that can achieve low VOC emissions without the additional capital costs and energy use required to control emissions with the technologies identified in the rule.

*EPA response 1.* Without this rule, new facilities not regulated by a provision in 326 IAC Article 8 that have potential emissions of 25 tons or more of VOC per year are required to reduce VOC emissions using BACT. Establishing BACT is a case-by-case determination based on the maximum reduction in emissions that is technically feasible, while taking into account energy, environmental, and economic impact. According to Indiana, establishing industry-specific BACT standards in place of case-by-case BACT will improve the clarity, predictability and timeliness of permit decisions involving sources that are currently subject to 326 IAC 8-1-6. NRG’s approach would revert this rule to case-by-case BACT determinations for the subject ethanol plants and eliminate its primary purpose. In addition, if a new and superior technology is established for ethanol plants, Indiana has the option of amending this rule to allow such technology.

*Comment 2.* NRG stated that the basis for the VOC destruction and concentration is not identified in the

rule, and that in order to make a VOC concentration legitimate, there must be a specific test method to determine the concentration. It is, therefore, very important that the rule state a basis for the concentration limit, because the levels identified in the rule are not attainable under some of the potential bases that could be required by IDEM.

*EPA response 2.* EPA agrees with NRG that a specific test method is needed to implement the 10 ppm and 20 ppm alternative control requirements for thermal oxidizers and wet scrubbers, respectively, in rule 326 IAC 8-5-6. After discussions with EPA, Region 5, in a December 19, 2007, letter from Daniel Murray, Assistant Commissioner for the Office of Air Quality, IDEM stated that it would be acceptable to measure the 10 ppm and 20 ppm concentration limits using EPA Method 25(A), expressed as equivalent ethanol, with the calibration gas being a mixture of ethanol in air.

*Comment 3.* NRG also noted that the rule currently excludes wet-mill ethanol plants that steep or soak the corn in order to separate the kernel, presumably because the emission characteristics for such facilities are different from dry-mill ethanol plants and require case-by-case determinations. According to NRG, however, technologies are currently in development that may allow dry-mill ethanol plants to separate the kernel without using a wet process. This technology has the potential to reduce the VOC emissions from the spent grain dryers due to the potential reduction in spent grain throughput. The emissions from dry-mill ethanol plants with dry kernel separation technology may be comparable to that of wet-mill ethanol plant dryers with one key difference; dry-mill plants will only dry the spent grain while the other parts of the kernel that are removed prior to fermentation can be further processed or shipped without drying. For this reason, NRG believes that this rule should also exclude dry-mill ethanol plants that use dry separation technologies.

*EPA response 3.* The definition in 326 IAC 8-5-6(b)(1) of “Dry mill” is “an ethanol production operation that uses the whole corn kernel to produce a meal that is then used to produce alcohol \* \* \*.” Because 326 IAC 8-5 does not cover dry-mill ethanol plants with dry kernel separation technology, NRG’s concerns have been addressed.

**II. What Action Is EPA Taking and What Is the Reason for This Action?**

We are approving revisions to the Indiana SIP in two areas: (1) To amend 326 IAC 8-5-1, Applicability of Rule; and (2) to add 326 IAC 8-5-6, Fuel

Grade Ethanol Facilities. It should be noted that approval of this rule does not in any way affect the applicability of Nonattainment New Source Review or Prevention of Significant Deterioration to subject sources.

### III. Statutory and Executive Order Reviews

#### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and, therefore, is not subject to review by the Office of Management and Budget.

#### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a “significant regulatory action” under Executive Order 12866 or a “significant regulatory action,” this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

#### *Regulatory Flexibility Act*

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

#### *Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

#### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

#### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

#### *National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

#### *Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### *Congressional Review Act*

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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. 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, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 5, 2008.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart P—Indiana**

■ 2. Section 52.770 is amended by adding paragraph (c)(182) to read as follows:

#### **§ 52.770 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(182) On March 30, 2007, Indiana submitted final adopted revisions, which amend 326 IAC 8–5–1, concerning rule applicability, and add 326 IAC 8–5–6, fuel grade ethanol production at dry mills, to its VOC rules as a requested revision to the Indiana state implementation plan. By letter of December 19, 2007, Indiana stated that it would be acceptable to measure the concentration limits in 326 IAC 8–5–6 using EPA Method 25(a) expressed as equivalent ethanol with the calibration gas being a mixture of ethanol in air. EPA is approving these revisions, authorizing Indiana to establish an

industry-specific State BACT standard for fuel grade ethanol production at dry mill facilities that emit 25 tons or more of VOC per year.

(i) *Incorporation by reference.* The following sections of the Indiana Administrative Code (IAC) are incorporated by reference. 326 IAC 8-5-1, "Applicability of Rule", and 326 IAC 8-5-6 "Fuel Grade Ethanol Production at Dry Mills". Approved by the Attorney General February 16, 2007. Approved by the Governor February 16, 2007. Filed with the Publisher February 20, 2007. Published on the Indiana Register Web site March 21, 2007, Document Identification Number (DIN):20070321-IR-326050197FRA. Effective March 22, 2007.

(ii) *Additional materials.* A December 19, 2007, letter from Daniel Murray, Assistant Commissioner of the Indiana Department of Environmental management, Office of Air Quality, which states that it would be acceptable to measure the concentration limits in 326 IAC 8-5-6 using EPA Method 25(a) expressed as equivalent ethanol with the calibration gas being a mixture of ethanol in air.

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[FR Doc. E8-2893 Filed 2-19-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2007-0633; A-1-FRL-8517-6]

#### Approval and Promulgation of Air Quality Implementation Plans; Maine; Conformity of General Federal Actions

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine for the purpose of making the SIP consistent with recent additions to the Federal general conformity regulation. This revision incorporates by reference new definitions and establishes *de minimis* emission levels for fine particulate matter (PM<sub>2.5</sub>) into Maine's existing general conformity criteria and procedures previously approved into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective April 21, 2008, unless EPA receives adverse comments by March 21, 2008. 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 Number EPA-R01-OAR-2007-0633 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

3. *Fax:* (617) 918-0047.

4. *Mail:* "Docket Identification Number EPA-R01-OAR-2007-0633", Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2007-0633. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, telephone number (617) 918-1668, fax number (617) 918-0668, e-mail [cooke.donald@epa.gov](mailto:cooke.donald@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. State Submittal
- III. Final Action
- IV. Statutory and Executive Order Reviews

#### I. Background and Purpose

Section 176(c) of the Clean Air Act, as amended (the Act), prohibits Federal entities from taking actions in nonattainment or maintenance areas which do not conform to the State