

FR 67249, November 9, 2000).

Therefore, the EPA has concluded that the action will not have tribal implications for the purposes of Executive Order 13175, and will not impose substantial direct costs upon the tribes, nor will it preempt Tribal law. We note that none of the tribes located in the SJV has requested eligibility to administer programs under the CAA.

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. The 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 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 October 11, 2016. 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. 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 regulations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: July 8, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, EPA Region 9.*

Chapter I, title 40 of the Code of Federal Regulations 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.*

##### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(476) to read as follows:

##### § 52.220 Identification of plan—in part.

\* \* \* \* \*

(c) \* \* \*

(476) The following revision was submitted on November 13, 2015 by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) California Air Resources Board.

(1) Attachment A to Resolution 15–50, "Updates to the Transportation Conformity Budgets for the San Joaquin Valley 2007 PM<sub>10</sub>, 2007 Ozone and 2012 PM<sub>2.5</sub> SIPs," Table A–1 (Updated Transportation Conformity Budgets for the 2008 Ozone Plan (Tons per summer day) and Table A–3 (Updated Transportation Conformity Budgets for the 2008 PM<sub>10</sub> Maintenance Plan (Tons per annual day)).

\* \* \* \* \*

■ 3. Subpart F is amended by adding § 52.248 to read as follows:

##### § 52.248 Identification of plan—conditional approval.

The EPA is conditionally approving a California State Implementation Plan (SIP) revision submitted on November 13, 2015 updating the motor vehicle emissions budgets for nitrogen oxides (NO<sub>x</sub>) and coarse particulate matter (PM<sub>10</sub>) for the 1987 24-hour PM<sub>10</sub> standard for the San Joaquin Valley PM<sub>10</sub> maintenance area. The conditional approval is based on a commitment from the State to submit a SIP revision that demonstrates full implementation of the contingency provisions of the 2007 PM<sub>10</sub> Maintenance Plan and Request for Redesignation (September 20, 2007). If the State fails to meet its commitment by June 1, 2017, the approval is treated as a disapproval.

[FR Doc. 2016–18898 Filed 8–11–16; 8:45 am]

**BILLING CODE 6560–50–P**

#### 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 October 11, 2016, unless EPA receives adverse comments by September 12, 2016. 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](mailto: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-18), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6832, [Liljegren.Jennifer@epa.gov](mailto: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(l) 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 October 11, 2016 without further notice unless we receive relevant adverse written comments by September 12, 2016. 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 October 11, 2016.

### 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.<sup>1</sup> EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://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 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 (Pub. L. 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 October 11, 2016. 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.

\* \* \* \* \*

(d) \* \* \*

<sup>1</sup> 62 FR 27968 (May 22, 1997).

EPA-APPROVED INDIANA SOURCE-SPECIFIC PROVISIONS

CO date	Title	SIP rule	EPA approval	Explanation
9/8/2015	Abengoa Bioenergy of Indiana.	N.A.	8/12/2016, [Insert <b>Federal Register</b> citation].	Alternative control technology requirements.

\* \* \* \* \*  
 [FR Doc. 2016–19032 Filed 8–11–16; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2015–0489; FRL–9950–19–Region 9]

**Revision to the California State Implementation Plan; San Joaquin Valley; Demonstration of Creditable Emission Reductions From Economic Incentive Programs**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a demonstration of creditable emission reductions submitted by California for approval into the San Joaquin Valley (SJV) portion of the California State Implementation Plan (SIP). This SIP submittal demonstrates that certain state incentive funding programs have achieved specified amounts of reductions in emissions of nitrogen oxides (NO<sub>x</sub>) and fine particulate matter (PM<sub>2.5</sub>) in the SJV area by 2014. The effect of this action would be to approve specific amounts of emission reductions for credit toward an emission reduction commitment in the California SIP. We are approving these emission reductions under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on September 30, 2016.

**ADDRESSES:** The EPA has established docket number EPA–R09–OAR–2015–0489 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may

not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Pérez, EPA Region IX, (415) 972 3248, [Perez.Idalia@epa.gov](mailto:Perez.Idalia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

**Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On August 24, 2015 (80 FR 51147), the EPA proposed to approve the “Report on Reductions Achieved from Incentive-based Emission Reduction Measures in the San Joaquin Valley” (Emission Reduction Report) and, based on California’s documentation therein of actions taken by grantees in accordance with the identified incentive program guidelines, to approve 7.8 tpd of NO<sub>x</sub> emission reductions and 0.2 tpd of PM<sub>2.5</sub> emission reductions for credit toward the State’s 2014 emission reduction commitments in its 2008 plan to provide for attainment of the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS) in the San Joaquin Valley (hereafter “2008 PM<sub>2.5</sub> Plan”).<sup>1</sup> The California Air Resources Board (CARB) adopted the Emission Reduction Report on October 24, 2014 and submitted it to EPA as a revision to the California SIP on November 17, 2014. We proposed to approve the Emission Reduction Report based on a determination that it satisfied the applicable CAA requirements. Our proposed action contains more information on the Emission Reduction Report and our evaluation.

<sup>1</sup> The 2014 emission reduction commitments are codified at 40 CFR 52.220(c)(356)(ii)(B)(2) and 52.220(c)(392)(ii)(A)(2). 76 FR 69896, 69926 (November 9, 2011).

**II. Public Comments and EPA Responses**

The EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from Adenike Adeyeye, Earthjustice, by email dated and received September 16, 2015. The comments and our responses are summarized below.

*Comment 1:* Earthjustice asserts that the emission reductions identified in the Emission Reduction Report are not enforceable by the public and therefore should not be approved into the SIP. According to Earthjustice, the Carl Moyer program allows air districts to enter into emission reduction agreements with grant recipients, with CARB added to contracts as a third party with enforcement rights, but does not enable the public to enforce these emission reduction agreements entered into among CARB, the air district, and the grant recipient. Earthjustice argues that the EPA’s enforceability criteria require that citizens have access to all emissions-related information obtained from participating sources and be able to file suit against a responsible entity for violations, and that the Emission Reduction Report does not meet these criteria.

*Response 1:* We agree with the commenter’s statement that the public cannot enforce the agreements entered into among CARB, an air district and a grant recipient but disagree with the commenter’s suggestion that this renders the Emission Reduction Report inconsistent with the EPA’s enforceability criteria. This Emission Reduction Report was submitted to demonstrate that a portion of the emission reductions required under a previously approved SIP commitment have in fact been achieved—not to satisfy a future emission reduction requirement—and thus it does not need to provide a citizen enforcement mechanism.

As we explained in our proposed rule, where a state relies on a discretionary economic incentive program (EIP) or other voluntary measure to satisfy an attainment planning requirement under the CAA (e.g., to demonstrate that specific amounts of emission reductions will occur by a future milestone date),