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# SENATE BILL No. 202

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-18; IC 13-20-10.5; IC 15-16-2-44.

**Synopsis:** Environmental approvals and other issues. Requires the approval of the Indiana department of environmental management (IDEM) for construction or expansion of a satellite manure storage structure, anaerobic digestion facility (ADF), or gasification facility (GF). If the construction or expansion of an ADF or a GF is on the premises of a confined feeding operation, provides that the approval is obtained through the approval process for confined feeding operations. Provides that an ADF or a GF for which the only input is biomass is not subject to regulation as a solid waste processing facility, but that IDEM may determine that an ADF or a GF for which the input is a combination of biomass and solid waste is subject to regulation as a solid waste processing facility. Amends the definition of "solid waste" for environmental statutes to exclude certain manures or crop residues returned to the soil regardless of whether the return is at the point of generation. Provides that rules adopted by the state chemist for distribution and use of fertilizer material must include standards to protect waters of the state. Requires the state chemist to adopt rules before January 1, 2012, concerning the staging and use of organic fertilizer material. Provides that a statutory water pollution prohibition is not violated by fertilizer material that: (1) is contained in runoff from a storm event or irrigation return flow; and (2) enters waters of Indiana as a result of land application of the fertilizer material that is for agricultural purposes, is done at appropriate agronomic rates for proper nutrient uptake in the field, and is documented.

**Effective:** July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Energy and Environmental Affairs.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 202



A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-7.3 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2011]: **Sec. 7.3. "Anaerobic digestion facility", for purposes of**  
4 **IC 13-20-10.5:**

5 (1) means a facility that incorporates equipment that  
6 promotes the decomposition of organic material such as  
7 biomass to simple organics and biogas products in the oxygen  
8 free environment of a closed, sealed chamber; and

9 (2) includes a methane recovery system.

10 SECTION 2. IC 13-11-2-16.7 IS ADDED TO THE INDIANA  
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
12 [EFFECTIVE JULY 1, 2011]: **Sec. 16.7. "Biomass", for purposes of**  
13 **sections 7.3 and 88.5 of this chapter and IC 13-20-10.5, means**  
14 **biological material that is available on a renewable recurring basis**  
15 **and is used as a source of renewable energy, including the**  
16 **following:**

17 (1) **Agricultural crops.**



- 1           (2) **Agricultural wastes and residues.**
- 2           (3) **Wood and wood byproducts, including the following:**
- 3                (A) **Wood residue.**
- 4                (B) **Forest thinning.**
- 5                (C) **Mill residue wood.**
- 6           (4) **Animal wastes and byproducts, including manure.**
- 7           (5) **Aquatic plants.**
- 8           (6) **Algae.**
- 9           (7) **Byproducts of processing agricultural crops.**

10           SECTION 3. IC 13-11-2-40, AS AMENDED BY P.L.127-2009,  
 11           SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12           JULY 1, 2011]: Sec. 40. "Confined feeding operation" for purposes of  
 13           ~~IC 13-18-10~~; means:

- 14                (1) any confined feeding of:
  - 15                    (A) at least three hundred (300) cattle;
  - 16                    (B) at least six hundred (600) swine or sheep;
  - 17                    (C) at least thirty thousand (30,000) fowl; or
  - 18                    (D) at least five hundred (500) horses.
- 19                (2) any animal feeding operation electing to be subject to  
 20                IC 13-18-10; or
- 21                (3) any animal feeding operation that is causing a violation of:
  - 22                    (A) water pollution control laws;
  - 23                    (B) any rules of the water pollution control board; or
  - 24                    (C) IC 13-18-10.

25           A determination by the department under this subdivision is appealable  
 26           under IC 4-21.5.

27           SECTION 4. IC 13-11-2-71, AS AMENDED BY P.L.127-2009,  
 28           SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29           JULY 1, 2011]: Sec. 71. "Environmental management laws" refers to  
 30           the following:

- 31                (1) IC 13-12-2 and IC 13-12-3.
- 32                (2) IC 13-13.
- 33                (3) IC 13-14.
- 34                (4) IC 13-15.
- 35                (5) IC 13-16.
- 36                (6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.
- 37                (7) IC 13-18-10, **IC 13-18-10.5**, IC 13-18-12, IC 13-18-13-31,  
 38                and IC 13-18-15 through IC 13-18-20.
- 39                (8) IC 13-19-1, IC 13-19-4, and IC 13-19-5-17.
- 40                (9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15,  
 41                IC 13-20-17.7, IC 13-20-19 through IC 13-20-21, and  
 42                IC 13-20-22-21.

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- 1 (10) IC 13-22.
- 2 (11) IC 13-23.
- 3 (12) IC 13-24.
- 4 (13) IC 13-25-1 through IC 13-25-5.
- 5 (14) IC 13-27-8.
- 6 (15) IC 13-30, except IC 13-30-1.

7 SECTION 5. IC 13-11-2-88.5 IS ADDED TO THE INDIANA  
 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2011]: **Sec. 88.5. "Gasification facility", for**  
 10 **purposes of IC 13-20-10.5, means a facility that incorporates**  
 11 **equipment to carry out a thermochemical process that, with little**  
 12 **or no oxygen present and at high temperatures, converts carbon**  
 13 **containing materials, such as coal, petroleum coke, and biomass,**  
 14 **into a synthesis gas.**

15 SECTION 6. IC 13-11-2-126.5 IS ADDED TO THE INDIANA  
 16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2011]: **Sec. 126.5. "Manure" means the**  
 18 **following:**

- 19 (1) **Liquid or solid animal excreta.**
- 20 (2) **Waste liquid generated at a livestock or poultry**  
 21 **production area, including the following:**
  - 22 (A) **Excess drinking water.**
  - 23 (B) **Cleanup water.**
  - 24 (C) **Contaminated livestock truck or trailer washwater.**
  - 25 (D) **Milking parlor wastewater.**
  - 26 (E) **Milk house washwater.**
  - 27 (F) **Egg washwater.**
  - 28 (G) **Silage leachate.**
- 29 (3) **Any precipitation or surface water that has come into**  
 30 **contact with the following:**
  - 31 (A) **Liquid or solid animal excreta.**
  - 32 (B) **Used bedding.**
  - 33 (C) **Litter.**
  - 34 (D) **Liquid described in subdivision (4).**
- 35 (4) **Any other materials generated at a livestock or poultry**  
 36 **production area commingled with the materials listed in**  
 37 **subdivisions (1) through (3).**

38 SECTION 7. IC 13-11-2-158, AS AMENDED BY P.L.137-2007,  
 39 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2011]: **Sec. 158. (a) "Person", for purposes of:**

- 41 (1) IC 13-21;
- 42 (2) air pollution control laws;

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1 (3) water pollution control laws; and  
 2 (4) environmental management laws, except as provided in  
 3 subsections (c), (d), (e), and (h);  
 4 means an individual, a partnership, a copartnership, a firm, a company,  
 5 a corporation, an association, a joint stock company, a trust, an estate,  
 6 a municipal corporation, a city, a school city, a town, a school town, a  
 7 school district, a school corporation, a county, any consolidated unit of  
 8 government, political subdivision, state agency, a contractor, or any  
 9 other legal entity.  
 10 (b) "Person", for purposes of:  
 11 (1) IC 13-18-10;  
 12 **(2) IC 13-18-10.5;**  
 13 **(3) IC 13-20-10.5;** and  
 14 ~~(2)~~ **(4) IC 13-20-17;**  
 15 means an individual, a partnership, a copartnership, a firm, a company,  
 16 a corporation, an association, a joint stock company, a trust, an estate,  
 17 a political subdivision, a state agency, or other legal entity, or their  
 18 legal representative, agent, or assigns.  
 19 (c) "Person", for purposes of:  
 20 (1) IC 13-20-13;  
 21 (2) IC 13-20-14;  
 22 (3) IC 13-20-16; and  
 23 (4) IC 13-25-6;  
 24 means an individual, a corporation, a limited liability company, a  
 25 partnership, or an unincorporated association.  
 26 (d) "Person", for purposes of IC 13-23, has the meaning set forth in  
 27 subsection (a). The term includes a consortium, a joint venture, a  
 28 commercial entity, and the United States government.  
 29 (e) "Person", for purposes of IC 13-20-17.5 and IC 13-25-3, means  
 30 an individual, a corporation, a limited liability company, a partnership,  
 31 a trust, an estate, or an unincorporated association.  
 32 (f) "Person", for purposes of IC 13-26, means an individual, a firm,  
 33 a partnership, an association, a limited liability company, or a  
 34 corporation other than an eligible entity.  
 35 (g) "Person", for purposes of IC 13-29-1, means any individual,  
 36 corporation, business enterprise, or other legal entity either public or  
 37 private and any legal successor, representative, agent, or agency of that  
 38 individual, corporation, business enterprise, or legal entity.  
 39 (h) "Person", for purposes of IC 13-30-8-1, has the meaning set forth  
 40 in IC 35-41-1.  
 41 SECTION 8. IC 13-11-2-196.2 IS ADDED TO THE INDIANA  
 42 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2011]: **Sec. 196.2. (a) "Satellite manure**  
 2 **storage structure", for purposes of IC 13-18-10.5, means any of the**  
 3 **items listed in subsection (b) that:**

4 **(1) are not located at a livestock or poultry production area;**  
 5 **and**

6 **(2) are designed for use in whole or in part for the storage of:**

7 **(A) at least one million (1,000,000) gallons of manure; or**

8 **(B) at least five thousand (5,000) cubic yards of manure.**

9 **(b) The items referred to in subsection (a) are as follows:**

10 **(1) A building.**

11 **(2) A lagoon.**

12 **(3) A pad.**

13 **(4) A pit.**

14 **(5) A pond.**

15 **(6) A tank.**

16 SECTION 9. IC 13-11-2-205 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 205. (a) "Solid waste",  
 18 for purposes of IC 13-19, IC 13-21, IC 13-20-22, and environmental  
 19 management laws, except as provided in subsection (b), means any  
 20 garbage, refuse, sludge from a waste treatment plant, sludge from a  
 21 water supply treatment plant, sludge from an air pollution control  
 22 facility, or other discarded material, including solid, liquid, semisolid,  
 23 or contained gaseous material resulting from industrial, commercial,  
 24 mining, or agricultural operations or from community activities. The  
 25 term does not include:

26 (1) solid or dissolved material in:

27 (A) domestic sewage; or

28 (B) irrigation return flows or industrial discharges;

29 that are point sources subject to permits under Section 402 of the  
 30 Federal Water Pollution Control Act Amendments (33 U.S.C.  
 31 1342);

32 (2) source, special nuclear, or byproduct material (as defined by  
 33 the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.));

34 (3) manures or crop residues returned to the soil ~~at the point of~~  
 35 ~~generation~~ as fertilizers or soil conditioners as part of a total farm  
 36 operation; or

37 (4) vegetative matter at composting facilities registered under  
 38 IC 13-20-10.

39 (b) "Solid waste", for purposes of IC 13-20-5, IC 13-20-22, and  
 40 IC 13-21, does not include the following:

41 (1) A waste that is regulated under the following:

42 (A) IC 13-22-1 through IC 13-22-8.

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1 (B) IC 13-22-13 through IC 13-22-14.  
2 (2) An infectious waste (as defined in IC 16-41-16-4) that is  
3 disposed of at an incinerator permitted under rules adopted by the  
4 solid waste management board to dispose of infectious waste.

5 (c) "Solid waste", for purposes of IC 13-26, means all putrescible  
6 and nonputrescible solid and semisolid wastes, except human excreta.  
7 The term includes garbage, rubbish, ashes, street cleanings, dead  
8 animals, offal, and solid commercial, industrial, and institutional  
9 wastes.

10 SECTION 10. IC 13-18-4-5 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) **Except as**  
12 **provided in subsection (b)**, a person may not:

- 13 (1) throw, run, drain, or otherwise dispose; ~~into any of the streams~~  
14 ~~or waters of Indiana;~~ or
- 15 (2) cause, permit, or suffer to be thrown, run, drained, allowed to  
16 seep, or otherwise disposed; ~~into any waters;~~

17 **into any of the streams or waters of Indiana** any organic or inorganic  
18 matter that causes or contributes to a polluted condition of any **of the**  
19 **streams or waters of Indiana**, as determined by a rule of the board  
20 adopted under sections 1 and 3 of this chapter.

21 (b) **Subsection (a) does not apply to organic or inorganic matter**  
22 **that consists of fertilizer material that:**

- 23 (1) **is contained in:**
  - 24 (A) **runoff from a storm event; or**
  - 25 (B) **irrigation return flow; and**
- 26 (2) **enters waters of Indiana as a result of land application of**  
27 **the fertilizer material that:**
  - 28 (A) **is for agricultural purposes;**
  - 29 (B) **is done at appropriate agronomic rates for proper**  
30 **nutrient uptake in the field; and**
  - 31 (C) **is documented.**

32 (c) **The department must request documentation required under**  
33 **subsection (b)(2)(C) to determine the applicability of this section**  
34 **before issuing a notice of violation under IC 13-30-3.**

35 (d) **Subsection (b) does not affect liability for killing wild**  
36 **animals under IC 14-22-10-6.**

37 SECTION 11. IC 13-18-10.5 IS ADDED TO THE INDIANA  
38 CODE AS A NEW CHAPTER TO READ AS FOLLOWS  
39 [EFFECTIVE JULY 1, 2011]:

40 **Chapter 10.5. Satellite Manure Storage Structures**

41 **Sec. 1. A person may not after June 30, 2011, start:**

- 42 (1) **construction of a satellite manure storage structure; or**

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1 (2) expansion of a satellite manure storage structure that  
2 increases manure containment capacity;  
3 without obtaining the prior approval of the department.

4 Sec. 2. The board may adopt rules under IC 4-22-2 and  
5 IC 13-14-9 regarding the construction, operation, and maintenance  
6 of a satellite manure storage structure.

7 SECTION 12. IC 13-20-10.5 IS ADDED TO THE INDIANA  
8 CODE AS A NEW CHAPTER TO READ AS FOLLOWS  
9 [EFFECTIVE JULY 1, 2011]:

10 Chapter 10.5. Anaerobic Digestion Facilities and Gasification  
11 Facilities

12 Sec. 1. (a) A person may not after June 30, 2011, start:

13 (1) construction of:

- 14 (A) an anaerobic digestion facility; or
- 15 (B) a gasification facility; or

16 (2) expansion of:

- 17 (A) an anaerobic digestion facility; or
- 18 (B) a gasification facility;

19 without obtaining prior approval of the department.

20 (b) A person who proposes to construct or expand an anaerobic  
21 digestion facility or a gasification facility on the premises of a  
22 confined feeding operation must obtain the prior approval  
23 required under subsection (a) through the approval process for  
24 confined feeding operations under IC 13-18-10 and rules  
25 implementing that chapter.

26 Sec. 2. Except as provided in section 3 of this chapter, an  
27 anaerobic digestion facility or a gasification facility for which the  
28 only input is biomass is not subject to regulation as a solid waste  
29 processing facility.

30 Sec. 3. The department may determine that an anaerobic  
31 digestion facility or a gasification facility for which the input is a  
32 combination of biomass and solid waste is subject to regulation as  
33 a solid waste processing facility.

34 Sec. 4. The board may adopt rules under IC 4-22-2 and  
35 IC 13-14-9 to implement this chapter.

36 SECTION 13. IC 15-16-2-44, AS AMENDED BY P.L.81-2009,  
37 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2011]: Sec. 44. (a) The state chemist may adopt rules under  
39 IC 4-22-2 concerning the following:

- 40 (1) The distribution and use of fertilizer material, **including**  
41 **standards to protect waters of the state.**
- 42 (2) The distribution and storage of bulk fertilizers, including

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1 standards for the storage of bulk fertilizers to protect the waters  
 2 of the state.  
 3 (b) The state chemist shall adopt rules under IC 4-22-2 concerning  
 4 the following:  
 5 (1) Subject to subsection ~~(d)~~, (e), the establishment of  
 6 certification and educational programs, as determined by the state  
 7 chemist, relating to the application of fertilizer material, the  
 8 transportation of fertilizer material, or both for the following:  
 9 (A) Persons who apply fertilizer material for hire, transport  
 10 fertilizer material for hire, or both.  
 11 (B) Persons who apply fertilizer material, transport fertilizer  
 12 material, or both from the following:  
 13 (i) Confined feeding operations (as defined in  
 14 IC 13-11-2-40).  
 15 (ii) Operations outside Indiana that would be confined  
 16 feeding operations (as defined in IC 13-11-2-40) if they  
 17 were located in Indiana.  
 18 (2) The establishment of fees for the certification and education  
 19 programs established under subdivision (1).  
 20 **(c) The state chemist shall adopt rules under IC 4-22-2 before**  
 21 **January 1, 2012, concerning the staging and use of organic**  
 22 **fertilizer material.**  
 23 ~~(c)~~ (d) Any fees collected for a certification and educational  
 24 programs under subsection (b)(1) shall be collected by the state  
 25 chemist and deposited and administered under section 44.5 of this  
 26 chapter.  
 27 ~~(d)~~ (e) The state chemist may waive all or part of the certification  
 28 requirements established under subsection (b)(1) on a reciprocal basis  
 29 with any state agency or federal agency that has substantially the same  
 30 certification standards.

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