



February 4, 2011

SENATE BILL No. 202

DIGEST OF SB 202 (Updated January 31, 2011 12:43 pm - DI 118)

Citations Affected: IC 13-11; IC 13-18; IC 13-20; IC 15-16.

Synopsis: Environmental approvals and other issues. Adds definition of "fertilizer material". Removes "coal" and "petroleum coke" from the definition of "gasification facility". 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. Requires guidelines under which the department of environmental management may issue a notice of violation. Provides
(Continued next page)

Effective: July 1, 2011.

Gard

January 5, 2011, read first time and referred to Committee on Energy and Environmental Affairs.
February 3, 2011, amended, reported favorably — Do Pass.

SB 202—LS 6337/DI 52+



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Digest Continued

that rules adopted by the state chemist for distribution and use of fertilizer material must include standards to protect waters of the state. Adjusts certain restrictions to pollutants that enter the waters of Indiana contained in land applications that comply with rules adopted by the state chemist. Requires the state chemist to adopt rules before July 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.

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February 4, 2011

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.**

SB 202—LS 6337/DI 52+



- 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 13-11-2-79.5 IS ADDED TO THE INDIANA
 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2011]: **Sec. 79.5. "Fertilizer material" for**
 10 **purposes of IC 13-18-4-5 has the meaning set forth in**
 11 **IC 15-16-2-11.**

12 SECTION 6. IC 13-11-2-88.5 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2011]: **Sec. 88.5. "Gasification facility", for**
 15 **purposes of IC 13-20-10.5, means a facility that incorporates**
 16 **equipment to carry out a thermochemical process that, with little**
 17 **or no oxygen present and at high temperatures, converts carbon**
 18 **containing materials, such as biomass, into a synthesis gas.**

19 SECTION 7. IC 13-11-2-126.5 IS ADDED TO THE INDIANA
 20 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2011]: **Sec. 126.5. "Manure" means the**
 22 **following:**

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

42 SECTION 8. IC 13-11-2-158, AS AMENDED BY P.L.137-2007,

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SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 158. (a) "Person", for purposes of:

- (1) IC 13-21;
- (2) air pollution control laws;
- (3) water pollution control laws; and
- (4) environmental management laws, except as provided in subsections (c), (d), (e), and (h);

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a municipal corporation, a city, a school city, a town, a school town, a school district, a school corporation, a county, any consolidated unit of government, political subdivision, state agency, a contractor, or any other legal entity.

(b) "Person", for purposes of:

- (1) IC 13-18-10;
- (2) IC 13-18-10.5;**
- (3) IC 13-20-10.5;** and
- ~~(4)~~ **(4) IC 13-20-17;**

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a political subdivision, a state agency, or other legal entity, or their legal representative, agent, or assigns.

(c) "Person", for purposes of:

- (1) IC 13-20-13;
- (2) IC 13-20-14;
- (3) IC 13-20-16; and
- (4) IC 13-25-6;

means an individual, a corporation, a limited liability company, a partnership, or an unincorporated association.

(d) "Person", for purposes of IC 13-23, has the meaning set forth in subsection (a). The term includes a consortium, a joint venture, a commercial entity, and the United States government.

(e) "Person", for purposes of IC 13-20-17.5 and IC 13-25-3, means an individual, a corporation, a limited liability company, a partnership, a trust, an estate, or an unincorporated association.

(f) "Person", for purposes of IC 13-26, means an individual, a firm, a partnership, an association, a limited liability company, or a corporation other than an eligible entity.

(g) "Person", for purposes of IC 13-29-1, means any individual, corporation, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, business enterprise, or legal entity.

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1 (h) "Person", for purposes of IC 13-30-8-1, has the meaning set forth
2 in IC 35-41-1.

3 SECTION 9. IC 13-11-2-196.2 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2011]: Sec. 196.2. (a) "Satellite manure
6 storage structure", for purposes of IC 13-18-10.5, means any of the
7 items listed in subsection (b) that:

8 (1) are not located at a livestock or poultry production area;
9 and

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

- 11 (A) at least one million (1,000,000) gallons of manure; or
- 12 (B) at least five thousand (5,000) cubic yards of manure.

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

- 14 (1) A building.
- 15 (2) A lagoon.
- 16 (3) A pad.
- 17 (4) A pit.
- 18 (5) A pond.
- 19 (6) A tank.

20 SECTION 10. IC 13-11-2-205 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 205. (a) "Solid waste",
22 for purposes of IC 13-19, IC 13-21, IC 13-20-22, and environmental
23 management laws, except as provided in subsection (b), means any
24 garbage, refuse, sludge from a waste treatment plant, sludge from a
25 water supply treatment plant, sludge from an air pollution control
26 facility, or other discarded material, including solid, liquid, semisolid,
27 or contained gaseous material resulting from industrial, commercial,
28 mining, or agricultural operations or from community activities. The
29 term does not include:

- 30 (1) solid or dissolved material in:
 - 31 (A) domestic sewage; or
 - 32 (B) irrigation return flows or industrial discharges;
 that are point sources subject to permits under Section 402 of the
 33 Federal Water Pollution Control Act Amendments (33 U.S.C.
 34 1342);
- 35 (2) source, special nuclear, or byproduct material (as defined by
 36 the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.));
- 37 (3) manures or crop residues returned to the soil at the point of
 38 generation as fertilizers or soil conditioners as part of a total farm
 39 operation; or
- 40 (4) vegetative matter at composting facilities registered under
 41 IC 13-20-10.

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

- 3 (1) A waste that is regulated under the following:
 - 4 (A) IC 13-22-1 through IC 13-22-8.
 - 5 (B) IC 13-22-13 through IC 13-22-14.
- 6 (2) An infectious waste (as defined in IC 16-41-16-4) that is
7 disposed of at an incinerator permitted under rules adopted by the
8 solid waste management board to dispose of infectious waste.

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

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

- 17 (1) throw, run, drain, or otherwise dispose; ~~into any of the streams~~
18 ~~or waters of Indiana;~~ or
- 19 (2) cause, permit, or suffer to be thrown, run, drained, allowed to
20 seep, or otherwise disposed; ~~into any waters;~~

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

25 (b) **Subsection (a) does not apply to organic or inorganic matter**
26 **that consists of fertilizer material contained in:**

- 27 (1) **runoff from a storm event; or**
 - 28 (2) **irrigation return flow;**
- 29 **entering the waters of Indiana as a result of land application of**
30 **fertilizer material in compliance with rules adopted by the state**
31 **chemist under IC 15-16-2-44.**

32 (c) **The department shall request documentation of compliance**
33 **with subsection (b) before a notice of violation can be issued.**

34 (d) **A person has thirty (30) days to submit documentation after**
35 **receiving a request under subsection (c).**

36 (e) **The department may issue a notice of violation for failure to**
37 **comply with subsection (d). No notice of violation can be issued if**
38 **the department determines that a person complied with subsection**
39 **(b).**

40 (f) **Before the rules for land application of fertilizer materials**
41 **adopted under IC 15-16-2-44 by the state chemist take effect, a**
42 **person may meet the requirements under subsection (b) if the**

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person maintains documentation of compliance with:

- (1) the conditions for land application of manure requirements under IC 13-18-10; or
- (2) the National Resources Conservation Services land application standards.

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

SECTION 12. IC 13-18-10.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 10.5. Satellite Manure Storage Structures

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

- (1) construction of a satellite manure storage structure; or
- (2) expansion of a satellite manure storage structure that increases manure containment capacity;

without obtaining the prior approval of the department.

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

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

Chapter 10.5. Anaerobic Digestion Facilities and Gasification Facilities

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

- (1) construction of:
 - (A) an anaerobic digestion facility; or
 - (B) a gasification facility; or
- (2) expansion of:
 - (A) an anaerobic digestion facility; or
 - (B) a gasification facility;

without obtaining prior approval of the department.

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

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

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1 **Sec. 3. The department may determine that an anaerobic**
2 **digestion facility or a gasification facility for which the input is a**
3 **combination of biomass and solid waste is subject to regulation as**
4 **a solid waste processing facility.**

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

7 SECTION 14. IC 15-16-2-44, AS AMENDED BY P.L.81-2009,
8 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2011]: Sec. 44. (a) The state chemist may adopt rules under
10 IC 4-22-2 concerning the following:

11 (1) The distribution and use of fertilizer material, **including**
12 **standards to protect waters of the state.**

13 (2) The distribution and storage of bulk fertilizers, including
14 standards for the storage of bulk fertilizers to protect the waters
15 of the state.

16 (b) The state chemist shall adopt rules under IC 4-22-2 concerning
17 the following:

18 (1) Subject to subsection ~~(d)~~, **(e)**, the establishment of
19 certification and educational programs, as determined by the state
20 chemist, relating to the application of fertilizer material, the
21 transportation of fertilizer material, or both for the following:

22 (A) Persons who apply fertilizer material for hire, transport
23 fertilizer material for hire, or both.

24 (B) Persons who apply fertilizer material, transport fertilizer
25 material, or both from the following:

26 (i) Confined feeding operations (as defined in
27 IC 13-11-2-40).

28 (ii) Operations outside Indiana that would be confined
29 feeding operations (as defined in IC 13-11-2-40) if they
30 were located in Indiana.

31 (2) The establishment of fees for the certification and education
32 programs established under subdivision (1).

33 **(c) The state chemist shall adopt rules under IC 4-22-2 before**
34 **July 1, 2012, concerning the staging, management, and land**
35 **application of fertilizer material.**

36 ~~(c)~~ **(d)** Any fees collected for a certification and educational
37 programs under subsection (b)(1) shall be collected by the state
38 chemist and deposited and administered under section 44.5 of this
39 chapter.

40 ~~(d)~~ **(e)** The state chemist may waive all or part of the certification
41 requirements established under subsection (b)(1) on a reciprocal basis
42 with any state agency or federal agency that has substantially the same

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1 certification standards.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 202, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 5. IC 13-11-2-79.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 79.5. "Fertilizer material" for purposes of IC 13-18-4-5 has the meaning set forth in IC 15-16-2-11.**"

Page 3, line 13, delete "coal, petroleum coke, and".

Page 6, line 22, after "material" delete "that" and insert "**contained in:**

- (1) runoff from a storm event; or
- (2) irrigation return flow;

entering the waters of Indiana as a result of land application of fertilizer material in compliance with rules adopted by the state chemist under IC 15-16-2-44."

Page 6, delete lines 23 through 34, begin a new paragraph and insert:

"(c) The department shall request documentation of compliance with subsection (b) before a notice of violation can be issued.

(d) A person has thirty (30) days to submit documentation after receiving a request under subsection (c).

(e) The department may issue a notice of violation for failure to comply with subsection (d). No notice of violation can be issued if the department determines that a person complied with subsection (b).

(f) Before the rules for land application of fertilizer materials adopted under IC 15-16-2-44 by the state chemist take effect, a person may meet the requirements under subsection (b) if the person maintains documentation of compliance with:

- (1) the conditions for land application of manure requirements under IC 13-18-10; or
- (2) the National Resources Conservation Services land application standards."

Page 6, line 35, delete "(d)" and insert "(g)".

Page 8, line 21, delete "January" insert "**July**".

Page 8, line 21, delete "staging" and insert "**staging, management,**".

SB 202—LS 6337/DI 52+



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Page 8, line 21, delete "use of organic" and insert "**land application of**".

Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 202 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

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