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**TITLE 329 SOLID WASTE MANAGEMENT BOARD****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #09-193

**DEVELOPMENT OF NEW RULES AT [329 IAC 11.5](#) CONCERNING REGISTRATION OF BIOMASS ANAEROBIC DIGESTERS, GASIFERS, AND BOILERS, AND MOBILE HOME SALVAGING OPERATIONS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules at [329 IAC 11.5](#) concerning requiring registration, operational requirements, and closure and financial assurance for biomass anaerobic digesters, gasifiers, and boilers, and mobile home salvaging operations.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking. IDEM also seeks comments on waste types appropriate for this registration and the level of oversight that may be appropriate.

**CITATIONS AFFECTED:** [329 IAC 11-3-1](#); [329 IAC 11.5](#).

**AUTHORITY:** [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#); [IC 13-19-4-10](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

IDEM has been approached by several companies interested in developing biomass digesters to process specific waste streams and recover methane or ethanol. Most of the proposals have focused on animal manure as the feedstock but some have also proposed to add other organic waste streams. The interest in the development of alternative energy sources has been the primary driver of these projects.

Currently, such proposals may fit under a variety of environmental permitting programs depending upon the specific facility circumstances. For example, a concentrated animal feeding operation (CAFO) could propose to construct and operate such a facility on the same property permitted under the National Pollutant Discharge Elimination System (NPDES) program as a CAFO and incorporate the facility into the CAFO permit. The same facility proposed at an off-site location that accepted manure from multiple farms would not be a CAFO and instead may be subject to either obtaining a solid waste processing facility permit or an exemption from the solid waste processing facility rules under [329 IAC 11-3-1](#)(15) as a solid waste management activity that does not pose a threat to human health or the environment. Neither the solid waste processing facility rules, nor the CAFO rules, were written with this type of facility in mind. In the interest of developing consistency in how similar facilities, regardless of their circumstances, are regulated for environmental concerns, this rule is being proposed.

IDEM has also encountered several operations in the state involved with the salvaging of parts and metals from mobile homes no longer suitable for use in mobile homes. While these operations do not require sophisticated equipment and represent a relatively low level of environmental threat, they fall under the solid waste processing facility definition in [329 IAC 11](#) and are subject to permitting requirements that place a significant financial burden on operations that have a very narrow profit margin.

While both of the operations described above are very different, IDEM is considering whether similar approaches in regulatory oversight may be appropriate. Establishment of a registration program for both types of operations that would also require the implementation of best management practices is therefore being considered in this rulemaking.

In addition, IDEM is also proposing to add a requirement to the solid waste processing rules that facilities permitted under the rule begin construction within 5 years of issuance of the original permit or the permit would be revoked or otherwise rescinded. This change is being proposed to make the permit requirement applied to processing facilities consistent with the same requirement applied to solid waste disposal facilities.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Adding both a biomass anaerobic digester, gasifier, and boiler, and a mobile home salvaging operation to the rule exclusions in the solid waste processing facility rules under [329 IAC 11-3-1](#). In a new article, registration, operational requirements (signage, access control, on-site roads, maintenance, storage requirements, review of how the waste is processed, records, reports, and employee training), and closure and financial assurance for both biomass digesters and operations that are only salvaging mobile home parts would be required. Adding pertinent definitions to clarify the article. Requirement for construction of any solid waste processing facility within 5 years after obtaining the initial permit or the permit would be revoked by the commissioner.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law, and there is no comparable federal law. It is a "state-only" requirement.

- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Leaving the rule as it currently stands and not adding the exclusion.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

### **Applicable Federal Law**

There is no federal law that is applicable to these facilities.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative will have a fiscal impact of approximately \$20,000 savings per year for each operation that is registered rather than permitted as a solid waste processing facility. This savings includes the permit fee and any renewals, as well as some administrative and operational costs required by the permit. There would be costs associated with registration and regulatory requirements where a processing permit would not be required. IDEM specifically requests comment on the fiscal impact.

Potential Fiscal Impact of Alternative 2. There is no additional fiscal impact if a full solid waste processing facility permit is currently required under the rule.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP, the monthly CTAP newsletter, and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface  
IDEM Compliance and Technical Assistance Program  
OPPTA - MC60-04  
100 North Senate Avenue  
W041  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC50-01-IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lynn West, Rules Development Branch, Office of Legal Counsel, at (317) 232-3593 or (800) 451-6027 (in Indiana).

### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.
- (3) The submission of comments on the potential fiscal impact of this rulemaking.

Mailed comments should be addressed to:

#09-193(SWMB) (SW Facility Registrations)  
Janet Pittman  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
MC 65-46  
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the IDEM receptionist on duty at the thirteenth floor reception desk, Rules Development Branch, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5517, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling Janet Pittman, Rules Development Branch at (317) 232-8922.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by April 24, 2009.

Additional information regarding this action may be obtained from Lynn West, Rules Development Branch, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).

Nancy King  
Branch Chief, Rules Development  
Office of Legal Counsel

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