
TITLE 329 SOLID WASTE MANAGEMENT BOARD

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #09-193

DEVELOPMENT OF NEW RULES AT [329 IAC 11.5](#) CONCERNING REGISTRATION OF BIOMASS ANAEROBIC DIGESTION FACILITIES AND BIOMASS GASIFICATION FACILITIES**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 11-3-1](#) and additional requirements in the proposed [329 IAC 11.5](#) concerning the registration of biomass anaerobic digestion facilities and biomass gasification facilities. The First Notice of Comment Period, published on March 25, 2009 (DIN: [20090325-IR-329090193FNA](#)), requested comments on two alternatives: excluding the described biomass facilities from regulation as solid waste processing facilities, along with other amendments to the exclusions in [329 IAC 11-3-1](#); and adding a new rule requiring registration, operational requirements, closure, and financial assurance for the described biomass facilities. Mobile Home Salvaging registrations have been transferred to a new rulemaking at LSA Document #10-253.

That comment period has ended; however, legislation has been enacted (House Enrolled Act 1187-2011), which adds definitions and a requirement that IDEM gives prior approval to a person constructing or expanding a biomass anaerobic digestion facility and biomass gasification facility. These facilities are also subject to this rulemaking.

This Continuation of First Notice of Comment Period provides information about adding to this rulemaking definitions of "biomass", "biomass anaerobic digestion facility", and "biomass gasification facility", as well as requirements that a person cannot construct or expand a biomass anaerobic digestion facility or a biomass gasification facility without obtaining prior approval from the department.

HISTORY

First Notice of Comment Period: March 25, 2009, Indiana Register (DIN: [20090325-IR-329090193FNA](#)).

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**

House Enrolled Act 1187, which will be effective on July 1, 2011, includes definitions of "biomass", "biomass anaerobic digestion facility", and "biomass gasification facility", as well as requirements that a person cannot start construction or expansion of a biomass anaerobic digestion facility or a biomass gasification facility without obtaining prior approval of the department after June 30, 2011. The rulemaking will be consistent with the new statutory language.

Alternatives to Be Considered Within the Rulemaking

The First Notice of Comment Period, published on March 25, 2009, in the Indiana Register at DIN: [20090325-IR-329090193FNA](#), included two alternatives for which no comments were received. This continuation adds one additional alternative.

Alternative 3. Adding the definitions and prior approval requirement in this rulemaking to be consistent with House Enrolled Act 1187 (adding [IC 13-20-10.5](#) and associated definitions at [IC 13-11-2](#)) effective July 1, 2011.

- 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? It is an Indiana statutory requirement.
- 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 applicable federal law.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 3. These amendments will not have any additional fiscal impact than what will already be required by Indiana law.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program 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 program,

the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

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

Alison Beumer
IDEM Small Business Regulatory Coordinator
MC 60-04 IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 232-8962
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386 or (800) 451-6027
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.

Mailed comments should be addressed to:

LSA Doc. #09-193 (Biomass Rule)
Janet Pittman
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
MC 65-45
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the thirteenth floor east reception desk,

Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5970, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 232-8922.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 8, 2011.

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, Chief
Rules Development Branch
Office of Legal Counsel

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