

# ARTICLE 11.5. BIOMASS ANAEROBIC DIGESTION FACILITIES AND BIOMASS GASIFICATION FACILITIES

## Rule 1. General Provisions

### 329 IAC 11.5-1-1 Purpose

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2-1; IC 36-9-30-35

Sec. 1. (a) This article regulates biomass anaerobic digestion facilities and biomass gasification facilities through the following:

(1) Providing for the registration of the construction and expansion of facilities storing, reusing, or processing biomass or appropriate feedstock for:

(A) energy production; or

(B) production of a reusable byproduct, such as animal bedding.

(2) Providing standards for storing or processing biomass or appropriate feedstock for:

(A) energy production; or

(B) production of a reusable byproduct, such as animal bedding.

(3) Providing cleanup and closure standards for facilities that have stored or processed biomass or appropriate feedstock for:

(A) energy production; or

(B) production of a reusable byproduct, such as animal bedding.

(4) Providing for financial assurance for the cleanup and closure of facilities that have stored or processed biomass or appropriate feedstock for:

(A) energy production; or

(B) production of a reusable byproduct, such as animal bedding.

(b) This article replaces all solid waste processing standards and permitting requirements under 329 IAC 10 and 329 IAC 11 for a facility's use of biomass or appropriate feedstock for energy production or production of a reusable byproduct, such as animal bedding. This article does not apply to incineration. (*Solid Waste Management Division; 329 IAC 11.5-1-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

### 329 IAC 11.5-1-2 Applicability

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. This article applies to a person doing any of the following:

(1) Constructing or expanding a biomass anaerobic digestion facility or a biomass gasification facility for:

(A) energy production; or

(B) recovery of reusable byproduct.

(2) Storing biomass or appropriate feedstock for:

(A) energy production; or

(B) recovery of reusable byproduct;

through a biomass anaerobic digestion facility or a biomass gasification facility.

(3) Processing or reusing a biomass or appropriate feedstock for:

(A) energy production; or

(B) recovery of reusable byproduct;

through a biomass anaerobic digestion facility or a biomass gasification facility.

(*Solid Waste Management Division; 329 IAC 11.5-1-2; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-1-3 Severability**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. If any provision of this article or the application to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or application of this article that can be given effect without the invalid provision or application. *(Solid Waste Management Division; 329 IAC 11.5-1-3; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-1-4 Acts prohibited**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. No person who owns or operates a facility to which this article applies shall cause or allow the storage, containment, processing, or disposal of biomass and appropriate feedstock in a manner that creates a threat to human health or the environment, including the creation of:

- (1) a fire hazard;
- (2) a vector attraction;
- (3) air, land, or water pollution; or
- (4) other contamination.

*(Solid Waste Management Division; 329 IAC 11.5-1-4; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-1-5 Penalties and enforcement**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 5. Penalties for violation of this article shall be governed by IC 13-14 and IC 13-30. *(Solid Waste Management Division; 329 IAC 11.5-1-5; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-1-6 Local approvals**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 6. The registration that is required by this article does not supersede or replace the need to obtain any local approvals. *(Solid Waste Management Division; 329 IAC 11.5-1-6; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-1-7 Commissioner approval**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 7. In this article, any approval that is given by the commissioner is based on protection of human health and the environment. *(Solid Waste Management Division; 329 IAC 11.5-1-7; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**Rule 2. Definitions**

**329 IAC 11.5-2-1 Definitions**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2; IC 13-30-2; IC 36-9-30

Sec. 1. In addition to the definitions in IC 13-11-2 and 329 IAC 11-2 that are applicable, the definitions in this rule apply

throughout this article. (*Solid Waste Management Division; 329 IAC 11.5-2-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-2 "Appropriate feedstock" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. "Appropriate feedstock" means a specific solid waste stream that has been segregated from other solid wastes and that can be successfully processed with other solid waste or products for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility. Food waste, cooking oil and grease, industrial waste, such as paper pulp, sewage sludge, off-spec or unused animal feed that are nonindustrial waste sources, dried distillers grain, food waste from food manufacturing industry and from food services industry, or pallets are examples of common appropriate feedstocks. (*Solid Waste Management Division; 329 IAC 11.5-2-2; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-3 "Biomass" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. "Biomass" means biological material that is available on a renewable recurring basis and is used as a source of renewable energy, including the following:

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

(*Solid Waste Management Division; 329 IAC 11.5-2-3; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-4 "Biomass anaerobic digestion facility" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. "Biomass anaerobic digestion facility" means a facility that incorporates equipment that promotes the decomposition of biomass to simple organics and biogas products in the oxygen free environment of a closed, sealed chamber. The term includes a methane recovery system. (*Solid Waste Management Division; 329 IAC 11.5-2-4; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-5 "Biomass gasification facility" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. "Biomass gasification facility" means a facility that incorporates equipment to carry out a thermochemical process that, with little or no oxygen present, converts biomass into a synthesis gas. (*Solid Waste Management Division; 329 IAC 11.5-2-5; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-6 "Byproduct" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. "Byproduct" means any material that is recovered after processing through a facility registered under this article and then reused. (*Solid Waste Management Division; 329 IAC 11.5-2-6; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-7 "Closure" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. "Closure" means the activities to be completed at the registered facility at the end of biomass and appropriate feedstock acceptance and processing. (*Solid Waste Management Division; 329 IAC 11.5-2-7; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-8 "Contingency action plan" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 8. "Contingency action plan" means a written course of action:

(1) in the event of an emergency that causes the release of contaminants into the environment; or

(2) for the method or methods of biomass and appropriate feedstock management or disposal if the facility is unable to operate or process biomass and appropriate feedstock for seventy-two (72) hours or longer.

(*Solid Waste Management Division; 329 IAC 11.5-2-8; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-9 "Discard" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 9. "Discard" has the meaning set forth [*sic, in*] 329 IAC 11-2-9.8. (*Solid Waste Management Division; 329 IAC 11.5-2-9; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-10 "Disposal" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-57; IC 13-30-2; IC 36-9-30

Sec. 10. "Disposal" has the meaning set forth in IC 13-11-2-57. For purposes of this article, disposal must meet the requirements in 329 IAC 11.5-7-1. (*Solid Waste Management Division; 329 IAC 11.5-2-10; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-11 "Financial assurance" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 11. "Financial assurance" means, for purposes of this article, a bond acquired by the owner or operator of the registered facility in an amount sufficient to provide for:

(1) remediation of contamination at the registered facility; and

(2) closure of the registered facility.

(*Solid Waste Management Division; 329 IAC 11.5-2-11; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

**329 IAC 11.5-2-12 "Household hazardous waste" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 12. "Household hazardous waste" means hazardous waste:

(1) generated by a household; and

(2) exempt from the requirements of the hazardous waste rules at 329 IAC 3.1.

*(Solid Waste Management Division; 329 IAC 11.5-2-12; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-13 "Landowner" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 13. "Landowner" means an owner of real property, as described in the recorded deed and the current county or counties plats. For purposes of this article, the term includes the lessee of the land. *(Solid Waste Management Division; 329 IAC 11.5-2-13; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-14 "Operator" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 14. "Operator" means the person responsible for managing and overseeing a facility regulated under this article. *(Solid Waste Management Division; 329 IAC 11.5-2-14; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-15 "Owner" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 15. "Owner" means the person who owns a facility required to register under this article. *(Solid Waste Management Division; 329 IAC 11.5-2-15; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-16 "Registered facility" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 16. "Registered facility" means a:

(1) storage;

(2) processing; or

(3) reuse or recovery;

facility that is registered under this article. *(Solid Waste Management Division; 329 IAC 11.5-2-16; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-17 "Registration" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 17. "Registration" means the notification to, and the approval by, the commissioner regarding the construction, expansion, processing, or storage of biomass or appropriate feedstock for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility that:

- (1) meets the requirements for registration; and
- (2) must register under this article.

*(Solid Waste Management Division; 329 IAC 11.5-2-17; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-18 "Residue" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 18. "Residue" means, for purposes of this article, any material remaining after storing, reusing, or processing of biomass and appropriate feedstock that must be discarded including unusable biomass, appropriate feedstock, or reusable byproducts. *(Solid Waste Management Division; 329 IAC 11.5-2-18; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-19 "Speculative accumulation" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 19. "Speculative accumulation" means the storage before processing or reusing of large quantities of biomass or appropriate feedstock without a current outlet for the processed or reused materials. It is a rebuttable presumption that storage of biomass, appropriate feedstock, or residue for more than six (6) months constitutes disposal. *(Solid Waste Management Division; 329 IAC 11.5-2-19; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-20 "Storage" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 20. "Storage" means the retention, containment, or accumulation of biomass or appropriate feedstock intended for processing on a temporary basis in such a manner that it does not:

- (1) threaten or potentially threaten human health; or
- (2) impact or potentially impact the environment.

The term does not include speculative accumulation. *(Solid Waste Management Division; 329 IAC 11.5-2-20; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

**329 IAC 11.5-2-21 "Waste determination" defined**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 21. "Waste determination" means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish the regulatory status of the waste and determine if the waste must be disposed of under the hazardous waste rules at 329 IAC 3.1, the PCB rules at 329 IAC 4.1, or the solid waste rules at 329 IAC 10. The regulatory status may be determined using either generator knowledge or testing by the methods in 40 CFR 261, Subpart C, or equivalent methods approved under 40 CFR 260.21 to ascertain the following:

- (1) The waste is a hazardous waste under 40 CFR 262.11 and is regulated under 329 IAC 3.1 because of the following:
  - (A) The waste is not excluded from regulation under 40 CFR 261.4.
  - (B) The waste is a listed waste under 40 CFR 261, Subpart D.
  - (C) The waste exhibits characteristics specified in 40 CFR 261, Subpart C.
- (2) The waste contains regulated amounts of PCBs and is regulated under 329 IAC 4.1.
- (3) The waste is a solid waste and can be disposed of under 329 IAC 10.
- (4) The waste is a solid waste and can be processed under 329 IAC 11.

\*Note: All federal regulations cited in this section are incorporated by reference as revised July 1, 2008. Sales of the Code

of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954 or online at <http://bookstore.gpo.gov/>. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management. (*Solid Waste Management Division; 329 IAC 11.5-2-21; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

### **Rule 3. Exclusions**

#### **329 IAC 11.5-3-1 Exclusions**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-258; IC 13-30-2; IC 36-9-30

Sec. 1. The following are excluded from regulation under this article:

- (1) Facilities that hold a valid permit under 329 IAC 10 or 329 IAC 11 to treat, process, store, or dispose of solid or hazardous wastes that are not described in 329 IAC 11.5-1-2.
- (2) A wastewater treatment plant as defined under IC 13-11-2-258 that has a permit as a publicly owned treatment works (POTW) or an industrial treatment works under 327 IAC 5 that has a permit to discharge and does not store solid waste.
- (3) Processing, except for digestion or gasification, of uncontaminated and untreated natural growth including sawdust, tree limbs, stumps, leaves, and grass clippings.
- (4) Facilities permitted under 329 IAC 3.1 are not required to obtain permits for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility.
- (5) Wastewater discharge activities regulated by 327 IAC 5.
- (6) A biomass anaerobic digestion facility or a biomass gasification facility that is a waste management system under 327 IAC 19-13-2 at a concentrated animal feeding operation (CAFO) or a confined feeding operation (CFO) provided the facility complies with the following:
  - (A) 329 IAC 11.5-4-1(g).
  - (B) 329 IAC 11.5-5.
  - (C) 329 IAC 11.5-6
  - (D) 329 IAC 11.5-7.
  - (E) 329 IAC 11.5-8, if the facility is accepting appropriate feedstock.

(*Solid Waste Management Division; 329 IAC 11.5-3-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

### **Rule 4. Registration**

#### **329 IAC 11.5-4-1 Registration**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 4-21.5-3; IC 13-15-7; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owners or operators of all facilities described under 329 IAC 11.5-1-2 are required to register, unless excluded under 329 IAC 11.5-3-1. A registration is for a fixed term not to exceed five (5) years. A registration may be renewed for five (5) years in accordance with this section.

(b) The registration form must be:

- (1) filled out completely; and
- (2) submitted to the commissioner in triplicate on a form or in a format provided by the commissioner.

At any time, one (1) copy of a registration may be submitted electronically via electronic media.

(c) The commissioner may require the registration to be submitted electronically with an electronic signature.

(d) The form for renewal of the registration must be submitted to the commissioner at least sixty (60) days before the expiration date of the registration. The renewal must include an update for the cost of the surety bond to meet the financial assurance requirements in rule 8 [329 IAC 11.5-8]. If the maximum on-site tonnage estimate has not changed from the previous

registration, the update for the cost of the surety bond will be calculated by multiplying the final figure of the most recent surety bond amount in the original registration, a modification, or most current renewal by an inflation factor of ten percent (10%). The recalculated amount will be the surety bond amount required for financial assurance in a renewal.

(e) The registration must be modified and submitted to the commissioner for approval prior to any of the following:

(1) A change in the following:

- (A) The process at the biomass anaerobic digestion facilities and biomass gasification facility.
- (B) The location of the biomass anaerobic digestion facilities and biomass gasification facilities.
- (C) The amounts of biomass or appropriate feedstock specified in subsection (g)(5).

(2) An expansion to the biomass anaerobic digestion facilities or biomass gasification facilities.

(f) The owner or operator of a facility that would like to accept a biomass or appropriate feedstock that is not currently listed on the facility's approved registration or any acknowledgment letter issued by the commissioner must submit documentation for the new biomass and appropriate feedstock, and approvals are as follows:

(1) Biomass with the same storage and handling is considered approved within fifteen (15) days unless a denial is issued by the commissioner.

(2) Appropriate feedstock with the same storage and handling is considered approved within thirty (30) days unless a denial is issued by the commissioner.

(3) Biomass or appropriate feedstock that has different storage or handling requirements can only be taken by the facility after the receipt by the facility of a commissioner approval.

(g) The registration must include the following information:

(1) The name of the owner, operator, and landowner, if different from the registered facility owner.

(2) Addresses and telephone numbers for the owner, operator, and landowner.

(3) The location and address of the facility.

(4) The type of facility.

(5) At a minimum the following information:

(A) The physical or chemical characteristics of the biomass or appropriate feedstock.

(B) The source of the biomass or appropriate feedstock.

(C) A description of the process that created the biomass and appropriate feedstock.

(D) Maximum amounts, in tons, of biomass or appropriate feedstock that are delivered daily, weekly, or monthly basis.

(E) The maximum amounts of biomass, appropriate feedstock, and residues to be stored on-site and the probable duration of storage in days.

(F) Identification of any reusable byproducts.

(G) Other information requested by the commissioner.

(6) Screening procedures to ensure that the registered facility is only receiving biomass and appropriate feedstock that are acceptable and approved for use at this registered facility.

(7) A plot plan that has a scale, including a bar scale, elevations that correlate with U.S. Geological Survey mean sea level data, north arrow, a map legend, facility boundary, roads, drainage ways, and identification on the plot plan of where the biomass, appropriate feedstock, and residues will be stored or processed in:

(A) a building;

(B) containers;

(C) vehicles;

(D) lagoons;

(E) tanks; or

(F) other proposed storage locations subject to approval by the commissioner.

(8) The construction plans and construction material for all areas where biomass, appropriate feedstock, and residues will be:

(A) stored; or

(B) processed.

(9) A detailed description of the:

(A) storage;



- (B) handling;
- (C) processing;
- (D) treatment; and
- (E) final disposition;

of the biomass, appropriate feedstock, reusable byproducts, or residue.

(10) The maximum total amount, in tons, of biomass or appropriate feedstock capable of being processed per day.

(11) Other approvals or permits from the commissioner for the facility.

(12) The date the facility became operational or will be operational.

(13) A contingency action plan that specifies the following:

(A) An outline of the method or methods of biomass and appropriate feedstock management or disposal to be implemented if the registered facility is unable to operate or process and there is no more remaining storage capacity for the biomass and appropriate feedstock that has been approved in the registration.

(B) The maximum amounts of biomass, appropriate feedstock, and residues as specified in subdivision (5)(E) at the facility site at any one (1) time.

(C) Emergency response plan for controlling:

- (i) fire;
- (ii) explosion;
- (iii) spills; and
- (iv) contamination.

(D) If required, a spill prevention control plan, under Section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

(E) A floor plan of the facility and areas where biomass and appropriate feedstock are stored.

(F) A plot plan of the registered facility. The plot plan must include the information required in subdivision (7).

(G) A United States Geological Service (USGS) map that identifies the facility location and any access roads.

(H) Telephone numbers for the fire department responsible for responding to a fire or emergency at the facility.

(14) A description of any residue, leachate, or wastewater resulting from the processing or storing of biomass or appropriate feedstock. Applicable surface water controls under 327 IAC 15-6 must be specified.

(15) Material handling and housekeeping procedures for the following areas:

- (A) Storage.
- (B) Biomass and appropriate feedstock processing.
- (C) Loading.
- (D) Unloading.

(16) The financial assurance documentation required under 329 IAC 11.5-8-1, if applicable.

(h) The owner or operator must sign and submit the following certification with the registration: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including a fine or imprisonment for a knowing violation. I further certify that I am authorized to submit this information."

(i) The commissioner or a designee may deny, revoke, limit the length of, or place additional conditions on a registration if the commissioner determines one (1) or more of the following:

- (1) The commissioner, under IC 13-15-7, has revoked the applicant's previous registration under this article.
- (2) The registration form is incomplete.
- (3) There is a violation of a requirement of this article or a condition of the registration.
- (4) There is a failure to disclose all relevant facts in obtaining a registration under this article.
- (5) There is a misrepresentation made in obtaining a registration under this article.
- (6) The permittee fails to meet the requirements for a registration.
- (7) The permittee fails to correct a condition as agreed to in an agreed order with the department or commissioner's order, or within the time established in the agreed order or commissioner's order, come into compliance with:

- (A) the registration;
- (B) this article; or
- (C) both.

(j) The issuance of a registration does not:

- (1) convey any property right of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other federal, state, or local requirements.

(k) A registration is not transferable. A new owner or operator:

- (1) must submit a registration form to the commissioner thirty (30) days in advance of taking ownership of the facility; and
- (2) may operate the facility in the interim.

*(Solid Waste Management Division; 329 IAC 11.5-4-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

### **329 IAC 11.5-4-2 Transition for submitting registration**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) All owners or operators of existing facilities that are required to register under this article must submit a registration form within sixty (60) days after the effective date of this article. These facilities may continue to operate unless the registration is denied and registration under 329 IAC 11.7 or permitting under 329 IAC 11 is not possible. All owners and operators with an existing biomass anaerobic digestion facility or a biomass gasification facility that intend to expand the facility must resubmit the registration for approval by the commissioner prior to expanding the facility.

(b) No person that plans a new biomass anaerobic digestion facility or biomass gasification facility that is required to be registered under this article may construct or operate without prior registration approval by the commissioner. *(Solid Waste Management Division; 329 IAC 11.5-4-2; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA)*

## **Rule 5. Storage Requirements**

### **329 IAC 11.5-5-1 Storage requirements for biomass and appropriate feedstock**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) All registered facilities must store biomass, appropriate feedstock, and any residue in a manner that does not threaten human health and protects the environment. The following are examples of adequate storage:

- (1) A building that is weather tight with impervious floor.
- (2) A container capable of being enclosed.
- (3) A completely enclosed vehicle.
- (4) Tanks, lagoons, or other storage, as approved by the commissioner.

(b) Speculative accumulation of biomass and appropriate feedstock is not allowed. Facilities registered under this article must engage in only legitimate reuse or processing as demonstrated by the following:

- (1) The owner or operator of the registered facility must have a plan to reuse or process the biomass, appropriate feedstock, and reusable byproducts, if applicable, which identifies the:
  - (A) biomass, appropriate feedstock, and reusable byproducts, if applicable, to be reused or processed; and
  - (B) manner in which the biomass, appropriate feedstock, and reusable byproducts, if applicable, is intended to be reused or processed.
- (2) Biomass, appropriate feedstock, reusable byproducts, and residue may be stored for periods exceeding six (6) months if a reason is provided in the registration, such as a contract providing for longer storage or documentation of the short term availability of certain vegetative biomass.
- (3) The biomass and appropriate feedstock, or any reusable byproduct is stored in a manner reflecting its value as a

commodity and in accordance with this rule.

(4) The registered facility must maintain records for a period of five (5) years, recorded in a consistent manner either daily, weekly, or monthly for biomass and appropriate feedstock received by the facility, and biomass and appropriate feedstock processed at the facility, including the following:

(A) The total amount in estimated tons of biomass and appropriate feedstock received.

(B) The total amount in estimated tons of biomass, appropriate feedstock, and reusable byproducts, if applicable, processed.

(C) The total amount in estimated tons of residue shipped from the facility for disposal.

(5) Shipping papers and manifests as applicable.

(c) Adequate measures must be in place to control fire hazards, and the contingency action plan required under 329 IAC 11.5-4-1(g)(13) must be submitted to the local fire department that services the area. (*Solid Waste Management Division; 329 IAC 11.5-5-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

## Rule 6. Operational Requirements

### 329 IAC 11.5-6-1 Operational requirements for processing of biomass and appropriate feedstock

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) A facility that processes or stores biomass and appropriate feedstock must have the following:

(1) A sign at least one (1) foot high by two (2) feet wide prominently displayed by the door or entrance to the facility and legibly containing the following information:

(A) The name of the facility.

(B) The IDEM registration number.

(C) The name and telephone number of a designated emergency contact person.

(2) Processing on an impervious surface such as concrete or asphalt with curbs to contain spills. All liquids or leachate must be controlled and collected. Facilities that are registered under this article that are only processing uncontaminated wood or only dry biomass are not required to process on an impervious surface.

(3) Adequate measures in place to control fire hazards, and equipment available to control fires. The contingency action plan required under 329 IAC 11.5-4-1(g)(13) must be submitted to the local fire department that services the area.

(4) A telephone, cellular telephone, or radio communication device available when employees are present and the building is in use.

(5) Adequate control of the following:

(A) Dust.

(B) Odors.

(C) Wastewater.

(D) Vectors.

(E) Litter.

(F) Leachate.

(6) Monitoring of incoming biomass and appropriate feedstock. Any biomass and appropriate feedstock that the facility is not permitted or registered to receive for processing must be isolated and removed from the registered facility.

(7) Biomass and appropriate feedstock that is stored must be fed into the biomass anaerobic digestion facility or biomass gasification facility before it can become putrid.

(b) Any container or vehicle that stores appropriate feedstock or residues that is:

(1) subject to blowing; or

(2) a vector attraction;

must be closed at the end of the operating day.

(c) The owner or operator shall record and retain at the registered facility, or in an alternative location approved by the commissioner, all records, reports, or audits required by this article. The following information must be retained until certification

of closure is deemed adequate by the commissioner under 329 IAC 11.5-7-1(f):

(1) A paper copy or an accessible copy of the electronically submitted registration.

(2) A contingency action plan as required under 329 IAC 11.5-4-1(g)(13).

(3) The results of any waste determination tests on the residues generated by the registered facility.

(d) All records required by this article must be furnished as required and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner.

(e) No hazardous waste that is regulated by 329 IAC 3.1 shall be processed at any registered facility, unless the facility is permitted under 329 IAC 3.1 to process hazardous waste.

(f) Employees must be trained on safety, emergency, and operational procedures for the facility. A training log must be kept for five (5) years stating the following:

(1) The name of the employee.

(2) Training topics.

(3) Hours of training.

(g) The facility storing biomass and appropriate feedstock, or any residue within a town or city limits must:

(1) have access controls in place, such as a locked door, twenty-four (24) hour security, or fence with locked gate; and

(2) be secured during nonbusiness hours.

(h) Biomass, appropriate feedstock, reusable byproducts, or residues may not be stored in areas other than in designated, approved storage areas.

(i) Storage, including the retention, containment, or accumulation of biomass, appropriate feedstock, and residue, on a temporary basis must be done in such a manner that it does not:

(1) threaten or potentially threaten human health; or

(2) impact or potentially impact the environment.

It is a rebuttable presumption that storage of biomass and appropriate feedstock, or any residue for more than six (6) months constitutes discarding and disposal. (*Solid Waste Management Division; 329 IAC 11.5-6-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

## **Rule 7. Closure**

### **329 IAC 11.5-7-1 Closure**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-25-5-8.5; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owner or operator must notify the commissioner in writing at least fourteen (14) days before the date when the registered facility permanently ceases accepting biomass or appropriate feedstock.

(b) All biomass, appropriate feedstock, reusable byproduct, and residue must be:

(1) removed from the:

(A) building;

(B) containers;

(C) storage areas;

(D) lagoons;

(E) tanks; and

(F) vehicles; and

(2) disposed of according to 329 IAC 11.5-7-2 [section 2 of this rule];

within sixty (60) days of the registered facility no longer accepting biomass and appropriate feedstock. Facilities that have a confined feeding operation (CFO) approval or a concentrated animal feeding operation (CAFO) permit and that cease processing biomass are required to comply with that permit or approval.

(c) Any contaminants resulting from the storage or processing of biomass, appropriate feedstock, reusable byproduct, or residue that are above risk based standards under IC 13-25-5-8.5 must be contained, removed and disposed of according to 329 IAC 11.5-7-2 [section 2 of this rule]. This requirement does not include any contaminants that the owner or operator can

demonstrate were existing before the storage or processing of biomass or appropriate feedstock.

(d) A registered facility must be certified closed under subsection (e) after all biomass, appropriate feedstock, and residue are removed and disposed.

(e) The owner or operator must send a certification statement indicating that the requirements of this section have been met to the commissioner within thirty (30) days after completion of the closure.

(f) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance. (*Solid Waste Management Division; 329 IAC 11.5-7-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

### **329 IAC 11.5-7-2 Reusable byproduct and residue disposal**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. Persons disposing of reusable byproduct or residue must reuse or make a waste determination and dispose as applicable at either of the following:

(1) A permitted facility or method allowed by the following:

(A) 327 IAC 6.1.

(B) 329 IAC 11-3-1.

(C) 329 IAC 3.1.

(D) 329 IAC 4.1.

(E) 329 IAC 10.

(F) Facilities permitted under 329 IAC 11.

(G) 329 IAC 13.

(2) A facility out of state.

(*Solid Waste Management Division; 329 IAC 11.5-7-2; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

## **Rule 8. Financial Assurance**

### **329 IAC 11.5-8-1 Financial assurance for cleanup and closure**

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 1. (a) All owners or operators that are required to register under this article shall establish financial assurance for closure of the registered facility. Facilities that have a confined feeding operation (CFO) approval or a concentrated animal feeding operation (CAFO) permit are exempt from the requirement to obtain financial assurance on any biomass. The financial assurance must be provided as a surety bond as specified in subsection (c) in the amount that will provide for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount that will provide for closure is determined by the maximum amount in tons of biomass, appropriate feedstock, and residue that may be stored at the facility at one (1) time, multiplied by ninety dollars (\$90), unless a demonstration of justified lower disposal costs is submitted for commissioner approval. This approval will be reconsidered with subsequent renewals that still must comply with the inflation calculation required by 329 IAC 11.5-4-1(d).

(c) The surety bond is established as follows:

(1) On forms:

(A) provided by the commissioner; or

(B) as approved by the commissioner.

(2) All surety bonds must contain the following:

(A) The establishment of minimum bond amount determined by subsection (b).

(B) Provision that the surety will place the amount that will provide for closure into a standby trust fund, as directed by the commissioner, upon notice from the commissioner that the owner or operator has failed to close the facility

under the requirements of 329 IAC 11.5-7-1.

(C) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.

(D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

(A) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and

(B) authorized to do business in Indiana.

(4) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the commissioner.

(5) The owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. Such trust fund must be established in accordance with the following:

(A) On forms provided by the commissioner or forms as approved by the commissioner.

(B) The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner-approved work done to close the facility.

(C) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.

(D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.

(E) The requirement that all signatures be notarized by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.

(F) The requirement that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal agency and a state of Indiana agency.

(d) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the following:

(1) The IDEM registration number, name, and address.

(2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.

(e) An owner or operator shall do the following:

(1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., naming the owner or operator as debtor. An owner or operator who has a surety bond shall be deemed to be without the required financial assurance in the event of bankruptcy of the institution issuing the surety bond.

(2) Reestablish financial assurance within sixty (60) days after such an event. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b).

(f) In addition to any other penalties provided for in this article or in IC 13-14 and IC 13-30, any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits shall be grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

(g) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article. (*Solid Waste Management Division; 329 IAC 11.5-8-1; filed Mar 14, 2013, 2:57 p.m.: 20130410-IR-329090193FRA*)

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