

# HOUSE BILL No. 1369

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2-191; IC 13-18-10.

**Synopsis:** Regulation of confined feeding operations. Amends the law on confined feeding operations (CFOs, which include any confined feeding of at least 300 cattle, 600 swine or sheep, 30,000 fowl, or 500 horses). Provides that a person that owns a CFO, owns the livestock in a CFO, applies for a permit, permit renewal, or permit modification for a CFO, or is otherwise in direct or responsible charge of a CFO is a "responsible party" with respect to the CFO. Provides that a person may not start construction or operation of a CFO without obtaining a permit from the department of environmental management (IDEM) and may not modify a CFO without obtaining a permit modification from IDEM. Requires IDEM to provide public access to a permit application through IDEM's Virtual File Cabinet, to publish a notice requesting public comments on the application, to allow interested persons to submit written comments, and to hold a public hearing on the permit application upon written request. Requires the commissioner of IDEM (commissioner) to deny an application for a permit or permit modification if the proposed activity would substantially endanger public health or the environment. Authorizes the commissioner to revoke a permit to prevent or abate a substantial endangerment to public health or the environment. Requires the environmental rules board to adopt rules establishing new requirements for new CFOs and for existing or expanding CFOs, including the requirement to maintain at least one mile in distance between a CFO's structures and the boundary of any property on which an existing residence is located and the requirement to meet an odor standard.

**Effective:** July 1, 2018.

---

---

## Errington

---

---

January 16, 2018, read first time and referred to Committee on Environmental Affairs.

---

---



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

# HOUSE BILL No. 1369

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 13-11-2-191, AS AMENDED BY P.L.127-2009,
- 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2018]: Sec. 191. (a) "Responsible party", for purposes of
- 4 IC 13-18-10, means, **with respect to a confined feeding operation,**
- 5 **any of the following: a person that:**
- 6 (1) ~~An applicant:~~ **owns the confined feeding operation;**
- 7 (2) ~~An officer, a corporation director, or a senior management~~
- 8 ~~official of any of the following that is an applicant:~~ (A) A
- 9 corporation. (B) A partnership. (C) A limited liability company.
- 10 (D) A ~~business association:~~ **owns the livestock confined in the**
- 11 **confined feeding operation;**
- 12 (3) **applies for a permit, permit renewal, or permit**
- 13 **modification for the confined feeding operation; or**
- 14 (4) **is otherwise in direct or responsible charge or control of**
- 15 **operations at the confined feeding operation.**
- 16 (b) "Responsible party", for purposes of IC 13-19-4, means:
- 17 (1) an officer, a corporation director, or a senior management



1 official of a corporation, partnership, limited liability company, or  
2 business association that is an applicant; or

3 (2) an individual, a corporation, a limited liability company, a  
4 partnership, or a business association that owns, directly or  
5 indirectly, at least a twenty percent (20%) interest in the  
6 applicant.

7 (c) "Responsible party", for purposes of IC 13-20-6, means:

8 (1) an officer, a corporation director, or a senior management  
9 official of a corporation, partnership, limited liability company, or  
10 business association that is an operator; or

11 (2) an individual, a corporation, a limited liability company, a  
12 partnership, or a business association that owns, directly or  
13 indirectly, at least a twenty percent (20%) interest in the operator.

14 (d) "Responsible party", for purposes of IC 13-24-2, has the  
15 meaning set forth in Section 1001 of the federal Oil Pollution Act of  
16 1990 (33 U.S.C. 2701).

17 (e) "Responsible party", for purposes of IC 13-25-6, means a person:

18 (1) who:

19 (A) owns hazardous material that is involved in a hazardous  
20 materials emergency; or

21 (B) owns a container or owns or operates a vehicle that  
22 contains hazardous material that is involved in a hazardous  
23 materials emergency; and

24 (2) who:

25 (A) causes; or

26 (B) substantially contributes to the cause of;  
27 the hazardous materials emergency.

28 SECTION 2. IC 13-18-10-1, AS AMENDED BY P.L.199-2014,  
29 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2018]: Sec. 1. (a) A person may not start ~~(†)~~ construction **or**  
31 **operation** of a confined feeding operation ~~or~~

32 ~~(‡)~~ expansion of a confined feeding operation that increases:

33 ~~(A) animal capacity; or~~

34 ~~(B) manure containment capacity; or~~

35 ~~(C) both;~~

36 without obtaining the prior approval of a **permit from** the department.

37 (b) A person may not ~~operate~~ **modify** a confined feeding operation  
38 **if the modification would increase:**

39 **(1) the number of animals;**

40 **(2) the animal capacity;**

41 **(3) the quantity of manure generated; or**

42 **(4) the manure containment capacity;**



1 **at the confined feeding operation** without **first** obtaining ~~the prior~~  
 2 ~~approval of a permit modification from~~ the department.

3 SECTION 3. IC 13-18-10-1.4, AS AMENDED BY P.L.126-2012,  
 4 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 2018]: Sec. 1.4. (a) Subject to subsection (b), an application  
 6 for ~~approval a permit~~ under section 1 of this chapter must include for  
 7 each responsible party the disclosure statement referred to in  
 8 subsection (c) if either or both of the following apply:

9 (1) State or federal officials at any time alleged that the  
 10 responsible party committed acts or omissions that constituted a  
 11 material violation of state or federal environmental law.

12 (2) Foreign officials at any time alleged that the responsible party  
 13 committed acts or omissions that:

14 (A) constituted a material violation of foreign environmental  
 15 law; and

16 (B) would have constituted a material violation of state or  
 17 federal environmental law if the act or omission had occurred  
 18 in the United States.

19 (b) Subsection (a):

20 (1) applies only if the acts or omissions alleged under subsection  
 21 (a)(1) or (a)(2) presented a substantial endangerment to human  
 22 health or the environment; and

23 (2) does not apply to a renewal of ~~an approval a permit~~ under  
 24 section 1 of this chapter that does not involve construction or  
 25 expansion as described in section 1 of this chapter.

26 (c) A responsible party referred to in subsection (a) must make  
 27 reasonable efforts to provide complete and accurate information to the  
 28 department in a disclosure statement that includes the following:

29 (1) The name and business address of the responsible party.

30 (2) A description of the responsible party's experience in  
 31 managing the environmental aspects of the type of facility that  
 32 will be managed under the permit.

33 (3) A description of all pending administrative, civil, or criminal  
 34 enforcement actions filed in the United States against the  
 35 responsible party alleging any acts or omissions that:

36 (A) constitute a material violation of state or federal  
 37 environmental law; and

38 (B) present a substantial endangerment to human health or the  
 39 environment.

40 (4) A description of all pending administrative, civil, or criminal  
 41 enforcement actions filed in a foreign country against the  
 42 responsible party alleging any acts or omissions that:



- 1 (A) constitute a material violation of foreign environmental  
 2 law;  
 3 (B) would have constituted a material violation of state or  
 4 federal environmental law if the act or omission on which the  
 5 action is based had occurred in the United States; and  
 6 (C) present a substantial endangerment to human health or the  
 7 environment.
- 8 (5) A description of all finally adjudicated or settled  
 9 administrative, civil, or criminal enforcement actions in the  
 10 United States resolved against the responsible party within the  
 11 five (5) years that immediately precede the date of the application  
 12 involving acts or omissions that:
- 13 (A) constitute a material violation of federal or state  
 14 environmental law; and  
 15 (B) present a substantial endangerment to human health or the  
 16 environment.
- 17 (6) A description of all finally adjudicated or settled  
 18 administrative, civil, or criminal enforcement actions in a foreign  
 19 country resolved against the responsible party within the five (5)  
 20 years that immediately precede the date of the application  
 21 involving acts or omissions that:
- 22 (A) constitute a material violation of foreign environmental  
 23 law;  
 24 (B) would have constituted a material violation of state or  
 25 federal environmental law if the act or omission on which the  
 26 action is based had occurred in the United States; and  
 27 (C) present a substantial endangerment to human health or the  
 28 environment.
- 29 (7) Identification of all state, federal, or foreign environmental  
 30 permits:
- 31 (A) applied for by the responsible party that were denied; or  
 32 (B) previously held by the responsible party that were revoked.
- 33 (d) A disclosure statement submitted under subsection (c):  
 34 (1) must be executed under oath or affirmation; and  
 35 (2) is subject to the penalty for perjury under IC 35-44.1-2-1.
- 36 (e) The department may investigate and verify the information set  
 37 forth in a disclosure statement submitted under this section.
- 38 SECTION 4. IC 13-18-10-1.9, AS ADDED BY P.L.1-2010,  
 39 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2018]: Sec. 1.9. (a) This section applies:  
 41 (1) to a confined feeding operation for which a person is required  
 42 to submit an application for ~~approval~~ **a permit** under section 1 of



1 this chapter if ~~an a permit~~ application for approval ~~submitted~~  
 2 under section 1 of this chapter ~~submitted~~ with respect to the  
 3 confined feeding operation was not approved by the department  
 4 before May 12, 2009; and

5 (2) notwithstanding the effective date of the addition or  
 6 amendment by P.L. 127-2009 of the provisions listed in subsection  
 7 (b)(1) through (b)(8).

8 (b) The following, as added or amended by P.L. 127-2009, effective  
 9 July 1, 2009, apply to a confined feeding operation described in  
 10 subsection (a)(1) in the same manner as if they had been in effect on  
 11 the date on which the application was submitted with respect to the  
 12 confined feeding operation under section 1 of this chapter:

13 (1) IC 13-11-2-8.

14 (2) IC 13-11-2-40.

15 (3) IC 13-11-2-191.

16 (4) Section 1 of this chapter.

17 (5) Section 2 of this chapter.

18 (6) Section 2.1 of this chapter.

19 (7) Section 2.2 of this chapter.

20 (8) Section 4 of this chapter.

21 SECTION 5. IC 13-18-10-2, AS AMENDED BY P.L. 199-2014,  
 22 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2018]: Sec. 2. (a) An application for ~~an approval~~ **a permit or**  
 24 **permit modification** under section 1 of this chapter must be submitted  
 25 on a form provided by the department. An applicant must submit the  
 26 completed application form to the department together with the  
 27 following:

28 (1) Plans and specifications for the design and operation of  
 29 **confinement buildings**, manure treatment and control facilities,  
 30 **and any other structure, conveyance, or area that will be used**  
 31 **to collect, store, manage, discard, or dispose of manure.**

32 (2) A manure management plan that outlines ~~procedures~~ **site**  
 33 **specific requirements for structures, production areas, and**  
 34 **land application for protection of ground and surface waters**  
 35 **from excess nutrient and E. coli bacteria contamination,**  
 36 **including** the following:

37 (A) Soil testing.

38 (B) Manure testing.

39 (C) **Ground water monitoring.**

40 (D) **Land application setbacks, buffers, and other criteria,**  
 41 **as appropriate, considering the specific conditions of the**  
 42 **site.**



- 1 (E) Routine inspection by the owner or operator and  
 2 reporting to the department.  
 3 (F) Any other practice, procedure, limit, or standard  
 4 deemed necessary by the department to protect ground  
 5 and surface waters from excess nutrient and E. coli  
 6 bacteria contamination.
- 7 (3) Maps of **proposed** manure application areas.  
 8 (4) **Supplemental Site specific** information, that the department  
 9 requires; including the following:
- 10 (A) **General features of The topography of the site and all**  
 11 **proposed land application areas.**  
 12 (B) Soil types **at the site and at all proposed land**  
 13 **application areas.**  
 14 (C) **Hydrology and drainage course: at the site and all**  
 15 **proposed land application areas.**  
 16 (D) Identification **and location of the nearest streams, ditches,**  
 17 **and lakes, wetlands regulated by the U.S. Army Corps of**  
 18 **Engineers under Section 404 of the federal Clean Water**  
 19 **Act (33 U.S.C. 1344), and isolated wetlands (as defined in**  
 20 **IC 13-11-2-112.5).**  
 21 (E) Location of field tiles **at the site and all proposed land**  
 22 **application areas.**  
 23 ~~(F) Location of land application areas.~~  
 24 ~~(G)~~ (F) Location of manure treatment facilities **and other**  
 25 **structures, conveyances, and areas that will be used to**  
 26 **collect, store, manage, discard, or dispose of manure.**  
 27 ~~(H)~~ (G) Farmstead plan; including The location of water wells  
 28 on the site **and within one-half (1/2) mile of the boundary of**  
 29 **the property on which the confined feeding operation is or**  
 30 **would be located.**  
 31 (H) Identification and location of all residences, schools,  
 32 churches, nonagricultural businesses, and other public  
 33 places within one-half (1/2) mile of the boundary of the  
 34 property on which the confined feeding operation is or  
 35 would be located.
- 36 (5) A site specific odor control plan detailing how the confined  
 37 feeding operation will comply with the odor standard  
 38 established by rule under section 4(a)(1)(E) and 4(a)(2)(D) of  
 39 this chapter. The odor control plan must contain the  
 40 following:  
 41 (A) A listing of all sources of odor emissions from all  
 42 production areas and structures of the confined feeding



- 1 operation.
- 2 (B) A listing of all potentially innovative and proven odor
- 3 control options for reducing odor emissions of the confined
- 4 feeding operation, which may include odor prevention,
- 5 odor capture and treatment, odor dispersion, add on
- 6 control devices, management practices, modifications to
- 7 feedstock or waste handling practices, or process changes.
- 8 (C) A detailed discussion of feasible and infeasible odor
- 9 control options. For the purposes of this clause, a
- 10 determination that an odor control option is infeasible
- 11 must be:
- 12 (i) well documented; and
- 13 (ii) based on physical, chemical, and engineering
- 14 principles demonstrating that technical difficulties would
- 15 preclude the success of the control option.
- 16 (D) A ranking of feasible odor control options from most
- 17 to least effective.
- 18 (E) A description of the odor control options proposed to
- 19 be implemented.
- 20 (F) A schedule for implementation, which must establish
- 21 interim milestones in implementing the odor control plan
- 22 if the plan cannot be implemented all at once.
- 23 (G) An odor monitoring and reporting plan.
- 24 (6) Identification and contact information for all responsible
- 25 parties of the confined feeding operation.
- 26 (7) Other supplemental information the department may
- 27 require to assure compliance with this chapter.
- 28 ~~(5)~~ (8) A fee of one hundred dollars (\$100). The department shall
- 29 refund the fee if the department does not make a determination in
- 30 accordance with the time period established under section 2.1 of
- 31 this chapter.
- 32 (b) An applicant who applies for ~~an approval~~ a permit or permit
- 33 **modification** under section 1 of this chapter shall, not more than ten
- 34 (10) ~~working~~ days after submitting the application, ~~make a reasonable~~
- 35 ~~effort~~ to provide notice under this subsection:
- 36 (1) to the county executive of the county in which the confined
- 37 feeding operation is **proposed** to be located or expanded; and
- 38 (2) to each owner and each occupant of land of which any part of
- 39 the boundary is ~~one-half (1/2)~~ **one (1)** mile or less from ~~the~~
- 40 ~~following:~~ **any part of the boundary of the property on which**
- 41 **the confined feeding operation is proposed to be located or**
- 42 **expanded.**





1 (A) Any part of the proposed footprint of either or both of the  
 2 following to be located on the land on which the confined  
 3 feeding operation is to be located:

4 (i) A livestock or poultry production structure.

5 (ii) A permanent manure storage facility.

6 (B) Any part of the proposed footprint of either or both of the  
 7 following to be located on the land on which the confined  
 8 feeding operation is to be expanded:

9 (i) A livestock or poultry production structure.

10 (ii) The expanded area of a livestock or poultry production  
 11 structure.

12 The notice must be sent by mail, **must** be in writing, **must** include the  
 13 date on which the application was submitted to the department, and  
 14 **must** include a brief description of the subject of the application. The  
 15 applicant shall pay the cost of complying with this subsection. The  
 16 applicant shall submit an affidavit to the department that certifies that  
 17 the applicant has complied with this subsection.

18 (c) A person must submit an application for the renewal of an  
 19 approval **a permit or a permit modification** to:

20 (1) **continue to** operate a confined feeding operation; or

21 (2) complete construction or expansion of a confined feeding  
 22 operation;

23 at least ~~thirty (30)~~ **ninety (90)** days prior to the expiration of the  
 24 existing approval: **permit or permit modification**. The construction  
 25 standards that apply to a renewal application under this subsection shall  
 26 be the standards in place under rules adopted by the board at the time  
 27 that the original approval for construction or expansion of a confined  
 28 feeding operation was issued: **renewal application is submitted**.

29 (d) A person who has received approval **a permit or permit**  
 30 **modification** to construct or expand a confined feeding operation  
 31 under section 1 of this chapter and has not begun construction or  
 32 expansion within ~~thirty (30)~~ **ninety (90)** days of the expiration of the  
 33 approval **permit or permit modification** must:

34 (1) submit a renewal application for construction or expansion at  
 35 least ~~thirty (30)~~ **ninety (90)** days prior to the expiration of the  
 36 approval; **permit or permit modification**; and

37 (2) comply with the requirements of subsection (b).

38 The ~~construction~~ standards that apply to a renewal application under  
 39 this subsection shall be the standards in place under rules adopted by  
 40 the board at the time that the renewal application is submitted.

41 (e) The department shall ~~approve the construction or expansion and~~  
 42 ~~the operation of the manure management system of the confined~~



1 feeding operation if the commissioner determines that the applicant  
 2 meets the requirements of: (1) this chapter; (2) rules adopted under this  
 3 chapter; (3) the water pollution control laws; (4) rules adopted under  
 4 the water pollution control laws; and (5) policies and statements  
 5 adopted under IC 13-14-1-11.5 relative to confined feeding operations:  
 6 **make its determination on applications for permit renewals under**  
 7 **subsections (c) and (d) in accordance with section 2.1 of this**  
 8 **chapter.**

9 SECTION 6. IC 13-18-10-2.1, AS AMENDED BY P.L.199-2014,  
 10 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2018]: Sec. 2.1. (a) The department:

12 (1) shall make a determination on an application submitted under  
 13 section 2 of this chapter not later than ninety (90) days after the  
 14 date the department receives the completed application, including  
 15 all required supplemental information, unless the department and  
 16 the applicant agree to a longer time; and

17 (2) may conduct any inquiry or investigation, consistent with the  
 18 department's duties under this chapter, the department considers  
 19 necessary before making a determination.

20 (b) If the department fails to make a determination on an application  
 21 not later than ninety (90) days after the date the department receives  
 22 the completed application, the applicant may request and receive a  
 23 refund of an approval application fee paid by the applicant, and the  
 24 commissioner shall:

25 (1) continue to review the application;  
 26 (2) approve or deny the application as soon as practicable; and  
 27 (3) refund the applicant's application fee not later than twenty-five  
 28 (25) working days after the receipt of the applicant's request.

29 (c) The commissioner may suspend the processing of an application  
 30 and the ninety (90) day period described under this section if the  
 31 department determines within thirty (30) days after the department  
 32 receives the application that the application is incomplete and has  
 33 mailed a notice of deficiency to the applicant that specifies the parts of  
 34 the application that:

35 (1) do not contain adequate information for the department to  
 36 process the application; or  
 37 (2) are not consistent with applicable law.

38 **(d) Before making a determination on the application, the**  
 39 **department shall provide public access to the application through**  
 40 **the Internet on the department's Virtual File Cabinet and shall**  
 41 **publish a notice requesting public comments concerning the**  
 42 **application.**



1 (e) A comment period of at least thirty (30) days must follow  
 2 publication of a notice under subsection (d) during which  
 3 interested persons may:

4 (1) submit written comments to the commissioner concerning  
 5 the application; and

6 (2) request a public hearing concerning the application.

7 (f) If the commissioner receives at least one (1) written request  
 8 under subsection (e)(2), the commissioner may hold a public  
 9 hearing in the geographical area affected by the proposed confined  
 10 feeding operation on the question of whether to approve or deny  
 11 the application. The commissioner shall consider:

12 (1) all written comments submitted under subsection (e)(1);  
 13 and

14 (2) all public testimony presented at a public hearing held  
 15 under this subsection;

16 before making a determination on the application.

17 (g) The department shall establish requirements in a permit,  
 18 permit modification, or permit renewal to assure:

19 (1) compliance with this chapter and rules adopted under this  
 20 chapter;

21 (2) compliance with the water pollution control laws and rules  
 22 adopted under the water pollution control laws;

23 (3) compliance with policies and statements adopted under  
 24 IC 13-14-1-11.5 relative to confined feeding operations; and

25 (4) protection of public health and the environment.

26 ~~(h)~~ (h) The department ~~may~~ shall establish requirements in an  
 27 approval a permit, permit modification, or permit renewal regarding  
 28 that part of the confined feeding operation that concerns manure  
 29 handling and application to assure:

30 (1) compliance with ~~(1)~~ this chapter ~~(2)~~ and the rules adopted  
 31 under this chapter;

32 ~~(2)~~ (2) compliance with the water pollution control laws ~~(4)~~ and  
 33 rules adopted under the water pollution control laws; and

34 ~~(3)~~ (3) compliance with policies and statements adopted under  
 35 IC 13-14-1-11.5 relative to confined feeding operations; and

36 (4) protection of public health and the environment.

37 ~~(e)~~ (i) Subject to subsection ~~(f)~~, The commissioner may deny an  
 38 application for a permit or permit modification upon making either  
 39 or both of the following findings:

40 (1) A responsible party intentionally misrepresented or concealed  
 41 any material fact in either or both of the following:

42 (A) An application for approval a permit or permit



- 1           **modification** under section 1 of this chapter.
- 2           (B) A disclosure statement required by section 1.4 of this
- 3           chapter.
- 4           (2) An enforcement action was resolved against a responsible
- 5           party as described in either or both of the following:
- 6           (A) Section 1.4(c)(5) of this chapter.
- 7           (B) Section 1.4(c)(6) of this chapter.
- 8           (f) ~~Before making a determination to approve or deny an~~
- 9           ~~application, the commissioner must consider the following factors:~~
- 10          (1) ~~The nature and details of the acts attributed to the responsible~~
- 11          ~~party.~~
- 12          (2) ~~The degree of culpability of the responsible party.~~
- 13          (3) ~~The responsible party's cooperation with the state, federal, or~~
- 14          ~~foreign agencies involved in the investigation of the activities~~
- 15          ~~involved in actions referred to in section 1.4(c)(5) and 1.4(c)(6)~~
- 16          ~~of this chapter.~~
- 17          (4) ~~The responsible party's dissociation from any other persons or~~
- 18          ~~entities convicted in a criminal enforcement action referred to in~~
- 19          ~~section 1.4(c)(5) and 1.4(c)(6) of this chapter.~~
- 20          (5) ~~Prior or subsequent self-policing or internal education~~
- 21          ~~programs established by the responsible party to prevent acts,~~
- 22          ~~omissions, or violations referred to in section 1.4(c)(5) and~~
- 23          ~~1.4(c)(6) of this chapter.~~
- 24          (j) **The commissioner must deny an application for a permit or**
- 25          ~~permit modification upon finding that the permitted activity~~
- 26          ~~would:~~
- 27               (1) **substantially endanger public health, safety, and welfare**
- 28               **or the environment;**
- 29               (2) **pose an undue risk to property; or**
- 30               (3) **cause a public nuisance.**
- 31          (g) ~~(k) Except as provided in subsection (h), in taking action In~~
- 32          ~~denying a permit or permit modification under subsection (e), (i) or~~
- 33          ~~(j), the commissioner must make separately stated findings of fact to~~
- 34          ~~support the action taken. The findings of fact must:~~
- 35               (1) include a statement of ultimate fact; and
- 36               (2) be accompanied by a concise statement of the underlying
- 37               basic facts of record to support the findings.
- 38          (h) ~~If the commissioner denies an application under subsection (e),~~
- 39          ~~the commissioner is not required to explain the extent to which any of~~
- 40          ~~the factors set forth in subsection (f) influenced the denial.~~
- 41          (i) ~~(l) The department may amend an approval under section 1 of~~
- 42          ~~this chapter or revoke an approval under section 1 of a permit or~~



1 **permit modification granted under** this chapter:

2 (1) for failure to comply with:

3 (A) this chapter;

4 (B) rules adopted under this chapter;

5 (C) the water pollution control laws; or

6 (D) rules adopted under the water pollution control laws; and

7 (2) as needed to prevent ~~discharges of manure into the~~  
8 ~~environment that pollute or threaten to pollute the waters of the~~  
9 ~~state. or abate:~~

10 (A) **a substantial endangerment to public health, safety,**  
11 **and welfare or the environment;**

12 (B) **an undue risk to property; or**

13 (C) **a public nuisance.**

14 SECTION 7. IC 13-18-10-2.2, AS AMENDED BY P.L.199-2014,  
15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2018]: Sec. 2.2. (a) Not more than thirty (30) days after the  
17 completion of construction or expansion of a confined feeding  
18 operation, the applicant shall execute and send to the department an  
19 affidavit that affirms under penalties of perjury that the confined  
20 feeding operation:

21 (1) was constructed or expanded; and

22 (2) will be operated;

23 in accordance with the requirements of the department's ~~approval~~  
24 **permit.**

25 (b) ~~An approval~~ **A permit** to construct or expand a confined feeding  
26 operation shall remain in effect as the operating approval for the  
27 duration of the permit term if construction or expansion is completed  
28 prior to the end of the permit term under which the confined feeding  
29 operation was constructed or expanded.

30 SECTION 8. IC 13-18-10-3 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 3. This chapter,  
32 including requirements established in a department ~~approval~~ **permit**  
33 under section 2 of this chapter, may be enforced under IC 13-30-3 or  
34 IC 13-14-2-6.

35 SECTION 9. IC 13-18-10-4, AS AMENDED BY P.L.127-2009,  
36 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2018]: Sec. 4. (a) The board ~~may~~ **shall** adopt rules under  
38 IC 4-22-2 and IC 13-14-9 **to assure compliance with this chapter,**  
39 and the department may adopt policies or statements under  
40 IC 13-14-1-11.5 that are necessary for the proper administration of this  
41 chapter. The rules ~~policies, or statements may concern construction,~~  
42 ~~expansion, and operation of confined feeding operations and may~~



1 **adopted under this subsection must include uniform criteria and**  
 2 **standards for ~~(+)~~ the construction, operation, and expansion and**  
 3 **manure containment that are appropriate for a specific site; and of**  
 4 **confined feeding operations to protect public health and the**  
 5 **environment, as follows:**

6 **(1) For new confined feeding operations, the criteria and**  
 7 **standards must do the following:**

8 **(A) Require that all confined feeding operation structures**  
 9 **and production areas be located at least one (1) mile from**  
 10 **the boundary of a property on which any existing residence**  
 11 **is located unless:**

12 **(i) the owner of the residential property provides written**  
 13 **consent for a lesser setback; and**

14 **(ii) the written consent is recorded with the deed of the**  
 15 **residential property.**

16 **(B) Require that all confined feeding operation structures**  
 17 **and production areas be located at least one (1) mile from**  
 18 **schools, nonagricultural businesses, churches, parks, and**  
 19 **other public places.**

20 **(C) Require implementation of a site specific manure**  
 21 **management plan to protect lakes, streams, wetlands,**  
 22 **ground water, and other environmentally sensitive areas**  
 23 **from excess nutrient and E. coli bacteria contamination.**  
 24 **The manure management plan must contain site specific**  
 25 **criteria for all construction, operation, and land**  
 26 **application activities in accordance with section 2(a)(2) of**  
 27 **this chapter.**

28 **(D) Prohibit:**

29 **(i) the construction or operation of a confined feeding**  
 30 **operation; or**

31 **(ii) the land application of manure;**

32 **in karst areas and flood plains.**

33 **(E) Prohibit the emissions of odorous matter in such**  
 34 **concentrations and frequencies, or for such durations, that**  
 35 **odor can be perceived when one (1) volume of odorous air**  
 36 **is diluted with seven (7) volumes of odor free air for two**  
 37 **(2) separate trials not less than fifteen (15) minutes apart**  
 38 **within the period of one (1) hour. This odor measurement**  
 39 **shall be made:**

40 **(i) with the use of a field olfactometer capable of**  
 41 **measuring and quantifying odor strength in the ambient**  
 42 **air or a similar instrument or technique approved by the**



- 1 department; and
- 2 (ii) at the property boundary of the confined feeding
- 3 operation.
- 4 (F) Require implementation of an odor control plan under
- 5 section 2(a)(5) of this chapter describing measures to be
- 6 used to maintain compliance with the odor performance
- 7 standard established under clause (E).
- 8 (G) Require annual submission of operating records to the
- 9 department.
- 10 (2) For existing or expanding confined feeding operations, the
- 11 criteria and standards must do the following:
- 12 (A) Prohibit expansion of a confined feeding operation
- 13 that:
- 14 (i) is located within one (1) mile of a residence unless
- 15 written authorization from the owner of the residential
- 16 property is obtained and the authorization is recorded
- 17 with the deed of the residential property;
- 18 (ii) is located within one (1) mile of a school,
- 19 nonagricultural business, church, park, or other public
- 20 place;
- 21 (iii) has structures, production areas, or land application
- 22 activities in karst areas or flood plains; or
- 23 (iv) would otherwise pose a substantial endangerment to
- 24 public health or the environment if the expansion were
- 25 allowed.
- 26 (B) Require implementation of a site specific manure
- 27 management plan to protect lakes, streams, wetlands,
- 28 ground water, and other environmentally sensitive areas
- 29 from excess nutrient and E. coli bacteria contamination.
- 30 The manure management plan must contain site specific
- 31 criteria for all construction, operation, and land
- 32 application activities in accordance with section 2(a)(2) of
- 33 this chapter.
- 34 (C) Prohibit land application of manure in karst areas and
- 35 flood plains.
- 36 (D) Require compliance with the odor performance
- 37 standard established under subdivision (1)(E) through
- 38 implementation of an odor control plan under section
- 39 2(a)(5) of this chapter.
- 40 (E) Require the annual submission of operating records to
- 41 the department.
- 42 (b) Standards adopted in a rule, policy, or statement under



- 1 subsection (a):
- 2 (1) must be developed through technical review by the
- 3 department in consultation with environmental experts,
- 4 public health experts, engineering experts, or other experts as
- 5 deemed necessary by the department;
- 6 (2) must be developed in consideration of public comments
- 7 and input from interested stakeholders; and
- 8 (3) may be based on environmental, public health,
- 9 engineering, and industry standards and best practices
- 10 developed by credible sources such as:
- 11 (A) the United States Environmental Protection Agency;
- 12 (B) the Centers for Disease Control and Prevention,
- 13 including the Agency for Toxic Substances and Disease
- 14 Registry;
- 15 (C) (2) manure application and handling that are consistent
- 16 with best management practices: (A) designed to reduce the
- 17 potential for manure to be conveyed off a site by runoff or soil
- 18 erosion; and (B) that are appropriate for a specific site. (b)
- 19 Standards adopted in a rule, policy, or statement under
- 20 subsection (a) must: (1) consider confined feeding standards
- 21 that are consistent with standards found in publications from:
- 22 (A) the United States Department of Agriculture, (B)
- 23 including the Natural Resources Conservation Service of the
- 24 United States Department of Agriculture;
- 25 (D) the American Society of Agricultural and Biological
- 26 Engineers;
- 27 (E) the American National Standards Institute;
- 28 (F) accredited universities and research institutions; and
- 29 (G) other state governments.
- 30 (C) the Midwest Plan Service; and (D) postsecondary
- 31 educational institution extension bulletins; and (2) be
- 32 developed through technical review by the department,
- 33 postsecondary educational institution specialists, and other
- 34 animal industry specialists.

