

HOUSE BILL No. 1378

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 for the department of environmental management (IDEM) to issue CFO permits instead of "approvals". 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 and must disclose certain information. Provides that a person may not start construction or operation of a CFO without obtaining a permit from IDEM and may not modify a CFO without obtaining a permit modification from IDEM. Provides that the application for a permit or permit modification must be accompanied by: (1) plans and specifications prepared or certified by a professional engineer; (2) certain site-specific information; and (3) a site-specific air pollution control plan. Requires IDEM to: (1) provide public access to a permit application through IDEM's virtual file cabinet; (2) publish a notice requesting public comments on the application; (3) allow interested persons to submit written comments; and (4) 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 IDEM to revoke a CFO permit if necessary to prevent or abate a substantial endangerment to public health or the environment. Requires the environmental rules board (board) to adopt rules establishing: (1)

(Continued next page)

Effective: July 1, 2019.

Errington, Saunders, Hamilton

January 14, 2019, read first time and referred to Committee on Environmental Affairs.



Digest Continued

limits on hydrogen sulfide, volatile organic compounds, and ammonia emissions; and (2) requirements and prohibitions applying to new CFOs, CFOs proposed for expansion, and other existing CFOs. Provides that the rules must prohibit a new or expanded CFO from being located within one mile of a residence unless the owner of the residence consents to a lesser setback or the commissioner determines that the CFO's air pollution control plan will prevent the CFO from exceeding the limits on hydrogen sulfide, volatile organic compounds, and ammonia emissions established by the rules of the board. Makes technical corrections.



Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1378

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 THE
2 TECHNICAL CORRECTIONS BILL OF THE 2019 GENERAL
3 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2019]: Sec. 191. (a) "Responsible party", for purposes of
5 IC 13-18-10, means, **with respect to a confined feeding operation,**
6 **any of the following: a person that:**
7 (1) **An applicant: owns the confined feeding operation;**
8 (2) **An officer, a corporation director, or a senior management**
9 **official of any of the following that is an applicant: (A) A**
10 **corporation: (B) A partnership: (C) A limited liability company:**
11 **(D) A business association: owns the livestock confined in the**
12 **confined feeding operation;**
13 (3) **applies for a permit, permit renewal, or permit**
14 **modification for the confined feeding operation; or**
15 (4) **is otherwise in direct or responsible charge or control of**



1 **operations at the confined feeding operation.**

2 (b) "Responsible party", for purposes of IC 13-19-4, means:

- 3 (1) an officer, a corporation director, or a senior management
4 official of a corporation, partnership, limited liability company, or
5 business association that is an applicant; or
6 (2) an individual, a corporation, a limited liability company, a
7 partnership, or a business association that owns, directly or
8 indirectly, at least a twenty percent (20%) interest in the
9 applicant.

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

- 11 (1) an officer, a corporation director, or a senior management
12 official of a corporation, partnership, limited liability company, or
13 business association that is an operator; or
14 (2) an individual, a corporation, a limited liability company, a
15 partnership, or a business association that owns, directly or
16 indirectly, at least a twenty percent (20%) interest in the operator.

17 (d) (c) "Responsible party", for purposes of IC 13-24-2, has the
18 meaning set forth in Section 1001 of the federal Oil Pollution Act of
19 1990 (33 U.S.C. 2701).

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

- 22 (1) who:
23 (A) owns hazardous material that is involved in a hazardous
24 materials emergency; or
25 (B) owns a container or owns or operates a vehicle that
26 contains hazardous material that is involved in a hazardous
27 materials emergency; and
28 (2) who:
29 (A) causes; or
30 (B) substantially contributes to the cause of;
31 the hazardous materials emergency.

32 SECTION 2. IC 13-18-10-1, AS AMENDED BY P.L.199-2014,
33 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2019]: Sec. 1. (a) A person may not start ~~(1)~~ construction **or**
35 **operation** of a confined feeding operation ~~or~~

- 36 ~~(2) expansion of a confined feeding operation that increases:~~
37 ~~(A) animal capacity; or~~
38 ~~(B) manure containment capacity; or~~
39 ~~(C) both;~~

40 without obtaining the prior approval of a permit from the department.

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



1 **(1) the number of animals;**
 2 **(2) the animal capacity;**
 3 **(3) the quantity of manure generated; or**
 4 **(4) the manure containment capacity;**
 5 **at the confined feeding operation** without obtaining ~~the prior~~
 6 **approval of a permit modification from** the department.

7 SECTION 3. IC 13-18-10-1.4, AS AMENDED BY P.L.126-2012,
 8 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2019]: Sec. 1.4. (a) Subject to subsection (b), an application
 10 for ~~approval a permit~~ under section 1 of this chapter must include for
 11 each responsible party the disclosure statement referred to in
 12 subsection (c) if either or both of the following apply:

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

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

18 (A) constituted a material violation of foreign environmental
 19 law; and

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

23 (b) Subsection (a):

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

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

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

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

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

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

40 (A) constitute a material violation of state or federal
 41 environmental law; and

42 (B) present a substantial endangerment to human health or the



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



1 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2019]: Sec. 1.9. (a) This section applies:

3 (1) to a confined feeding operation for which a person is required
4 to submit an application for ~~approval~~ **a permit** under section 1 of
5 this chapter if an application for ~~approval~~ **submitted** under
6 section 1 of this chapter ~~submitted~~ with respect to the confined
7 feeding operation was not approved by the department before
8 May 12, 2009; and

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

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

- 17 (1) IC 13-11-2-8.
18 (2) IC 13-11-2-40.
19 (3) IC 13-11-2-191.
20 (4) Section 1 of this chapter.
21 (5) Section 2 of this chapter.
22 (6) Section 2.1 of this chapter.
23 (7) Section 2.2 of this chapter.
24 (8) Section 4 of this chapter.

25 SECTION 5. IC 13-18-10-2, AS AMENDED BY P.L.199-2014,
26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2019]: Sec. 2. (a) An application for ~~an approval~~ **a permit or**
28 **permit modification** under section 1 of this chapter must be submitted
29 on a form provided by the department. An applicant must submit the
30 completed application form to the department together with the
31 following:

32 (1) Plans and specifications for the design and operation of
33 **confinement buildings**, manure treatment and control facilities,
34 **and any other structure, conveyance, or area that will be used**
35 **to collect, store, manage, discard, or dispose of manure**
36 **prepared or certified by a professional engineer registered**
37 **under IC 25-31-1.**

38 (2) A manure management plan that outlines ~~procedures~~
39 **site-specific requirements** for **structures, production areas,**
40 **and land application for protection of ground and surface**
41 **waters from excess nutrient and E. coli bacteria**
42 **contamination, including** the following:



- 1 (A) Soil testing.
 2 (B) Manure testing.
 3 **(C) Ground water monitoring.**
 4 **(D) Land application setbacks, buffers, and other criteria,**
 5 **as appropriate, considering the specific conditions of the**
 6 **site.**
 7 **(E) Routine inspection by the owner or operator and**
 8 **reporting to the department.**
 9 **(F) Any other practice, procedure, limit, or standard**
 10 **considered necessary by the department to protect ground**
 11 **and surface waters from excess nutrient and E. coli**
 12 **bacteria contamination.**
 13 (3) Maps of **proposed** manure application areas.
 14 (4) **Supplemental Site-specific** information, that the department
 15 requires; including the following:
 16 (A) **General features of The topography of the site and all**
 17 **proposed land application areas.**
 18 (B) **Soil types at the site and at all proposed land**
 19 **application areas.**
 20 (C) **Hydrology and drainage course: at the site and all**
 21 **proposed land application areas.**
 22 (D) **Identification and location of the nearest streams, ditches,**
 23 **and lakes, wetlands regulated by the United States Army**
 24 **Corps of Engineers under Section 404 of the federal Clean**
 25 **Water Act (33 U.S.C. 1344), and isolated wetlands (as**
 26 **defined in IC 13-11-2-112.5).**
 27 (E) **Location of field tiles at the site and all proposed land**
 28 **application areas.**
 29 (F) **Location of land application areas:**
 30 ~~(F)~~ **(F) Location of manure treatment facilities and other**
 31 **structures, conveyances, and areas that will be used to**
 32 **collect, store, manage, discard, or dispose of manure.**
 33 ~~(H)~~ **(G) Farmstead plan; including The location of water wells**
 34 **on the site and within one-half (1/2) mile of the boundary of**
 35 **the property on which the confined feeding operation is or**
 36 **would be located.**
 37 **(H) Identification and location of all residences, schools,**
 38 **churches, nonagricultural businesses, and other public**
 39 **places located not more than one (1) mile from the**
 40 **boundary of the property on which the confined feeding**
 41 **operation is or would be located.**
 42 **(5) If a residence, school, church, nonagricultural business, or**



1 other public place is located not more than one (1) mile from
 2 the boundary of the property on which the confined feeding
 3 operation is or would be located, a site-specific air pollution
 4 control plan detailing how the confined feeding operation will
 5 comply with the air pollution standards established by rule
 6 under section 4(c) of this chapter. The air pollution control
 7 plan must contain the following:

8 (A) A listing of all sources of hydrogen sulfide, volatile
 9 organic compounds, and ammonia emissions from all
 10 production areas and structures of the confined feeding
 11 operation.

12 (B) A listing of all potentially innovative and proven air
 13 pollution control options for reducing the emissions of
 14 hydrogen sulfide, volatile organic compounds, and
 15 ammonia from the confined feeding operation, which may
 16 include air pollution prevention, capture, and treatment,
 17 air pollution dispersion, add on control devices,
 18 management practices, modifications to feedstock or waste
 19 handling practices, or process changes.

20 (C) A detailed discussion of feasible and infeasible air
 21 pollution control options. For the purposes of this clause,
 22 a determination that an air pollution control option is
 23 infeasible must be:

24 (i) well documented; and

25 (ii) based on physical, chemical, and engineering
 26 principles demonstrating that technical difficulties would
 27 preclude the success of the control option.

28 (D) A ranking of feasible air pollution control options from
 29 most to least effective.

30 (E) A description of the air pollution control options
 31 proposed to be implemented.

32 (F) A schedule for implementation, which must establish
 33 interim milestones in implementing the air pollution
 34 control plan if the plan cannot be implemented all at once.

35 (G) An air pollution monitoring and reporting plan.

36 (6) Identification and contact information for all responsible
 37 parties of the confined feeding operation.

38 (7) Other supplemental information the department may
 39 require to assure compliance with this chapter.

40 ~~(5)~~ (8) A fee of one hundred dollars (\$100). The department shall
 41 refund the fee if the department does not make a determination in
 42 accordance with the time period established under section 2.1 of



- 1 this chapter.
- 2 (b) An applicant who applies for ~~an approval~~ **a permit or permit**
- 3 **modification** under section 1 of this chapter shall, not more than ten
- 4 (10) ~~working~~ days after submitting the application, ~~make a reasonable~~
- 5 ~~effort to~~ provide notice under this subsection:
- 6 (1) to the county executive of the county in which the confined
- 7 feeding operation is **proposed** to be located or expanded; and
- 8 (2) to each owner and each occupant of land of which any part of
- 9 the boundary is ~~one-half (1/2)~~ **one (1)** mile or less from ~~the~~
- 10 ~~following:~~ **any part of the boundary of the property on which**
- 11 **the confined feeding operation is proposed to be located or**
- 12 **expanded.**
- 13 (A) Any part of the proposed footprint of either or both of the
- 14 following to be located on the land on which the confined
- 15 feeding operation is to be located:
- 16 (i) A livestock or poultry production structure.
- 17 (ii) A permanent manure storage facility.
- 18 (B) Any part of the proposed footprint of either or both of the
- 19 following to be located on the land on which the confined
- 20 feeding operation is to be expanded:
- 21 (i) A livestock or poultry production structure.
- 22 (ii) The expanded area of a livestock or poultry production
- 23 structure.
- 24 The notice must be sent by mail, **must** be in writing, **must** include the
- 25 date on which the application was submitted to the department, and
- 26 **must** include a brief description of the subject of the application. The
- 27 applicant shall pay the cost of complying with this subsection. The
- 28 applicant shall submit an affidavit to the department that certifies that
- 29 the applicant has complied with this subsection.
- 30 (c) A person must submit an application for the renewal of ~~an~~
- 31 ~~approval~~ **a permit or a permit modification** to:
- 32 (1) **continue to** operate a confined feeding operation; or
- 33 (2) complete construction or expansion of a confined feeding
- 34 operation;
- 35 at least ~~thirty (30)~~ **ninety (90)** days prior to the expiration of the
- 36 existing ~~approval:~~ **permit or permit modification.** The ~~construction~~
- 37 standards that apply to a renewal application under this subsection shall
- 38 be the standards in place under rules adopted by the board at the time
- 39 that the ~~original approval for construction or expansion of a confined~~
- 40 ~~feeding operation was issued:~~ **renewal application is submitted.**
- 41 (d) A person who has received ~~approval~~ **a permit or permit**
- 42 **modification** to construct or expand a confined feeding operation



1 under section 1 of this chapter and has not begun construction or
 2 expansion within ~~thirty (30)~~ **ninety (90)** days of the expiration of the
 3 ~~approval~~ **permit or permit modification** must:

- 4 (1) submit a renewal application for construction or expansion at
 5 least ~~thirty (30)~~ **ninety (90)** days prior to the expiration of the
 6 ~~approval~~; **permit or permit modification**; and
 7 (2) comply with the requirements of subsection (b).

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

11 (e) The department shall ~~approve the construction or expansion and~~
 12 ~~the operation of the manure management system of the confined~~
 13 ~~feeding operation if the commissioner determines that the applicant~~
 14 ~~meets the requirements of: (1) this chapter; (2) rules adopted under this~~
 15 ~~chapter; (3) the water pollution control laws; (4) rules adopted under~~
 16 ~~the water pollution control laws; and (5) policies and statements~~
 17 ~~adopted under IC 13-14-1-11.5 relative to confined feeding operations.~~
 18 **make its determination on applications for permit renewals under**
 19 **subsections (c) and (d) in accordance with section 2.1 of this**
 20 **chapter.**

21 SECTION 6. IC 13-18-10-2.1, AS AMENDED BY P.L.199-2014,
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2019]: Sec. 2.1. (a) The department:

- 24 (1) shall make a determination on an application submitted under
 25 section 2 of this chapter not later than ninety (90) days after the
 26 date the department receives the completed application, including
 27 all required supplemental information, unless the department and
 28 the applicant agree to a longer time; and
 29 (2) may conduct any inquiry or investigation, consistent with the
 30 department's duties under this chapter, the department considers
 31 necessary before making a determination.

32 (b) If the department fails to make a determination on an application
 33 not later than ninety (90) days after the date the department receives
 34 the completed application, the applicant may request and receive a
 35 refund of an ~~approval~~ application fee paid by the applicant, and the
 36 commissioner shall:

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

41 (c) The commissioner may suspend the processing of an application
 42 and the ninety (90) day period described under this section if the



1 department determines within thirty (30) days after the department
 2 receives the application that the application is incomplete and has
 3 mailed a notice of deficiency to the applicant that specifies the parts of
 4 the application that:

- 5 (1) do not contain adequate information for the department to
 6 process the application; or
- 7 (2) are not consistent with applicable law.

8 **(d) Before making a determination on the application, the**
 9 **department shall provide public access to the application through**
 10 **the Internet on the department's virtual file cabinet and shall**
 11 **publish a notice requesting public comments concerning the**
 12 **application.**

13 **(e) A comment period of at least thirty (30) days must follow**
 14 **publication of a notice under subsection (d), during which**
 15 **interested persons may:**

- 16 **(1) submit written comments to the commissioner concerning**
 17 **the application; and**
- 18 **(2) request a public hearing concerning the application.**

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

- 24 **(1) all written comments submitted under subsection (e)(1);**
 25 **and**
- 26 **(2) all public testimony presented at a public hearing held**
 27 **under this subsection;**

28 **before making a determination on the application.**

29 **(g) The department shall establish requirements in a permit,**
 30 **permit modification, or permit renewal to assure:**

- 31 **(1) compliance with this chapter and rules adopted under this**
 32 **chapter;**
- 33 **(2) compliance with the water pollution control laws and rules**
 34 **adopted under the water pollution control laws;**
- 35 **(3) compliance with policies and statements adopted under**
 36 **IC 13-14-1-11.5 relative to confined feeding operations; and**
- 37 **(4) protection of public health and the environment.**

38 ~~(h)~~ **(h) The department may shall establish requirements in an**
 39 **approval a permit, permit modification, or permit renewal regarding**
 40 **that part of the confined feeding operation that concerns manure**
 41 **handling and application to assure:**

- 42 **(1) compliance with ~~(1)~~ this chapter ~~(2)~~ and the rules adopted**



1 under this chapter;

2 ~~(3)~~ **(2) compliance with** the water pollution control laws ~~(4)~~ **and**
 3 rules adopted under the water pollution control laws; ~~and~~
 4 ~~(5)~~ **(3) compliance with** policies and statements adopted under
 5 IC 13-14-1-11.5 relative to confined feeding operations; ~~and~~
 6 **(4) protection of public health and the environment.**

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

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

12 (A) An application for ~~approval~~ **a permit or permit**
 13 **modification** under section 1 of this chapter.

14 (B) A disclosure statement required by section 1.4 of this
 15 chapter.

16 (2) An enforcement action was resolved against a responsible
 17 party as described in either or both of the following:

18 (A) Section 1.4(c)(5) of this chapter.

19 (B) Section 1.4(c)(6) of this chapter.

20 ~~(f)~~ Before making a determination to approve or deny a
 21 application, the commissioner must consider the following factors:

22 ~~(1)~~ The nature and details of the acts attributed to the responsible
 23 party:

24 ~~(2)~~ The degree of culpability of the responsible party:

25 ~~(3)~~ The responsible party's cooperation with the state, federal, or
 26 foreign agencies involved in the investigation of the activities
 27 involved in actions referred to in section ~~1.4(c)(5)~~ and ~~1.4(c)(6)~~
 28 of this chapter:

29 ~~(4)~~ The responsible party's dissociation from any other persons or
 30 entities convicted in a criminal enforcement action referred to in
 31 section ~~1.4(c)(5)~~ and ~~1.4(c)(6)~~ of this chapter:

32 ~~(5)~~ Prior or subsequent self-policing or internal education
 33 programs established by the responsible party to prevent acts,
 34 omissions, or violations referred to in section ~~1.4(c)(5)~~ and
 35 ~~1.4(c)(6)~~ of this chapter:

36 **(j) The commissioner must deny an application for a permit or**
 37 **permit modification upon finding that the permitted activity**
 38 **would:**

39 **(1) substantially endanger public health, safety, and welfare**
 40 **or the environment;**

41 **(2) pose an undue risk to property; or**

42 **(3) cause a public nuisance.**



1 ~~(g)~~ **(k)** Except as provided in subsection ~~(h)~~; in taking action **In**
 2 **denying a permit or permit modification** under subsection ~~(e)~~; **(i) or**
 3 **(j)**, the commissioner must make separately stated findings of fact to
 4 support the action taken. The findings of fact must:

- 5 (1) include a statement of ultimate fact; and
 6 (2) be accompanied by a concise statement of the underlying
 7 basic facts of record to support the findings.

8 ~~(h)~~ If the commissioner denies an application under subsection ~~(e)~~;
 9 the commissioner is not required to explain the extent to which any of
 10 the factors set forth in subsection ~~(f)~~ influenced the denial:

11 ~~(i)~~ **(I)** The department may amend an approval under section ~~4~~ of
 12 this chapter or revoke an approval under section ~~4~~ of a **permit or**
 13 **permit modification granted under** this chapter:

- 14 (1) for failure to comply with:
 15 (A) this chapter;
 16 (B) rules adopted under this chapter;
 17 (C) the water pollution control laws; or
 18 (D) rules adopted under the water pollution control laws; and
 19 (2) as needed to prevent discharges of manure into the
 20 environment that pollute or threaten to pollute the waters of the
 21 state: or abate:
 22 (A) a substantial endangerment to public health, safety,
 23 and welfare or the environment;
 24 (B) an undue risk to property; or
 25 (C) a public nuisance.

26 SECTION 7. IC 13-18-10-2.2, AS AMENDED BY P.L.199-2014,
 27 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2019]: Sec. 2.2. (a) Not more than thirty (30) days after the
 29 completion of construction or expansion of a confined feeding
 30 operation, the applicant shall execute and send to the department an
 31 affidavit that affirms under penalties of perjury that the confined
 32 feeding operation:

- 33 (1) was constructed or expanded; and
 34 (2) will be operated;

35 in accordance with the requirements of the department's ~~approval~~
 36 **permit**.

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

42 SECTION 8. IC 13-18-10-3 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. This chapter,
 2 including requirements established in a department ~~approval permit~~
 3 under section 2 of this chapter, may be enforced under IC 13-30-3 or
 4 IC 13-14-2-6.

5 SECTION 9. IC 13-18-10-4, AS AMENDED BY P.L.127-2009,
 6 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2019]: Sec. 4. (a) The board ~~may~~ **shall** adopt rules under
 8 IC 4-22-2 and IC 13-14-9 **to assure compliance with this chapter,**
 9 and the department may adopt policies or statements under
 10 IC 13-14-1-11.5 that are necessary for the proper administration of this
 11 chapter.

12 **(b) The rules ~~policies, or statements may concern construction,~~**
 13 **~~expansion, and operation of confined feeding operations and may~~**
 14 **~~include adopted by the board under this section must establish~~**
 15 **uniform criteria and standards for (†) the construction, operation,**
 16 **and expansion and manure containment that are appropriate for a**
 17 **specific site; and of confined feeding operations to protect public**
 18 **health and the environment.**

19 **(c) The rules adopted under this section must set numerical**
 20 **limits on the emission of hydrogen sulfide, volatile organic**
 21 **compounds, and ammonia from a confined feeding operation. The**
 22 **board:**

23 **(1) shall state the numerical limits on:**

24 **(A) hydrogen sulfide;**

25 **(B) volatile organic compounds; and**

26 **(C) ammonia;**

27 **emissions from a confined feeding operation as the**
 28 **concentration, expressed as parts per million, in the ambient**
 29 **air, using air samples gathered at the property boundary of**
 30 **the confined feeding operation; and**

31 **(2) shall determine the numerical limits on the concentrations**
 32 **of hydrogen sulfide, volatile organic compounds, and**
 33 **ammonia in the ambient air at levels determined by the board**
 34 **to be necessary to protect against short term as well as long**
 35 **term adverse effects on human health, including:**

36 **(A) in the case of ammonia:**

37 **(i) eye and respiratory tract irritation; and**

38 **(ii) pulmonary edema, coughing, and laryngospasm; and**

39 **(B) in the case of volatile organic compounds:**

40 **(i) eye, nose, and throat irritation; and**

41 **(ii) headaches, loss of coordination, and nausea;**

42 **(C) in the case of hydrogen sulfide:**



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- (i) eye and respiratory tract irritation; and
 - (ii) headache, nausea, and vomiting.
- (d) The rules adopted under this section must include provisions that do the following with respect to new confined feeding operations:
- (1) Require all confined feeding operation structures and production areas to be located at least one (1) mile from the boundary of a property on which an existing residence is located, unless at least one (1) of the following applies:
 - (A) The owner of the residential property provides written consent to the location of structures or production areas less than one (1) mile from the boundary of the property and the written consent is recorded with the deed to the residential property.
 - (B) The applicant seeking a permit for the confined feeding operation provides evidence satisfactory to the commissioner that, in the absence of unforeseen circumstances, the air pollution control plan implemented under subdivision (3) will prevent the confined feeding operation from exceeding the limits on hydrogen sulfide, volatile organic compounds, and ammonia emissions established under subsection (c).
 - (2) Require that all confined feeding operation structures and production areas be located at least one (1) mile from schools, nonagricultural businesses, churches, parks, and other public places, unless the applicant seeking a permit for the confined feeding operation provides evidence satisfactory to the commissioner that, in the absence of unforeseen circumstances, the implementation of the air pollution control plan under subdivision (3) will prevent the confined feeding operation from exceeding the limits on hydrogen sulfide, volatile organic compounds, and ammonia emissions established under subsection (c).
 - (3) Require implementation of an air pollution control plan for the new confined feeding operation that meets the requirements set forth in section 2(a)(5) of this chapter.
 - (4) Require implementation of a site-specific manure management plan that:
 - (A) will adequately protect lakes, streams, wetlands, ground water, and other environmentally sensitive areas from excess nutrient and E. coli bacteria contamination from the new confined feeding operation; and



- 1 **(B) contains site-specific requirements for all structures,**
 2 **production areas, and land application activities, as**
 3 **described in section 2(a)(2) of this chapter.**
- 4 **(5) Prohibit:**
- 5 **(A) the construction or operation of a new confined feeding**
 6 **operation; or**
- 7 **(B) the land application of manure;**
 8 **in karst areas and flood plains.**
- 9 **(6) Require submission of the operating records of the new**
 10 **confined feeding operation to the department annually.**
- 11 **(e) The rules adopted under this section must do the following**
 12 **with respect to an existing confined feeding operation for which an**
 13 **application is submitted for a permit modification for the purpose**
 14 **of expansion:**
- 15 **(1) Prohibit the expansion of the confined feeding operation**
 16 **if it is or, as expanded, would be located within one (1) mile of**
 17 **a residence, unless at least one (1) of the following applies:**
- 18 **(A) The owner of the residential property provides written**
 19 **consent to the location of structures or production areas**
 20 **less than one (1) mile from the boundary of the property**
 21 **and the written consent is recorded with the deed to the**
 22 **residential property.**
- 23 **(B) The applicant seeking a permit modification for the**
 24 **confined feeding operation provides evidence satisfactory**
 25 **to the commissioner that, in the absence of unforeseen**
 26 **circumstances, the air pollution control plan implemented**
 27 **for the confined feeding operation under subsection (d)(3)**
 28 **or (f)(3) will prevent the confined feeding operation from**
 29 **exceeding the limits on hydrogen sulfide, volatile organic**
 30 **compounds, and ammonia emissions established under**
 31 **subsection (c).**
- 32 **(2) Prohibit the expansion of the confined feeding operation**
 33 **if it is or, as expanded, would be located within one (1) mile of**
 34 **a school, nonagricultural business, church, park, or other**
 35 **public place, unless the applicant seeking the permit**
 36 **modification provides evidence satisfactory to the**
 37 **commissioner that, in the absence of unforeseen**
 38 **circumstances, the air pollution control plan implemented**
 39 **under subsection (d)(3) or (f)(3) will prevent the confined**
 40 **feeding operation from exceeding the limits on hydrogen**
 41 **sulfide, volatile organic compounds, and ammonia emissions**
 42 **established under subsection (c).**



- 1 **(3) Prohibit the expansion of the confined feeding operation**
 2 **if it has structures, production areas, or land application**
 3 **activities in karst areas or flood plains.**
 4 **(4) Prohibit the expansion of the confined feeding operation**
 5 **if the expansion would otherwise pose a substantial**
 6 **endangerment to public health or the environment if allowed.**
 7 **(f) The rules adopted under this section must do the following**
 8 **with respect to all existing confined feeding operations:**
 9 **(1) Require implementation of a site-specific manure**
 10 **management plan that:**
 11 **(A) will adequately protect lakes, streams, wetlands,**
 12 **ground water, and other environmentally sensitive areas**
 13 **from excess nutrient and E. coli bacteria contamination**
 14 **from the new confined feeding operation; and**
 15 **(B) contains site-specific requirements for all structures,**
 16 **production areas, and land application activities, as**
 17 **described in section 2(a)(2) of this chapter.**
 18 **(2) Prohibit land application of manure in karst areas and**
 19 **flood plains.**
 20 **(3) Require implementation of an air pollution control plan**
 21 **for the confined feeding operation that:**
 22 **(A) meets the requirements set forth in section 2(a)(5) of**
 23 **this chapter; and**
 24 **(B) is reasonably expected, if fully implemented, to achieve**
 25 **compliance with the limits on hydrogen sulfide, volatile**
 26 **organic compounds, and ammonia emissions established**
 27 **under subsection (c).**
 28 **(4) Require the annual submission of operating records to the**
 29 **department.**
 30 **(g) The rules adopted under this section and any criteria or**
 31 **standards established by the rules:**
 32 **(1) must be developed through technical review by the**
 33 **department in consultation with:**
 34 **(A) environmental experts;**
 35 **(B) public health experts;**
 36 **(C) engineering experts; or**
 37 **(D) other experts as considered necessary by the**
 38 **department;**
 39 **(2) must be developed in consideration of public comments**
 40 **and input from interested stakeholders; and**
 41 **(3) may be based on environmental, public health,**
 42 **engineering, and industry standards and best practices**



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

