



Reprinted
February 23, 2017

HOUSE BILL No. 1494

DIGEST OF HB 1494 (Updated February 22, 2017 12:52 pm - DI 55)

Citations Affected: IC 13-11; IC 13-18; IC 13-23.

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). Repeals the statute requiring a person to obtain the "prior approval" of the department of environmental management (IDEM) before constructing or operating a CFO. Provides instead that a person must obtain a permit from IDEM before constructing or operating a CFO. Requires a permit amendment before: (1) construction of a replacement manure storage facility that would not increase the CFO's manure storage capacity; (2) a change that would increase a CFO's manure volume by 10% or more or decrease the size of a CFO's manure storage facility by 10% or more; or (3) a change to a CFO that would increase manure storage capacity by less than 10%. Requires a new permit for: (1) the construction of a new manure storage facility that would increase manure storage capacity beyond the capacity approved in the CFO's most recently issued permit; or (2) a change to a CFO's manure storage facility that would increase storage capacity by 10% or more. Requires the submission of a facility change notification to IDEM under certain circumstances and requires the construction of additional manure storage capacity under certain circumstances. Makes changes concerning disclosure statements and notice of applications.

Effective: July 1, 2017.

Wolkins

January 18, 2017, read first time and referred to Committee on Environmental Affairs.
February 16, 2017, amended, reported — Do Pass.
February 22, 2017, read second time, amended, ordered engrossed.

HB 1494—LS 7155/DI 55



Reprinted
February 23, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1494

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 13-11-2-126.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2017]: **Sec. 126.7. (a) "Manure storage**
4 **facility", for purposes of IC 13-18-10, means any:**

5 **(1) pad;**
6 **(2) pit;**
7 **(3) pond;**
8 **(4) lagoon;**
9 **(5) tank;**
10 **(6) building; or**
11 **(7) manure containment area;**
12 **that is used to store or treat manure.**

13 **(b) The term includes:**
14 **(1) a biomass digester; and**
15 **(2) any part of a building that is used specifically for the**
16 **storage or treatment of manure.**

17 SECTION 2. IC 13-11-2-148, AS AMENDED BY P.L.6-2012,

HB 1494—LS 7155/DI 55



1 SECTION 100, IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2017]: Sec. 148. (a) "Operator", for purposes of
3 **section 191 of this chapter and** IC 13-18-10, means the person in
4 direct or responsible charge **or control** of **compliance with permit**
5 **requirements for** one (1) or more confined feeding operations. **The**
6 **term may include a permit holder.**

7 (b) "Operator", for purposes of IC 13-18-11 and environmental
8 management laws, means the person in direct or responsible charge and
9 supervising the operation of:

10 (1) a water treatment plant;
11 (2) a wastewater treatment plant; or
12 (3) a water distribution system.

13 (c) "Operator", for purposes of IC 13-20-6, means a corporation, a
14 limited liability company, a partnership, a business association, a unit,
15 or an individual who is a sole proprietor that is one (1) of the following:
16 (1) A broker.
17 (2) A person who manages the activities of a transfer station that
18 receives municipal waste.
19 (3) A transporter.

20 (d) "Operator", for purposes of IC 13-23, except as provided in
21 subsections (e), (g), and (h), means a person:
22 (1) in control of; or
23 (2) having responsibility for;
24 the daily operation of an underground storage tank.

25 (e) "Operator", for purposes of IC 13-23-13, does not include the
26 following:
27 (1) A person who:
28 (A) does not participate in the management of an underground
29 storage tank;
30 (B) is otherwise not engaged in the:
31 (i) production;
32 (ii) refining; and
33 (iii) marketing;
34 of regulated substances; and
35 (C) holds evidence of ownership, primarily to protect the
36 owner's security interest in the tank.

37 (2) A person that is a lender that did not participate in
38 management of an underground storage tank before foreclosure,
39 notwithstanding that the person:
40 (A) forecloses on the vessel or facility; and
41 (B) after foreclosure, sells, re-leases (in the case of a lease
42 finance transaction), or liquidates the underground storage



1 tank, maintains business activities, winds up operations,
2 undertakes a response action under Section 107(d)(1) of
3 CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an
4 on-scene coordinator appointed under the National
5 Contingency Plan with respect to the underground storage
6 tank, or takes any other measure to preserve, protect, or
7 prepare the underground storage tank prior to sale or
8 disposition;

9 if the person seeks to sell, re-lease (in the case of a lease finance
10 transaction), or otherwise divest the person of the underground
11 storage tank at the earliest practicable, commercially reasonable
12 time, on commercially reasonable terms, taking into account
13 market conditions and legal and regulatory requirements.

14 (3) A person who:

15 (A) does not own or lease, directly or indirectly, the facility or
16 business at which the underground storage tank is located;

17 (B) does not participate in the management of the facility or
18 business described in clause (A); and

19 (C) is engaged only in:

20 (i) filling;

21 (ii) gauging; or

22 (iii) filling and gauging;
23 the product level in the course of delivering fuel to an
24 underground storage tank.

underground storage tank.

(4) A political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that:

26 federal or state government that.
27 (A) acquires ownership or control of an underground storage
28 tank on a brownfield because of:

28 tank on a brownish
29 (i) bankruptcy:

29 (i) bankruptcy;
30 (ii) foreclosure;

30 (ii) foreclosure;
31 (iii) tax delinquency, including an acquisition under
32 IC 6-1-1-24 or IC 6-1-1-25;

(iv) abandonment:

35 (v) the exercise of eminent domain, including any purchase
36 of property once an offer to purchase has been tendered
under IC 32-24-1-5;

37 (vi) receivership;

38 (vii) transfer from another political subdivision or unit of
39 federal or state government;

40 (viii) acquiring an area needing redevelopment (as defined
41 in IC 36-7-1-3) or conducting redevelopment activities,
42 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,



1 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and
2 IC 36-7-15.1-15.5;
3 (ix) other circumstances in which the political subdivision
4 or unit of federal or state government involuntarily acquired
5 an interest in the property because of the political
6 subdivision's or unit's function as sovereign; or
7 (x) any other means to conduct remedial actions on a
8 brownfield; and
9 (B) is engaged only in activities in conjunction with:
10 (i) investigation or remediation of hazardous substances,
11 petroleum, and other pollutants associated with a
12 brownfield, including complying with land use restrictions
13 and institutional controls; or
14 (ii) monitoring or closure of an underground storage tank;
15 unless existing contamination on the brownfield is exacerbated
16 due to gross negligence or intentional misconduct by the
17 political subdivision or unit of federal or state government.
18 (f) For purposes of subsection (e)(4)(B), reckless, willful, or wanton
19 misconduct constitutes gross negligence.
20 (g) "Operator" does not include a person that after June 30, 2009,
21 meets, for purposes of the determination under IC 13-23-13 of liability
22 for a release from an underground storage tank, the exemption criteria
23 under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for
24 purposes of the determination of liability for a release of a hazardous
25 substance.
26 (h) "Operator" does not include a person that meets, for purposes of
27 the determination under IC 13-23-13 of liability for a release from an
28 underground storage tank, the exemption criteria under Section 107(r)
29 of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the
30 determination of liability for a release of a hazardous substance, except
31 that the person acquires ownership of the facility after June 30, 2009.
32 SECTION 3. IC 13-11-2-150, AS AMENDED BY P.L.159-2011,
33 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2017]: Sec. 150. **(a) "Owner", for purposes of section 191
35 of this chapter and IC 13-18-10 (except for IC 13-18-10-1.1(c)(2)
36 and IC 13-18-10-2(b)(2)), means the person that owns the waste
37 management system at a confined feeding operation. The term may
38 include a permit holder.**
39 **(a) (b) "Owner", for purposes of IC 13-23 (except as provided in
40 subsections (b), (c), (d), (e), (f), (g), and (h)) means:**
41 (1) for an underground storage tank that:
42 (A) was:





(C) marketing;
of regulated substances; and
(3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

(e) (d) "Owner", for purposes of IC 13-23, does not include a person that is a lender that did not participate in management of an underground storage tank before foreclosure, notwithstanding that the person:

(1) forecloses on the underground storage tank; and

(2) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the underground storage tank, maintains business activities, winds up operations, undertakes a response action under Section 107(d)(1) of CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan with respect to the underground storage tank, or takes any other measure to preserve, protect, or prepare the underground storage tank prior to sale or disposition;

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the underground storage tank at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(d) (e) "Owner", for purposes of IC 13-23, does not include a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that acquired ownership or control of an underground storage tank because of:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(4) abandonment;

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

(7) transfer from another political subdivision or unit of federal or state government;

(8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;



unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

12 (e) (f) "Owner", for purposes of IC 13-23, does not include a
13 nonprofit corporation that acquired ownership or control of an
14 underground storage tank to assist and support a political subdivision's
15 revitalization and reuse of a brownfield for noncommercial purposes,
16 including conservation, preservation, and recreation, unless the
17 nonprofit corporation causes or contributes to the release or threatened
18 release of a regulated substance, in which case the nonprofit
19 corporation is subject to IC 13-23 in the same manner and to the same
20 extent as any other nongovernmental entity under IC 13-23.

21 (f) (g) "Owner" does not include a person that after June 30, 2009,
22 meets, for purposes of the determination under IC 13-23-13 of liability
23 for a release from an underground storage tank, the exemption criteria
24 under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for
25 purposes of the determination of liability for a release of a hazardous
26 substance.

(g) (h) "Owner" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

33 SECTION 4. IC 13-11-2-157 IS AMENDED TO READ AS
34 FOLLOWING [EFFECTIVE JULY 1, 2017]: Sec. 157. (a) "Permit", for
35 purposes of IC 13-15-4 and IC 13-18-10, means:

36 (1) a permit;
37 (2) a license;
38 (3) a registration;
39 (4) a certificate; or
40 (5) other type of authorization required before construction or
41

that may be issued by the commissioner under pollution control laws



1 or environmental management laws.

2 (b) As used in IC 13-15-4-11 through IC 13-15-4-17, the term
3 includes:

4 (1) a permit; or

5 (2) a determination related to a permit;

6 that is described in IC 13-15-4-1.

7 SECTION 5. IC 13-11-2-157.2 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2017]: Sec. 157.2. **"Permit holder"**, for
10 purposes of this chapter and IC 13-18-10, means a person that
11 applies for and receives a permit to construct or operate a confined
12 feeding operation.

13 SECTION 6. IC 13-11-2-191, AS AMENDED BY P.L.127-2009,
14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2017]: Sec. 191. (a) "Responsible party", for purposes of
16 IC 13-18-10, means any of the following:

17 (1) An applicant operator, as defined in section 148(a) of this
18 chapter.

19 (2) An officer, a corporation director, or a senior management
20 official of any of the following that is an applicant (A) A
21 corporation. (B) A partnership. (C) A limited liability company.
22 (D) A business association owner, as defined in section 150(a)
23 of this chapter.

24 (3) A permit holder.

25 (4) Any person or persons, as designated by a person listed in
26 subdivisions (1) through (3), to be in direct or responsible
27 charge of permit compliance at a confined feeding operation.

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

29 (1) an officer, a corporation director, or a senior management
30 official of a corporation, partnership, limited liability company, or
31 business association that is an applicant; or

32 (2) an individual, a corporation, a limited liability company, a
33 partnership, or a business association that owns, directly or
34 indirectly, at least a twenty percent (20%) interest in the
35 applicant.

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

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

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



1 **(d) (c)** "Responsible party", for purposes of IC 13-24-2, has the
 2 meaning set forth in Section 1001 of the federal Oil Pollution Act of
 3 1990 (33 U.S.C. 2701).

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

6 (1) who:

7 (A) owns hazardous material that is involved in a hazardous
 8 materials emergency; or

9 (B) owns a container or owns or operates a vehicle that
 10 contains hazardous material that is involved in a hazardous
 11 materials emergency; and

12 (2) who:

13 (A) causes; or

14 (B) substantially contributes to the cause of;
 15 the hazardous materials emergency.

16 SECTION 7. IC 13-11-2-247.6 IS ADDED TO THE INDIANA
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2017]: Sec. 247.6. **"Waste management**
 19 **system", for purposes of IC 13-18-10, means any approved method**
 20 **of managing manure or process wastewater at a confined feeding**
 21 **operation, including:**

22 **(1) manure storage facilities;**

23 **(2) manure transfer systems;**

24 **(3) manure treatment systems, such as a:**

25 **(A) constructed wetland;**

26 **(B) vegetative management system; or**

27 **(C) wastewater treatment system under a valid national**
 28 **pollutant discharge elimination system (NPDES) permit;**

29 **(4) feedlots;**

30 **(5) confinement buildings; or**

31 **(6) waste liquid handling, storage, and treatment systems.**

32 SECTION 8. IC 13-18-10-1 IS REPEALED [EFFECTIVE JULY 1,
 33 2017]. Sec. 1. (a) A person may not start:

34 **(1) construction of a confined feeding operation; or**

35 **(2) expansion of a confined feeding operation that increases:**

36 **(A) animal capacity; or**

37 **(B) manure containment capacity; or**

38 **(C) both;**

39 **without obtaining the prior approval of the department.**

40 (b) A person may not operate a confined feeding operation without
 41 obtaining the prior approval of the department.

42 SECTION 9. IC 13-18-10-1.1 IS ADDED TO THE INDIANA



1 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2017]: Sec. 1.1. (a) A person must obtain a
3 **permit before doing either of the following:**
4 (1) **Constructing a confined feeding operation.**
5 (2) **Operating a confined feeding operation.**
6 A person may obtain a single permit under this subsection
7 authorizing the person to both construct and operate a confined
8 feeding operation.
9 (b) **A permit holder must obtain approval from the department**
10 **before:**
11 (1) **constructing a new manure storage facility; or**
12 (2) **expanding a manure storage facility.**
13 The approval may be in the form of a new permit or a permit
14 amendment, in accordance with this section and rules adopted by
15 the board.
16 (c) **A permit amendment is required before any of the following:**
17 (1) **Construction of a new manure storage facility to replace**
18 **an existing manure storage facility if the construction would**
19 **not increase the manure storage capacity of the confined**
20 **feeding operation.**
21 (2) **A proposed change to a confined feeding operation that**
22 **would:**
23 (A) **increase manure volume by ten percent (10%) or**
24 **more;**
25 (B) **decrease the size of a manure storage facility by ten**
26 **percent (10%) or more; or**
27 (C) **increase manure storage capacity by less than ten**
28 **percent (10%).**
29 (d) **A new permit is required for any of the following:**
30 (1) **Construction of a new manure storage facility that would**
31 **increase manure storage capacity beyond the capacity**
32 **approved in the most recently issued permit.**
33 (2) **A change to a manure storage facility that would increase**
34 **manure storage capacity by ten percent (10%) or more.**
35 (e) **Before a permit holder makes a change to a confined feeding**
36 **operation not described in subsection (c) or (d), the permit holder**
37 **must submit to the department a facility change notification**
38 **concerning the proposed change.**
39 (f) **Any change to a confined feeding operation that reduces the**
40 **number of days of manure storage required under the rules in**
41 **effect when the most recent permit was issued for the confined**
42 **feeding operation must require the construction of additional**



1 **manure storage.**

2 SECTION 10. IC 13-18-10-1.4, AS AMENDED BY P.L.126-2012,
 3 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2017]: Sec. 1.4. (a) ~~Subject to subsection (b);~~ An application
 5 for approval a permit for a new confined feeding operation required
 6 under section + 1.1 of this chapter or a request for a transfer of
 7 ownership of an existing confined feeding operation must include
 8 for each responsible party the a disclosure statement referred to in
 9 subsection (e) if either or both any of the following apply:

10 (1) State or federal officials, at any time within the five (5) years
 11 before the date on which the permit application or ownership
 12 transfer request is submitted, alleged that the a person who
 13 would be a responsible party with respect to the confined
 14 feeding operation committed acts or omissions that constituted
 15 a material violation of state or federal environmental law.

16 (2) Foreign officials, at any time within the five (5) years before
 17 the date on which the permit application or ownership
 18 transfer request is submitted, alleged that the a person who
 19 would be a responsible party with respect to the confined
 20 feeding operation committed acts or omissions that (A)
 21 constituted a material violation of foreign environmental law. and
 22 (B) would have constituted a material violation of state or
 23 federal environmental law if the act or omission had occurred
 24 in the United States.

25 (3) An administrative, civil, or criminal enforcement action
 26 filed in the United States or a foreign country alleging a
 27 violation of environmental law by a person who would be a
 28 responsible party with respect to the confined feeding
 29 operation is pending.

30 (b) Subsection (a):

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

34 (2) does not apply to a renewal of an approval under section + of
 35 this chapter that does not involve construction or expansion as
 36 described in section + of this chapter.

37 (c) (b) A responsible party referred to in subsection (a) must make
 38 reasonable efforts to provide complete and accurate information to the
 39 department in a disclosure statement that includes required under
 40 subsection (a), including the following:

41 (1) The name and business address of the responsible party.
 42 (2) A description of the responsible party's experience in



1 managing the environmental aspects of the type of facility that
2 will be managed under the permit **or ownership transfer**
3 **request.**

4 (3) A description of all pending administrative, civil, or criminal
5 enforcement actions filed in the United States against the
6 responsible party alleging any acts or omissions that (A)
7 constitute a **material** violation of state or federal environmental
8 law. **and**

9 (B) **present a substantial endangerment to human health or the**
10 **environment.**

11 (4) A description of all pending administrative, civil, or criminal
12 enforcement actions filed in a foreign country against the
13 responsible party alleging any acts or omissions that (A)
14 constitute a **material** violation of foreign environmental law.

15 (B) **would have constituted a material violation of state or**
16 **federal environmental law if the act or omission on which the**
17 **action is based had occurred in the United States; and**

18 (C) **present a substantial endangerment to human health or the**
19 **environment.**

20 (5) A description of all finally adjudicated or settled
21 administrative, civil, or criminal enforcement actions in the
22 United States resolved against the responsible party within the
23 five (5) years that immediately precede the date of the application
24 involving acts or omissions that (A) constitute a **material** violation
25 of federal or state environmental law. **and**

26 (B) **present a substantial endangerment to human health or the**
27 **environment.**

28 (6) A description of all finally adjudicated or settled
29 administrative, civil, or criminal enforcement actions in a foreign
30 country resolved against the responsible party within the five (5)
31 years that immediately precede the date of the application
32 involving acts or omissions that (A) constitute a **material** violation
33 of foreign environmental law.

34 (B) **would have constituted a material violation of state or**
35 **federal environmental law if the act or omission on which the**
36 **action is based had occurred in the United States; and**

37 (C) **present a substantial endangerment to human health or the**
38 **environment.**

39 (7) Identification of all state, federal, or foreign environmental
40 permits (A) applied for by the responsible party that were denied.
41 **or**

42 (B) **previously held by the responsible party that were revoked.**



1 **(d) (c)** A disclosure statement submitted under subsection (e): this
 2 **section:**

3 (1) must be executed under oath or affirmation; and
 4 (2) is subject to the penalty for perjury under IC 35-44.1-2-1.
 5 **(e) (d)** The department may investigate and verify the information
 6 set forth in a disclosure statement submitted under this section.

7 SECTION 11. IC 13-18-10-1.9 IS REPEALED [EFFECTIVE JULY
 8 1, 2017]. Sec. 1.9. (a) This section applies:

9 (1) to a confined feeding operation for which a person is required
 10 to submit an application for approval under section 1 of this
 11 chapter if an application for approval under section 1 of this
 12 chapter submitted with respect to the confined feeding operation
 13 was not approved by the department before May 12, 2009; and
 14 (2) notwithstanding the effective date of the addition or
 15 amendment by P.L.127-2009 of the provisions listed in subsection
 16 (b)(1) through (b)(8).

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

22 (1) IC 13-11-2-8.
 23 (2) IC 13-11-2-40.
 24 (3) IC 13-11-2-191.
 25 (4) Section 1 of this chapter.
 26 (5) Section 2 of this chapter.
 27 (6) Section 2.1 of this chapter.
 28 (7) Section 2.2 of this chapter.
 29 (8) Section 4 of this chapter.

30 SECTION 12. IC 13-18-10-2, AS AMENDED BY P.L.199-2014,
 31 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2017]: Sec. 2. (a) An application for an approval Except as
 33 provided in subsection (g), a permit application required under
 34 section 1.1 of this chapter must be submitted on a form provided by
 35 the department. An applicant must submit the completed application
 36 form to the department together with The following must be submitted
 37 with a complete application:

38 (1) Plans and specifications for the design and operation of
 39 manure treatment and control facilities: waste management
 40 systems.
 41 (2) A manure management plan that outlines procedures for the
 42 following:



(A) Soil testing.
(B) Manure testing.
(3) Maps of manure application areas.
(4) Supplemental information that the department requires, including the following:
(A) General features of topography.
(B) Soil types.
(C) Drainage course.
(D) Identification of nearest streams, ditches, and lakes.
(E) Location of field tiles.
(F) Location of land application areas.
(G) Location of manure treatment facilities.
(H) Farmstead plan, including the location of water wells on the site.
(5) A fee of one hundred dollars (\$100). The department shall refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

(b) ~~An applicant~~ A person who applies for ~~an approval~~ a permit under section ~~+~~ 1.1 of this chapter shall, not more than ten (10) working days after submitting the application, make a reasonable effort to provide **written** notice under this subsection:

(1) to the county executive of the county in which the confined feeding operation is to be located or expanded; and

(2) to each owner and each occupant of land of which any part of the boundary is one-half (1/2) mile or less from the following:

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

(i) A livestock or poultry production structure.
(ii) A permanent manure storage facility.

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

(i) A livestock or poultry production structure.
(ii) The expanded area of a ~~livestock or poultry production structure~~ manure storage facility.

(c) The notice **provided under subsection (b)**:

(1) must be sent by mail, be in writing, include:

(A) the date on which the application was submitted to the department; and include

(B) a brief description of the subject of the application; and



1 **(2) may be transmitted by mail or electronic mail.**

2 The applicant shall pay the cost of complying with this subsection. The
 3 applicant shall submit an affidavit to the department that certifies that
 4 the applicant has complied with this subsection.

5 **(e) (d)** A person must submit an application for the renewal of ~~an~~
 6 **approval a permit** to:

7 (1) operate a confined feeding operation; or
 8 (2) complete construction or expansion of a confined feeding
 9 operation;

10 at least thirty (30) days prior to the expiration of the existing ~~approval~~
 11 **permit**. The construction standards that apply to a renewal application
 12 under this subsection shall be the standards in place under rules
 13 adopted by the board at the time that the original ~~approval~~ **permit** for
 14 construction or expansion of a confined feeding operation was issued.

15 **(d) (e)** A person who has received ~~approval a permit~~ to construct
 16 or expand a confined feeding operation under section + 1.1 of this
 17 chapter and has not begun construction or expansion within thirty (30)
 18 days of the expiration of the ~~approval~~ **permit** must:

19 (1) submit a renewal application for construction or expansion at
 20 least thirty (30) days prior to the expiration of the ~~approval~~;
 21 **permit**; and

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

23 The construction standards that apply to a renewal application under
 24 this subsection shall be the standards in place under rules adopted by
 25 the board at the time that the renewal application is submitted.

26 **(e) (f)** The department shall approve the construction or expansion
 27 and the operation of the manure management system of the confined
 28 feeding operation if the commissioner determines that the ~~applicant~~
 29 **meets the requirements of**:

30 (1) this chapter;
 31 (2) rules adopted under this chapter;
 32 (3) the water pollution control laws;
 33 (4) rules adopted under the water pollution control laws; and
 34 (5) policies and statements adopted under IC 13-14-1-11.5
 35 relative to confined feeding operations;

36 **have been met.**

37 **(g) A request for a permit amendment required under section**
 38 **1.1 of this chapter must be submitted on a form provided by the**
 39 **department. The notification requirements of this section do not**
 40 **apply to a permit amendment.**



1 SECTION 13. IC 13-18-10-2.1, AS AMENDED BY P.L.199-2014,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 2.1. (a) The department:

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

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

12 (b) If the department fails to make a determination on an application
13 not later than ninety (90) days after the date the department receives
14 the completed application, the applicant may request and receive a
15 refund of an ~~approval~~ application fee ~~paid by the applicant~~; and the
16 commissioner shall:

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

21 (c) The commissioner may suspend the processing of an application
22 and the ninety (90) day period described under this section if the
23 department determines within thirty (30) days after the department
24 receives the application that the application is incomplete and has
25 ~~mailed~~ **provided** a **written** notice of deficiency to the applicant that
26 specifies the parts of the application that:

27 (1) do not contain adequate information for the department to
28 process the application; or
29 (2) are not consistent with applicable law.

30 (d) The department may establish requirements in ~~an approval a~~
31 **permit** regarding that part of the confined feeding operation that
32 concerns manure handling and application to assure compliance with:

33 (1) this chapter;
34 (2) rules adopted under this chapter;
35 (3) the water pollution control laws;
36 (4) rules adopted under the water pollution control laws; and
37 (5) policies and statements adopted under IC 13-14-1-11.5
38 relative to confined feeding operations.

39 (e) Subject to subsection (f), the commissioner may deny an
40 application upon making either or both of the following findings:

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



(A) ~~an~~ **A permit** application for approval under section **1.1** of this chapter.

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

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

(A) Section ~~1.4(e)(5)~~ **1.4(b)(5)** of this chapter.

(B) Section ~~1.4(e)(6)~~ **1.4(b)(6)** of this chapter.

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

(1) The nature and details of the acts attributed to the responsible party.

(2) The degree of culpability of the responsible party.

(3) The responsible party's cooperation with the state, federal, or foreign agencies involved in the investigation of the activities involved in actions referred to in section ~~1.4(e)(5)~~ **1.4(b)(5)** and ~~1.4(e)(6)~~ **1.4(b)(6)** of this chapter.

(4) The responsible party's dissociation from any other persons or entities convicted in a criminal enforcement action referred to in section ~~1.4(e)(5)~~ **1.4(b)(5)** and ~~1.4(e)(6)~~ **1.4(b)(6)** of this chapter.

(5) Prior or subsequent self-policing or internal education programs established by the responsible party to prevent acts, omissions, or violations referred to in section ~~1.4(e)(5)~~ **1.4(b)(5)** and ~~1.4(e)(6)~~ **1.4(b)(6)** of this chapter.

(g) Except as provided in subsection (h), in taking action under subsection (e), the commissioner must make separately stated findings of fact to support the action taken. The findings of fact must **include**:

(1) **include** a statement of ultimate fact; and

(2) ~~be accompanied by a concise~~ statement of the underlying ~~basic~~ facts of record to support the findings.

(h) If the commissioner denies an application under subsection (e), the commissioner is not required to explain the extent to which any of the factors set forth in subsection (f) influenced the denial.

(i) The department may amend ~~an approval under section 1 of this chapter~~ or revoke ~~an approval a permit~~ under section **1.1** of this chapter:

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

(C) the water pollution control laws; or

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



4 SECTION 14. IC 13-18-10-2.2, AS AMENDED BY P.L.199-2014,
5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2017]: Sec. 2.2. (a) Not more than thirty (30) days after the
7 completion of construction or expansion of a confined feeding
8 operation, the ~~applicant~~ **permit holder** shall execute and send to the
9 department an affidavit that affirms under penalties of perjury that the
10 confined feeding operation:

11 (1) was constructed or expanded; and
12 (2) will be operated;

13 in accordance with the requirements of the department's approval.

14 (b) **An approval A permit** to construct or expand a confined feeding
15 operation shall remain in effect as the operating **approval permit** for
16 the duration of the permit term if construction or expansion is
17 completed prior to the end of the permit term under which the confined
18 feeding operation was constructed or expanded.

19 SECTION 15. IC 13-18-10-3 IS REPEALED [EFFECTIVE JULY
20 1, 2017]. See. 3. This chapter, including requirements established in a
21 department approval under section 2 of this chapter, may be enforced
22 under IC 13-30-3 or IC 13-14-2-6.

23 SECTION 16. IC 13-18-10-5 IS REPEALED [EFFECTIVE JULY
24 1, 2017]. Sec. 5. The department may seek injunctive relief under this
25 chapter.

26 SECTION 17. IC 13-18-10-6, AS AMENDED BY P.L.137-2007,
27 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2017]: Sec. 6. **(a) This chapter, including requirements in**
29 **a permit issued under this chapter, may be enforced under**
30 **IC 13-30-3 or IC 13-14-2-6.**

31 **(b)** A person who violates this chapter is subject to the penalties
32 imposed by the following:

- 33 (1) IC 13-30-4.
- 34 (2) IC 13-30-5.
- 35 (3) IC 13-30-8.

36 In addition, a person who violates this chapter may be subject to
37 criminal prosecution under IC 13-30-10.

38 (c) The department may seek injunctive relief under this
39 chapter.

40 SECTION 18. IC 13-23-13-14, AS AMENDED BY P.L.159-2011,
41 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2017]: Sec. 14. For purposes of IC 13-11-2-148(e),



1 **IC 13-11-2-150(b), and IC 13-11-2-150(c), and IC 13-11-2-150(d)**, a
2 person that is a lender and that holds evidence of ownership primarily
3 to protect a security interest in an underground storage tank shall be
4 considered to participate in management (as defined in
5 IC 13-11-2-151.2) of the underground storage tank only if, while the
6 borrower is still in possession of the underground storage tank
7 encumbered by the security interest, the person:

8 (1) exercises decision making control over the environmental
9 compliance related to the underground storage tank such that the
10 person has undertaken responsibility for the hazardous substance
11 handling or disposal practices related to the underground storage
12 tank; or
13 (2) exercises control at a level comparable to that of a manager of
14 the underground storage tank such that the person has assumed or
15 manifested responsibility:
16 (A) for the overall management of the underground storage
17 tank encompassing day to day decision making with respect to
18 environmental compliance; or
19 (B) over all or substantially all of the operational functions (as
20 distinguished from financial or administrative functions) of the
21 underground storage tank other than the function of
22 environmental compliance.

23 SECTION 19. IC 13-23-13-16, AS ADDED BY P.L.221-2007,
24 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2017]: Sec. 16. (a) A political subdivision or unit of federal
26 or state government that acquired ownership or control of an
27 underground storage tank on a brownfield by any of the means listed
28 in **IC 13-11-2-150(c) IC 13-11-2-150(d)** and IC 13-11-2-151(b) may
29 undertake any activity in conjunction with:

30 (1) investigation or remediation of hazardous substances,
31 petroleum, and other pollutants associated with a brownfield,
32 including complying with land use restrictions and institutional
33 controls; or
34 (2) monitoring or closure of an underground storage tank;
35 without being considered as contributing to the existing release or
36 threatened release of a regulated substance on, in, or at the brownfield
37 unless existing contamination on the brownfield is exacerbated due to
38 gross negligence or intentional misconduct by the political subdivision
39 or unit of federal or state government.
40 (b) For purposes of subsection (a), reckless, willful, or wanton
41 misconduct constitutes gross negligence.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1494, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 10, line 3, delete "to:" and insert "**before doing either of the following:**

- (1) Constructing a confined feeding operation.**
- (2) Operating a confined feeding operation.**

A person may obtain a single permit under this subsection authorizing the person to both construct and operate a confined feeding operation.".

Page 10, delete lines 4 through 6.

and when so amended that said bill do pass.

(Reference is to HB 1494 as introduced.)

WOLKINS

Committee Vote: yeas 7, nays 3.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1494 be amended to read as follows:

Page 10, line 16, delete "either" and insert "**any**".

Page 10, line 24, delete "more than".

Page 10, line 25, delete "(10%); or" and insert "**(10%) or more;**".

Page 10, line 26, delete "more".

Page 10, line 27, delete "than".

Page 10, line 27, delete "(10%)." and insert "**(10%) or more; or**

(C) increase manure storage capacity by less than ten percent (10%).

(d) A new permit is required for any of the following:

(1) Construction of a new manure storage facility that would increase manure storage capacity beyond the capacity approved in the most recently issued permit.

(2) A change to a manure storage facility that would increase manure storage capacity by ten percent (10%) or more."

Page 10, line 28, delete "(d)" and insert "(e)".



Page 10, line 29, delete "(c)," and insert "**(c) or (d)**".

Page 10, line 32, delete "(e)" and insert "**(f)**".

(Reference is to HB 1494 as printed February 17, 2017.)

WOLKINS

HB 1494—LS 7155/DI 55

