



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



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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



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

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

- (1) a water treatment plant;
- (2) a wastewater treatment plant; or
- (3) a water distribution system.

(c) "Operator", for purposes of IC 13-20-6, means a corporation, a
 limited liability company, a partnership, a business association, a unit,
 or an individual who is a sole proprietor that is one (1) of the following:

- (1) A broker.
- (2) A person who manages the activities of a transfer station that
 receives municipal waste.
- (3) A transporter.

(d) "Operator", for purposes of IC 13-23, except as provided in
 subsections (e), (g), and (h), means a person:

- (1) in control of; or
- (2) having responsibility for;

the daily operation of an underground storage tank.

(e) "Operator", for purposes of IC 13-23-13, does not include the
 following:

- (1) A person who:
 - (A) does not participate in the management of an underground
 storage tank;
 - (B) is otherwise not engaged in the:
 - (i) production;
 - (ii) refining; and
 - (iii) marketing;
 - of regulated substances; and
 - (C) holds evidence of ownership, primarily to protect the
 owner's security interest in the tank.
- (2) A person that is a lender that did not participate in
 management of an underground storage tank before foreclosure,
 notwithstanding that the person:
 - (A) forecloses on the vessel or facility; and
 - (B) after foreclosure, sells, re-leases (in the case of a lease
 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.
 25 (4) A political subdivision (as defined in IC 36-1-2-13) or unit of
 26 federal or state government that:
 27 (A) acquires ownership or control of an underground storage
 28 tank on a brownfield because of:
 29 (i) bankruptcy;
 30 (ii) foreclosure;
 31 (iii) tax delinquency, including an acquisition under
 32 IC 6-1.1-24 or IC 6-1.1-25;
 33 (iv) abandonment;
 34 (v) the exercise of eminent domain, including any purchase
 35 of property once an offer to purchase has been tendered
 36 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,



IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and
IC 36-7-15.1-15.5;

(ix) other circumstances in which the political subdivision
or unit of federal or state government involuntarily acquired
an interest in the property because of the political
subdivision's or unit's function as sovereign; or

(x) any other means to conduct remedial actions on a
brownfield; and

(B) is engaged only in activities in conjunction with:

(i) investigation or remediation of hazardous substances,
petroleum, and other pollutants associated with a
brownfield, including complying with land use restrictions
and institutional controls; or

(ii) monitoring or closure of an underground storage tank;
unless existing contamination on the brownfield is exacerbated
due to gross negligence or intentional misconduct by the
political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(4)(B), reckless, willful, or wanton
misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009,
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(q) of CERCLA (42 U.S.C. 9607(q)) that apply for
purposes of the determination of liability for a release of a hazardous
substance.

(h) "Operator" 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.

SECTION 3. IC 13-11-2-150, AS AMENDED BY P.L.159-2011,
SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2017]: Sec. 150. **(a) "Owner", for purposes of section 191
of this chapter and IC 13-18-10 (except for IC 13-18-10-1.1(c)(2)
and IC 13-18-10-2(b)(2)), means the person that owns the waste
management system at a confined feeding operation. The term may
include a permit holder.**

~~(a)~~ **(b)** "Owner", for purposes of IC 13-23 (except as provided in
subsections ~~(b)~~, (c), (d), (e), (f), **(g)**, and ~~(g)~~ **(h)**) means:

(1) for an underground storage tank that:

(A) was:



- 1 (i) in use on November 8, 1984; or
- 2 (ii) brought into use after November 8, 1984;
- 3 for the storage, use, or dispensing of regulated substances, a
- 4 person who owns the underground storage tank or the real
- 5 property that is the underground storage tank site, or both; or
- 6 (B) was:
- 7 (i) in use before November 8, 1984; but
- 8 (ii) no longer in use on November 8, 1984;
- 9 a person who owned the tank immediately before the
- 10 discontinuation of the tank's use; or
- 11 (2) a person who conveyed ownership or control of the
- 12 underground storage tank to a political subdivision (as defined in
- 13 IC 36-1-2-13) or unit of federal or state government because of:
- 14 (A) bankruptcy;
- 15 (B) foreclosure;
- 16 (C) tax delinquency, including a conveyance under
- 17 IC 6-1.1-24 or IC 6-1.1-25;
- 18 (D) abandonment;
- 19 (E) the exercise of eminent domain, including any purchase of
- 20 property once an offer to purchase has been tendered under
- 21 IC 32-24-1-5;
- 22 (F) receivership;
- 23 (G) acquiring an area needing redevelopment (as defined in
- 24 IC 36-7-1-3) or conducting redevelopment activities,
- 25 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
- 26 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- 27 (H) other circumstances in which a political subdivision or
- 28 unit of federal or state government involuntarily acquired
- 29 ownership or control because of the political subdivision's or
- 30 unit's function as sovereign; or
- 31 (I) any other means to conduct remedial actions on a
- 32 brownfield;
- 33 if the person was a person described in subdivision (1)
- 34 immediately before the person conveyed ownership or control of
- 35 the underground storage tank.
- 36 ~~(b)~~ (c) "Owner", for purposes of IC 13-23-13, does not include a
- 37 person who:
- 38 (1) does not participate in the management of an underground
- 39 storage tank;
- 40 (2) is otherwise not engaged in the:
- 41 (A) production;
- 42 (B) refining; and



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

~~(c)~~ (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;



(9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(10) any other means to conduct remedial actions on a brownfield;

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.

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

~~(f)~~ (g) "Owner" does not include a person that after June 30, 2009, 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(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous 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.

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

- (1) a permit;
- (2) a license;
- (3) a registration;
- (4) a certificate; or
- (5) other type of authorization required before construction or operation;

that may be issued by the commissioner under pollution control laws



or environmental management laws.

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

(1) a permit; or

(2) a determination related to a permit;

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

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

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

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

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

(3) **A permit holder.**

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

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

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

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

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

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

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



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

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

(1) who:

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

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

(2) who:

(A) causes; or

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

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

(1) manure storage facilities;

(2) manure transfer systems;

(3) manure treatment systems, such as a:

(A) constructed wetland;

(B) vegetative management system; or

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

(4) feedlots;

(5) confinement buildings; or

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

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

(1) construction of a confined feeding operation; or

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

(A) animal capacity; or

(B) manure containment capacity; or

(C) both;

without obtaining the prior approval of the department.

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

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



CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2017]: **Sec. 1.1. (a) A person must obtain a permit 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.

(b) A permit holder must obtain approval from the department before:

(1) constructing a new manure storage facility; or

(2) expanding a manure storage facility.

The approval may be in the form of a new permit or a permit amendment, in accordance with this section and rules adopted by the board.

(c) A permit amendment is required before any of the following:

(1) Construction of a new manure storage facility to replace an existing manure storage facility if the construction would not increase the manure storage capacity of the confined feeding operation.

(2) A proposed change to a confined feeding operation that would:

(A) increase manure volume by ten percent (10%) or more;

(B) decrease the size of a manure storage facility by ten percent (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.

(e) Before a permit holder makes a change to a confined feeding operation not described in subsection (c) or (d), the permit holder must submit to the department a facility change notification concerning the proposed change.

(f) Any change to a confined feeding operation that reduces the number of days of manure storage required under the rules in effect when the most recent permit was issued for the confined 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~~ **1.1** 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 (c) 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~~ **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~~ **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 ~~1~~ of
35 this chapter that does not involve construction or expansion as
36 described in section ~~1~~ 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



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

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

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

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

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

~~(C) present a substantial endangerment to human health or the environment.~~

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

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

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

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

~~(C) present a substantial endangerment to human health or the environment.~~

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

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



(d) (c) A disclosure statement submitted under ~~subsection (c):~~ **this section:**

(1) must be executed under oath or affirmation; and

(2) is subject to the penalty for perjury under IC 35-44.1-2-1.

(e) (d) The department may investigate and verify the information set forth in a disclosure statement submitted under this section.

SECTION 11. IC 13-18-10-1.9 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 1-9: (a) This section applies:

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

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

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

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

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

(4) Section 1 of this chapter.

(5) Section 2 of this chapter.

(6) Section 2.1 of this chapter.

(7) Section 2.2 of this chapter.

(8) Section 4 of this chapter.

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

(1) Plans and specifications for the design and operation of manure treatment and control facilities: **waste management systems.**

(2) A manure management plan that outlines procedures for the following:



- 1 (A) Soil testing.
- 2 (B) Manure testing.
- 3 (3) Maps of manure application areas.
- 4 (4) Supplemental information that the department requires,
- 5 including the following:
- 6 (A) General features of topography.
- 7 (B) Soil types.
- 8 (C) Drainage course.
- 9 (D) Identification of nearest streams, ditches, and lakes.
- 10 (E) Location of field tiles.
- 11 (F) Location of land application areas.
- 12 (G) Location of manure treatment facilities.
- 13 (H) Farmstead plan, including the location of water wells on
- 14 the site.
- 15 (5) A fee of one hundred dollars (\$100). The department shall
- 16 refund the fee if the department does not make a determination in
- 17 accordance with the time period established under section 2.1 of
- 18 this chapter.
- 19 (b) ~~An applicant~~ **A person** who applies for ~~an approval a permit~~
- 20 under section ~~1.1~~ **1.1** of this chapter shall, not more than ten (10)
- 21 working days after submitting the application, make a reasonable effort
- 22 to provide **written** notice under this subsection:
- 23 (1) to the county executive of the county in which the confined
- 24 feeding operation is to be located or expanded; and
- 25 (2) to each owner and each occupant of land of which any part of
- 26 the boundary is one-half (1/2) mile or less from the following:
- 27 (A) Any part of the proposed footprint of either or both of the
- 28 following to be located on the land on which the confined
- 29 feeding operation is to be located:
- 30 (i) A livestock or poultry production structure.
- 31 (ii) A permanent manure storage facility.
- 32 (B) Any part of the proposed footprint of either or both of the
- 33 following to be located on the land on which the confined
- 34 feeding operation is to be expanded:
- 35 (i) A livestock or poultry production structure.
- 36 (ii) The expanded area of a ~~livestock or poultry production~~
- 37 ~~structure.~~ **manure storage facility.**
- 38 (c) The notice **provided under subsection (b):**
- 39 (1) ~~must be sent by mail, be in writing,~~ include:
- 40 (A) the date on which the application was submitted to the
- 41 department; and ~~include~~
- 42 (B) a brief description of the subject of the application; **and**



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

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

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

- (1) operate a confined feeding operation; or
- (2) complete construction or expansion of a confined feeding operation;

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

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

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

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

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

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

have been met.

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



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

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

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

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

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the ~~applicant's~~ application fee not later than twenty-five
(25) working days after the receipt of the applicant's request.

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

(1) do not contain adequate information for the department to
process the application; or

(2) are not consistent with applicable law.

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

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

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

(5) policies and statements adopted under IC 13-14-1-11.5
relative to confined feeding operations.

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

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



- 1 (A) ~~An A permit~~ application for approval under section ~~† 1.1~~
2 of this chapter.
- 3 (B) A disclosure statement required by section 1.4 of this
4 chapter.
- 5 (2) An enforcement action was resolved against a responsible
6 party as described in either or both of the following:
7 (A) Section ~~†.4(c)(5)~~ **1.4(b)(5)** of this chapter.
8 (B) Section ~~†.4(c)(6)~~ **1.4(b)(6)** of this chapter.
- 9 (f) Before making a determination to approve or deny an
10 application, the commissioner must consider the following factors:
11 (1) The nature and details of the acts attributed to the responsible
12 party.
13 (2) The degree of culpability of the responsible party.
14 (3) The responsible party's cooperation with the state, federal, or
15 foreign agencies involved in the investigation of the activities
16 involved in actions referred to in section ~~†.4(c)(5)~~ **1.4(b)(5)** and
17 ~~†.4(c)(6)~~ **1.4(b)(6)** of this chapter.
18 (4) The responsible party's dissociation from any other persons or
19 entities convicted in a criminal enforcement action referred to in
20 section ~~†.4(c)(5)~~ **1.4(b)(5)** and ~~†.4(c)(6)~~ **1.4(b)(6)** of this chapter.
21 (5) Prior or subsequent self-policing or internal education
22 programs established by the responsible party to prevent acts,
23 omissions, or violations referred to in section ~~†.4(c)(5)~~ **1.4(b)(5)**
24 and ~~†.4(c)(6)~~ **1.4(b)(6)** of this chapter.
- 25 (g) Except as provided in subsection (h), in taking action under
26 subsection (e), the commissioner must make separately stated findings
27 of fact to support the action taken. The findings of fact must **include**:
28 (1) ~~include~~ a statement of ultimate fact; and
29 (2) ~~be accompanied by a concise~~ statement of the underlying
30 ~~basic~~ facts of record to support the findings.
- 31 (h) If the commissioner denies an application under subsection (e),
32 the commissioner is not required to explain the extent to which any of
33 the factors set forth in subsection (f) influenced the denial.
- 34 (i) The department may amend ~~an approval under section † of this~~
35 ~~chapter~~ or revoke ~~an approval a permit~~ under section ~~† 1.1~~ of this
36 chapter:
37 (1) for failure to comply with:
38 (A) this chapter;
39 (B) rules adopted under this chapter;
40 (C) the water pollution control laws; or
41 (D) rules adopted under the water pollution control laws; and



(2) as needed to prevent discharges of manure into the environment that pollute or threaten to pollute the waters of the state.

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

(1) was constructed or expanded; and

(2) will be operated;

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

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

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

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

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

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

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-8.

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

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

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



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

(1) exercises decision making control over the environmental compliance related to the underground storage tank such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the underground storage tank; or

(2) exercises control at a level comparable to that of a manager of the underground storage tank such that the person has assumed or manifested responsibility:

(A) for the overall management of the underground storage tank encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank other than the function of environmental compliance.

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

(1) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or

(2) monitoring or closure of an underground storage tank; without being considered as contributing to the existing release or threatened release of a regulated substance on, in, or at the brownfield unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(b) For purposes of subsection (a), reckless, willful, or wanton 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

