

SENATE BILL No. 316

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2-191; IC 13-18-10; IC 15-11-2-6; IC 32-30-6-9.

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

Effective: July 1, 2018.

Stoops

January 4, 2018, read first time and referred to Committee on Agriculture.



Digest Continued

the rights of farmers to choose among all generally accepted farming and livestock production practices. Amends the law stating that an agricultural operation that has been in operation for more than one year does not become a nuisance by a change in conditions if there is no "significant change" in the type of operation by eliminating provisions of the law declaring that certain types of changes are not significant changes.



Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

SENATE BILL No. 316

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

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



(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) "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) "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 2. IC 13-18-10-1, AS AMENDED BY P.L.199-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) A person may not start ~~(+)~~ construction **or**

operation 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~~ **a permit from** the department.

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

(1) the number of animals;

(2) the animal capacity;



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

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

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

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

16 (A) constituted a material violation of foreign environmental
 17 law; and

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

21 (b) Subsection (a):

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

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

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

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

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

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

38 (A) constitute a material violation of state or federal
 39 environmental law; and

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

42 (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) A disclosure statement submitted under subsection (c):

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

SECTION 4. IC 13-18-10-1.9, AS ADDED BY P.L.1-2010, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: 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~~ **a permit** under section 1 of this chapter if ~~an a permit~~ application for ~~approval~~ **submitted** 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 5. IC 13-18-10-2, AS AMENDED BY P.L.199-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2. (a) An application for ~~an approval~~ **a permit or permit modification** 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:

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

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

(A) Soil testing.

(B) Manure testing.

(C) Ground water monitoring.

(D) Land application setbacks, buffers, and other criteria,



as appropriate considering the specific conditions of the site.

(E) Routine inspection by the owner or operator and reporting to the department.

(F) Any other practice, procedure, limit, or standard deemed necessary by the department to protect ground and surface waters from excess nutrient and *E. coli* bacteria contamination.

(3) Maps of **proposed** manure application areas.

(4) ~~Supplemental Site specific~~ information, ~~that the department requires,~~ including the following:

(A) ~~General features of The~~ topography of the site and all **proposed land application areas.**

(B) Soil types at the site and at all **proposed land application areas.**

(C) ~~Hydrology and drainage course:~~ at the site and all **proposed land application areas.**

(D) Identification and location of the nearest streams, ditches, and lakes, wetlands regulated by the U.S. Army Corps of Engineers under Section 404 of the federal Clean Water Act (33 U.S.C. 1344), and isolated wetlands (as defined in IC 13-11-2-112.5).

(E) Location of field tiles at the site and all **proposed land application areas.**

~~(F) Location of land application areas:~~

~~(G)~~ (F) Location of manure treatment facilities and other structures, conveyances, and areas that will be used to collect, store, manage, discard, or dispose of manure.

~~(H)~~ (G) Farmstead plan, including The location of water wells on the site and within one-half (1/2) mile of the boundary of the property on which the confined feeding operation is or would be located.

(H) Identification and location of all residences, schools, churches, nonagricultural businesses, and other public places within one-half (1/2) mile of the boundary of the property on which the confined feeding operation is or would be located.

(5) A site-specific odor control plan detailing how the confined feeding operation will comply with the odor standard established by rule under section 4(a)(1)(E) and 4(a)(2)(D) of this chapter. The odor control plan must contain the following:



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



1 **the confined feeding operation is proposed to be located or**
 2 **expanded.**

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

6 (i) A livestock or poultry production structure.

7 (ii) A permanent manure storage facility.

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

11 (i) A livestock or poultry production structure.

12 (ii) The expanded area of a livestock or poultry production
 13 structure.

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

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

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

23 (2) complete construction or expansion of a confined feeding
 24 operation;

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

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

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

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

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



(e) 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.~~ **make its determination on applications for permit renewals under subsections (c) and (d) in accordance with section 2.1 of this chapter.**

SECTION 6. IC 13-18-10-2.1, AS AMENDED BY P.L.199-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: 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 a 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) Before making a determination on the application, the department shall provide public access to the application through the Internet on the department's Virtual File Cabinet and shall



1 publish a notice requesting public comments concerning the
2 application.

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

6 (1) submit written comments to the commissioner concerning
7 the application; and

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

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

14 (1) all written comments submitted under subsection (e)(1);
15 and

16 (2) all public testimony presented at a public hearing held
17 under this subsection;

18 before making a determination on the application.

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

21 (1) compliance with this chapter and rules adopted under this
22 chapter;

23 (2) compliance with the water pollution control laws and rules
24 adopted under the water pollution control laws;

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

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

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

32 (1) compliance with ~~(1)~~ this chapter ~~(2)~~ and the rules adopted
33 under this chapter;

34 ~~(3)~~ (2) compliance with the water pollution control laws ~~(4)~~ and
35 rules adopted under the water pollution control laws; and

36 ~~(5)~~ (3) compliance with policies and statements adopted under
37 IC 13-14-1-11.5 relative to confined feeding operations; and

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

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

42 (1) A responsible party intentionally misrepresented or concealed



any material fact in either or both of the following:

(A) An application for ~~approval~~ **a permit or permit modification** under section 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(c)(5) of this chapter.

(B) Section 1.4(c)(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(c)(5) and 1.4(c)(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(c)(5) and 1.4(c)(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(c)(5) and 1.4(c)(6) of this chapter.~~

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

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

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

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

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

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

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

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

(B) an undue risk to property; or

(C) a public nuisance.

SECTION 7. IC 13-18-10-2.2, AS AMENDED BY P.L.199-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2.2. (a) Not more than thirty (30) days after the completion of construction or expansion of a confined feeding operation, the applicant 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~~ **permit**.

(b) ~~An approval~~ **A permit** to construct or expand a confined feeding operation shall remain in effect as the operating approval 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 8. IC 13-18-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 3. This chapter, including requirements established in a department ~~approval~~ **permit** under section 2 of this chapter, may be enforced under IC 13-30-3 or IC 13-14-2-6.

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



chapter. The rules policies, or statements may concern construction, expansion, and operation of confined feeding operations and may **adopted under this subsection must** include uniform **criteria and standards for (†) the construction, operation, and expansion and manure containment** that are appropriate for a specific site; and of **confined feeding operations to protect public health and the environment, as follows:**

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

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

- (i) the owner of the residential property provides written consent for a lesser setback; and**
- (ii) the written consent is recorded with the deed of the residential property.**

(B) 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.

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

(D) Prohibit:

- (i) the construction or operation of a confined feeding operation; or**
- (ii) the land application of manure;**

in karst areas and flood plains.

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

- (i) with the use of a field olfactometer capable of**



measuring and quantifying odor strength in the ambient air or a similar instrument or technique approved by the department; and

(ii) at the property boundary of the confined feeding operation.

(F) Require implementation of an odor control plan under section 2(a)(5) of this chapter describing measures to be used to maintain compliance with the odor performance standard established under clause (E).

(G) Require annual submission of operating records to the department.

(2) For existing or expanding confined feeding operations, the criteria and standards must do the following:

(A) Prohibit expansion of a confined feeding operation that:

(i) is located within one (1) mile of a residence unless written authorization from the owner of the residential property is obtained and the authorization is recorded with the deed of the residential property;

(ii) is located within one (1) mile of a school, nonagricultural business, church, park, or other public place;

(iii) has structures, production areas, or land application activities in karst areas or flood plains; or

(iv) would otherwise pose a substantial endangerment to public health or the environment if the expansion were allowed.

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

(C) Prohibit land application of manure in karst areas and flood plains.

(D) Require compliance with the odor performance standard established under subdivision (1)(E) through implementation of an odor control plan under section 2(a)(5) of this chapter.

(E) Require the annual submission of operating records to



the department.

(b) Standards adopted in a rule, policy, or statement under subsection (a):

(1) must be developed through technical review by the department in consultation with environmental experts, public health experts, engineering experts, or other experts as deemed necessary by the department;

(2) must be developed in consideration of public comments and input from interested stakeholders; and

(3) may be based on environmental, public health, engineering, and industry standards and best practices developed by credible sources such as:

(A) the United States Environmental Protection Agency;

(B) the Centers for Disease Control and Prevention, including the Agency for Toxic Substances and Disease Registry;

(C) (2) manure application and handling that are consistent with best management practices: (A) designed to reduce the potential for manure to be conveyed off a site by runoff or soil erosion; and (B) that are appropriate for a specific site. (b)

Standards adopted in a rule, policy, or statement under subsection (a) must: (1) consider confined feeding standards that are consistent with standards found in publications from:

(A) the United States Department of Agriculture, (B) including the Natural Resources Conservation Service of the United States Department of Agriculture;

(D) the American Society of Agricultural and Biological Engineers;

(E) the American National Standards Institute;

(F) accredited universities and research institutions; and

(G) other state governments.

(C) the Midwest Plan Service; and (D) postsecondary educational institution extension bulletins; and (2) be developed through technical review by the department; postsecondary educational institution specialists; and other animal industry specialists.

SECTION 10. IC 15-11-2-6, AS AMENDED BY P.L.25-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 6. (a) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of agriculture, agricultural businesses, and agricultural land for the production of food, fuel, fiber, and other agricultural products. The Indiana Code shall be construed to protect



1 the rights of farmers to choose among all generally accepted farming
 2 and livestock production practices, including the use of ever changing
 3 technology.

4 (b) The department shall promote the growth of agricultural
 5 businesses by doing the following:

6 (1) Assisting agricultural businesses with the permit process
 7 required to conduct business in Indiana.

8 (2) Serving as a liaison between agricultural businesses, state
 9 agencies, and local units of government.

10 SECTION 11. IC 32-30-6-9, AS AMENDED BY P.L.23-2005,
 11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2018]: Sec. 9. (a) This section does not apply if a nuisance
 13 results from the negligent operation of an agricultural or industrial
 14 operation or its appurtenances.

15 (b) The general assembly declares that it is the policy of the state to
 16 conserve, protect, and encourage the development and improvement of
 17 its agricultural land for the production of food and other agricultural
 18 products. The general assembly finds that when nonagricultural land
 19 uses extend into agricultural areas, agricultural operations often
 20 become the subject of nuisance suits. As a result, agricultural
 21 operations are sometimes forced to cease operations, and many persons
 22 may be discouraged from making investments in farm improvements.
 23 It is the purpose of this section to reduce the loss to the state of its
 24 agricultural resources by limiting the circumstances under which
 25 agricultural operations may be deemed to be a nuisance.

26 (c) For purposes of this section, the continuity of an agricultural or
 27 industrial operation shall be considered to have been interrupted when
 28 the operation has been discontinued for more than one (1) year.

29 (d) An agricultural or industrial operation or any of its
 30 appurtenances is not and does not become a nuisance, private or public,
 31 by any changed conditions in the vicinity of the locality after the
 32 agricultural or industrial operation, as the case may be, has been in
 33 operation continuously on the locality for more than one (1) year if the
 34 following conditions exist:

35 (1) There is no significant change in the **type hours** of operation.
 36 ~~A significant change in the type of agricultural operation does not~~
 37 ~~include the following:~~

38 ~~(A) The conversion from one type of agricultural operation to~~
 39 ~~another type of agricultural operation:~~

40 ~~(B) A change in the ownership or size of the agricultural~~
 41 ~~operation:~~

42 ~~(C) The:~~



- 1 (i) enrollment; or
2 (ii) reduction or cessation of participation;
3 of the agricultural operation in a government program.
4 ~~(D) Adoption of new technology by the agricultural operation.~~
5 **(2) There is no significant change in the type, size, or matter**
6 **of operation.**
7 ~~(2)~~ **(3)** The operation would not have been a nuisance at the time
8 the agricultural or industrial operation began on that locality.

