



January 29, 2014

SENATE BILL No. 359

DIGEST OF SB 359 (Updated January 27, 2014 3:38 pm - DI 55)

Citations Affected: IC 13-18; IC 13-20.

Synopsis: Confined feeding operations and composting. Provides that a person may not operate a confined feeding operation without obtaining the prior approval of the department of environmental management. Provides for renewal of an approval for the construction, expansion, or operation of a confined feeding operation. Provides that the law concerning the registration of composting facilities applies to facilities for the composting of vegetative matter and other organic material. (Currently the law applies only to facilities for the composting of vegetative matter resulting from landscaping maintenance and land clearing projects.) Specifies the conditions under which an application for registration of a composting facility may be denied or a registration may be revoked.

Effective: July 1, 2014.

Charbonneau

January 14, 2014, read first time and referred to Committee on Environmental Affairs.
January 28, 2014, amended, reported favorably — Do Pass.

SB 359—LS 6716/DI 55



January 29, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 359

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 13-18-10-1, AS AMENDED BY P.L.1-2010,
2 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 1. **(a)** A person may not start:
4 (1) construction of a confined feeding operation; or
5 (2) expansion of a confined feeding operation that increases:
6 **(A)** animal capacity; or
7 **(B)** manure containment capacity; or
8 **(C)** both;
9 without obtaining the prior approval of the department.
10 **(b) A person may not operate a confined feeding operation**
11 **without obtaining the prior approval of the department.**
12 SECTION 2. IC 13-18-10-2, AS AMENDED BY P.L.127-2009,
13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2014]: Sec. 2. **(a) An application for an approval under**
15 **section 1 of this chapter of the construction or expansion of a confined**
16 **feeding operation must be made on a form submitted on a form**

SB 359—LS 6716/DI 55



1 provided by the department. An applicant must submit the completed
2 application form to the department together with the following:

3 (1) Plans and specifications for the design and operation of
4 manure treatment and control facilities.

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

7 (A) Soil testing.

8 (B) Manure testing.

9 (3) Maps of manure application areas.

10 (4) Supplemental information that the department requires,
11 including the following:

12 (A) General features of topography.

13 (B) Soil types.

14 (C) Drainage course.

15 (D) Identification of nearest streams, ditches, and lakes.

16 (E) Location of field tiles.

17 (F) Location of land application areas.

18 (G) Location of manure treatment facilities.

19 (H) Farmstead plan, including the location of water wells on
20 the site.

21 (5) A fee of one hundred dollars (\$100). The department shall
22 refund the fee if the department does not make a determination in
23 accordance with the time period established under section 2.1 of
24 this chapter.

25 (b) An applicant who applies for **an** approval under section 1 of this
26 chapter ~~to construct or expand a confined feeding operation on land for~~
27 ~~which a valid existing approval has not been issued shall, make a~~
28 ~~reasonable effort to provide notice~~ not more than ten (10) working days
29 after submitting ~~an the~~ application, **make a reasonable effort to**
30 **provide notice under this subsection:**

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

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

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

38 (i) A livestock or poultry production structure.

39 (ii) A permanent manure storage facility.

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



1 (i) A livestock or poultry production structure.

2 (ii) The expanded area of a livestock or poultry production
3 structure.

4 The notice must be sent by mail, be in writing, include the date on
5 which the application was submitted to the department, and include a
6 brief description of the subject of the application. The applicant shall
7 pay the cost of complying with this subsection. The applicant shall
8 submit an affidavit to the department that certifies that the applicant
9 has complied with this subsection.

10 **(c) A person must submit an application for the renewal of an
11 approval to:**

12 **(1) operate a confined feeding operation; or**

13 **(2) complete construction or expansion of a confined feeding
14 operation;**

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

21 **(d) A person who has received approval to construct or expand
22 a confined feeding operation under section 1 of this chapter and
23 has not begun construction or expansion within thirty (30) days of
24 the expiration of the approval must:**

25 **(1) submit a renewal application for construction or
26 expansion at least thirty (30) days prior to the expiration of
27 the approval; and**

28 **(2) comply with the requirements of subsection (b).**

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

33 ~~(e) Plans and specifications for manure treatment or control~~
34 ~~facilities for a confined feeding operation must secure the approval of~~
35 ~~the department. The department shall approve the construction or~~
36 ~~expansion and the operation of the manure management system of the~~
37 ~~confined feeding operation if the commissioner determines that the~~
38 ~~applicant meets the requirements of:~~

39 ~~(1) this chapter;~~

40 ~~(2) rules adopted under this chapter;~~

41 ~~(3) the water pollution control laws;~~

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



- 1 (5) policies and statements adopted under IC 13-14-1-11.5
 2 relative to confined feeding operations.
- 3 SECTION 3. IC 13-18-10-2.1, AS AMENDED BY P.L.127-2009,
 4 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2014]: Sec. 2.1. (a) The department:
- 6 (1) shall make a determination on an application ~~made submitted~~
 7 under section 2 of this chapter not later than ninety (90) days after
 8 the date the department receives the completed application,
 9 including all required supplemental information, unless the
 10 department and the applicant agree to a longer time; and
 11 (2) may conduct any inquiry or investigation, consistent with the
 12 department's duties under this chapter, the department considers
 13 necessary before making a determination.
- 14 (b) If the department fails to make a determination on an application
 15 not later than ninety (90) days after the date the department receives
 16 the completed application, the applicant may request and receive a
 17 refund of an approval application fee paid by the applicant, and the
 18 commissioner shall:
- 19 (1) continue to review the application;
 20 (2) approve or deny the application as soon as practicable; and
 21 (3) refund the applicant's application fee not later than twenty-five
 22 (25) working days after the receipt of the applicant's request.
- 23 (c) The commissioner may suspend the processing of an application
 24 and the ninety (90) day period described under this section if the
 25 department determines within thirty (30) days after the department
 26 receives the application that the application is incomplete and has
 27 mailed a notice of deficiency to the applicant that specifies the parts of
 28 the application that:
- 29 (1) do not contain adequate information for the department to
 30 process the application; or
 31 (2) are not consistent with applicable law.
- 32 (d) The department may establish requirements in an approval
 33 regarding that part of the confined feeding operation that concerns
 34 manure handling and application to assure compliance with:
- 35 (1) this chapter;
 36 (2) rules adopted under this chapter;
 37 (3) the water pollution control laws;
 38 (4) rules adopted under the water pollution control laws; and
 39 (5) policies and statements adopted under IC 13-14-1-11.5
 40 relative to confined feeding operations.
- 41 (e) Subject to subsection (f), the commissioner may deny an
 42 application upon making either or both of the following findings:



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



- 1 (2) as needed to prevent discharges of manure into the
 2 environment that pollute or threaten to pollute the waters of the
 3 state.
- 4 SECTION 4. IC 13-18-10-2.2, AS AMENDED BY P.L.127-2009,
 5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2014]: Sec. 2.2. (a) ~~If an applicant receives an approval under
 7 this chapter and completes construction or expansion;~~ Not more than
 8 thirty (30) days after ~~the date the applicant completes the~~ **completion**
 9 **of construction or expansion of a confined feeding operation,** the
 10 applicant shall execute and send to the department an affidavit that
 11 affirms under penalties of perjury that the confined feeding operation:
 12 (1) was constructed or expanded; and
 13 (2) will be operated;
 14 in accordance with the requirements of the department's approval.
- 15 (b) ~~Construction or expansion of an approved confined feeding~~
 16 ~~operation must:~~
 17 ~~(1) begin not later than two (2) years; and~~
 18 ~~(2) be completed not later than four (4) years;~~
 19 ~~after the date the department approves the construction or expansion of~~
 20 ~~the confined feeding operation or the date all appeals brought under~~
 21 ~~IC 4-21.5 concerning the construction or expansion of the confined~~
 22 ~~feeding operation have been completed, whichever is later. An~~
 23 ~~approval to construct or expand a confined feeding operation shall~~
 24 ~~remain in effect as the operating approval for the duration of the~~
 25 ~~permit term if construction or expansion is completed prior to the~~
 26 ~~end of the permit term under which the confined feeding operation~~
 27 ~~was constructed or expanded.~~
- 28 SECTION 5. IC 13-18-10-2.3 IS REPEALED [EFFECTIVE JULY
 29 1, 2014]. Sec. 2.3. ~~A confined feeding operation must submit a manure~~
 30 ~~management plan that outlines procedures for soil testing, manure~~
 31 ~~testing, and maps of manure application areas to the department at least~~
 32 ~~one (1) time every five (5) years to maintain valid approval for the~~
 33 ~~confined feeding operation under this chapter.~~
- 34 SECTION 6. IC 13-20-10-1 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This chapter
 36 applies to composting **(as defined in IC 13-11-2-38)** of vegetative
 37 matter ~~resulting from landscaping maintenance and land clearing~~
 38 ~~projects. and other organic material.~~
- 39 (b) This chapter does not apply to the following:
 40 (1) A person who conducts a composting operation at the person's
 41 residence or farm for vegetative matter and other types of organic
 42 material that are:



- 1 (A) generated by the person's activities; and
 2 (B) stored, treated, or disposed of at the person's residence or
 3 farm.
- 4 (2) A person who conducts a composting operation that processes
 5 less than two thousand (2,000) pounds of vegetative matter during
 6 a year.
- 7 (3) Temporary stores of vegetative matter where only an
 8 incidental amount of composting will occur before removal of the
 9 matter.
- 10 SECTION 7. IC 13-20-10-2 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. A person may
 12 operate a composting facility ~~for vegetative matter~~ only if the person
 13 registers the composting facility with the department.
- 14 SECTION 8. IC 13-20-10-3, AS AMENDED BY P.L.133-2012,
 15 SECTION 142, IS AMENDED TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2014]: Sec. 3. To register a composting facility
 17 ~~for vegetative matter~~ with the department, a person must submit an
 18 application to the department that contains the following:
- 19 (1) A:
 20 (A) legal description; and
 21 (B) topographic map;
 22 of the site on which the composting facility will be located.
- 23 (2) A description of the composting facility that indicates the area
 24 to be served by the composting operation.
- 25 (3) An estimate of the volume of materials that will be processed
 26 annually by the composting facility.
- 27 (4) Any other information that the department or the board
 28 requires by rule.
- 29 SECTION 9. IC 13-20-10-4 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Except as provided
 31 in sections 5 and 6 of this chapter, the active area of a composting
 32 facility: ~~for vegetative matter:~~
- 33 (1) may not be located:
 34 (A) within two hundred (200) feet of a well that supplies
 35 potable water; or
 36 (B) within two hundred (200) feet of a residential structure
 37 that exists at the time that the composting facility initially
 38 registers under this chapter;
- 39 (2) must be located outside the ten (10) year floodplain, except a
 40 facility that is either:
 41 (A) operated in conjunction with a publicly owned works
 42 permitted under IC 13-15-3; or



- 1 (B) designed and operated to provide adequate controls to
 2 prevent ground or surface water contamination in the event a
 3 ten (10) year flood occurs;
 4 (3) must be designed and operated to:
 5 (A) prevent compost from being placed within five (5) feet of
 6 a water table or provide adequate controls to prevent ground
 7 or surface water contamination;
 8 (B) adequately control runoff from the composting facility;
 9 and
 10 (C) manage leachate that is generated by the composting
 11 facility; and
 12 (4) must include controls for the following:
 13 (A) Dust.
 14 (B) Odor.
 15 (C) Noise.

16 SECTION 10. IC 13-20-10-5 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. A unit of local
 18 government may adopt an ordinance providing the distance required
 19 between the active area of a composting facility for ~~vegetative matter~~
 20 and an existing residence. An ordinance adopted under this section may
 21 not do any of the following:

- 22 (1) Allow the active area of a composting facility to locate less
 23 than two hundred (200) feet from an existing residence.
 24 (2) Require the active area of a composting facility to locate more
 25 than six hundred (600) feet from an existing residence.

26 SECTION 11. IC 13-20-10-6 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. The active area of a
 28 composting facility for ~~vegetative matter~~ may be located less than two
 29 hundred (200) feet from a residence if:

- 30 (1) no unit of local government with jurisdiction over:
 31 (A) the residence; or
 32 (B) the composting facility;
 33 has adopted an ordinance under section 5 of this chapter or
 34 IC 13-7-35-6(b) (before its repeal); and
 35 (2) the composting facility obtains written consent from the
 36 occupant and the owner of the residence.

37 SECTION 12. IC 13-20-10-7 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. A person who
 39 operates a composting facility for ~~vegetative matter~~ that must be
 40 registered under this chapter shall submit an annual report to the
 41 department:

- 42 (1) before February 1 of each year; and



1 (2) that indicates the volume of material processed by the
2 composting facility during the preceding year.

3 SECTION 13. IC 13-20-10-8 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. **(a) The department**
5 **shall approve an application for registration of a composting**
6 **facility under this chapter or renewal of a registration if the**
7 **applicant meets the requirements of this chapter and rules adopted**
8 **by the board.**

9 **(b) The department may deny an application for the registration**
10 **of a composting facility or renewal of a registration if the**
11 **application does not meet the requirements of this chapter or rules**
12 **adopted by the board.**

13 **(c) A registration under this chapter:**

14 (1) expires five (5) years after the date the composting facility ~~for~~
15 ~~vegetative matter~~ is registered; and

16 (2) may be renewed by the person who registered the composting
17 facility if the person applies to the department.

18 **(d) A registration under this chapter may be revoked if the**
19 **registrant operates the composting facility in violation of:**

20 (1) this chapter or any other environmental management law;

21 or

22 (2) rules adopted by the board.



COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 359, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 359 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 6, Nays 1.

