



Reprinted
February 25, 2014

ENGROSSED SENATE BILL No. 359

DIGEST OF SB 359 (Updated February 24, 2014 6:07 pm - DI 69)

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

Synopsis: Confined feeding, composting, and manure storage. 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. Requires a person who applies for approval to construct or expand a satellite manure storage structure to provide notice concerning the approval to: (1) the county executive of the county in which the satellite manure storage structure is to be constructed or expanded; and (2) each owner and each occupant of land of which any part of the boundary is one-half mile or less from any part of the proposed footprint of the satellite manure storage structure.

Effective: July 1, 2014.

Charbonneau, Leising, Randolph

(HOUSE SPONSORS — LEHE, GUTWEIN, NIEMEYER)

January 14, 2014, read first time and referred to Committee on Environmental Affairs.
January 28, 2014, amended, reported favorably — Do Pass.
January 30, 2014, read second time, ordered engrossed.
January 31, 2014, engrossed.
February 3, 2014, read third time, passed. Yeas 45, nays 2.

HOUSE ACTION

February 10, 2014, read first time and referred to Committee on Environmental Affairs.
February 20, 2014, reported — Do Pass.
February 24, 2014, read second time, amended, ordered engrossed.

ES 359—LS 6716/DI 55



Reprinted
February 25, 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.

ENGROSSED 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**

ES 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 13-18-10.5-3 IS ADDED TO THE INDIANA
 35 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 36 [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) **An applicant who applies**
 37 **for approval under section 1 of this chapter to construct or expand**
 38 **a satellite manure storage structure shall make a reasonable effort**
 39 **to provide notice not more than ten (10) working days after**
 40 **submitting an application for approval to:**

41 (1) **the county executive of the county in which the satellite**
 42 **manure storage structure is to be constructed or expanded;**



- 1 **and**
 2 **(2) each owner and each occupant of land of which any part**
 3 **of the boundary is one-half (1/2) mile or less from any part of**
 4 **the proposed footprint of the satellite manure storage**
 5 **structure.**
 6 **(b) The notice described in subsection (a) must:**
 7 **(1) be in writing;**
 8 **(2) be sent by mail; and**
 9 **(3) include the following:**
 10 **(A) The date the application was submitted to the**
 11 **department.**
 12 **(B) A brief description of the subject of the application.**
 13 **(c) An applicant shall pay the costs of complying with this**
 14 **section.**
 15 SECTION 7. IC 13-20-10-1 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This chapter
 17 applies to composting **(as defined in IC 13-11-2-38)** of vegetative
 18 matter **resulting from landscaping maintenance and land clearing**
 19 **projects: and other organic material.**
 20 (b) This chapter does not apply to the following:
 21 (1) A person who conducts a composting operation at the person's
 22 residence or farm for vegetative matter and other types of organic
 23 material that are:
 24 (A) generated by the person's activities; and
 25 (B) stored, treated, or disposed of at the person's residence or
 26 farm.
 27 (2) A person who conducts a composting operation that processes
 28 less than two thousand (2,000) pounds of vegetative matter during
 29 a year.
 30 (3) Temporary stores of vegetative matter where only an
 31 incidental amount of composting will occur before removal of the
 32 matter.
 33 SECTION 8. IC 13-20-10-2 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. A person may
 35 operate a composting facility ~~for vegetative matter~~ only if the person
 36 registers the composting facility with the department.
 37 SECTION 9. IC 13-20-10-3, AS AMENDED BY P.L.133-2012,
 38 SECTION 142, IS AMENDED TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2014]: Sec. 3. To register a composting facility
 40 ~~for vegetative matter~~ with the department, a person must submit an
 41 application to the department that contains the following:
 42 (1) A:



- 1 (A) legal description; and
 2 (B) topographic map;
 3 of the site on which the composting facility will be located.
 4 (2) A description of the composting facility that indicates the area
 5 to be served by the composting operation.
 6 (3) An estimate of the volume of materials that will be processed
 7 annually by the composting facility.
 8 (4) Any other information that the department or the board
 9 requires by rule.
- 10 SECTION 10. IC 13-20-10-4 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Except as provided
 12 in sections 5 and 6 of this chapter, the active area of a composting
 13 facility: ~~for vegetative matter:~~
- 14 (1) may not be located:
 15 (A) within two hundred (200) feet of a well that supplies
 16 potable water; or
 17 (B) within two hundred (200) feet of a residential structure
 18 that exists at the time that the composting facility initially
 19 registers under this chapter;
 20 (2) must be located outside the ten (10) year floodplain, except a
 21 facility that is either:
 22 (A) operated in conjunction with a publicly owned works
 23 permitted under IC 13-15-3; or
 24 (B) designed and operated to provide adequate controls to
 25 prevent ground or surface water contamination in the event a
 26 ten (10) year flood occurs;
 27 (3) must be designed and operated to:
 28 (A) prevent compost from being placed within five (5) feet of
 29 a water table or provide adequate controls to prevent ground
 30 or surface water contamination;
 31 (B) adequately control runoff from the composting facility;
 32 and
 33 (C) manage leachate that is generated by the composting
 34 facility; and
 35 (4) must include controls for the following:
 36 (A) Dust.
 37 (B) Odor.
 38 (C) Noise.
- 39 SECTION 11. IC 13-20-10-5 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. A unit of local
 41 government may adopt an ordinance providing the distance required
 42 between the active area of a composting facility ~~for vegetative matter~~



1 and an existing residence. An ordinance adopted under this section may
2 not do any of the following:

3 (1) Allow the active area of a composting facility to locate less
4 than two hundred (200) feet from an existing residence.

5 (2) Require the active area of a composting facility to locate more
6 than six hundred (600) feet from an existing residence.

7 SECTION 12. IC 13-20-10-6 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. The active area of a
9 composting facility ~~for vegetative matter~~ may be located less than two
10 hundred (200) feet from a residence if:

11 (1) no unit of local government with jurisdiction over:

12 (A) the residence; or

13 (B) the composting facility;

14 has adopted an ordinance under section 5 of this chapter or
15 IC 13-7-35-6(b) (before its repeal); and

16 (2) the composting facility obtains written consent from the
17 occupant and the owner of the residence.

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

23 (1) before February 1 of each year; and

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

26 SECTION 14. IC 13-20-10-8 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. **(a) The department
28 shall approve an application for registration of a composting
29 facility under this chapter or renewal of a registration if the
30 applicant meets the requirements of this chapter and rules adopted
31 by the board.**

32 **(b) The department may deny an application for the registration
33 of a composting facility or renewal of a registration if the
34 application does not meet the requirements of this chapter or rules
35 adopted by the board.**

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

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

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

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



- 1 **(1) this chapter or any other environmental management law;**
- 2 **or**
- 3 **(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.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 359, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 359 as printed January 29, 2014.)

Committee Vote: Yeas 11, Nays 0

Representative Wolkins

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 359 be amended to read as follows:

Page 6, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 6. IC 13-18-10.5-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 3. (a) An applicant who applies for approval under section 1 of this chapter to construct or expand a satellite manure storage structure shall make a reasonable effort to provide notice not more than ten (10) working days after submitting an application for approval to:**

(1) the county executive of the county in which the satellite

ES 359—LS 6716/DI 55



**manure storage structure is to be constructed or expanded;
and**

(2) each owner and each occupant of land of which any part of the boundary is one-half (1/2) mile or less from any part of the proposed footprint of the satellite manure storage structure.

(b) The notice described in subsection (a) must:

(1) be in writing;

(2) be sent by mail; and

(3) include the following:

(A) The date the application was submitted to the department.

(B) A brief description of the subject of the application.

(c) An applicant shall pay the costs of complying with this section."

Renumber all SECTIONS consecutively.

(Reference is to ESB 359 as printed February 21, 2014.)

LEHE

