

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 ENROLLED ACT No. 359

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AN ACT to amend the Indiana Code concerning environmental law.

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

SECTION 1. IC 13-18-10-1, AS AMENDED BY P.L.1-2010, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: 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 2. IC 13-18-10-2, AS AMENDED BY P.L.127-2009, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) **An** application for **an** approval under section 1 of this chapter ~~of the construction or expansion of a confined feeding operation~~ must be ~~made on a form~~ **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 manure treatment and control facilities.
- (2) A manure management plan that outlines procedures for the

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following:

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

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

- (1) to the county executive of the county in which the confined feeding operation is to be located or expanded; and
- (2) to each owner and each occupant of land of which any part of the boundary is one-half (1/2) mile or less from the following:
  - (A) Any part of the proposed footprint of either or both of the following to be located on the land on which the confined feeding operation is to be located:
    - (i) A livestock or poultry production structure.
    - (ii) A permanent manure storage facility.
  - (B) Any part of the proposed footprint of either or both of the following to be located on the land on which the confined feeding operation is to be expanded:
    - (i) A livestock or poultry production structure.
    - (ii) The expanded area of a livestock or poultry production structure.

The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a



brief description of the subject of the application. 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) A person must submit an application for the renewal of an approval 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. 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 for construction or expansion of a confined feeding operation was issued.**

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

- (1) submit a renewal application for construction or expansion at least thirty (30) days prior to the expiration of the approval; 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) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. 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.**

**SECTION 3. IC 13-18-10-2.1, AS AMENDED BY P.L.127-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2.1. (a) The department:**

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- (1) shall make a determination on an application ~~made~~ **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) The department may establish requirements in an approval 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:
  - (A) An application for approval 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.

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

(1) include a statement of ultimate fact; and

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

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

(i) The department may amend an approval under section 1 of this chapter or revoke an approval under section 1 of this chapter:

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

(C) the water pollution control laws; or

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

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

SECTION 4. IC 13-18-10-2.2, AS AMENDED BY P.L.127-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2014]; Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction or expansion; Not more than thirty (30) days after the date the applicant completes 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.

(b) Construction or expansion of an approved confined feeding operation must:

- (1) begin not later than two (2) years; and
- (2) be completed not later than four (4) years;

after the date the department approves the construction or expansion of the confined feeding operation or the date all appeals brought under IC 4-21.5 concerning the construction or expansion of the confined feeding operation have been completed, whichever is later. **An approval 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 5. IC 13-18-10-2.3 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 2.3: A confined feeding operation must submit a manure management plan that outlines procedures for soil testing, manure testing, and maps of manure application areas to the department at least one (1) time every five (5) years to maintain valid approval for the confined feeding operation under this chapter:

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 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.**

SECTION 7. IC 13-20-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This chapter applies to composting **(as defined in IC 13-11-2-38)** of vegetative matter ~~resulting from landscaping maintenance and land clearing projects.~~ **and other organic material.**

**(b) This chapter does not apply to the following:**

- (1) A person who conducts a composting operation at the person's residence or farm for vegetative matter and other types of organic material that are:**

- (A) generated by the person's activities; and**

- (B) stored, treated, or disposed of at the person's residence or farm.**

- (2) A person who conducts a composting operation that processes less than two thousand (2,000) pounds of vegetative matter during a year.**

- (3) Temporary stores of vegetative matter where only an incidental amount of composting will occur before removal of the matter.**

SECTION 8. IC 13-20-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. A person may operate a composting facility ~~for vegetative matter~~ only if the person registers the composting facility with the department.

SECTION 9. IC 13-20-10-3, AS AMENDED BY P.L.133-2012, SECTION 142, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. To register a composting facility ~~for vegetative matter~~ with the department, a person must submit an application to the department that contains the following:

- (1) A:**

- (A) legal description; and**

- (B) topographic map;**

**of the site on which the composting facility will be located.**

- (2) A description of the composting facility that indicates the area to be served by the composting operation.**



(3) An estimate of the volume of materials that will be processed annually by the composting facility.

(4) Any other information that the department or the board requires by rule.

SECTION 10. IC 13-20-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Except as provided in sections 5 and 6 of this chapter, the active area of a composting facility: ~~for vegetative matter:~~

(1) may not be located:

(A) within two hundred (200) feet of a well that supplies potable water; or

(B) within two hundred (200) feet of a residential structure that exists at the time that the composting facility initially registers under this chapter;

(2) must be located outside the ten (10) year floodplain, except a facility that is either:

(A) operated in conjunction with a publicly owned works permitted under IC 13-15-3; or

(B) designed and operated to provide adequate controls to prevent ground or surface water contamination in the event a ten (10) year flood occurs;

(3) must be designed and operated to:

(A) prevent compost from being placed within five (5) feet of a water table or provide adequate controls to prevent ground or surface water contamination;

(B) adequately control runoff from the composting facility; and

(C) manage leachate that is generated by the composting facility; and

(4) must include controls for the following:

(A) Dust.

(B) Odor.

(C) Noise.

SECTION 11. IC 13-20-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. A unit of local government may adopt an ordinance providing the distance required between the active area of a composting facility ~~for vegetative matter~~ and an existing residence. An ordinance adopted under this section may not do any of the following:

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

(2) Require the active area of a composting facility to locate more

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than six hundred (600) feet from an existing residence.

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

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

(A) the residence; or

(B) the composting facility;

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

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

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

(1) before February 1 of each year; and

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

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

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

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

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

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

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

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

**(2) rules adopted by the board.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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