

## **IC 13-18-10**

### **Chapter 10. Confined Feeding Control**

#### **IC 13-18-10-1**

##### **Department approval necessary for confined feeding operations**

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.

*As added by P.L.1-1996, SEC.8. Amended by P.L.24-2004, SEC.3; P.L.81-2009, SEC.2; P.L.127-2009, SEC.5; P.L.1-2010, SEC.62; P.L.199-2014, SEC.1.*

#### **IC 13-18-10-1.4**

##### **Disclosure statement for confined feeding operation application**

Sec. 1.4. (a) Subject to subsection (b), an application for approval under section 1 of this chapter must include for each responsible party the disclosure statement referred to in subsection (c) if either or both of the following apply:

- (1) State or federal officials at any time alleged that the responsible party committed acts or omissions that constituted a material violation of state or federal environmental law.
- (2) Foreign officials at any time alleged that the responsible party committed acts or omissions that:
  - (A) constituted a material violation of foreign environmental law; and
  - (B) would have constituted a material violation of state or federal environmental law if the act or omission had occurred in the United States.

(b) Subsection (a):

- (1) applies only if the acts or omissions alleged under subsection (a)(1) or (a)(2) presented a substantial endangerment to human health or the environment; and
- (2) does not apply to a renewal of an approval under section 1 of this chapter that does not involve construction or expansion as described in section 1 of this chapter.

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

- (1) The name and business address of the responsible party.
- (2) A description of the responsible party's experience in managing the environmental aspects of the type of facility that will be managed under the permit.
- (3) A description of all pending administrative, civil, or criminal enforcement actions filed in the United States against the

responsible party alleging any acts or omissions that:

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

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

(4) A description of all pending administrative, civil, or criminal enforcement actions filed in a foreign country against the responsible party alleging any acts or omissions that:

(A) constitute a material violation of foreign environmental law;

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

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

(5) A description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions in the United States resolved against the responsible party within the five (5) years that immediately precede the date of the application involving acts or omissions that:

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

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

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

(A) constitute a material violation of foreign environmental law;

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

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

(7) Identification of all state, federal, or foreign environmental permits:

(A) applied for by the responsible party that were denied; or

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

(d) 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.

*As added by P.L.127-2009, SEC.6. Amended by P.L.126-2012, SEC.32.*

**IC 13-18-10-1.9**

### **Application of the law to certain confined feeding operations**

Sec. 1.9. (a) This section applies:

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

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

- (1) IC 13-11-2-8.
- (2) IC 13-11-2-40.
- (3) IC 13-11-2-191.
- (4) Section 1 of this chapter.
- (5) Section 2 of this chapter.
- (6) Section 2.1 of this chapter.
- (7) Section 2.2 of this chapter.
- (8) Section 4 of this chapter.

*As added by P.L.1-2010, SEC.63.*

### **IC 13-18-10-2**

#### **Application for approval; notice requirements; renewal of approval; approval of manure management system**

Sec. 2. (a) An application for an approval 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 manure treatment and control facilities.
- (2) A manure management plan that outlines procedures for the 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 shall, not more than ten (10) working days after submitting 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) 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.

*As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.4; P.L.127-2009, SEC.7; P.L.199-2014, SEC.2.*

### **IC 13-18-10-2.1**

#### **Approval procedure; requirements; denial or revocation of approval**

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) 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.

*As added by P.L.125-1997, SEC.5. Amended by P.L.127-2009, SEC.8; P.L.199-2014, SEC.3.*

#### **IC 13-18-10-2.2**

##### **Affidavit after construction or expansion; approval to construct or expand remains effective as operating approval**

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.

(b) 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.

*As added by P.L.125-1997, SEC.6. Amended by P.L.127-2009, SEC.9; P.L.199-2014, SEC.4.*

#### **IC 13-18-10-2.3**

##### **Repealed**

*(Repealed by P.L.199-2014, SEC.5.)*

#### **IC 13-18-10-2.6**

##### **Compliance and technical assistance program**

Sec. 2.6. The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations that may be administered by:

- (1) the department;
- (2) a state college or university; or
- (3) a contractor.

*As added by P.L.125-1997, SEC.8.*

#### **IC 13-18-10-3**

##### **Enforcement of chapter**

Sec. 3. This chapter, including requirements established in a department approval under section 2 of this chapter, may be enforced under IC 13-30-3 or IC 13-14-2-6.

*As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.9.*

#### **IC 13-18-10-4**

##### **Rules, policies, and statements; uniform standards**

Sec. 4. (a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 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 include uniform standards for:

- (1) construction, expansion, and manure containment that are appropriate for a specific site; and
  - (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) the Natural Resources Conservation Service of the United States Department of Agriculture;
    - (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.

*As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.10; P.L.2-2007, SEC.167; P.L.127-2009, SEC.10.*

#### **IC 13-18-10-5**

##### **Injunctive relief**

Sec. 5. The department may seek injunctive relief under this chapter.

*As added by P.L.1-1996, SEC.8. Amended by P.L.125-1997, SEC.11.*

#### **IC 13-18-10-6**

##### **Violations; penalties**

Sec. 6. A person who violates this chapter is subject to the penalties imposed by the following:

- (1) IC 13-30-4.
- (2) IC 13-30-5.
- (3) IC 13-30-8.

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

*As added by P.L.1-1996, SEC.8. Amended by P.L.137-2007, SEC.12.*