February 14, 2007

SENATE BILL No. 431

DIGEST OF SB 431 (Updated February 12, 2007 1:08 pm - DI 52)

Citations Affected: IC 13-11; IC 13-13; IC 13-18; IC 15-3; noncode.

Synopsis: Confined feeding. Defines "applicant" and "responsible party" for purposes of confined feeding control statutes. Specifies that confined feeding control statutes apply to both confined feeding operations (CFOs) and concentrated animal feeding operations (CAFOs). Establishes good character disclosure requirements for CFOs and CAFOs. Allows the department of environmental management to review and act on disclosed good character information. Sets fees for CFOs and CAFOs and eliminates separate NPDES permit fees for CAFOs. Requires the state chemist to adopt rules relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers. Makes conforming amendments.

Effective: July 1, 2007; January 1, 2008.

Gard

January 18, 2007, read first time and referred to Committee on Energy and Environmental Affairs.
February 13, 2007, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

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February 14, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 431

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:

SECTION 1. IC 13-11-2-8, AS AMENDED BY P.L.154-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. **(a) "Applicant", for purposes of IC 13-18-10, refers to a person (as defined in section 158(b) of this chapter) that submits an application to the department under IC 13-18-10-2.**

~~(a)~~ **(b)** "Applicant", for purposes of IC 13-19-4, means an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) receives, for commercial purposes, solid or hazardous waste generated offsite for storage, treatment, processing, or disposal; and

(2) applies for the issuance, transfer, or major modification of a permit described in IC 13-15-1-3 other than a postclosure permit or an emergency permit.

For purposes of this subsection, an application for the issuance of a permit does not include an application for renewal of a permit.

~~(b)~~ **(c)** "Applicant", for purposes of IC 13-20-2, means an

individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

~~(c)~~ **(d)** For purposes of subsection ~~(a),~~ **(b),** "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) generates solid or hazardous waste; and

(2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:

(A) owned by the individual, corporation, partnership, or business association; and

(B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.

SECTION 2. IC 13-11-2-71, AS AMENDED BY P.L.170-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 71. "Environmental management laws" refers to the following:

(1) IC 13-12-2 and IC 13-12-3.

(2) IC 13-13.

(3) IC 13-14.

(4) IC 13-15.

(5) IC 13-16.

(6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.

(7) **IC 13-18-10,** IC 13-18-12, and IC 13-18-15 through IC 13-18-20.

(8) IC 13-19-1 and IC 13-19-4.

(9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15, IC 13-20-17.7, and IC 13-20-19 through IC 13-20-21.

(10) IC 13-22.

(11) IC 13-23.

(12) IC 13-24.

(13) IC 13-25-1 through IC 13-25-5.

(14) IC 13-27-8.

(15) IC 13-30, except IC 13-30-1.

SECTION 3. IC 13-11-2-191 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 191. **(a) "Responsible party", for purposes of IC 13-18-10, means any of the following:**

(1) An applicant referred to in IC 13-18-10-1.5(a).

(2) A person referred to in IC 13-18-10-1.5(b).

(3) An officer, a corporation director, or a senior management

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official of any of the following that is an applicant referred to in IC 13-18-10-1.5(a) or a person referred to in IC 13-18-10-1.5(b):

(A) A corporation.

(B) A partnership.

(C) A limited liability company.

(D) A business association.

~~(a)~~ **(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.

~~(b)~~ **(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.

~~(c)~~ **(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).

~~(d)~~ **(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 4. IC 13-13-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. The department must include the following divisions:

(1) An air pollution control division.

(2) A water pollution control division.

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(3) A solid waste management division.

~~(4) A laboratory division.~~

~~(5)~~ **(4)** An administrative services division.

~~(6)~~ **(5)** A division of pollution prevention.

SECTION 5. IC 13-13-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. The:

(1) position of commissioner;

(2) highest position in each of the offices, except for the offices identified in:

(A) IC 13-13-3-1(1); and

(B) IC 13-13-3-1(3); and

(3) highest position in each of the divisions; ~~except for the division identified in IC 13-13-3-2(4);~~

are subject to IC 4-15-1.8.

SECTION 6. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 1. (a) **Except as provided in subsection (b),** a person may not start construction of ~~a confined feeding operation~~ **either of the following** without obtaining the prior approval of the department:

(1) A confined feeding operation.

(2) A CAFO.

(b) **Subject to section 1.5 of this chapter,** obtaining an NPDES permit for a CAFO meets the requirements of subsection ~~(a)~~ **(a)(2)** and 327 IAC 16 to obtain an approval.

SECTION 7. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) An applicant must include in the application the disclosure statement or statements referred to in subsection (c).**

(b) A person that is not required to file an application for a CAFO as provided in section 1(b) of this chapter must include the disclosure statement or statements referred to in subsection (c) in:

(1) the application for an individual NPDES permit for the CAFO under 327 IAC 5; or

(2) the notice of intent filed under 327 IAC 15 for general NPDES permit coverage for the CAFO.

(c) A person referred to in subsection (a) or (b) must submit to the department a disclosure statement for each responsible party 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 type of facility that will be managed under the

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permit.

(3) A description of all pending administrative, civil, or criminal enforcement actions filed against the responsible party alleging either of the following:

(A) Acts or omissions to which either of the following apply:

(i) The acts or omissions constitute a material violation of a state or federal environmental law or regulation.

(ii) The acts or omissions present a substantial endangerment to human health or the environment.

(B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.

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

(A) Acts or omissions to which either of the following apply:

(i) The acts or omissions constitute a material violation of a state or federal environmental law or regulation.

(ii) The acts or omissions present a substantial endangerment to human health or the environment.

(B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.

(5) Identification of all state and federal environmental permits previously denied or 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 35-44-2-1.

(e) The department may investigate and verify the information set forth in a disclosure statement submitted under subsection (b).

SECTION 8. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Application for approval of the construction of a confined feeding operation **or a CAFO** must be made 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.

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(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~~ **four thousand** dollars ~~($100).~~ **($4,000).** 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.

(6) The disclosure statement or statements required under section 1.5 of this chapter.

(b) An applicant who applies for approval to construct a confined feeding operation **or a CAFO** on land that is undeveloped or for which a valid existing approval has not been issued shall make a reasonable effort to provide notice:

(1) to:

(A) each person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the confined feeding operation **or the CAFO** is to be located;

not more than ten (10) working days after submitting an application. 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.

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(c) Plans and specifications for manure treatment or control facilities for a confined feeding operation **or a CAFO** must secure the approval of the department. The department shall approve the construction and operation of the manure management system of the confined feeding operation **or the CAFO** 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 **or CAFOs.**

SECTION 9. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.1. (a) The department:

(1) shall make a determination on an application 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

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regarding that part of the confined feeding operation **or the CAFO** 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 **or CAFOs.**

(e) Subject to subsections (f) and (g), the commissioner may deny an application or require the person to apply for an individual permit under section 2.4 of this chapter upon making either of the following findings:

(1) A responsible party intentionally misrepresented or concealed any material fact in:

(A) a disclosure statement; or

(B) other information;

required by section 1.5 of this chapter.

(2) An enforcement action was resolved against a responsible party as described in section 1.5(c)(4) of this chapter.

(f) The commissioner may not deny a permit under this section or require the person to apply for an individual permit under section 2.4 of this chapter based solely on pending actions disclosed under section 1.5(c)(3) of this chapter.

(g) Before making a determination to approve or deny an application or to require the person to apply for an individual permit under section 2.4 of this chapter, the commissioner must consider the following factors:

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) The degree of culpability of the responsible party.

(3) The responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in actions referred to in section 1.5(c)(4) 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 1.5(c)(4) 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 1.5(c)(4) of this chapter.

(6) Whether the best interests of the public will be served by

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denial of the permit or by requiring the person to apply for an individual permit under section 2.4 of this chapter.

(7) Any demonstration of good citizenship by the person or responsible party.

(h) Except as provided in subsection (i), 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.

(i) If the commissioner denies an application under subsection (e) or requires a person to apply for an individual permit under section 2.4 of this chapter, the commissioner is not required to explain the extent to which any of the factors set forth in subsection (g) influenced the denial.

~~(c)~~ **(j)** The department may amend an approval **of an application** or revoke an approval **of an application:**

(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 10. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction, not more than thirty (30) days after the date the applicant completes the construction the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation **or CAFO:**

(1) was constructed; and

(2) will be operated;

in accordance with the requirements of the department's approval.

(b) Construction of an approved confined feeding operation **or CAFO** 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 of the confined feeding operation **or CAFO** or the date all appeals brought under

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IC 4-21.5 concerning the construction of the confined feeding operation **or CAFO** have been completed, whichever is later.

SECTION 11. IC 13-18-10-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.3. **(a)** A confined feeding operation must submit **a manure management plan to the department at least one (1) time every five (5) years.**

(b) For purposes of this section, a manure management plan ~~that outlines.~~ **consists of:**

(1) procedures for soil testing;

(2) procedures for manure testing; and

(3) 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 12. IC 13-18-10-2.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.4. (a) The department may examine:**

(1) a notice of intent filed under 327 IAC 15 for general NPDES permit coverage for a CAFO; and

(2) the disclosure statement filed with the notice of intent under section 1.5(b)(2) of this chapter;

to determine whether there are grounds under section 2.1 of this chapter to require the person that files the notice of intent to apply for an individual permit for the CAFO under 327 IAC 5.

(b) If the department requires an application for an individual permit under subsection (a), the department must provide to the person the department's findings under section 2.1(e) of this chapter.

SECTION 13. IC 13-18-10-2.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.6. The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations **and CAFOs** that may be administered by:

(1) the department;

(2) a state college or university; or

(3) a contractor.

SECTION 14. IC 13-18-10-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.7. (a) The following fees payable to the department apply to confined feeding operations and CAFOs based on the indicated number of animals:**

(1) For a confined feeding operation or a CAFO for the

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confined feeding of:

(A) at least six hundred (600) swine; and

(B) less than seven hundred fifty (750) swine;

a fee once every five (5) years in the amount of two hundred fifty dollars ($250).

(2) For a confined feeding operation or a CAFO for the confined feeding of:

(A) more than seven hundred forty-nine (749) swine; and

(B) less than two thousand five hundred (2,500) swine;

an annual fee of three hundred dollars ($300).

(3) For a confined feeding operation or a CAFO for the confined feeding of:

(A) more than three hundred (300) cows; and

(B) less than seven hundred (700) cows;

an annual fee of three hundred dollars ($300).

(4) For a confined feeding operation or a CAFO for the confined feeding of at least two thousand five hundred (2,500) swine, an annual fee of nine hundred dollars ($900).

(5) For a confined feeding operation or a CAFO for the confined feeding of at least seven hundred (700) cows, an annual fee of nine hundred dollars ($900).

(6) For a confined feeding operation or a CAFO for the confined feeding of at least thirty thousand (30,000) poultry, an annual fee of nine hundred dollars ($900).

(b) A CAFO subject to a fee under the following is not subject to NPDES permit fees under IC 13-18-20:

(1) Subsection (a).

(2) Section 2 of this chapter.

SECTION 15. IC 13-18-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: 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 and operation of confined feeding operations **and CAFOs** and may include uniform standards for:

(1) construction 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.

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(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) university extension bulletins; and

(2) be developed through technical review by the department, university specialists, and other animal industry specialists.

SECTION 16. IC 13-18-20-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) **Except as provided in subsection (c),** when a person files an application with the department concerning a NPDES permit, including:

(1) an application for an initial permit;

(2) the renewal of a permit;

(3) the modification of a permit; or

(4) a variance from a permit;

the person must remit an application fee of ~~fifty~~ **seventy-five** dollars ~~($50)~~ **($75)** to the department.

(b) If a person does not remit an application fee to the department, the department shall deny the person's application.

(c) This section does not apply to a person filing an application or a notice of intent for:

(1) an initial permit;

(2) renewal of a permit; or

(3) modification of a permit;

issued under 327 IAC 5 or 327 IAC 15 for an individual or general NPDES permit for a CAFO.

(d) A person referred to in subsection (c) is subject to fees under IC 13-18-10.

SECTION 17. IC 15-3-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. The state chemist ~~may~~ **shall** adopt rules under IC 4-22-2 relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers to implement this chapter, including rules that set forth standards for the storage of bulk fertilizers for the purpose of protecting the waters of the state.

SECTION 18. [EFFECTIVE JULY 1, 2007] IC 13-18-20-11.5 IS REPEALED.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 431, 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:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-8, AS AMENDED BY P.L.154-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. **(a) "Applicant", for purposes of IC 13-18-10, refers to a person (as defined in section 158(b) of this chapter) that submits an application to the department under IC 13-18-10-2.**

~~(a)~~ **(b)** "Applicant", for purposes of IC 13-19-4, means an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) receives, for commercial purposes, solid or hazardous waste generated offsite for storage, treatment, processing, or disposal; and

(2) applies for the issuance, transfer, or major modification of a permit described in IC 13-15-1-3 other than a postclosure permit or an emergency permit.

For purposes of this subsection, an application for the issuance of a permit does not include an application for renewal of a permit.

~~(b)~~ **(c)** "Applicant", for purposes of IC 13-20-2, means an individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

~~(c)~~ **(d)** For purposes of subsection ~~(a),~~ **(b),** "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) generates solid or hazardous waste; and

(2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:

(A) owned by the individual, corporation, partnership, or business association; and

(B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.".

Page 1, line 11, delete "IC 13-18-10.5,".

Page 2, line 6, delete "191. (a)" and insert "191. **(a) "Responsible**

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party", for purposes of IC 13-18-10, means any of the following:

(1) An applicant referred to in IC 13-18-10-1.5(a).

(2) A person referred to in IC 13-18-10-1.5(b).

(3) An officer, a corporation director, or a senior management official of any of the following that is an applicant referred to in IC 13-18-10-1.5(a) or a person referred to in IC 13-18-10-1.5(b):

(A) A corporation.

(B) A partnership.

(C) A limited liability company.

(D) A business association.

~~(a)~~ **(b)**".

Page 2, line 7, delete "IC 13-18-10.5 and".

Page 2, line 15, strike "(b)" and insert "**(c)**".

Page 2, line 22, strike "(c)" and insert "**(d)**".

Page 2, line 25, strike "(d)" and insert "**(e)**".

Page 3, line 14, delete "A" and insert "**Except as provided in subsection (b),** a".

Page 3, line 15, strike "a confined feeding operation" and insert "**either of the following**".

Page 3, line 16, delete "department. **IC 13-18-10.5 applies**" and insert "department:

(1) A confined feeding operation.

(2) A CAFO.".

Page 3, delete line 17.

Page 3, line 18, delete "IC 13-18-10.5," and insert "**section 1.5 of this chapter,**".

Page 3, line 19, strike "(a)" and insert "**(a)(2)**".

Page 3, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 7. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) An applicant must include in the application the disclosure statement or statements referred to in subsection (c).**

(b) A person that is not required to file an application for a CAFO as provided in section 1(b) of this chapter must include the disclosure statement or statements referred to in subsection (c) in:

(1) the application for an individual NPDES permit for the CAFO under 327 IAC 5; or

(2) the notice of intent filed under 327 IAC 15 for general NPDES permit coverage for the CAFO.

(c) A person referred to in subsection (a) or (b) must submit to

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the department a disclosure statement for each responsible party 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 type of facility that will be managed under the permit.

(3) A description of all pending administrative, civil, or criminal enforcement actions filed against the responsible party alleging either of the following:

(A) Acts or omissions to which either of the following apply:

(i) The acts or omissions constitute a material violation of a state or federal environmental law or regulation.

(ii) The acts or omissions present a substantial endangerment to human health or the environment.

(B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.

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

(A) Acts or omissions to which either of the following apply:

(i) The acts or omissions constitute a material violation of a state or federal environmental law or regulation.

(ii) The acts or omissions present a substantial endangerment to human health or the environment.

(B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.

(5) Identification of all state and federal environmental permits previously denied or 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 35-44-2-1.

(e) The department may investigate and verify the information set forth in a disclosure statement submitted under subsection (b).".

Page 3, line 23, after "operation" insert "**or a CAFO**".

Page 4, line 3, delete "three" and insert "**four**".

Page 4, line 4, delete "($3,000)." and insert "**($4,000).**".

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Page 4, between lines 6 and 7, begin a new line block indented and insert:

"**(6) The disclosure statement or statements required under section 1.5 of this chapter.**".

Page 4, line 8, after "operation" insert "**or a CAFO**".

Page 4, delete lines 12 through 20, begin a new line double block indented and insert:

"(A) each person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located does not occupy the land, all occupants of the land; and".

Page 4, line 22, after "operation" insert "**or the CAFO**".

Page 4, line 31, after "operation" insert "**or a CAFO**".

Page 4, line 34, after "operation" insert "**or the CAFO**".

Page 4, line 41, delete "." and insert "**or CAFOs.**".

Page 4, delete line 42, begin a new paragraph and insert:

"SECTION 9. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.1. (a) The department:

(1) shall make a determination on an application 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

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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 **or the CAFO** 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 **or CAFOs.**

(e) Subject to subsections (f) and (g), the commissioner may deny an application or require the person to apply for an individual permit under section 2.4 of this chapter upon making either of the following findings:

(1) A responsible party intentionally misrepresented or concealed any material fact in:

(A) a disclosure statement; or

(B) other information;

required by section 1.5 of this chapter.

(2) An enforcement action was resolved against a responsible party as described in section 1.5(c)(4) of this chapter.

(f) The commissioner may not deny a permit under this section or require the person to apply for an individual permit under section 2.4 of this chapter based solely on pending actions disclosed under section 1.5(c)(3) of this chapter.

(g) Before making a determination to approve or deny an application or to require the person to apply for an individual permit under section 2.4 of this chapter, the commissioner must consider the following factors:

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) The degree of culpability of the responsible party.

(3) The responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in actions referred to in section 1.5(c)(4) of this chapter.

(4) The responsible party's dissociation from any other persons or entities convicted in a criminal enforcement action

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referred to in section 1.5(c)(4) 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 1.5(c)(4) of this chapter.

(6) Whether the best interests of the public will be served by denial of the permit or by requiring the person to apply for an individual permit under section 2.4 of this chapter.

(7) Any demonstration of good citizenship by the person or responsible party.

(h) Except as provided in subsection (i), 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.

(i) If the commissioner denies an application under subsection (e) or requires a person to apply for an individual permit under section 2.4 of this chapter, the commissioner is not required to explain the extent to which any of the factors set forth in subsection (g) influenced the denial.

~~(c)~~ **(j)** The department may amend an approval **of an application** or revoke an approval **of an application:**

(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 10. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction, not more than thirty (30) days after the date the applicant completes the construction the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation **or CAFO:**

(1) was constructed; and

(2) will be operated;

in accordance with the requirements of the department's approval.

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(b) Construction of an approved confined feeding operation **or CAFO** 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 of the confined feeding operation **or CAFO** or the date all appeals brought under IC 4-21.5 concerning the construction of the confined feeding operation **or CAFO** have been completed, whichever is later.

SECTION 11. IC 13-18-10-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.3. **(a)** A confined feeding operation must submit **a manure management plan to the department at least one (1) time every five (5) years.**

(b) For purposes of this section, a manure management plan ~~that outlines:~~ **consists of:**

(1) procedures for soil testing;

(2) procedures for manure testing; and

(3) 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 12. IC 13-18-10-2.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.4. (a) The department may examine:**

(1) a notice of intent filed under 327 IAC 15 for general NPDES permit coverage for a CAFO; and

(2) the disclosure statement filed with the notice of intent under section 1.5(b)(2) of this chapter;

to determine whether there are grounds under section 2.1 of this chapter to require the person that files the notice of intent to apply for an individual permit for the CAFO under 327 IAC 5.

(b) If the department requires an application for an individual permit under subsection (a), the department must provide to the person the department's findings under section 2.1(e) of this chapter.

SECTION 13. IC 13-18-10-2.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.6. The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations **and CAFOs** that may be administered by:

(1) the department;

(2) a state college or university; or

(3) a contractor.

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SECTION 14. IC 13-18-10-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.7. (a) The following fees payable to the department apply to confined feeding operations and CAFOs based on the indicated number of animals:**

(1) For a confined feeding operation or a CAFO for the confined feeding of:

(A) at least six hundred (600) swine; and

(B) less than seven hundred fifty (750) swine;

a fee once every five (5) years in the amount of two hundred fifty dollars ($250).

(2) For a confined feeding operation or a CAFO for the confined feeding of:

(A) more than seven hundred forty-nine (749) swine; and

(B) less than two thousand five hundred (2,500) swine;

an annual fee of three hundred dollars ($300).

(3) For a confined feeding operation or a CAFO for the confined feeding of:

(A) more than three hundred (300) cows; and

(B) less than seven hundred (700) cows;

an annual fee of three hundred dollars ($300).

(4) For a confined feeding operation or a CAFO for the confined feeding of at least two thousand five hundred (2,500) swine, an annual fee of nine hundred dollars ($900).

(5) For a confined feeding operation or a CAFO for the confined feeding of at least seven hundred (700) cows, an annual fee of nine hundred dollars ($900).

(6) For a confined feeding operation or a CAFO for the confined feeding of at least thirty thousand (30,000) poultry, an annual fee of nine hundred dollars ($900).

(b) A CAFO subject to a fee under the following is not subject to NPDES permit fees under IC 13-18-20:

(1) Subsection (a).

(2) Section 2 of this chapter.

SECTION 15. IC 13-18-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: 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 and operation of confined feeding operations **and CAFOs** and may include uniform standards for:

(1) construction and manure containment that are appropriate for

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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) university extension bulletins; and

(2) be developed through technical review by the department, university specialists, and other animal industry specialists.".

Delete pages 5 through 10.

Page 11, delete lines 1 through 36.

Page 12, line 7, delete "A" and insert "**This section does not apply to a**".

Page 12, line 7, after "application" insert "**or a notice of intent**".

Page 12, line 12, delete "CAFO shall remit the fees required under" and insert "**CAFO.**

(d) A person referred to in subsection (c) is subject to fees under IC 13-18-10.".

Page 12, delete line 13.

Page 12, after line 20, begin a new paragraph and insert:

"SECTION 18. [EFFECTIVE JULY 1, 2007] IC 13-18-20-11.5 IS REPEALED.".

Renumber all SECTIONS consecutively.

and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 431 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 7, Nays 0.

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