January 18, 2008

HOUSE BILL No. 1168

DIGEST OF HB 1168 (Updated January 15, 2008 12:43 pm - DI 77)

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

Synopsis: Confined feeding operations and manure haulers. Establishes good character disclosure requirements for CFOs and CAFOs (operations). Allows the department of environmental management (IDEM) to review and act on disclosed good character information. Establishes construction and modification fees and annual fees and financial assurance requirements for operations. Establishes a confined feeding operation inspection fund. Requires IDEM to inspect operations at least one time each year. Requires IDEM to revoke the approval for an operation if at least three violations of confined feeding or water pollution control laws occur at the operation in any two year period. Establishes a manure hauler certification program administered by the state chemist.

Effective: Upon passage; July 1, 2008; January 1, 2009.

Cheatham, Saunders

January 14, 2008, read first time and referred to Committee on Agriculture and Rural Development.
January 16, 2008, reported — Do Pass.
January 17, 2008, referred to Committee on Ways and Means pursuant to Rule 127.

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January 18, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1168

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law and to make an appropriation.

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 JANUARY 1, 2009]: 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.137-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: 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, IC 13-18-13-31, and IC 13-18-15 through IC 13-18-20.

(8) IC 13-19-1, IC 13-19-4, and IC 13-19-5-17.

(9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15, IC 13-20-17.7, IC 13-20-19 through IC 13-20-21, and IC 13-20-22-21.

(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 13-11-2-129.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 129.9. "Modification", for purposes of IC 13-18-10, refers to an expansion of a confined**

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feeding operation or concentrated animal feeding operation that results in either of the following:

(1) An increase in the confined animal capacity.

(2) An increase in the liquid manure storage capacity.

SECTION 4. IC 13-11-2-191 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: 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 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

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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 5. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1. (a) **Except as provided in subsection (b),** a person may not start construction **or modification** 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 6. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 1.5. (a) An applicant must include in the application the disclosure statement or statements referred to in subsection (c) and proof of financial assurance referred to in subsection (f).**

(b) A person that obtains an NPDES permit for a CAFO as provided in section 1(b) of this chapter must include the disclosure statement or statements referred to in subsection (c) and proof of financial assurance referred to in subsection (f) 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 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 that:

(i) constitute a material violation of a state or federal

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environmental law or regulation; and

(ii) 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 that:

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

(ii) 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).

(f) A person referred to in subsection (a) or (b) must submit to the department evidence of financial assurance, maintained in accordance with and in amounts set in rules adopted under section 4 of this chapter. The financial assurance must be in the form of:

(1) a bond for performance, executed by a corporate surety licensed to do business in Indiana;

(2) a negotiable certificate of deposit; or

(3) a negotiable letter of credit;

payable to the department and conditional upon faithful performance of the requirements of this chapter and compliance with other environmental laws.

SECTION 7. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2. (a) Application for approval of the construction **or modification** 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

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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) **Except as provided in subsection (e),** a fee of one hundred dollars ($100). The department shall:

(A) 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; **and**

(B) deposit the fee revenue collected under this subdivision in the confined feeding operation inspection fund established by section 2.8 of this chapter.

(6) The disclosure statement or statements and the proof of financial assurance 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, **or to modify a confined feeding operation or a CAFO,** 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 modified;** 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 **or modified** does not occupy the land, all occupants of the land; and

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

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.

(c) A person must comply with subsection (d) if:

(1) the person is not required to file an application as provided in section 1(b) of this chapter for construction of a CAFO:

(A) on land that is undeveloped; or

(B) for which:

(i) a valid existing approval has not been issued; or

(ii) an NPDES permit has not been obtained;

or for modification of a CAFO; and

(2) the person files:

(A) an application under 327 IAC 5 for an individual NPDES permit for the construction or modification of a CAFO; or

(B) a notice of intent under 327 IAC 15 for general NPDES permit coverage for construction or modification of a CAFO.

(d) A person referred to in subsection (c) shall make a reasonable effort to provide notice:

(1) to:

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

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

(2) to the county executive of the county in which the CAFO is to be located or modified;

not more than ten (10) working days after submitting an application or filing a notice of intent. The notice must be sent by mail, be in writing, include the date on which the application or notice of intent was submitted to or filed with the department, and include a brief description of the subject of the application or notice of intent. The person shall pay the cost of complying with this subsection. The person shall submit an affidavit to the

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department that certifies that the person has complied with this subsection.

(e) The fee for a modification of a confined feeding operation or CAFO is the fee determined by rule by the department as a percentage of the fee established for the type of operation in subsection (a)(5) determined to account for the magnitude of the modification as compared to the magnitude of the original construction. The department shall deposit the fee revenue collected under this subsection in the confined feeding operation inspection fund established by section 2.8 of this chapter.

~~(e)~~ **(f)** 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 8. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: 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.

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(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if **either of the following applies:**

(1) The department:

(A) determines within thirty (30) days after the department receives the application that the application is incomplete; and

(B) has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

~~(1)~~ **(i)** do not contain adequate information for the department to process the application; or

~~(2)~~ **(ii)** are not consistent with applicable law.

(2) The department:

(A) determines that the applicant is subject to any pending action as described in section 1.5(c)(3) of this chapter; and

(B) is diligently pursuing the pending action under IC 13-30.

(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 subsection (f), the commissioner may deny an application 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 an application under this section 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, 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.

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(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 denial of the permit.

(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), the commissioner is not required to explain the extent to which any of the factors set forth in subsection (g) influenced the denial.

~~(e)~~ **(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 9. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: 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:**

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

SECTION 10. IC 13-18-10-2.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: 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 11. IC 13-18-10-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 2.7. (a) Subject to subsections (c), (d), (e), (f), (g), and (i), the following fees payable to the department apply to confined feeding operations and CAFOs based on the following amount for each category under subsection (b) based on the number of each type of confined animal included in the most recent approval under section 1(a) of this chapter or NPDES permit referred to in section 1(b) of this chapter:**

Category A	**$250**
Category B	**$500**
Category C	**$250**
Category D	**$500**

(b) The categories for purposes of subsection (a) are as follows:

	Category A	**Category B**
Mature cows	**300 to 499**	**500 to 699**
Other cattle	**300 to 699**	**700 to 999**
Swine at least 55 lbs	**600 to 999**	**1,000 to 2,499**
Swine less than 55 lbs	**600 to 4,999**	**5,000 to 9,999**
Chickens	**30,000 to 74,999**	**75,000 to 124,999**
Turkeys	**30,000 to 39,999**	**40,000 to 54,999**
Ducks	**30,000 to 59,999**	**60,000 to 99,999**
Sheep	**600 to 4,999**	**5,000 to 9,999**

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Horses	**not applicable**	**not applicable**
	Category C	**Category D**
Mature cows	**700 to 1,999**	**at least 2,000**
Other cattle	**1,000 to 2,999**	**at least 3,000**
Swine at least 55 lbs	**2,500 to 7,499**	**at least 7,500**
Swine less than 55 lbs	**10,000 to 19,999**	**at least 20,000**
Chickens	**125,000 to 399,999**	**at least 400,000**
Turkeys	**55,000 to 174,999**	**at least 175,000**
Ducks	**100,000 to 299,999**	**at least 300,000**
Sheep	**10,000 to 19,999**	**at least 20,000**
Horses	**500 to 999**	**at least 1,000**

(c) A confined feeding operation that:

(1) provides confined feeding for a number of animals less than the minimum number of animals stated in IC 13-11-2-40(1); and

(2) is a confined feeding operation as a result of meeting the criteria in IC 13-11-2-40(2) or IC 13-11-2-40(3);

is subject to the fee prescribed in subsections (a) and (b) for Category A.

(d) The department shall determine by rule a fee that is a reduced percentage of the fee established in subsections (a) and (b) for each of two (2) or more confined feeding operations or CAFOs for which efficiency in inspecting the multiple facilities results from any of the following:

(1) Proximity of not more than twenty (20) miles from each other.

(2) Common ownership.

(3) Biosecurity protocols.

(e) The fee determined under this section applies for a calendar year only if the confined feeding operation or CAFO held:

(1) an approval under section 1(a) of this chapter; or

(2) an NPDES permit referred to in section 1(b) of this chapter;

for at least six (6) months of the calendar year.

(f) A confined feeding operation or CAFO that holds:

(1) an approval under section 1(a) of this chapter; or

(2) an NPDES permit referred to in section 1(b) of this chapter;

for more than one (1) type of animal listed in subsection (b) for a calendar year at a single location is required to pay with respect to that location only the highest fee determined under this section for the calendar year for one (1) of those types of animals.

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

(1) This section.

(2) Section 2 of this chapter.

(h) The department shall deposit the fee revenue collected under this section in the confined feeding operation inspection fund established by section 2.8 of this chapter.

(i) The fees for:

(1) Category A and Category B under subsection (a) must be paid every five (5) years; and

(2) Category C and Category D under subsection (a) must be paid every year.

SECTION 12. IC 13-18-10-2.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 2.8. (a) The confined feeding operation inspection fund is established to permit the department to inspect confined feeding operations, including CAFOs, to determine compliance with this title.**

(b) The department shall administer the fund. Money in the fund is annually appropriated to the department for purposes of this chapter.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(e) Money in the fund at the end of a fiscal year does not revert to the state general fund.

SECTION 13. IC 13-18-10-4, AS AMENDED BY P.L.2-2007, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 4. (a) **Subject to subsection (c),** 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

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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.

(c) The board shall:

(1) adopt rules under IC 4-22-2 and IC 13-14-9 to set the amount of financial assurance required of a person under section 1.5(f) of this chapter; and

(2) set graduated amounts under subdivision (1) for the categories of operations specified in section 2.7(b) of this chapter based on the greater potential liability associated with larger operations.

SECTION 14. IC 13-18-10-6, AS AMENDED BY P.L.137-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. **(a)** 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.

(b) Notwithstanding section 2.1(j) of this chapter, the department shall revoke the approval for a confined feeding operation if at least three (3) violations of:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws; or

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

occur at the confined feeding operation in any two (2) year period.

SECTION 15. IC 13-18-10-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JANUARY 1, 2009]: **Sec. 7. The department shall inspect each confined feeding operation, including CAFOs, at least one (1) time each year.**

SECTION 16. IC 13-18-20-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: 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 dollars ($50) 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 15-3-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 15. (a) A person who:

(1) knowingly makes a false statement in application for registration required in section 4 of this chapter;
(2) offers for sale or sells, by sample or otherwise, any package or sample, or any quantity, or any commercial fertilizer, the analysis and brand of which has not been registered as provided in section 4 of this chapter;
(3) fails to pay the fees as provided in section 6 of this chapter;
(4) hauls manure in violation of section 18 of this chapter; or
~~(4)~~ **(5)** otherwise violates this chapter;

commits a Class C infraction. In all prosecutions involving the composition of a commercial fertilizer, a certified copy of the official analysis signed by the state chemist shall be accepted as prima facie evidence of the composition.

(b) The state chemist need not report, for prosecution or for the institution of seizure proceedings, minor violations of this chapter

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when he believes that the public interest will be best served by a suitable notice of warning in writing.

(c) The state chemist may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

SECTION 18. IC 15-3-3-18 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 18. (a) The state chemist shall establish a manure hauler certification program to take effect January 1, 2009. The state chemist shall by rule establish the following:**

(1) Subject to subsections (b) and (c), terms, conditions, application requirements, financial assurance requirements, and fees for certification.

(2) Record keeping requirements for certified manure haulers.

(3) Standards for revocation of a certification based on significant violations of this chapter or environmental laws.

(b) The amount of the fee established under subsection (a) may not be more than is necessary to recover the cost of establishing and operating the certification program.

(c) The board shall set the amounts of financial assurance required of manure haulers under subsection (a)(1) based on the potential liability associated with the operations of manure haulers.

(d) Except as provided in subsection (e), a person may transport manure in Indiana, regardless of where the manure is generated, only if the person:

(1) has successfully completed a manure hauler certification program conducted or approved by the state chemist; and

(2) holds a valid manure hauler certification issued by the state chemist under this chapter.

(e) Subsection (d) does not apply to a person that transports manure within the boundaries of real property owned, leased, or controlled by the person.

(f) To apply for a certificate as a manure hauler, a person must submit at least the following to the state chemist:

(1) The person's name.

(2) The address of the person's principal office.

(3) The addresses of any offices maintained by the person in Indiana.

(4) Evidence of financial assurance maintained in accordance

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with rules adopted under subsection (a). The financial assurance must be in the form of:

(A) a bond for performance, executed by a corporate surety licensed to do business in Indiana;

(B) a negotiable certificate of deposit; or

(C) a negotiable letter of credit;

payable to the state chemist and conditional upon faithful performance of the requirements of this chapter and compliance with environmental laws.

(g) For purposes of the certification program, the state chemist shall develop training and educational requirements and other criteria. Training must at a minimum address the following:

(1) Laws and rules pertaining to manure hauling.

(2) Best management practices with respect to manure hauling and safety procedures.

(h) The state chemist may approve training and education programs that:

(1) meet the requirements of this section; and

(2) are developed by educational institutions or entities.

SECTION 19. [EFFECTIVE UPON PASSAGE] **(a) This SECTION applies notwithstanding the effective date of:**

(1) IC 13-18-10-1.5, as added by this act; and

(2) the amendments under this act to IC 13-11-2-8, IC 13-11-2-191, IC 13-18-10-1, IC 13-18-10-2, IC 13-18-10-2.1, and IC 13-18-10-2.2.

(b) The definitions in IC 13-11-2 apply throughout this SECTION.

(c) Subject to subsection (d), the Indiana Code sections referred to in subsection (a), as added or amended by this act, apply to the following confined feeding operations and CAFOs in the same manner those sections would have applied if those sections had been in effect on the date the application for the confined feeding operation or CAFO was submitted to the department or the notice of intent for general NPDES permit coverage for the CAFO was filed with the department:

(1) A confined feeding operation or CAFO for which a person is required to submit an application to the department for approval under IC 13-18-10-1(a), as amended by this act.

(2) A CAFO for which a person is required to submit an application to the department for approval of an individual NPDES permit for the CAFO under 327 IAC 5.

(3) A CAFO for which a person is required to file a notice of

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intent under 327 IAC 15 for general NPDES permit coverage for the CAFO.

(d) Subsection (c) applies only if:

(1) an application referred to in subsection (c) was not approved by the department before the effective date of this SECTION; or

(2) the date of submission of a notice of intent referred to in subsection (c) is on or after the effective date of this SECTION.

SECTION 20. IC 13-18-20-11.5 IS REPEALED [EFFECTIVE JANUARY 1, 2009].

SECTION 21. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1168, 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.

PFLUM, Chair

Committee Vote: yeas 7, nays 5.

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