Reprinted
March 24, 2009

ENGROSSED
SENATE BILL No. 221

DIGEST OF SB 221 (Updated March 23, 2009 2:43 pm - DI 52)

Citations Affected: IC 13-11; IC 13-18; IC 36-8; noncode.

Synopsis: Confined animal feeding. Amends the definitions of "applicant" and "responsible party" for purposes of confined feeding statutes. Amends the definition of "confined feeding operation" (CFO) to be consistent with the federal definition of "concentrated animal feeding operation" (CAFO) and eliminates separate CFO and CAFO references. Makes the confined feeding control statute part of the defined term "environmental management laws". Eliminates the exception from the requirement for department of environmental management (IDEM) construction approval for a CAFO that obtains an NPDES permit. Requires IDEM approval of confined feeding operation expansion that increases animal capacity or manure containment capacity. Establishes good character disclosure requirements for CFOs, applicable to both new construction and certain expansions. Provides that disclosure of acts and omissions in violation of foreign law applies
(Continued next page)

Effective: Upon passage; July 1, 2009.

Gard, Head, Deig, Dillon
(HOUSE SPONSORS — PEARSON, FRIEND, PFLUM, CHEATHAM)

January 7, 2009, read first time and referred to Committee on Energy and Environmental Affairs.
February 17, 2009, amended, reported favorably — Do Pass.
February 19, 2009, read second time, ordered engrossed.
February 20, 2009, engrossed.
February 23, 2009, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 2, 2009, read first time and referred to Committee on Agriculture and Rural Development.
March 19, 2009, amended, reported — Do Pass.
March 23, 2009, read second time, amended, ordered engrossed.

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Digest Continued

only if the acts and omissions would have violated state or federal environmental law if the act or omission had occurred in the United States. Provides that disclosure requirements do not apply to a renewal of an IDEM approval and apply only if alleged acts and omissions subject to disclosure presented a substantial endangerment to human health or the environment. Requires an applicant for the construction or expansion of a CFO to inform land owners and occupants whose land is within 1/2 mile of certain parts of the CFO within 10 days after submitting the application. Allows the department of environmental management to review and act on disclosed good character information. Applies good character disclosure requirements to pending confined feeding projects.

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Reprinted
March 24, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 221

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, 2009]: Sec. 8. **(a) "Applicant", for purposes of IC 13-11-2-191 and 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 13-11-2-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 40. "Confined feeding operation", for purposes of IC 13-18-10, means:

(1) any confined feeding of:

(A) at least three hundred (300) cattle;

(B) at least six hundred (600) swine or sheep; ~~and~~

(C) at least thirty thousand (30,000) fowl; **or**

(D) at least five hundred (500) horses.

(2) any animal feeding operation electing to be subject to IC 13-18-10; or

(3) any animal feeding operation that is causing a violation of:

(A) water pollution control laws;

(B) any rules of the water pollution control board; or

(C) IC 13-18-10.

A determination by the department under this subdivision is appealable under IC 4-21.5.

SECTION 3. IC 13-11-2-71, AS AMENDED BY P.L.137-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 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.

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(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 4. IC 13-11-2-191 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 191. **(a) "Responsible party", for purposes of IC 13-18-10, means any of the following:**

(1) An applicant.

(2) An officer, a corporation director, or a senior management official of any of the following that is an applicant:

(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:

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(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 5. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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 animal capacity or manure containment capacity, or both;

without obtaining the prior approval of the department.

~~(b) Obtaining an NPDES permit for a CAFO meets the requirements of subsection (a) and 327 IAC 16 to obtain an approval.~~

SECTION 6. IC 13-18-10-1.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **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

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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

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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 35-44-2-1.

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

SECTION 7. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Application for approval **under section 1 of this chapter** of the construction **or expansion** of a confined feeding operation 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.

(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

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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 approval **under section 1 of this chapter** to construct **or expand** a confined feeding operation on land ~~that is undeveloped or~~ for which a valid existing approval has not been issued shall make a reasonable effort to provide notice **not more than ten (10) working days after submitting an application:**

~~(1) to:~~

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

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

~~(2)~~ **(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.

~~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) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. The department shall approve the construction **or expansion** and **the** operation of the manure management system of the confined feeding operation if the commissioner determines that the

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applicant meets the requirements of:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

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

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

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

(1) shall make a determination on an application **made 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;

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(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.

~~(c)~~ **(i)** The department may amend an approval **under section 1 of**

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this chapter or revoke an approval **under section 1 of this chapter:**

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

(C) the water pollution control laws; or

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

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

SECTION 9. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction **or expansion,** not more than thirty (30) days after the date the applicant completes the construction **or expansion** the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation:

(1) was constructed **or expanded;** and

(2) will be operated;

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

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

(1) begin not later than two (2) years; and

(2) be completed not later than four (4) years;

after the date the department approves the construction **or expansion** of the confined feeding operation or the date all appeals brought under IC 4-21.5 concerning the construction **or expansion** of the confined feeding operation have been completed, whichever is later.

SECTION 10. IC 13-18-10-4, AS AMENDED BY P.L.2-2007, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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.

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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) postsecondary educational institution extension bulletins; and

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

SECTION 11. IC 36-8-12-2, AS AMENDED BY P.L.43-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter:

"Employee" means a person in the service of another person under a written or implied contract of hire or apprenticeship.

"Employer" means:

(1) a political subdivision;

(2) an individual or the legal representative of a deceased individual;

(3) a firm;

(4) an association;

(5) a limited liability company;

(6) an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5(a); or

(7) a corporation or its receiver or trustee;

that uses the services of another person for pay.

"Essential employee" means an employee:

(1) who the employer has determined to be essential to the operation of the employer's daily enterprise; and

(2) without whom the employer is likely to suffer economic injury as a result of the absence of the essential employee.

"Nominal compensation" means annual compensation of not more than twenty thousand dollars ($20,000).

"Public servant" has the meaning set forth in IC 35-41-1-24.

"Responsible party" has the meaning set forth in ~~IC 13-11-2-191(d).~~ **IC 13-11-2-191(e).**

"Volunteer fire department" means a department or association organized for the purpose of answering fire alarms, extinguishing fires,

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and providing other emergency services, the majority of members of which receive no compensation or nominal compensation for their services.

"Volunteer firefighter" means a firefighter:

(1) who, as a result of a written application, has been elected or appointed to membership in a volunteer fire department;

(2) who has executed a pledge to faithfully perform, with or without nominal compensation, the work related duties assigned and orders given to the firefighter by the chief of the volunteer fire department or an officer of the volunteer fire department, including orders or duties involving education and training as prescribed by the volunteer fire department or the state; and

(3) whose name has been entered on a roster of volunteer firefighters that is kept by the volunteer fire department and that has been approved by the proper officers of the unit.

"Volunteer member" means a member of a volunteer emergency medical services association connected with a unit as set forth in IC 16-31-5-1(6).

SECTION 12. IC 36-8-12-13, AS AMENDED BY P.L.107-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) A volunteer fire department may impose a charge on the owner of property, the owner of a vehicle, or a responsible party (as defined in ~~IC 13-11-2-191(d))~~ **IC 13-11-2-191(e))** that is involved in a hazardous material or fuel spill or chemical or hazardous material related fire (as defined in IC 13-11-2-96(b)):

(1) that is responded to by the volunteer fire department; and

(2) that members of that volunteer fire department assisted in extinguishing, containing, or cleaning up.

(b) The volunteer fire department shall bill the owner or responsible party of the vehicle for the total dollar value of the assistance that was provided, with that value determined by a method that the state fire marshal shall establish under IC 36-8-12-16. A copy of the fire incident report to the state fire marshal must accompany the bill. This billing must take place within thirty (30) days after the assistance was provided. The owner or responsible party shall remit payment directly to the governmental unit providing the service. Any money that is collected under this section may be:

(1) deposited in the township firefighting fund established in IC 36-8-13-4;

(2) used to pay principal and interest on a loan made by the department of homeland security established by IC 10-19-2-1 or a division of the department for the purchase of new or used

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firefighting and other emergency equipment or apparatus; or

(3) used for the purchase of equipment, buildings, and property for firefighting, fire protection, and other emergency services.

(c) The volunteer fire department may maintain a civil action to recover an unpaid charge that is imposed under subsection (a).

SECTION 13. IC 36-8-12.2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. As used in this chapter, "responsible party" has the meaning set forth in ~~IC 13-11-2-191(d).~~ **IC 13-11-2-191(e).**

SECTION 14. [EFFECTIVE UPON PASSAGE] **(a) This SECTION applies notwithstanding the effective date of:**

(1) IC 13-18-10-1.4, as added by this act; and

(2) the amendments under this act to IC 13-11-2-8, IC 13-11-2-40, 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 a confined feeding operation for which a person is required to submit an application to the department for approval under IC 13-18-10-1, as amended by this act, in the same manner those sections would have applied if those sections had been in effect on the date the application was submitted to the department.

(d) Subsection (c) applies only if an application referred to in subsection (c) was not approved by the department before the effective date of this SECTION.

SECTION 15. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 221, 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, line 3, after "of" insert "**IC 13-11-2-191 and**".

Page 2, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 2. IC 13-11-2-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 40. "Confined feeding operation", for purposes of IC 13-18-10, means:

(1) any confined feeding of:

(A) at least three hundred (300) cattle;

(B) at least six hundred (600) swine or sheep; ~~and~~

(C) at least thirty thousand (30,000) fowl; **and**

(D) at least five hundred (500) horses.

(2) any animal feeding operation electing to be subject to IC 13-18-10; or

(3) any animal feeding operation that is causing a violation of:

(A) water pollution control laws;

(B) any rules of the water pollution control board; or

(C) IC 13-18-10.

A determination by the department under this subdivision is appealable under IC 4-21.5.".

Page 2, line 40, delete "the individual" and insert "**any of the following:**

(1) An applicant.

(2) An officer, a corporation director, or a senior management official of any of the following that is an applicant:

(A) A corporation.

(B) A partnership.

(C) A limited liability company.

(D) A business association.".

Page 2, delete lines 41 through 42.

Page 3, delete line 1.

Page 3, delete lines 32 through 42, begin a new paragraph and insert:

"SECTION 5. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: 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

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animal capacity or manure containment capacity, or both; without obtaining the prior approval of the department.

~~(b) Obtaining an NPDES permit for a CAFO meets the requirements of subsection (a) 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 JULY 1, 2009]: **Sec. 1.5. (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

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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 35-44-2-1.

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

SECTION 7. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Application for approval **under section 1 of this chapter** of the construction **or expansion** of a confined feeding operation 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.

(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 approval **under section 1 of this chapter** to construct **or expand** a confined feeding operation 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 is to be located **or expanded;** or

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

(2) to the county executive of the county in which the confined

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feeding operation is to be located **or expanded;**

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) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. The department shall approve the construction **or expansion** and **the** operation of the manure management system of the confined feeding operation if the commissioner determines that the applicant meets the requirements of:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

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

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

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

(1) shall make a determination on an application **made 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

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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 1.5 of this chapter.

(2) An enforcement action was resolved against a responsible party as described in either or both of the following:

(A) Section 1.5(c)(5) of this chapter.

(B) Section 1.5(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 1.5(c)(5) and 1.5(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 1.5(c)(5) and 1.5(c)(6) of this chapter.

(5) Prior or subsequent self-policing or internal education programs established by the responsible party to prevent acts,

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omissions, or violations referred to in section 1.5(c)(5) and 1.5(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.

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

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

(C) the water pollution control laws; or

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

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

SECTION 9. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction **or expansion,** not more than thirty (30) days after the date the applicant completes the construction **or expansion** the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation:

(1) was constructed **or expanded;** and

(2) will be operated;

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

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

(1) begin not later than two (2) years; and

(2) be completed not later than four (4) years;

after the date the department approves the construction **or expansion** of the confined feeding operation or the date all appeals brought under IC 4-21.5 concerning the construction **or expansion** of the confined feeding operation have been completed, whichever is later.".

Delete pages 4 through 9.

Page 10, delete lines 1 through 31.

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Page 10, line 38, after "construction" insert ", **expansion,**".

Page 10, line 38, after "operations" delete "and".

Page 10, line 39, delete "CAFOs".

Page 10, line 40, after "construction" insert ", **expansion,**".

Page 13, delete lines 14 through 42, begin a new paragraph and insert:

"SECTION 14. [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 13-11-2-40, 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 a confined feeding operation for which a person is required to submit an application to the department for approval under IC 13-18-10-1, as amended by this act, in the same manner those sections would have applied if those sections had been in effect on the date the application was submitted to the department.

(d) Subsection (c) applies only if an application referred to in subsection (c) was not approved by the department before the effective date of this SECTION.".

Page 14, delete lines 1 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 221 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred Senate Bill 221, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 23, delete "and" and insert "**or**".

Page 4, line 16, delete "manure containment capacity," and insert

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"**volume of manure produced,**".

Page 4, line 18, delete "Obtaining" and insert "~~Obtaining~~".

Page 4, line 20, delete "IC 13-18-10-1.5" and insert "IC 13-18-10-1.4".

Page 4, line 22, delete "Sec. 1.5." and insert "**Sec. 1.4.**".

Page 6, delete lines 18 through 42, begin a new paragraph and insert:

"SECTION 7. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Application for approval **under section 1 of this chapter** of the construction **or expansion** of a confined feeding operation 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.

(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 approval **under section 1 of this chapter** to construct **or expand** a confined feeding operation on land ~~that is undeveloped or~~ for which a valid existing approval has not been issued shall make a reasonable effort to provide notice **not more than ten (10) working days after submitting an application:**

~~(1)~~ ~~to:~~

~~(A) each person who owns land that adjoins the land on which~~

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~~the confined feeding operation is to be located; or~~

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

~~(2)~~ **(1)** to the county executive of the county in which the confined feeding operation is to be located **or expanded; and**

(2) to each person who owns 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 one (1) or more 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 one (1) or more 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) A permanent manure storage facility.

(iii) The expanded area of a livestock or poultry production structure.

(iv) The expanded area of a permanent manure storage facility.

~~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) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. The department shall approve the construction **or expansion** and **the** operation of the manure management system of the confined feeding operation if the commissioner determines that the applicant meets the requirements of:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

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

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.".

Page 7, delete lines 1 through 35.

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Page 8, line 38, delete "section 1.5" and insert "**section 1.4**".

Page 8, line 42, delete "Section 1.5(c)(5)" and insert "**Section 1.4(c)(5)**".

Page 9, line 1, delete "Section 1.5(c)(6)" and insert "**Section 1.4(c)(6)**".

Page 9, line 9, delete "section 1.5(c)(5)" and insert "**section 1.4(c)(5) and 1.4(c)(6)**".

Page 9, line 10, delete "and 1.5(c)(6)".

Page 9, line 13, delete "section 1.5(c)(5) and 1.5(c)(6)" and insert "**section 1.4(c)(5) and 1.4(c)(6)**".

Page 9, line 16, delete "section 1.5(c)(5) and" and insert "**section 1.4(c)(5) and 1.4(c)(6)**".

Page 9, line 17, delete "1.5(c)(6)".

Page 12, line 40, delete "IC 13-18-10-1.5," and insert "**IC 13-18-10-1.4,**".

and when so amended that said bill do pass.

(Reference is to SB 221 as printed February 18, 2009.)

PFLUM, Chair

Committee Vote: yeas 12, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 221 be amended to read as follows:

Page 4, line 16, delete "volume of manure produced," and insert "**manure containment capacity,**".

Page 7, line 17, delete "person who owns" and insert "**owner and each occupant of**".

Page 7, line 19, delete "one (1) or more" and insert "**either or both**".

Page 7, line 24, delete "one (1) or more" and insert "**either or both**".

Page 7, delete line 28.

Page 7, line 29, delete "(iii)" and insert "**(ii)**".

Page 7, delete lines 31 through 32.

(Reference is to ESB 221 as printed March 20, 2009.)

CHEATHAM

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