

Brief Policy Paper in Support of HB 1378 (2019 Session):
The Critical Need for Legislation to Address Serious Gaps in IDEM
Regulation of CFOs/CAFOs

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I. Background

Increasingly we hear from long-time, rural Hoosier families that their lives have been disrupted by the proliferation of concentrated animal feeding operations and confined feeding operations (collectively “CFOs”) in their communities. A common problem they share -- aside from the sickening odors, manure-laden waterways, plummeting property values, and community conflict so often caused by CFOs – are the feelings of frustration, isolation and despair they experience when they learn that their county planners, zoning boards, health departments, commissioners and even Indiana’s environmental agency IDEM can’t help. When they reach out to IDEM they are told it’s a “local problem” and when they contact their county officials, they’re directed back to IDEM. In other words, citizens who need help aren’t getting it and in most cases it’s because the offending CFO is in compliance with the law. That means that something is wrong with the law. And, indeed, there are several problems:

A. IDEM has no authority to regulate where CFOs can locate even if too close to homes.

The IDEM CFO rule imposes a mere 400-foot setback from existing residences and that distance is measured from structure to structure, not the residential property line. Put another way, if an existing residence is 300 feet from its property boundary, the CFO can be built just 100 feet from that boundary, effectively imposing a 300-foot easement on the residential property without paying for it. Imagine having to live just 400 feet away from 10,000 hogs (an average size CAFO) and the waste they produce.

B. IDEM has no authority to limit noxious odors and dangerous air emissions from CFOs.

Under current law, IDEM lacks authority to regulate the noxious and dangerous odorous compounds (hydrogen sulfide, ammonia, volatile fatty acids, amines, and others) that CFOs are well known to generate. Nor does the U.S. EPA because CFOs are exempt from regulation under the Clean Air Act. This is particularly troublesome given the findings of numerous, peer-reviewed, scientific studies over decades that have consistently confirmed the human health effects and significant deterioration of air quality and quality of life for people who live near CFOs due to these emissions.¹ Furthermore, this problem more than any other is the one that is so devastating

¹ See e.g., Claudia Copeland, *Air Quality Issues and Animal Agriculture: A Primer*, U.S. Congressional Research Service, (RL32948; Dec. 22, 2014); C. Hribar, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities* (2010); Heederik, D., et. al., *Health effects of airborne exposures from concentrated animal feeding operations*, *Environmental Health Perspectives* 115:298-302 (2007); *Environmental Health Perspectives* 114:1032-1037 (2006); Iowa State University and University of Iowa College Study Group, *Concentrated Animal Feeding Operations Air Quality Study* (2002).

to the lives of people who through no fault of their own find themselves living next to a new CFO where a cornfield once stood. Yet under current law, it is perfectly legal.

C. CFOs are not “zero discharge” facilities

The livestock industry claims that CFOs are “zero discharge”—i.e., that they do not pollute our waterways. But this claim is simply not true. Indiana’s livestock generate as much untreated excrement as that produced by 87 million people, or 14 times the human population of Indiana.² And, it is well known that animal waste (both from humans and livestock) contain high levels of phosphorus and nitrogen as well as pathogens like *E. coli* and parasites which is why human waste must be treated before it can ever be applied to land. Nevertheless, under current law, as long as the millions of gallons of untreated livestock waste produced annually by a typical CFO is spread on land in accordance with an IDEM “CFO Approval,” any runoff of that waste with rain or melting snow to nearby waterways, or leaching into groundwater below, is not considered a “discharge” subject to Clean Water Act permitting or enforcement. And, because IDEM is required to conduct inspections only once every five (5) years and the CFO’s land application records are kept on site, whether CFOs are complying with their permits is really anybody’s guess. What we do know is that current law allows CFOs to be built in karst terrain, very close to waterways, and other environmentally sensitive areas, and that *E.coli* from animal waste is the number one polluter of our waterways. In other words, those “no discharge” CFOs must be discharging.

D. IDEM has no authority to deny or revoke a CFO permit for protection of public health and the environment

Unlike IDEM’s authority in regulating other polluting industries, IDEM has no discretion to deny a permit to build, operate or expand a CFO to protect public health and the environment as long as a CFO meets the minimum requirements under the CFO Rule. Similarly, IDEM lacks authority under current law to revoke a CFO permit if the CFO becomes a public health or environmental threat or a public nuisance. And while a CFO operator must disclose its environmental track record during the five years preceding the application, the violations disclosed – no matter how egregious -- are not a basis for IDEM to deny the permit. Indeed, the only basis IDEM has for denying a CFO permit is if the applicant makes a material misrepresentation in the application – and even then, the applicant is given an opportunity to fix the misinformation. Indeed, since 2012, only one CFO application has been denied by IDEM and that denial was successfully appealed by the industry.

E. There is no mechanism for transparency or public accountability

Despite the known environmental and public health effects CFO pollution can cause, current law requires IDEM to inspect a CFO just once every five years. And, unlike other industries that have to report their activities and emissions to IDEM, the operating records of a CFO are kept by the CFO owner and are not made available to the public. Also concerning, owners of new or

² Calculation and comparison based on USDA Census of Agriculture data providing the total number and type of livestock animals in Indiana, multiplied by the average daily amount of manure produced per animal type as indicated by NRCS data, and compared to the average daily amount of excrement produced by one human multiplied by the population of Indiana.

expanding CFOs need only make a “reasonable attempt” to provide notice to neighbors within a half-mile that they are seeking IDEM approval to build or expand a CFO. But even if neighbors receive notice, IDEM does not have to consider or respond to their concerns in making its decision. Finally, although most CFOs have contracts with outside corporations (known as integrators) that own the animals and dictate just about every aspect of a CFO’s operations, the integrator does not have to be disclosed in the permit application to IDEM. That means the entity calling the shots is not held accountable for the harm a CFO may cause.

II. HB 1378 Addresses These Serious Regulatory Gaps

These gaps in regulation are the reason IDEM is unable to protect the air we breathe, the water we drink, swim and fish in, and our fellow citizens from CFO pollution. HB 1378 would address this by:

- imposing a minimum one-mile setback for new CFOs from existing residences unless written authorization is obtained from the owner of the residence for a lesser setback and the written authorization is recorded with the deed of the residential property; and/or the CFO incorporates air pollution control technology demonstrated to protect air quality beyond the boundary of the CFO;
- imposing a minimum one-mile setback for new CFOs from existing schools, non-agricultural businesses, churches, parks and other public places unless the CFO incorporates air pollution control technology demonstrated to protect air quality beyond the boundary of the CFO;
- requiring new and existing CFOs to use best management practices (BMPs), testing, monitoring, and/or other appropriate criteria based on site-specific conditions for protection of lakes, streams, wetlands, groundwater, and other environmentally sensitive areas from excess sediment, nutrient and *E.coli* contamination through implementation of a site-specific manure management plan;
- prohibiting new CFOs from being built in karst areas and flood plains;
- requiring new and existing CFOs to submit and comply with an odor control plan for protection of off-site air quality.
- prohibiting expansion of existing CFOs that are: (i) within one-mile of a residence without written authorization from the owner of the residential property that is recorded with the deed of the residential property and/or incorporation of air pollution control technology demonstrated to protect air quality outside the boundary of the CFO; (ii) within one-mile of a school, non-agricultural business, church, park and other public place without incorporation of air pollution control technology demonstrated to protect air quality outside the boundary of the CFO; (iii) have structures, production areas and/or land application activities in karst areas and/or flood plains; (iv) would otherwise pose a substantial endangerment to public health or the environment if the expansion is allowed.

- requiring groundwater monitoring or other criteria as appropriate for existing CFOs that have structures, production areas and/or land application activities in karst areas and/or flood plains;
- requiring annual compliance inspections by IDEM and submission of all CFO operating records to IDEM to ensure public transparency and accountability.
- requiring full disclosure of all persons/entities in control of a CFO including the integrator, owner of the CFO and land application sites and their officers, directors and senior management officials and full disclosure of the environmental track records of all owner/operators of CFOs;
- imposing the same public notice and commenting requirements for CFO permits as is required under the CWA and CAA for other industries which would require IDEM to actually consider and respond to public comments in its decision making on whether to issue a CFO permit.

Please help us pass this critically needed legislation by urging your state lawmakers to support HB 1378. Thank you.