

Hoosier Environmental Council

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HEC Policy Analysis of HB 1494 – “Regulation of CFOs” **(2017 Legislative Session)**

I. Existing CFO regulation already fails to protect Hoosiers

Increasingly, we hear from long-time, rural Hoosier families whose lives are greatly disrupted by the proliferation of confined feeding operations (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 CFO pollution -- are the feelings of frustration, isolation and despair these families experience when told by IDEM that there is nothing the agency can do to help.¹

Indeed, under existing law, IDEM does not have authority to regulate where CFOs can locate -- even if too close to homes. IDEM has no authority to limit the noxious and dangerous odorous compounds (H₂S, ammonia, volatile fatty acids, amines and others) that CFOs are well known to emit. And, as long as the millions of gallons of livestock waste produced annually by a typical CFO is spread on land in accordance with an IDEM-issued “CFO Approval,” the runoff of that waste to nearby waterways is not considered a “discharge” or violation subject to enforcement under state or federal regulation. In other words, existing CFO law simply does not go far enough to protect our fellow citizens and the environment.

II. HB 1494 would leave Hoosiers and the environment even less protected

A. *HB 1494 eliminates the requirement to obtain IDEM approval before construction and operation of a CFO, sidestepping public notice requirements*

Of particular concern, HB 1494 would eliminate the current requirement that IDEM approve plans to build a new CFO or expand an existing one *before construction*. (Bill p. 9:33-41). In its place would be a weakened requirement that “a person must obtain a permit to construct and operate a CFO” but with no mandate for *when* that permit must be obtained. (Bill p. 10:2-6) That means impacted neighbors will not be notified prior to construction of a new or expanded CFO -- as is currently required -- thereby depriving neighbors of the ability to raise concerns with IDEM at a point when their concerns might

¹ As confirmed by IDEM on its website at <http://www.in.gov/idem/cfo/2342.htm> (identifying what “IDEM Does Not Regulate” under Indiana’s Confined Feeding Law including property values, where CAFOs and CFOs can locate, odors, vectors, disposal of dead animals, ground water use, among other issues).

make a difference.² Moreover, IDEM would be stripped of its ability to determine whether a proposed new or expanded CFO meets requirements for setbacks, facility design, and other standards until the permit is actually applied for -- which, under HB 1494, could be *after* the CFO is already built rendering any design, setback and construction standards meaningless.

While HB 1494 would require IDEM's preapproval before constructing or expanding a CFO's "manure storage facility" (Bill p. 10:7-13) -- defined as "any pad, pit, pond, lagoon, tank, building, or manure containment area that is used to store or treat manure" and includes "a biomass digester and any part of a building that is used specifically for the storage or treatment of manure" (Bill p. 1:3-16) -- this "prior approval" does not eliminate the concern that IDEM will have no regulatory oversight of new CFO construction or the concern that neighbors will not be notified until after the CFO is constructed.

Furthermore, the public notice requirements are altogether eliminated for "permit amendments" (Bill p. 15:30-33) which, under HB 1494, could be obtained for: 1) construction of new manure storage facilities that replace existing manure storage facilities but do not increase manure storage capacity; or 2) any change to an existing CFO that increases manure volume or reduces manure storage capacity by more than 10%. (Bill pp. 10:14-25). In other words, existing CFOs would be able to essentially expand without limit without having to notify neighbors and local governments of their plans.

B. HB 1494 would undermine IDEM's ability to ensure that CFOs are not owned and operated by "bad actors"

Under current law, all applications for CFO approval must disclose all "responsible parties" for the proposed or to be expanded CFO which include each owner/operator, its respective officers, corporate directors, senior management officials, and persons who will be in direct or responsible charge or control of the CFO or its land application activities. (Bill p. 8:36-42). Furthermore, under current law each "responsible party" must disclose in the CFO application to IDEM all of its past "material" violations of federal, state or foreign environmental laws that posed "a substantial endangerment to human health or the environment." (Bill pp. 10:35 – 13:21).

To ensure compliance with these provisions, IDEM currently requires that all responsible parties and all material violations be disclosed regardless of whether the applicant believes those violations posed a substantial endangerment. An applicant's failure to fully disclose this information is one of the few bases IDEM currently has to deny a CFO permit application. And, as testified by IDEM's CFO Permitting Section Chief in an administrative permit appeal that HEC is handling involving these disclosure requirements, the purpose of full disclosure is to ensure that CFO permits are not issued to "bad actors" and to make sure

² This appears to be the goal of proponents of HB 1494. Josh Trenary, lobbyist for the Indiana Pork Producers Association, testified at the Jan. 25th committee hearing that the preconstruction notice requirements are of concern to the industry because they often lead to permit challenges and litigation.

that IDEM is aware of all responsible parties to ensure accountability for any noncompliance with permit requirements down the road. HB 1494 would change all that.

Under HB 1494, the disclosure requirements would apply only to applications for new CFOs or for transfers of ownership of existing CFOs. (Bill p. 10:35-42). And, because a permit application for a new CFO could be submitted *after* construction of the CFO has already occurred, the disclosure of who will be responsible for operations and their past environmental history would have no impact on the decision to allow construction of the CFO in the first place.

Making matters worse, HB 1494 would redefine the meaning of “responsible party” to exclude disclosure of officers, directors and senior management officials of the CFO. Under the new definition, a “responsible party” would include: an “operator” defined as “a person in charge of permit compliance” (Bill p. 2:2-6); an “owner,” defined as a person who owns the waste management system (as opposed to the owner of the entire CFO) (Bill p. 4:34-38); a “permit holder” defined as a “person who applies for and receives a CFO permit” (Bill p. 8:9-12); and, “any person designated by an operator, owner or permit holder to be in direct or responsible charge of permit compliance at a confined feeding operation” (Bill p. 8:15-27). In other words, the actual owners of the CFO will not have to be disclosed (Bill. p. 8: 36-42) thereby allowing “bad actors” that apply for new CFO permits to simply designate someone else who does not have a checkered environmental record for purposes of the permit application. This would not only undermine IDEM’s ability to ensure that CFOs in our state are not owned and operated by bad actors but would weaken IDEM’s ability to ensure the actual owners of a CFO are held accountable for noncompliance with regulatory requirements.

Finally, HB 1494 would require only disclosure of the responsible party’s environmental violations alleged by federal, state foreign officials within the five years preceding the date of the permit application or transfer of operations request as opposed to the current requirement that all past violations be disclosed thereby substantially limiting the scope of disclosure.

In sum, HB 1494 effectively strips IDEM of its permitting authority to ensure that CFOs are built in accordance with environmental regulatory requirements and that bad actors are not allowed to operate CFOs in our state. The bill would also eliminate the ability of impacted citizens to have their concerns regarding new or expanding CFOs planned for their communities considered by IDEM, and undermines IDEM’s ability to hold CFO owners -- the real responsible parties -- accountable for noncompliance. Therefore, HEC strongly opposes HB 1494.