

GENERAL ORDINANCE NUMBER 85-3, 2007

AN ORDINANCE REGULATING CONFINED ANIMAL FEEDING
OPERATIONS AND CONCENTRATED ANIMAL FEEDING
OPERATIONS IN WABASH COUNTY, INDIANA

SECTION 1. PURPOSE

The purpose of this Ordinance is to establish certain minimum standards for medium and large concentrated animal feeding operations (CAFO) in Wabash County, Indiana in order to assure reasonable compatibility between such livestock operations and other uses.

These standards, along with any relevant requirements of the Indiana Department of Environmental Management (IDEM), National Pollutant Discharge Elimination System (NPDES) and Environmental Protection Agency (EPA) are intended to create a fair balance between needed livestock production and other uses in Wabash County, Indiana.

SECTION 2. DELINEATION

A. The provisions of this Ordinance are supplemental to all laws, rules and regulations of federal and state authorities. In case of conflicting requirements, the more restrictive provision shall prevail.

SECTION 3. DEFINITIONS

A. CONFINED FEEDING OPERATION:

For the purposes of this Ordinance "Confined Feeding Operation" shall have the meaning set forth at Indiana Code 13-11-2-40, which now states:

(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;

(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.

B. APPLICANT:

The person or entity seeking any permit, approval, certificate, or determination for a CAFO.

C. CAFO (Concentrated Animal Feeding Operation) MEDIUM

A structure that confines, or is capable of confining, the type or number of animals that fall within any of the ranges listed below. Where animals are confined, fed and maintained for at least 45 days during any year and where there is no ground cover or vegetation present over at least half of the confinement area.

Mature dairy cows, dry or milked	200 to	699
Veal calves, dairy starter replacements	300 to	999
Cattle, heifers, steers, bulls, cow/calf pairs	300 to	999
Swine 55 lbs or larger	750 to	2,499
Swine 54 lbs or smaller	3,000 to	9,999
Horses	150 to	499
Sheep, lambs, goats	3,000 to	9,999
Turkeys	16,500 to	54,999
Laying hens, broilers	9,000 to	29,999 *
Chickens other than laying hens	37,500 to	124,999 *
Laying hens,	25,000 to	81,999**
Ducks	10,000 to	29,999 *
Ducks	1,500 to	4,999**

* Uses a liquid manure handling system

** Uses systems other than a liquid manure handling system

1. Any animal feeding operation where the operator elects to come under this Ordinance, any animal feeding operation causing a violation of Indiana Code 13-18-10, as amended, or Indiana Code 13-18-4, as amended.

D. CAFO (Concentrated Animal Feeding Operation) LARGE

A structure that confines, or is capable of confining, the type or number of animals that fall within any of the ranges listed below. Where animals are confined, fed and maintained for at least 45 days during any year and where there is no ground cover or vegetation present over at least half of the confinement area.

Mature dairy cows, dry or milked	700 or more
Veal calves, dairy starter replacements	1,000 or more
Cattle, heifers, steers, bulls, cow/calf pairs	1,000 or more
Swine 55 lbs or larger	2,500 or more
Swine 54 lbs or smaller	10,000 or more
Horses	500 or more
Sheep, lambs, goats	10,000 or more
Turkeys	55,000 or more
Laying hens, broilers	30,000 or more *
Chickens other than laying hens	125,000 or more *
Laying hens,	82,000 or more **
Ducks	5,000 or more *
Ducks	30,000 or more **

* Uses a liquid manure handling system

** Uses systems other than a liquid manure handling system

1. Any animal feeding operation where the operator elects to come under this Ordinance, any animal feeding operation causing a violation of Indiana Code 13-18-10, as amended, or Indiana Code 13-18-4, as amended.
2. Any CFO may be designated a CAFO by IDEM upon IDEM's determination that such CFO is a significant polluter of water.
3. Any livestock operation with any combination of livestock listed herein that equals 100% of the minimum species number of a Medium CAFO shall be defined as a CAFO. This provision shall be based on structure capacity, rather than the actual number of animals confined.

E. CAFO REGISTRATION

A document certifying the CAFO owner's registration, with the Wabash County Plan Commission, of all structures, buildings, lagoons, pits, ponds, holding tanks, livestock, or land associated with the CAFO.

F. IMPROVEMENT LOCATION PERMIT

A permit of zoning compliance indicating that the proposed use, construction, reconstruction, alteration, or moving of a building or structure, lagoon, pit, pond, holding tank or use of land, referred to therein, complies with the provisions of this Ordinance.

G. MANURE

Any animal or fowl excreta, and any bedding, litter or water that has been in contact with or contaminated by such excreta.

H. PRE-APPLICATION PERMIT

A certificate of intention to construct, reconstruct, alter, enlarge, or move, a building, structure, lagoon, pit, pond, holding tank, or use land in accordance with the requirements of this Ordinance and all relevant laws, rules and regulations of the United States and the State of Indiana, and the National Pollutant Discharge Elimination System.

I. POND

A small area designed for short term collection and storage of feedlot runoff. Manure solids, except in extremely small quantities, to be excluded.

J. PROCESS WASTE LIQUID

Liquid to be handled as manure that is generated at the CAFO including excess drinking water, clean-up water, contaminated livestock truck or trailer wash-water, milking parlor wash-water, milk house wash-water, egg wash-water, silage leachate, or any run off that threatens water quality standards.

K. SETBACKS

The mandatory and absolute minimum horizontal distance (specified in feet) that must be established between two designated points.

SECTION 4. PRE-APPLICATION PERMIT

A. Prior to submitting a permit application to IDEM or NPDES, a Wabash County CAFO applicant shall request a Pre-Application Permit from the Wabash County Plan Commission. Except as provided hereinafter, for a period of eighteen (18) months after the issuance of a Pre-Application Permit, the Wabash County Plan Commission shall not issue any building permit for a dwelling to be located within the established setback of the proposed CAFO site.

B. Provided, however, that this restriction shall not prevent the owner of the proposed CAFO site, or a member of such owner's immediate family, from obtaining such building permit, if such person shall record, in the office of the Wabash County Recorder, a statement substantially in the following form:

COVENANTS, CONDITIONS AND RESTRICTIONS

This declaration of covenants, conditions and restrictions is made by _____, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the (owner) (purchaser) of the following described real estate in Wabash County, Indiana:

WHEREAS, Declarant acknowledges that Declarant's proposed residential use is within established set-back requirements for a Concentrated Animal Feeding Operation (CAFO) that is either existing or proposed; and

WHEREAS, Declarant acknowledges that such residential use may be adversely affected by odors and noise customary to a CAFO.

WHEREAS, Declarant wants, nevertheless, to establish a residential use in close proximity to a CAFO site.

THEREFORE, Declarant, for (himself) (herself) (themselves) (itself), and for all persons, firms, entities, personal representatives, heirs, devisees, successors and assigns hereafter claiming ownership from or through Declarant, hereby waive(s) any rights which they might otherwise have as owners of real estate, to object to, petition against, or to file any lawsuit for damages, injunctions or other legal or equitable relief against the owners or operators of any agricultural enterprise, including, but not limited to, the following:

1. The use of buildings and the construction or expansion of buildings, for raising, breeding or feeding of livestock, provided the construction and use of such buildings are within applicable federal, state and local laws, rules and regulations.

2. The use of all agricultural real estate for any lawful agricultural uses, including but not limited to, spreading of manure, effluent, wastes, fertilizer, chemicals and the like.

These covenants shall run with the land and be enforceable by the owner or operator of any agricultural enterprise in proximity to the above described real estate.

Executed this ____ day of _____.

[Signatures, Notary and any other requirement for recording.]

C. No Pre-Application Permit shall be issued to any CAFO applicant who has a significant connection with any pending or otherwise unresolved violation of any environmental related statute, rule, regulation or order of any federal, state or local governing body.

D. No Pre-Application permit may be transferred to any other location, owner or legal entity.

E. A Pre-Application Permit may be renewed one time, for an additional six (6) months, but only if the Applicant proves diligence in seeking IDEM and NPDES operation permits.

F. A Pre-Application Permit fee shall be assessed as follows:

1. \$0.02 per square foot of structure.

2. A portion of such fee, less expenses, may be refunded if, after review by the Wabash County Plan Commission, it is determined that the applicant's state permit has been denied, or if circumstances beyond the applicant's control prevent continuation of the application process. However, no refund shall be granted after commencement of excavation or construction.

G. Each applicant for a Pre-Application Permit shall acknowledge in writing that the applicant has reviewed and understands the requirements of this Ordinance.

H. Within 30 days after the issuance of a Pre-Application Permit, each property owner within the required setback of the proposed CAFO site shall be notified of the proposed CAFO application. Such notification shall be prepared and mailed by the Wabash County Plan Commission by certified mail, return receipt requested.

I. The notice requirement prescribed herein shall be in addition to all other notification requirements, including that imposed by Indiana Code 13-18-10-2, as amended.

SECTION 5. IMPROVEMENT LOCATION PERMIT

A. After a CAFO applicant has received both IDEM and NPDES approval, the applicant shall present copies of such approvals to the Wabash County Plan Commission and shall apply for an Improvement Location Permit.

B. An Improvement Location Permit shall be required for:

1. All new CAFO structures, lagoons, pits, holding tanks, etc.
2. Expansion, extension or enlargement of any existing CFO or CAFO.

SECTION 6. TRANSFER

A. No land upon which a CAFO exists, or for which a CAFO Improvement Location Permit has been issued, shall be sold, transferred, conveyed or leased to any person or entity that has any pending or otherwise unresolved violation of any environmental related statute, rule, regulation or order of any federal, state or local governing body.

SECTION 7. CFO, CAFO REGISTRATION

A. Every owner of a CFO or CAFO in Wabash County, Indiana shall register such facility with the Wabash County Plan Commission within one (1) year after the adoption of this Ordinance.

B. Registration shall include a legal description and Wabash County aerial photograph of the site, and a current IDEM status report if any has been issued.

C. The owner of each new CAFO in Wabash County, Indiana shall register with the Wabash County Plan Commission at the same time the Application for Improvement Location Permit is completed.

D. The owner of each CFO or CAFO shall renew such registration with the Wabash County Plan Commission every three (3) years. The Wabash County Plan Commission shall send notice to each such owner at least sixty (60) days before such registration renewal is due.

SECTION 8. SETBACKS

A. Any CAFO, including its lagoons, ponds, pits, holding tanks and related structures, must have a minimum separation distance from designated areas as stated hereinbelow:

1. CHESTER TOWNSHIP

Liberty Mills	1320' East of 4th Street	1600 Feet Open Lagoon
	West of St. Rd. 13	1600 Feet Open Lagoon
	North of North 1/2 line of Section 22	1600 Feet Open Lagoon
	South of South line of Section 22	1600 Feet Open Lagoon
N. Manchester	Outside of corporate jurisdictional boundary and meet required AG zoning setback	
Servia	1320 Feet East of Sugar Street	1600 Feet Open Lagoon
	1320 Feet North of 900 North	1600 Feet Open Lagoon
	1320 Feet South of Smith Street	1600 Feet Open Lagoon
	1320 Feet West of 2nd Street	1600 Feet Open Lagoon

2. LAGRO TOWNSHIP

Lagro Town	Outside of corporate jurisdictional boundary and meet required AG zoning setback	
Lincolnville	1320' Outside all zoning except AG	1600 Feet Open Lagoon
Salamonie Res. Area	2640' Outside all zoning except AG	
Urbana	1320' Outside all zoning except AG	1600 Feet Open Lagoon

3. LIBERTY TOWNSHIP

Treaty	1320' From intersection of 700S and 50E	1600 Feet Open Lagoon
Lafontaine	Outside of corporate jurisdictional boundary and meet required AG zoning setback	

4. NOBLE TOWNSHIP

Richvalley Wabash City	1320' Outside all zoning except AG Outside of corporate jurisdictional boundary and meet required AG zoning setback	1600 Feet Open Lagoon
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5. PAW PAW

Roann	1320' South of ST RD 16 from 650W to 800W 1320' North of River Road from 650W to 800W 1320' outside R, AB, LB, GB, I, IR Zoning SW 1/4 Section One Available less 1320' Set Back N 1/4 NE 1/4 Section One Available less 1320' Set Back South West 1/4 of section 36	1600 Feet Open Lagoon All Roann
Urbana	1320' outside all zoning except AG	1600 Feet Open Lagoon

6. PLEASANT TOWNSHIP

Disko & Twin Lakes	1320 ft from a residence	1600 Feet Open Lagoon
Ijamsville	1320 ft outside all zoning except AG	1600 Feet Open Lagoon
Laketon, Sandy Beach & Ireland Beach	1320' ft outside R, LR, AB, LB, GB, I, IR	1600 Feet Open Lagoon

North
Manchester Outside of corporate jurisdictional
boundary and meet required AG
zoning setback

7. WALTZ

Somerset 1320' outside all zoning except AG 1600 Feet Open Lagoon
Mt. Vernon

Mississinewa 2640' outside all zoning except AG
Res. Area

8. PUBLIC SCHOOLS & WHITES RESIDENTIAL

	<u>Minimum Setback</u>
All North Manchester Community Schools	2640 ft
Manchester College	2640 ft
All Metropolitan Community Schools	2640 ft
Whites Residential	2640 ft
All Wabash City Schools	2640 ft

9. PUBLIC WELLS

	<u>SITES</u>	<u>Minimum Setback</u>
Wabash City Public Wells	2	2640 ft
North Manchester Public Wells	2	2640 ft
Marion City Public Wells	2	2640 ft
Lafontaine Public Wells	2	2640 ft
Roann Public Wells	2	2640 ft
Lagro Public Wells	2	2640 ft

10. PUBLIC AREAS, BUILDINGS 1320 ft 1600 Feet Open Lagoon

11. CHURCHES 1320 ft 1600 Feet Open Lagoon

(As recognized on the current listing of churches in the Wabash County Assessor's Office.)

SECTION 9. B AGRICULTURE ZONED SETBACKS

A. All CAFO structures shall be a minimum of 1320 feet from any residence unless

said residence is on the same parcel of land and is owned by the CAFO owner.

B. All CAFO single stage or multi-stage lagoons shall be a minimum of 1600 feet from any residence unless said residence is on the same parcel of land and is owned by the CAFO owner.

C. No new dwelling may be constructed within:

1. 1320 feet of a CAFO, unless the requirements of Section 4 B of this Ordinance are met.

2. 1600 feet from open holding tanks and all lagoons, unless the requirements of Section 4 B of this Ordinance are met.

3. Provided however, that the Wabash County Plan Commission may waive, but shall not be required to waive, the separation distance between a CAFO and a dwelling owner who is not associated with the CAFO, if there is not less than five hundred (500) feet between any CAFO structure and the dwelling, and if the document described at Section 4 B is recorded in the office of the Recorder of Wabash County, Indiana.

SECTION 10. EXISTING CAFO

A. Any CAFO that existed prior to the date of this Ordinance, and which had obtained or had applied for IDEM and NPDES permits prior to the date of this Ordinance, and is not otherwise in violation of any federal, state or local statute, rule or regulation, may expand its operation, at the same immediate ("immediate" meaning within 500 feet) location if:

1. Such expansion does not result in any CAFO structure being less than one hundred (100) feet to a property line or a public road; and,

2. Screening and / or landscape barrier is installed to shield any CAFO structure that is less than five hundred (500) feet from a property line or public road.

3. All such screening shall conform to Wabash County Plan Commission requirements, and shall be properly maintained by the CAFO operator.

SECTION 11. NEW CAFO

A. All newly constructed CAFO structures, lagoons, pits, ponds, holding tanks must be set back a minimum of 300 feet from public roads or property lines.

1. Screening and / or landscape barriers will be required for new structures, lagoons, pits, ponds, holding tanks that are located less than 500 feet from a public road or property line.

a. Screening and / or landscape barriers specifications from the Wabash County Plan Commission shall be followed.

b. All such screenings and / or barriers shall be properly maintained by the CAFO owner.

SECTION 12. TERMINATION

A. In the event that a CAFO has ceased operation for at least three (3) consecutive years, the operation shall not continue without approval as a new CAFO.

SECTION 13. MANURE MANAGEMENT

A. Any owner or operator of a CFO or a CAFO, and anyone who transports or applies CFO or CAFO manure or process waste liquid in Wabash County, Indiana shall follow all state and county regulations for transporting, storage and application of such manure or process waste liquid, including the requirements found at 327 Indiana Administrative Code, Article 15.

SECTION 14. CAFO DENSITY

A. After the date of this Ordinance, any new CAFO shall be located on a tract of not less than ten (10) acres.

SECTION 15. CONFORMANCE

A. In the event that IDEM or NPDES determines that setbacks of greater distance than as required by this Ordinance are required, then such IDEM or NPDES requirements shall prevail.

SECTION 16. ENFORCEMENT

A. This Ordinance may be enforced, at law or in equity, by the attorney for the Wabash County Plan Commission, or by the Wabash County Attorney, by action filed in the Wabash Circuit Court or the Wabash Superior Court. The remedies provided in this section shall be cumulative and in addition to any other remedy provided by law.

B. Any person violating any of the provisions of this Ordinance shall be liable for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs, including all costs of enforcement.

SECTION 17. SEVERABILITY


A. Invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.


SECTION 18. EFFECTIVE DATE

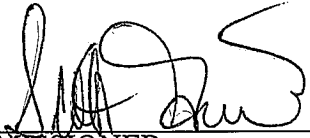
A. This Ordinance shall be in full force and effect from and after its enactment and approval by the Board of Commissioners of Wabash County, Indiana.

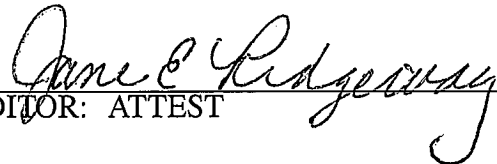
Approved this 2nd day of March, 2007.

THE BOARD OF COMMISSIONERS OF WABASH COUNTY, INDIANA


COMMISSIONER


COMMISSIONER


COMMISSIONER


AUDITOR: ATTEST