

216 CONFINED FEEDING REGULATIONS

Article 2

Definitions and Regulations

Ordinance # 2016-7 / September 12, 2016

Ordinance # 2016-9 / October 10, 2016

216 CONFINED FEEDING OPERATION (CFO) REGULATIONS

PURPOSE: The purpose of this Section is to impose construction and operational requirements for Animal Feeding Operations (AFO's) and Confined Feeding Operations (CFO's) and to provide standards to help safe-guard life, human health and the environment. The purpose of setback regulations is to separate the homeowner and others from the normal noises and odors which may accompany a confined feeding operation.

216.1 CONFINED FEEDING PERMITS REQUIRED

1. A person, firm or corporations may not start:
 - a. construction of a confined feeding operation (CFO); or
 - b. the expansion of a confined feeding operation (CFO) including any alterations to and/or any additional structures and manure/waste storage structure/facility;without first obtaining a Building Permit from the Zoning Administrator/Director.
2. Any animal feeding operation that falls under the definition of a CFO as defined in Section 216.2(C) shall comply with all regulations as set forth in this Ordinance.
3. Any manure/waste storage structure/facility will require a permit and must meet all setback requirements that are applicable to the permitted AFO/CFO, including any IDEM requirements
5. Any animal composting structure/facility will require a permit and must comply with the regulations as set forth in Section 216.5, including any IDEM requirements.
6. Any Satellite Manure Storage Structure (SMSS) will require a permit and must comply with the regulations as set forth in Section 216.6, including any IDEM requirements.

216.2 DEFINITIONS

The following words and terms shall, for the purpose of this Section and used elsewhere in this Ordinance, have the meaning shown herein.

A. Animal Feeding Operation or "AFO" defined

327 IAC 19-2-3 "Animal feeding operation" or "AFO" defined

Animal feeding operation or "AFO" means a lot or facility, other than an aquatic animal production facility, where all of the following conditions are met:

- (1) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period.
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.

B. Confined Feeding defined:

327 IAC 19-2-6 "Confined feeding" defined

(a) Confined feeding, *as defined in IC 13-11-2-39*, means the confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where:

- (1) animals are confined, fed, and maintained for at least forty-five (45) days during any twelve (12) month period; and
- (2) ground cover or vegetation is not sustained over at least fifty percent (50%) of the animal confinement area.

(b) The term does not include the following:

- (1) A livestock market:
 - (A) where animals are assembled from at least two (2) sources to be publicly auctioned or privately sold on a commission basis; and
 - (B) that is under state or federal supervision.
- (2) A livestock sale barn or auction market where animals are kept for not more than ten days

C. Confined Feeding Operation of “CFO” is further defined as:

1. Any existing or proposed animal feeding operation or an expansion of an existing animal feeding operation regardless of acreage on which there are animal numbers equal to or exceeding:
 - a. 100 Cattle or Horses
 - b. 300 Swine or Sheep
 - c. 500 Ducks or Turkeys
 - d. 5,000 Chickens
2. Any AFO or CFO using open waste storage and/or a waste holding pit.
3. Where any animal feeding operation involves less than 100 cattle or horses, 300 swine or sheep, 500 ducks or turkeys, 5,000 chickens *but there is more than one species of animal*, the total number of animals in each category shall be divided by 100 in the case of cattle or horses, 300 in the case of swine or sheep, 500 in the case of ducks or turkeys and 5,000 in the case of chickens. The resulting percentages shall be added together. If the total of such percentages equals or exceeds 100, then the operation is a confined feeding operation as defined herein, and as such, shall be subject to the provisions of this ordinance.
4. Any animal feeding operation facility where the owner and/or operator elects to be subject to IDEM, IC 13-18-10 / Chapter 10 Confined Feeding Control.
5. Any animal feeding operation facility causing a violation of water pollution control laws and/or any rules of the water pollution control board; or as determined by the Water Pollution Control Board or its successors.

D. Construction defined:

327 IAC 19-2-9 "Construction" defined

"Construction", as defined in IC 13-11-2-40.8, for purposes of IC 13-18-10, means the fabrication, erection, or installation of a facility or manure control equipment at the location where the facility or manure control equipment is intended to be used. The term does not include the following:

- (1) The dismantling of existing equipment and control devices.
- (2) The ordering of equipment and control devices.
- (3) Off-site fabrication.

E. Feedlot defined:

327 IAC 19-2-14 "Feedlot" defined

"Feedlot" means an outside lot or pen used for confined feeding, including areas that may be covered, partially covered, or uncovered.

F. Flood Plain defined per FEMA:

FEMA: Floodplain--Any land area susceptible to being inundated by floodwaters from any source.

Flood Hazard Boundary Map (FHBM)--Official map of a community issued by FEMA, where the boundaries of the flood, mudflow and related erosion areas having special hazards have been designated.

G. Manure/Waste defined:

327 IAC 19-2-25 "Manure" defined

"Manure", as defined in IC 13-11-2-126.5, means the following:

- (1) Liquid or solid animal excreta.
- (2) Waste liquid generated at a livestock or poultry production area, including the following:
 - (A) Excess drinking water.
 - (B) Cleanup water.
 - (C) Contaminated livestock truck or trailer washwater.
 - (D) Milking parlor wastewater.
 - (E) Milk house washwater.
 - (F) Egg washwater.
 - (G) Silage leachate.
- (3) Any precipitation or surface water that has come into contact with the following:
 - (A) Liquid or solid animal excreta.
 - (B) Used bedding.
 - (C) Litter.
 - (D) Liquid described in subdivision (4).
- (4) Any other materials generated at a livestock or poultry production area commingled with the materials listed in subdivisions (1) through (3).

H. Manure/Waste Storage Facility defined:

327 IAC 19-2-28 "Manure storage facility" defined

"Manure storage facility" means any:

(1) pad; (2) pit; (3) pond; (4) lagoon; (5) tank; (6) building; or (7) manure containment area; used to store or treat manure, including any portions of buildings used specifically for manure storage or treatment.

I. Mortality Management / "Animal Composting"

327 IAC 19-7-6 Mortality management (Water Pollution Control Division)

(a) CFOs must carry out proper management of dead livestock as required by 345 IAC 7-7 to ensure that there shall be:

(1) no discharge of mortality or liquids that have been in contact with mortality to waters of the state; and Indiana Administrative Code Page 17(2) no disposal in a manure storage facility that is not specifically designed to treat animal mortalities.

(b) Mortality composting sites must meet all of the following criteria:

(1) Be constructed and operated:

(A) to prevent:

(i) leaching, either through the use of earthen compaction or a concrete pad; and

(ii) run-on and runoff of storm water; and

(B) in accordance with IC 15-17-11.

(2) Comply with setbacks listed in 327 IAC 19-12-3.

J. Owner/Operator defined:

327 IAC 19-2-32 "Owner/operator" defined

"Owner/operator" means the person:

(1) that owns the waste management systems at the CFO;

(2) that:

(A) owns the livestock at the CFO; and

(B) applies for or has received an approval under this Section; or

(3) in direct or responsible charge or control of one (1) or more CFOs..

K. Process Wastewater defined:

327 IAC 19-2-33 "Process wastewater" defined

(a) "Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following:

(1) Spillage or overflow from animal or poultry watering systems.

(2) Washing, cleaning, or flushing any of the following:

(A) Pens; (B) Barns; (C) Manure pits; (D) Other AFO facilities.

(3) Direct contact swimming, washing, or spray cooling of animals.

(4) Dust control at the production area.

(b) The term includes any water that comes into contact with or is a constituent of any raw materials, products, or byproducts, including the following:

(1) Manure; (2) Litter; (3) Feed; (4) Milk; (5) Eggs; (6) Bedding.

L. Production Area defined:

327 IAC 19-2-34 "Production area" defined

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins, and areas within berms and diversions that separate uncontaminated storm water. The term includes any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

M. Surface Water defined

327 IAC 19-2-45 "Surface water" defined

"Surface water" means waters present on the surface of the earth, including:

- (1) streams; (2) lakes; (3) ponds; (4) rivers; (5) swamps; (6) marshes; or (7) wetlands.

N. Waste Management System defined

327 IAC 19-2-48 "Waste management system" defined

"Waste management system" means any approved method of managing manure or process wastewater at the CFO, including:

- (1) manure storage facilities;
- (2) manure transfer systems;
- (3) manure treatment systems, such as a:
 - (A) constructed wetland;
 - (B) vegetative management system; or
 - (C) wastewater treatment system under a valid national pollutant discharge elimination system (NPDES) permit;
- (4) feedlots;
- (5) confinement buildings; or
- (6) waste liquid handling, storage, and treatment systems.

O. Waters defined

327 IAC 19-2-49 "Waters" defined

(a) "Waters", as defined in IC 13-11-2-265, means:

- (1) the accumulations of water, surface and underground, natural and artificial, public and private; or
- (2) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.

(b) The term does not include:

- (1) an exempt isolated wetland;
- (2) a private pond; or
- (3) an off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.

(c) The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C.1362(7)), that are located in Indiana.

216.3 JAY COUNTY REGULATIONS: Setback requirements For CFO's without the use of any open waste storage: For confined feeding operations *without* the use on any open waste storage, all confined lots, feedlots and structures designed to house or contain livestock shall meet the following setbacks applicable to the operation:

A. SETBACKS USING 2 TIER SYSTEM

TIER 1	100 – 500	Cattle or Horses
	300 – 10,000	Swine or Sheep
	500 – 24,000	Ducks
	500 – 30,000	Turkeys – Finishers
	500 – 48,000	Turkeys – Starters
	5,000 – 1,000,000	Chickens

Tier 1 Setbacks: 750' from any Residence not owned by the CFO owner/operator;
 1,250' from church, school, business, public building and any area zoned Commercial (COM);
 1,550' from Rural Residential (RR);
 100' from Property lines;
 100' from Road right of way
 300' from Flood Plain as designated on the FEMA Flood Hazard Boundary Map (FHBM).
 300' from any surface waters of the state, including any county ditch, stream, or waterway.
 See 216.3(B) for additional setback requirements

TIER 2 Any animal number greater than those numbers listed in Tier 1

Tier 2 Setbacks: 1,320' from any Residence not owned by the CFO owner/operator;
 1,750' from church, school, business, public building and any area zoned Commercial (COM);
 2,050' from Rural Residential (RR);
 150' from Property lines;
 150' from Road right of way
 350' from Flood Plain as designated on the FEMA Flood Hazard Boundary Map (FHBM).
 350' from any surface waters of the state, including any county ditch, stream, or waterway.
 See 216.3(B) for additional setback requirements

B. Additional Setback Requirements for CFO's without the use of any open waste storage:

1. 1 mile (5,280 ft) from the corporate limits of Pennville, 1 mile (5,280 ft) from the corporate limits of Redkey, 1/2 mile (2,640 ft) from the corporate limits of Salamonia and 2 miles (10,560 ft) from the corporate limits of Portland. (See City of Portland Zoning Ordinance for regulations).
2. 1 mile to the west, 1 mile to the south, 1/2 mile to the north, and 1/2 mile to the east of the property lines of any Commercial (COM) zoned Recreational Area.
3. 2,000 feet from any nature preserve, park and/or recreational use including such uses as permitted in the Floodplain (FP) District, Section 205 of the Jay County Zoning Ordinance; to include property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project/area.

216.4 JAY COUNTY REGULATIONS: Setback Requirements for any Open Waste Storage:

ALL open waste storage facilities and/or structures shall meet the following setbacks applicable to the operation based on the number of animals:

A. SETBACKS USING 2 TIER SYSTEM

TIER 1	100 – 500	Cattle or Horses
	300 – 10,000	Swine or Sheep
	500 – 24,000	Ducks
	500 – 30,000	Turkeys – Finishers
	500 – 48,000	Turkeys – Starters
	5,000 – 1,000,000	Chickens

Tier 1 Setbacks: 1,250' from any Residence not owned by the CFO owner/operator;
 1,500' from church, school, business, public building and any area zoned Commercial (COM);
 2,000' from Rural Residential (RR);
 100' from Property lines;
 100' from Road right of way
 300' from any surface waters of the state, including any county ditch, stream, or waterway
 See 216.4(B) for additional setback requirements

TIER 2 Any animal number greater than those numbers listed in Tier 1

Tier 2 Setbacks: 1,500' from any Residence not owned by the CFO owner/operator;
 2,000' from church, school, business, public building and area zoned Commercial (COM);
 2,500' from Rural Residential (RR);
 150' from Property lines;
 150' from Road right of way
 350' from any surface waters of the state, including any county ditch, stream, or waterway
 See 216.4(B) for additional setback requirements

B. Additional Setback Requirements for CFO's with any open waste storage

1. 1 mile (5,280 ft) from the corporate limits of Pennville, 1 mile (5,280 ft) from the corporate limits of Redkey, 1/2 mile (2,640 ft) from the corporate limits of Salamonina and 2 miles (10,560 ft) from the corporate limits of Portland. (See City of Portland Zoning Ordinance for regulations).
2. 1 mile to the west, 1 mile to the south, 1/2 mile to the north, and 1/2 mile to the east of the property lines of any Commercial (COM) zoned recreational area.
3. 2,000 feet from any nature preserve, park and/or recreational use including such uses as permitted in the Floodplain (FP) District, Section 205 of the Jay County Zoning Ordinance; to include property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project/area.
4. Setback from any Floodplain area as designated on the FEMA Flood Hazard Boundary Map (FHBM) as listed below:
 - a. 1 million gallon lagoon -- 500 feet from the flood plain
 - b. 5 million gallon lagoon -- 1,200 feet from the flood plain
 - c. 10 million gallon lagoon -- 1,800 feet from the flood plain
 - d. 15 million gallon lagoon -- 2,000 feet from the flood plain

In a case where the gallon amount falls between two of the stated amounts listed above, the further setback distance will be used.

5. Setbacks for any new and/or expansion of existing open waste storage facility will be based on the number of animals of the operation per the 2 Tier System.

216.5 Animal Composting Structure/Facility Regulations & Setbacks

Any animal composting structure/facility shall meet the setbacks as required for the permitted CFO as stated in Subsections 216.3 and 216.4 *and/or* shall comply with the following setbacks including all setbacks required by IDEM per 327 IAC 19-7-6 Mortality Management/Animal Composting (Water Pollution Control Division) and 327 IAC 19-12-3 Setbacks.

1. 1,000 feet from a public water supply well or public water supply surface intake structure.
2. 300 feet from the following:
 - a. Surface water.
 - b. Drainage inlets, including water and sediment control basins.
 - c. Sinkholes, as measured from the surficial opening or the lowest point of the feature.
 - d. Off-site water wells
3. 100 feet from the following:
 - a. On-site water wells.
 - b. Property lines.
 - c. Public roads.
4. 400 feet from any existing off-site residential and public buildings.

216.6 Satellite Manure Storage Structure/Facility “SMSS”

A satellite manure storage structure (SMSS) means a structure and any associated structures that are designed to store off site manure, both solid and liquid (regardless of the size or storage capacity), and is not located at a privately owned livestock or poultry production area. A SMSS includes, but is not limited to a building, pad, lagoon, pit, pond or tank. A SMSS must also comply with all regulations as set forth by IDEM along with the regulations as set forth in this Section and Ordinance.

A. Zoning Classification:

A SMSS is considered a business and shall only be permitted on property with a zoning classification of Environmental Protection (EP) per Section 211 of this Ordinance.

B. Setback Requirements:

All SMSS structures and/or manure storage structures (open and/or enclosed) must comply with the following setback requirements:

1. 2,640' (1/2 Mile) from any residence;
2. 3,000' from any church, school, business, public building and area zoned Commercial (COM);
3. 3,500' from Rural Residential (RR);
4. 1,000' from Property lines;
5. 1,000' from Road right of way;
6. 1 mile from the corporate limits of Bryant, Dunkirk, Pennville, Redkey, Salamonia, and 2 miles from the corporate limits of Portland (Portland has a 2-mile jurisdictional area);
7. 1 mile from the property lines of any Commercial (COM) zoned Recreational Area;
8. 500 feet from any surface waters of the state, including any county ditch, stream, or waterway;
9. 2,640 feet from any nature preserve, park and/or recreational use including such uses as permitted in the Floodplain (FP) District, Section 205 of the Jay County Zoning Ordinance. This includes property owned by IDNR, Friends of the Limberlost and/or any such property associated with the Loblolly reconstruction project/area;
10. Setback from any Floodplain area as designated on the FEMA Flood Hazard Boundary Map (FHBM) as listed below:

a.	0 - 1 million gallon lagoon	--	750 feet from the flood plain
b.	5 million gallon lagoon	--	1,500 feet from the flood plain
c.	10 million gallon lagoon	--	2,250 feet from the flood plain
d.	15 million gallon lagoon	--	3,000 feet from the flood plain

In a case where the gallon amount falls between two of the stated amounts listed above, the further setback distance will be used.

C. Screening:

The SMSS facility shall provide a screen of vegetation and/or a fence may be employed to screen the operation. The vegetation and/or fence must be sufficient to screen the operation from sight as well as provide for public safety. The proposed vegetation and/or fence shall be identified and located on a site map and submitted to and approved by the Zoning Administrator/Director prior to the issuance of a Certificate of Compliance.

D. Application and Permitting:

The application and permitting process for a proposed SMSS shall be the same as for a proposed confined feeding operation (see Subsection 216.8).

216.7 SETBACK PROTECTION FOR THE CONFINED FEEDING OPERATOR

No residence (except that of the confined feeding owner/operator), no church, school, business, public building, area zoned Commercial (COM) or any recreational area under public or private ownership zoned Commercial (COM) may be constructed within the setback requirements applicable to an existing or granted (permitted or otherwise) confined feeding operation per the Tier System as set forth in Sections 216.3 and 216.4 of this Ordinance without an approved variance from the Board of Zoning Appeals.

216.8 CONFINED FEEDING OPERATION APPLICATIONS & PERMITS**A. Intent to Build/Confined Feeding Application Requirements:**

Prior to any construction or expansion of a confined feeding operation (CFO), the applicant/operator shall file with the Zoning Administrator/Director an application referred to in this Ordinance as a "Intent to Build/Confined Feeding Application". The filing shall include, but not limited to, the following:

1. The completed application signed by the applicant/operator and property owner (when applicable)
2. A site plan drawn to scale to include the following:
 - a. The entire property and the features of the property including all rights-of-way, easements, property lines and setbacks;
 - b. All existing and proposed buildings, structures, waste containment areas and/or other site improvements with the dimensions of such improvements including the number of stories and/or the height of proposed buildings and/or structures;
 - c. The use to be made of the proposed buildings, structures and/or land;
 - d. The distances from all proposed buildings, structures and/or site improvements to the property lines and right-of-ways;
 - e. The location of any existing or proposed water well and/or septic field;
 - f. The location of any existing or proposed driveway(s) and/or parking areas;
3. If the applicant/operator elects to be, or the operation is required to be subject to IDEM regulations, a copy of such proposal as submitted to IDEM may be required at the time of filing.
4. If the proposed animal feeding operation does not meet the requirements to be subject to IDEM regulations, a copy of the supplier's contract certifying the number of animals to be supplied to the confined feeding operation may be required.
5. Any other information required by the Zoning Administrator/Director for the proper enforcement of this Ordinance.
6. Payment of all required fees for filing of the Intent-To-Build/Confined Feeding Application including those fees for all notices published and/or mailed.

B. Intent To Build/Confined Feeding Application Review & Approval:

1. Upon receiving the application and site plan, the Zoning Administrator/Director shall:
 - a. Contact the Jay County Surveyor, Jay County Engineer and Jay County Highway Department. All will review the site plan and make a site inspection and report back to the Zoning Administrator/Director within two (2) weeks of any concerns they may have with the proposed plan;
 - b. Notify all property owners and/or tenants within a 1/2 mile radius of the proposed construction site via regular mail of the proposed plan. A legal notice shall also be published in the local newspaper of the proposed plan. All required notices will be paid for by the applicant along with the applicable filing fee at the time of filing;
 - c. Accept public comments, in writing only, for a period of 30 days from the date of the notice. All public comments will be reviewed by the Zoning Administrator/Director, Jay County Surveyor, Jay County Engineer, Jay County Highway Department and the Jay County Commissioners.
2. After reviewing the application, results of the site inspection and public comments received, if the applicant is in compliance with the regulations as set forth in this Section and Ordinance, along with approval from, but not limited to, the following Departments applicable to the project,
 - a. Jay County Soil & Water Conservation District (*local IDEM Rule 5 Regulations*),
 - b. Indiana Department of Environmental Management (*IDEM*),
 - c. Jay County and/or Indiana Health Department (*septic systems & water wells*).

The applicant/operator may then obtain a Building Permit and shall pay the applicable fees associated with the construction and/or expansion of the project.
3. If the applicant/operator is subject to IDEM regulations and has received IDEM approval for the project, the Intent to Build/Confined Feeding Application and Building Permit will be valid for the length of time the IDEM approval is valid.
4. If the applicant/operator is subject to IDEM regulations but does not file with IDEM, the Intent to Build/Confined Feeding Application will only be valid for a period of 1 year (12 months) from the date of application.
5. If the applicant/operator is not subject to IDEM approval, the Intent to Build/Confined Feeding Application will be valid for a period of 1 year (12 months) from the date of application approval. The Building Permit will be valid for a period of 12 months/1 year from the date of issuance.

C. Confined Feeding Operation Permits & Fees:

The Intent to Build/Confined Feeding Application, including all required documentation shall be filed with the Zoning Administrator/Director together with the application filing fee as specified in the Official Fee Schedule along with payment for all notices published and/or mailed.

When the project has final approval from the Zoning Administrator/Director, prior to the undertaking of any construction, expansion or alteration on the subject site, the applicant must obtain a Building Permit and pay the applicable permit fee(s) as specified in the Official Fee Schedule, which is maintained by the Zoning Administrator/Director.

No Building Permit will be issued unless the project is in conformity with the provisions of this Section and/or Ordinance, and no construction may begin at the project site without the proper permit(s) issued by the Zoning Administrator/Director.

216.9 Violations:

Any person/operator/owner in violation of this Section and/or Ordinance will be subject to the provisions as set forth in Article 4, Section 404 of this Ordinance.

Official Fee Schedule for Confined Feeding as follows:

1. Intent to Build/Confined Feeding Application Fee **\$ 350.00**
(Applicant pays for all notification letters & notices)

2. Building Permit Fees Regarding Confined Feeding Operations:
(After application approval, prior to any construction/expansion)

Charge a flat fee of:

- \$ 200.00 per animal building**
(regardless of size or number of stories)
- \$ 100.00 per waste handling facility**
(lagoons, composting structure, processing structure/facility, etc...)
- \$ 50.00 per additional structures on site**
(storage buildings, office buildings, etc...)

3. Satellite Manure Storage Structure “SMSS” Application Fee **\$ 350.00**
(Applicant pays for all notification letters & notices)

4. Permit for Satellite Manure Storage Structure “SMSS” Facility **\$ 500.00**