



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

June 28, 2024

NOTICE OF DECISION

Reauthorization of Construction

The Indiana Department of Environmental Management (IDEM) issued a permit decision for Top Grade Production LLC, Farm ID # 3713. This farm is located at 5504 N 400 W, Howard County, Indiana. This permit can be viewed online at IDEM's Virtual File Cabinet (VFC) website using the following steps:

1. Visit IDEM's Virtual File Cabinet (VFC) page at <https://www.in.gov/idem/legal/public-records/virtual-file-cabinet>, which is the VFC page.
2. Once there, click on the **Virtual File Cabinet** in the blue box.
3. Select the **Quick Search** dropdown arrow.
4. Select CFO/CAFO #.
5. Enter the Farm ID # **3713** in the box to the right of the **Quick Search box**.
6. Click the **Search arrow**, which will create a list of links to relevant documents for the farm selected.
7. The date on the approval document will match the date of this notice; if multiple pages are brought up you may click on the dropdown arrow in the **Page 1 of x** area above the list of documents to view additional pages with document links.
8. To find and review the permit decision, click on the blue highlighted numbers in the **Content Id** column for the document date that matches the date of this notice. If the permit decision is not yet available when you first search, try again later, it will soon be posted.

If you don't have access to the internet, please contact the Office of Records Management at (317) 232-8667, or toll free at (800) 451-6027 and ask for the Office of Records Management, to receive a hard copy of the documents. If you have questions specific to this approval you may contact Kraig Whitman, Permit Manger at (317) 234-5130. If your questions relate to the appeal process see the **Notice of Right to Administrative Review** on the back of this letter and follow the directions given.

Sincerely,

Joseph D Goetz, Section Chief
Confined Feeding Permits Section
Office of Land Quality

Enclosure: Notice of Right to Administrative Review



Visit on.IN.gov/survey or scan the QR code to provide feedback.

We appreciate your input!



Notice of Right to Administrative Review

If you wish to challenge this decision, you must file a Petition for Administrative Review with the Office of Environmental Adjudication (OEA), and serve a copy of the petition upon IDEM. The requirements for filing a Petition for Administrative Review are found in IC 4-21.5-3-7, IC 13-15-6-1 and 315 IAC 1-3-2. A summary of the requirements of these laws is provided below.

A Petition for Administrative Review must be filed with the Office of Environmental Adjudication (OEA) within fifteen (15) days of the issuance of this notice (eighteen (18) days if you received this notice by U.S. Mail), and a copy must be served upon IDEM. Addresses are:

Director
Office of Environmental Adjudication
Indiana Government Center North
Room N103
100 North Senate Avenue
Indianapolis, Indiana 46204

Commissioner
Indiana Department of Environmental Management
Indiana Government Center North
Room 1301
100 North Senate Avenue
Indianapolis, Indiana 46204

The petition must contain the following information:

1. The name, address and telephone number of each petitioner.
2. A description of each petitioner's interest in the approval.
3. A statement of facts demonstrating that each petitioner is:
 - a. a person to whom the order is directed;
 - b. aggrieved or adversely affected by the approval; or
 - c. entitled to administrative review under any law.
4. The reasons for the request for administrative review.
5. The particular legal issues proposed for review.
6. The alleged environmental concerns or technical deficiencies of the approval.
7. The approval terms and conditions that the petitioner believes would be appropriate and would comply with the law.
8. The identity of any persons represented by the petitioner.
9. The identity of the person against whom administrative review is sought.
10. A copy of the approval that is the basis of the petition.
11. A statement identifying petitioner's attorney or other representative, if any.

Failure to meet the requirements of the law with respect to a Petition for Administrative Review may result in a waiver of your right to seek administrative review of the approval. Examples are:

1. Failure to file a Petition by the applicable deadline;
2. Failure to serve a copy of the Petition upon IDEM when it is filed; or
3. Failure to include the information required by law.

If you seek to have the approval stayed during the administrative review, you may need to file a Petition for a Stay of Effectiveness. The specific requirements for such a Petition can be found in 315 IAC 1-3-2 and 315 IAC 1-3-2.1.

Pursuant to IC 4-21.5-3-17, OEA will provide all parties with notice of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action. If you are entitled to notice under IC 4-21.5-3-5(b) and would like to obtain notices of any pre-hearing conferences, preliminary hearings, hearings, stays, or orders disposing of the review of this action without intervening in the proceeding you must submit a written request to OEA at the address above.

More information on the review process is available at the website for the Office of Environmental Adjudication at <http://www.in.gov/oea>.



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Response to Public Comments:

**Re: Comment Letter Response Summary
Confined Feeding Operation (CFO)
Top Grade Production LLC
Howard County
Farm ID# 3713**

On March 11, 2024, Top Grade Production LLC, submitted to the Indiana Department of Environmental Management (IDEM) an application seeking reauthorization of approval to construct and operate a swine operation to be located at 5504 N 400 W, near Kokomo, Indiana.

The application requested reauthorization to construct a previously approved expansion to its existing swine operation. The site also submitted a modification to their original, approved design plans for structures 8P and 9P due to the DNR floodway and floodplain fringe that have been mapped on the site after the original approval was granted. These changes decrease the size and animal capacity of structure 9P and increase the resistance to hydrostatic pressures for both structures.

Comments that were received have been consolidated and paraphrased for efficiency of response. Those people who provided IDEM a full return mailing or email address are receiving this “Response to Public Comments” Responsiveness Summary.

The following responses have been prepared by IDEM staff to address the comments about the proposed swine operation.

General comments received through written and oral communication:

- **Comment:** There are concerns over surface and ground water pollution and water well contamination resulting from the proposed operations land application of liquid manure.

Response: The CFO regulation provides a great deal of oversight when it comes to issues that address protecting Indiana’ ground and surface water quality. This oversight begins with design and construction requirements then continues with manure handling and land application activities and concludes with self-monitoring and record keeping requirements, which are reviewed by our compliance staff during farm inspections. All of the state standards for design of waste storage structures, and the standards for land applying the manure are intended to provide



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a high level of water quality protection. The waste storage structures designed for this project meet the required protective design standards. Manure land application rates are based on either phosphorus or nitrogen, both of which are constituents of the manure. IDEM requires the manure to be applied at rates based on soil phosphorus levels and the crop nitrogen and phosphorus demands of the crop to be grown following land application. Limiting the manure application rates based on these considerations serve well to minimize the loss of nitrogen or phosphorus to runoff or leaching. This process and logic is a recommended measure to protect water quality and recycle nutrients from the manure through producing crops which need nitrogen and phosphorus fertilizer.

- **Comment:** Several comments expressed concern about the proximity of the operation to features such as the Manson Kingery Ditch, off-site wells, possible sinkholes, and the Galveston city limits.

Response: IDEM regulations contain setbacks specific to CFO facilities and their location in relation to certain features, such as: public water supplies, property lines, county roads, onsite and offsite water wells, surface waters of the state, and neighboring residences. If all IDEM facility setbacks and regulations are met IDEM has no discretion to deny a location based on concerns outside IDEM's regulatory jurisdiction to consider during the review process. Additionally, applicants may propose and implement features, referred to as Alternative Compliance Approaches (ACA's), which divert surface water flow in a way that is equally protective and achieves the distance of the required setbacks.

- **Comment:** Several comments expressed concern about the proximity of the operation to the floodplain and floodway

Response: During the review process, it was found that the Indiana Department of Natural Resources (DNR) had updated their floodplain and floodway mapping after the original approval to expand was granted for this operation on April 22, 2019. These updates show that the floodplain and floodway are closer to the operation than what was understood during the original approval process. As noted in the introduction to this letter, the designs of the approved structures have been updated to accommodate this new information and the new designs meet all standards required by IDEM and were reviewed and approved by IDEM CFO technical staff.

- **Comment:** Manure generated and land applied on this farm will end up in local streams, rivers and lakes.

Response: Manure will be land applied at agronomic rates to assure proper utilization of the nutrients in the manure by field crops. This minimizes the potential of nutrients leaching into groundwater and surface waters of the state. Setback distances in both the IDEM CFO rules and the Office Indiana State Chemist rule are designed to buffer the area around a field or sensitive area to minimize any potential effect of runoff from the manure application site. The records of land application must be kept in the farm's operating records for at least five years and

these land application records are thoroughly checked by IDEM compliance inspectors during visits to the farm.

- **Comment:** Several comments expressed concern about property zoning, road usage, and reduced property values.

Response: IDEM is given authority through legislation and the rules to regulate CFOs based on water quality concerns. Other concerns relative to property zoning classification, road usage, and property values are outside of the agency's authority to address through the permitting process. In some counties land use ordinances provide citizens the opportunity to object to the county zoning or construction permit approval.

- **Comment:** There are several comments that express concern that odors/air borne pathogens from the proposed swine operation will negatively affect the quality of life for those living near the proposed farm or visiting the area.

Response: The odors commonly associated with swine production sites and the land application of manure from those sites represent the main concern this office receives about swine operations. IDEM is given the authority through legislation and the rules to regulate CFOs based on water quality concerns. To date there are currently no federal or state odor standards to impose or consider during the permit review process. In some counties land use ordinances provide citizens the opportunity to object to the county zoning or construction permit approval. Odor related concerns can be considered by county and local zoning objections and may influence zoning decisions.

- **Comment:** Concerns about disease and bacteria that may present in the manure.

Response: Neither IDEM nor the United States EPA have any regulations in regard to pathogen reduction requirements for animal waste. Historically, manure has been used as a crop supplement since the beginning of cultivation of the land to grow food. Manure is the primary source of plant nutrients in most organic farming operations. IDEM's CFO program focuses on the obvious manure nutrient constituents and how to utilize those nutrients with the production of crops while minimizing the potential of the nutrients having a negative impact to surface or ground waters.

- **Comment:** There are potential public health concerns resulting from this proposed farm's activities.

Response: The Indiana Confined Feeding Control Law and IDEM's CFO rules are based on protecting the quality of Indiana's surface and ground water. Protecting the quality of Indiana's water resources serves to protect the public health by minimizing the risk of pollutant contact via the ground and surface water exposure pathway.

- **Comment:** There are concerns regarding how an operation of this size could be allowable on the existing lot.

Response: IDEM does not have regulations that limit the number of animals or structures that can be permitted at a CFO. IDEM regulations contain setbacks specific to CFO facilities and their location in relation to certain features, such as: public water supplies, property lines, county roads, onsite and offsite water wells, surface waters of the state, and neighboring residences. IDEM regulations also require applicants to demonstrate that manure storage structures at the operation have adequate capacity for the number of animals approved to be on site. If all IDEM facility setbacks and regulations are met IDEM has no discretion to deny a location based on concerns outside IDEMs regulatory jurisdiction to consider during the review process.

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The review of the CFO permit application submitted by Top Grade Production LLC has been completed and found to satisfy all applicable requirements under the Confined Feeding Control Law (IC 13-18-10) and associated regulation 327 IAC 19.

You can view public records for CFO Approvals on IDEM's Virtual File Cabinet (VFC) website. Go to <https://www.in.gov/idem/legal/public-records/virtual-file-cabinet>, which is the VFC page. Once there, click on the **Virtual File Cabinet** in the blue box. Select the "**Quick Search**" option in the upper right hand corner. Select "**CFO/CAFO #**" from the dropdown menu. Type in the farm ID #, **3713**, in the box to the right of the "**Quick Search**". Click the **Search arrow** button. You can sort the search results by clicking on the title at the top of the column for each of the following categories: **Content Id, Document Date, or Document Type**. IDEM posts documents within approximately 5 days of when we send or receive them. Contact us if you cannot locate a particular document.

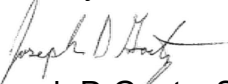
A weekly posting of pending permits is located on our agency website at: <http://www.in.gov/idem/landquality/2349.htm>.

This decision becomes effective immediately upon issuance unless a person aggrieved or adversely affected by the decision files a request for an administrative review and stay of the decision. For more information on appealing this decision, please refer to the attached "*Notice of Right to Administrative Review*" document.

For more information, you can access the Confined Feeding Operations Rule 327 IAC 19 at the following link: <http://www.in.gov/legislative/iac/T03270/A00190.PDF>.

If you have any questions, please call Kraig Whitman, at (317) 234-5130

Sincerely,



Joseph D Goetz, Section Chief
Confined Feeding Permits Section
Office of Land Quality

Enclosure: Appeal Procedure

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