

**OBJECTION TO THE APPROVAL REVOCATION  
IC 13-18-10 CONFINED FEEDING CONTROL LAW  
327 IAC 19 CONFINED FEEDING OPERATION REGULATION  
FARM ID: 2219; ANIMAL WASTE NO.: AW-6108  
WR FARMS, LLC  
2025 OALP 040, CAUSE NO.: IDEM-2406-001285**

<b>Official Short Cite Name:</b>	WR Farms, LLC, 2025 OALP 040
<b>Cause Nos.:</b>	IDEM-2406-001285 (OEA 24-W-J-5294)
<b>Topics/Keywords:</b>	CFO approval revocation IC § 13-30-2-1(1) 327 IAC 10-4-1(b)(3) 327 IAC19-8-5 327 IAC 19-3-1(d) 327 IAC 19-13-1(c) 327 IAC 19-7-6(b) 327 IAC 19-11-2(a)          
<b>Presiding ELJ:</b>	Hon. Lori Kyle Endris
<b>Party Representatives:</b>	Petitioner - Pro Se, David Witmer Jr. and Adam Witmer  Respondent, IDEM, Susanna Bingman, Esq. and Brooke Werstler, Esq.
<b>Order Issued:</b>	April 10, 2025
<b>Index Category:</b>	Land - Solid Waste
<b>Further Case Activity:</b>	



ISSUED: April 10, 2025

**STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

David Witmer Jr.,  
**Permittee/Petitioner,**

**v.**

INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT,  
**Respondent.**

**Administrative Case Number:** IDEM-2406-001285 OEA  
24-W-J-5294

**Agency Number:** Farm ID: 2219; Animal Waste ID: 6108

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER**

The Administrative Law Judge (ALJ) having considered the Petition for Administrative Review, record of the proceedings, testimony and evidence at the Final Hearing now issues this Final Order addressing the Indiana Department of Environmental Management's (IDEM) Revocation of Animal Waste ID Approval 6108. The ALJ, being duly advised and by substantial evidence,<sup>1</sup> now makes the following findings of fact and conclusions of law, and enters a final order:

**Jurisdiction**

IDEM is authorized to implement and enforce specified Indiana environmental laws, and rules promulgated relevant to those laws. Ind. Code § 13-13, *et seq.* The Office of Administrative Law Proceedings (OALP or Court) has jurisdiction over this case pursuant to Ind. Code § 4-15-10.5-12.

**Issue**

Whether IDEM exceeded its statutory and regulatory authority<sup>2</sup> in revoking Permittee/Petitioner's Approval.

**Procedural History**

1. David Witmer Jr. (Permittee/Petitioner) owns WR Farms, LLC, a confined feeding swine operation (CFO) located at 2007 N. Roussey Road in New Haven, Allen County, Indiana.<sup>3</sup> The CFO Approval was renewed on July 8, 2021.<sup>4</sup>
2. On May 15, 2024, IDEM revoked Permittee/Petitioner's Approval pursuant to IC § 13-18-10-2.1 and 327 IAC 19-8-5(a).

<sup>1</sup> IC § 4-21.5-5-14(d)(5).

<sup>2</sup> IC § 13-18-10-2.1; 327 IAC 19-8-5(a).

<sup>3</sup> IDEM Ex. M, p. 000120.

<sup>4</sup> *Id.*

3. On May 28, 2024, Permittee/Petitioner filed a Petition for Administrative Review.
4. On February 5, 2025, the Final Hearing on Permittee/Petitioner's Petition for Administrative Review and Adjudicatory Hearing of IDEM's May 15, 2024 Revocation of WR Farms, LLC's Confined Feeding Operation Approval for Farm ID# 2219 was held.

#### Findings of Fact

1. The Indiana Department of Environmental Management is authorized to implement and enforce specified Indiana environmental laws and rules promulgated relevant to those laws. IC § 13-13, et seq.
2. The CFO contains swine confinement structures, mortality compost structures and a clay lined earthen storage lagoon for manure storage.<sup>5</sup> Permittee/Petitioner is responsible for complying with the Approval.<sup>6</sup>
3. The CFO's manure lagoon sits less than 200 feet to the east of Rushart Ditch, a water of the state.<sup>7</sup> A grassed stormwater ditch, also a water of the state, sits directly south of the manure lagoon, and flows into Rushart Ditch.<sup>8</sup> A field tile located to the north of the manure lagoon also outlets into Rushart Ditch.<sup>9</sup>
4. On March 22, 2024 and April 3, 2024, IDEM Inspector Jeffery Matthew Brown (Inspector Brown), Senior Environmental Manager of the Compliance and Response Branch of the Office of Land Quality (OLQ), conducted inspections of the CFO.<sup>10</sup> At the Final Hearing Inspector Brown testified that he observed the following during his inspections:
  - a. The manure lagoon was at capacity and completely covered the two-foot freeboard mark in violation of 327 IAC 19-13-1(d). Dirt had been pushed up around the lagoon to prevent manure from coming out of the lagoon.<sup>11</sup>
  - b. There were signs that the manure lagoon had overtopped multiple times as evidenced by eroded soil around the lagoon's border and distressed vegetation.<sup>12</sup> In addition, some of the holes that had been dug around the manure lagoon to help prevent overtopping had grass growing in them, which indicated they were not freshly dug.<sup>13</sup>

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<sup>5</sup> *Id.* at p. 000124.

<sup>6</sup> Transcript, pp. 81:8-10.

<sup>7</sup> Transcript, pp. 38:7-14.

<sup>8</sup> Transcript, pp. 39:8-20.

<sup>9</sup> Transcript, pp. 39:1-7.

<sup>10</sup> IDEM Ex. A, p. 000001.

<sup>11</sup> Transcript, pp. 41:6-16. *See also* Approval Revocation, pp. 1 – 2.

<sup>12</sup> Transcript, pp. 42:3-8.

<sup>13</sup> Transcript, pp. 42:9-20.

- c. The mortality compost structures had leachate runoff and extensive rutting surrounding the structures in violation of 327 IAC 19-7-6(b).<sup>14</sup>
  - d. One of the compost structures was not on the CFO Approval's farmstead map as required.<sup>15</sup>
  - e. Manure was observed coming out of several structures and running off-site, including Barn E4/E5, which was filled over capacity.<sup>16</sup> The manure was observed migrating to the south, off the property, into a neighboring farm field.<sup>17</sup>
  - f. On April 3, 2024, over a week after IDEM's initial inspection, the lagoon was still at capacity and actively overtopping and flowing into a neighboring farm field.<sup>18</sup>
  - g. No facility records or land application records were available for IDEM's review as required.<sup>19</sup>
5. Inspector Brown took water samples during his March 22 and April 3 inspections to test for the presence of ammonia/nitrogen.<sup>20</sup> These field tests are used to test for the presence of manure and range from non-detect to eight parts per million ammonia/nitrogen.<sup>21</sup> Samples taken from the stormwater ditch that runs south of the manure lagoon, standing water around the compost structure, and the farm field to the south all tested for eight parts per million, indicating that manure was present.<sup>22</sup>
  6. Permittee/Petitioner was present during both the March 22 and April 3, 2024 inspections, and Inspector Brown informed him what corrective actions he needed to take.<sup>23</sup>
  7. On April 11, 2024, IDEM sent a Summary Letter/Referral to Enforcement to Permittee/Petitioner detailing the violations observed by IDEM and what actions needed to be taken to return the CFO to compliance.<sup>24</sup>
  8. On April 30, 2024, Scott Frosch with OLQ's Emergency Response inspected the CFO following a call from Permittee/Petitioner regarding a spill<sup>25</sup> on the property. Emergency Responder Scott Frosch is no longer employed at IDEM; his RM Record detailing his findings from his April 30, 2024 inspection was admitted into the Record without objection.<sup>26</sup>

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<sup>14</sup> Transcript, pp. 44:19-21.

<sup>15</sup> Transcript, pp. 45:2-4; *see also* [https://www.in.gov/idem/cfo/files/guidance\\_manual\\_cfp.pdf](https://www.in.gov/idem/cfo/files/guidance_manual_cfp.pdf).

<sup>16</sup> Transcript, pp. 40:14-16, 45:21-22, 49-50:21-1.

<sup>17</sup> Transcript, pp. 46:4-19, 51:13-16.

<sup>18</sup> Transcript, pp. 48:5-8, 50:7-14.

<sup>19</sup> Transcript, pp. 52:4-10.

<sup>20</sup> Transcript, pp. 48:12-19.

<sup>21</sup> Transcript, pp. 48-49:16-1.

<sup>22</sup> Transcript, pp. 51-52:17-3; IDEM Ex. A 000005.

<sup>23</sup> Transcript, pp. 37:19-21, 43:12-14; IDEM Ex. A 000005.

<sup>24</sup> IDEM Ex. A.

<sup>25</sup> *See* 327 IAC 2-6.1.

<sup>26</sup> IDEM Ex. C.

9. On April 30, 2024, Inspector Brown also conducted an inspection of the CFO.<sup>27</sup> Inspector Brown testified that he observed the following violations:
  - a. The lagoon was actively overtopping, and manure was entering Rushart Ditch.<sup>28</sup>
  - b. Manure was going onto the properties to the North and South in such an amount that residue was building up on the surface. Permittee/Petitioner had not removed any of the manure from either of the neighboring fields.
10. Inspector Brown took field samples during the April 30, 2024 inspection. One sample was taken from the field tile to the north of the manure lagoon which outlets directly into Rushart Ditch.<sup>29</sup> The sample indicated eight parts per million ammonia/nitrogen.<sup>30</sup> Inspector Brown testified that he believed the source of the ammonia/nitrogen was the manure lagoon.<sup>31</sup> Inspector Brown took a field sample directly in Rushart Ditch, which detected ammonia/nitrogen.<sup>32</sup> Inspector Brown also took a field sample from the farm field to the north of the CFO, which tested eight parts per million ammonia/nitrogen.<sup>33</sup>
11. Permittee/Petitioner was present for the April 30, 2024 inspection, and Inspector Brown again instructed him on what he needed to do to correct the violations.<sup>34</sup>
12. On May 13, 2024, IDEM sent a Revised Violation Letter/Referral to Enforcement to Permittee/Petitioner detailing the violations observed by IDEM and what actions he needed to take to return to compliance.<sup>35</sup> The Letter noted that Permittee/Petitioner had not taken reasonable steps to prevent manure releases, spills or discharges from the lagoon, buildings, and the facility in general. Inspector Brown testified that by this point, he would have expected Permittee/Petitioner to have lowered the lagoon level and prevented runoff from coming out of the compost structures and the buildings.<sup>36</sup>
13. On May 2, 2024, the Indiana Farm Bureau, the Indiana Pork Producers Association, and members of IDEM staff met to discuss the conditions at the CFO, IDEM's initial inspections, and how the CFO was deteriorating.<sup>37</sup> Indiana Farm Bureau and the Indiana Pork Producers Association informed IDEM that they had extended Permittee/Petitioner an offer to assist with pumping the manure lagoon down and properly land applying the manure, but he refused.<sup>38</sup>

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<sup>27</sup> Transcript, pp. 54:23.

<sup>28</sup> Transcript, pp. 55:3-4, 11-12.

<sup>29</sup> Transcript, pp. 55:13-22.

<sup>30</sup> Transcript, pp. 55-56:23-3.

<sup>31</sup> Transcript, pp. 56-57:21-1.

<sup>32</sup> Transcript, pp. 57:2-10.

<sup>33</sup> Transcript, pp. 58-59:9-2.

<sup>34</sup> IDEM Ex. O; Transcript, pp. 60:4-7.

<sup>35</sup> IDEM Ex. O.

<sup>36</sup> Transcript, pp. 60:11-23.

<sup>37</sup> Transcript, pp. 62:4-15.

<sup>38</sup> Transcript, pp. 62-63:17-7; IDEM Ex. F.

14. On May 8, 2024, IDEM filed a Verified Motion for an Emergency Temporary Restraining Order and Preliminary Injunction in the Allen Superior Court to enjoin Permittee/Petitioner from unlawfully allowing the manure lagoon to reach capacity and overflow, and releasing manure and wastewater into the environment.<sup>39</sup> IDEM filed its motion because Permittee/Petitioner had not yet lowered the manure lagoon.<sup>40</sup>
15. On May 15, 2024, IDEM issued the Revocation of Permittee/Petitioner's CFO Approval based on IDEM's March 22, 2024, April 3, 2024, and April 30, 2024 inspections.<sup>41</sup> The Revocation violations of IC § 13-30-2-1(1), 327 IAC 19-3-1(d), 327 IAC 19-13-1(d), 327 IAC 19-7-6(b), 327 IAC 19-11-2(a), 327 IAC 5-2-2, 327 IAC 19-3-1(c), 327 IAC 19-14-1, and 327 IAC 19-9-1(b).<sup>42</sup> The Revocation required Permittee/Petitioner to remove all livestock and manure as soon as possible, but not to exceed sixty days.<sup>43</sup>
16. On May 15, 2024, Inspector Brown conducted a follow-up inspection of the CFO.<sup>44</sup> Permittee/Petitioner was present for the inspection.<sup>45</sup> Inspector Brown testified that the lagoon was still at capacity.<sup>46</sup> A field sample taken out of the stormwater ditch showed eight parts per million ammonia/nitrogen.<sup>47</sup> Manure was also still actively coming out of the E4/E5 barn and migrating off the property.<sup>48</sup> On May 21, 2024, IDEM sent a Violation Letter/Referral to Enforcement to Permittee/Petitioner.<sup>49</sup>
17. On May 30, 2024, IDEM inspector Chris Lowell conducted an inspection to determine the freeboard of the lagoon.<sup>50</sup> Inspector Lowell testified that, in response to IDEM's Motion for a Temporary Restraining Order, Permittee/Petitioner had lowered the manure lagoon level to roughly twelve inches of freeboard.<sup>51</sup> Permittee/Petitioner did not provide any land application records for the manure that was pumped out of the manure lagoon.<sup>52</sup> On June 4, 2024, IDEM sent a Violation Letter/Referral to Enforcement to Permittee/Petitioner.<sup>53</sup>
18. On June 24, 2024, IDEM filed a Verified Complaint for Permanent Injunction against Permittee/Petitioner, seeking to enjoin Permittee/Petitioner from causing or allowing further

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<sup>39</sup> IDEM Ex. E.

<sup>40</sup> Transcript, pp. 64:11-13.

<sup>41</sup> IDEM Ex. G.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> IDEM Ex. H.

<sup>45</sup> *Id.*

<sup>46</sup> Transcript, pp. 65:14-19.

<sup>47</sup> IDEM Ex. H 000083.

<sup>48</sup> *Id.*

<sup>49</sup> IDEM Ex. H.

<sup>50</sup> IDEM Ex. I.

<sup>51</sup> Transcript, pp. 73:12-18.

<sup>52</sup> Transcript, pp. 73:19-22.

<sup>53</sup> IDEM Ex. I.

violations of Indiana statutes and regulations concerning the unlawful discharge of manure and operation of the CFO.<sup>54</sup>

19. On August 22, 2024, a Receiver appointed in the matter of First Bank of Berne v. David Witmer Jr. repossessed 948 sows and machinery from the CFO.<sup>55</sup>
20. On October 1, 2024, Inspector Brown conducted a follow-up inspection of the CFO to check the status of the operation.<sup>56</sup> Inspector Brown testified that the lagoon only had approximately one foot of freeboard, and there was still evidence of manure coming out of the E4/E5 Barn.<sup>57</sup> On October 3, 2024, IDEM sent a Violation Letter/Referral to Enforcement to Permittee/Petitioner.<sup>58</sup>
21. To date, Permittee/Petitioner has failed to comply with IDEM's directive to provide land application records.<sup>59</sup> Land application records are critical for ensuring that a CFO is land applying manure at the proper agronomic rate.<sup>60</sup> Without these records, IDEM has no way of verifying where Permittee/Petitioner is taking the manure from the lagoon and barns or whether he is complying with the land application rules.<sup>61</sup>
22. To date, Permittee/Petitioner has failed to comply with IDEM's directive to regain the required two feet of freeboard in the manure lagoon.<sup>62</sup> With the limited amount of freeboard, Inspector Brown testified that he believes the manure lagoon risks overtopping again in the future.<sup>63</sup>
23. To date, Permittee/Petitioner has failed to comply with IDEM's directive to remove the manure that has built up on the neighboring farm fields to the north and south of the CFO.<sup>64</sup>
24. To date, Permittee/Petitioner has failed to comply with IDEM's directive to submit an approval modification to add the additional mortality compost structure to the CFO's farmstead map.<sup>65</sup>

### **CONCLUSIONS OF LAW**

1. This is a Final Order issued under IC § 4-21.5-3-27. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.

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<sup>54</sup> IDEM Ex. J.

<sup>55</sup> IDEM Ex. N.

<sup>56</sup> IDEM Ex. L.

<sup>57</sup> Transcript, pp. 67-68:5-9, 68:14-15.

<sup>58</sup> IDEM Ex. L.

<sup>59</sup> Transcript, pp. 33: 17-18; 52:8-10.

<sup>60</sup> Transcript, pp. 52:13-16.

<sup>61</sup> Transcript, pp. 52-53:17-1.

<sup>62</sup> Transcript, pp. 68:1-5.

<sup>63</sup> Transcript, pp. 68:6-9.

<sup>64</sup> Transcript, pp. 58-59:22-2.

<sup>65</sup> Transcript, pp. 87-88:8-1.

2. IC § 4-21.5-3, et seq. does not require a party to be represented by legal counsel if they are representing their own personal interest, and “a litigant who chooses to proceed pro se is held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of [their choice].” *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004), cited in *Re Clay Township of Hamilton County, Indiana*, 2007 OEA 8, 13. See also *Twin Lakes Reg. Sewer Dist. v. Teumer*, 992 N.E.2d 744 (Ind. App. Ct. 2013); *Wressell v. R. L. Turner Corp.*, 988 N.E.2d 289 (Ind. App. Ct. 2013).
3. This Court must apply de novo review to this proceeding when determining the facts at issue. 315 IAC 1-3-10(b); *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993); *Jennings Water, Inc. v. Office of Env'tl. Adjudication*, 909 N.E.2d 1020, 1025 (Ind. Ct. App. 2009). “De novo review” means that “all issues are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.” *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind. Ct. App. 1981).
4. Findings of fact must be based exclusively on the evidence presented to the Administrative Law Judge, and deference to the agency’s initial factual determination is not allowed. *Id.*; IC § 4-21.5-3-27(d). “The [A]LJ . . . serves as the trier of fact in an administrative hearing and a de novo review at that level is necessary. *United Refuse*, 615 N.E.2d 100, 103. The ALJ does not give deference to the initial determination of the agency.” *Indiana-Kentucky Elec. Corp. v. Comm’r, Ind. Dep’t of Env’tl. Mgmt.*, 820 N.E.2d 771 (Ind. Ct. App. 2005).
5. Given that Permittee/Petitioner filed his Petition for Administrative review prior to July 1, 2024, the following standard of proof applies:

OALP is required to base its factual findings on substantial evidence. *Huffman v. Ind. Office of Env’tl. Adjudication*, 811 N.E.2d 806, 809 (Ind. 2004); see also IC § 4-21.5-3-27(d). “Standard of proof generally has been described as a continuum with levels ranging from a ‘preponderance of the evidence test’ to a ‘beyond a reasonable doubt’ test. The ‘clear and convincing evidence’ test is the intermediate standard, although many varying descriptions may be associated with the definition of this intermediate test.” *In re Moore*, 453 N.E.2d 971, 972, n. 2. (Ind. 1983). The “substantial evidence” standard requires a lower burden of proof than the preponderance test, yet more than the scintilla of the evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993). *Gas America* 347, 2004 OEA 123, 129. See also *In the Matter of: Objection to the Issuance of 327 IAC Article 3 Construction Permit Application Plans & Specifications, Blue River Valley Area Sanitary Sewer & Water Projects*, 2005 OEA 1, 11-12. See also *Winimac, Pulaski County, Indiana; HydroTech Consulting and Engineering, Inc.*, 2005 OEA 26, 41.



6. The CFO Approval requires Permittee/Petitioner to meet all terms and conditions of the Approval, the Confined Feeding Control Law IC § 13-18-10, the Confined Feeding Operation regulations 327 IAC 19, and the Spill Rule 327 IAC 2-6.1.<sup>66</sup>
7. Pursuant to I.C. § 13-18-10-2.1(i), IDEM may amend an Approval under section 1 of this chapter or revoke an approval under section 1 of this chapter: (1) for failure to comply with this chapter, rules adopted under this chapter, the water pollution control laws, or rules adopted under the water pollution control laws, and (2) as needed to prevent discharges of manure into the environment that pollute or threaten to pollute the waters of the state.
8. Pursuant to 327 IAC 19-4-1(b)(3), a CFO approval may be amended, revoked, and reissued, or revoked for causing or threatening to cause harm to the environment.
9. Pursuant to 327 IAC 19-8-5, the commissioner may revoke an approval or a condition of an approval as a result of a violation of: water pollution control laws, rules adopted under the water pollution control laws, Ind. Code 13-18-10, this article, or approval conditions. The commissioner may revoke an approval or condition or modify the terms of an approval through an order of the commissioner under IC § 13-30-3-11.
10. Pursuant to IC § 13-30-2-1(1), no person may discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources, into the environment or into any publicly owned treatment works in any form which causes or would cause pollution which violates or which would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws. Here, Permittee/Petitioner violated IC § 13-30-2-1(1) by allowing manure to come out of several structures at the CFO and migrate off-site.
11. 327 IAC 19-3-1(d) requires all waste management systems to be designed, constructed, and maintained to minimize leaks, seepage, and prevent manure releases or spills. Permittee/Petitioner violated 327 IAC 19-3-1(d) by allowing manure to escape several structures at the CFO.
12. Pursuant to 327 IAC 19-13-1(d), liquid manure storage facilities that are uncovered must be maintained with a minimum freeboard of two feet. The CFO's manure lagoon violates 327 IAC 19-13-1(d) by not maintaining a minimum two feet of freeboard.
13. Pursuant to 327 IAC 19-7-6(b), mortality composting sites must be constructed and operated to prevent leaching and run-on and run-off of storm water. The CFO's compost structures violate 327 IAC 19-7-6(b) by failing to maintain adequate run-on and runoff controls, and by having leachate running out of the structures.
14. Pursuant to 327 IAC 19-11-2(a), CFOs must consider all activities and significant materials that may reasonably be expected to add significant amounts of pollutants to storm water draining from the facility and potential pollutant sources. Permittee/Petitioner violated 327 IAC 19-11-2(a) by

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<sup>66</sup> See Transcript, pp. 81-82:23-4.

allowing significant rutting throughout the CFO and allowing stormwater to comeingle with manure and run offsite into neighboring farm fields.

15. Pursuant to 327 IAC 5-2-2, any discharge of pollutants into waters of the state as a point source discharge is prohibited unless in conformity with a valid NPDES permit obtained prior to the discharge. Pursuant to 327 IAC 19-3-1(a), a CFO shall be managed so as to avoid an unpermitted discharge into waters of the state. Permittee/Petitioner violated 327 IAC 5-2-2 and 327 IAC 19-3-1(a) by discharging to waters of the state without a valid NPDES permit.
16. Pursuant to 327 IAC 19-3-1(c), a CFO shall take all reasonable steps to prevent manure releases, spills, or discharge of manure, including seepage and leakage. Permittee/Petitioner violated 327 IAC 19-3-1(c) by failing to prevent multiple manure releases, spills, and discharges from the manure lagoon and structures at the CFO.
17. Pursuant to 327 IAC 19-14-1, land application of manure and process wastewater shall be done in accordance with the requirements of this rule. Pursuant to IC § 13-30-2-1, no person shall deposit any contaminants upon the land in a place and manner that creates or would create a pollution hazard that violates a rule adopted by the board. 329 IAC 10-4-2 prohibits a person from allowing the storage, containment, processing, or disposal of solid waste in a manner which creates a threat to human health or the environment including creation of water pollution or other contamination. 329 IAC 10-4-3 and 329 IAC 10-4-4 prohibit open dumps and require that open dumps be remediated. Permittee/Petitioner violated 327 IAC 19-14-1, IC § 13-30-2-1, 329 IAC 10-4-2, 329 IAC 10-4-3, and 329 IAC 10-4-4 by allowing manure from the CFO to migrate offsite.
18. Pursuant to 327 IAC 19-9-1(b), the CFO operating record must contain all required records. Permittee/Petitioner violated 327 IAC 19-9-1(b) by not keeping all required records at the CFO.
19. IDEM proved Permittee/Petitioner failed to comply with the Indiana Code, IDEM's regulations, and the CFO Approval. In addition, IDEM proved that the CFO has caused and threatens to cause harm to the environment. Specifically, the CFO has, on multiple occasions, discharged manure into the environment, including neighboring properties and waters of the state.
20. All of IDEM's witnesses testified that they supported the revocation of Permittee/Petitioner's CFO Approval based on the seriousness and extent of the violations, Permittee/Petitioner's failure to adequately respond to the violations in a timely manner, and the complete lack of required land application records.<sup>67</sup> IDEM witnesses testified that they did not believe Permittee/Petitioner was capable of fully complying with his CFO Approval, and that violations were likely to reoccur.<sup>68</sup>
21. At the final hearing, Permittee/Petitioner testified that some of IDEM's field tests taken from Rushart Ditch, including upstream of the CFO, were non-detect.<sup>69</sup> Permittee/Petitioner testified that he believed some of the ammonia/nitrogen was coming from one of the neighboring farm

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<sup>67</sup> Transcript, pp. 69:7-11, 69:14-17, 76:20-22, 79-80:21-2, 88:9-12, 91:10-13.

<sup>68</sup> Transcript, pp. 69:21.

<sup>69</sup> Transcript, pp. 9:20-21, 16-17:22-1.

fields that had land applied commercial fertilizer.<sup>70</sup> He referenced that there had been a lot of rain during the period of IDEM's inspections.<sup>71</sup> Permittee/Petitioner did not offer any evidence or exhibits disputing IDEM's cited violations.

22. In contrast, IDEM provided substantial evidence that manure from the CFO entered waters of the state, including detects of ammonia/nitrogen in Rushart Ditch itself.<sup>72</sup> Inspector Brown, who has conducted roughly 1,000 CFO inspections in his ten years with IDEM, testified that he did not agree that some of the manure was discharging from the neighboring fields.<sup>73</sup> Inspector Brown observed manure directly coming out of the CFO's manure lagoon and laying wet in the farm field, and took field samples directly from the field tile to the north of the manure lagoon showing eight parts per million ammonia/nitrogen.<sup>74</sup> IDEM witnesses also testified that CFO lagoons are designed to handle large storm events, and that a properly managed lagoon should never overtop even during a wet season.<sup>75</sup>
23. Pursuant to IC § 13-18-10-2.1(i), 327 IAC 19-4-1(b)(3), and 327 IAC 19-8-5, IDEM provided substantial evidence that grounds exist to revoke the CFO Approval and that IDEM followed the proper procedures for revoking a CFO Approval. IDEM complied with its statutory and regulatory authority to revoke Permittee/Petitioner's Approval.

#### **FINAL ORDER**

**AND THE COURT**, being duly advised, hereby **ORDERS, JUDGES AND DECREES** that the Indiana Department of Environmental Management's May 15, 2025 Revocation of WR Farm, LLC's CFO Approval is **UPHELD**. Permittee/Petitioner's Petition for Administrative Review is **DENIED**.

You are further notified that, pursuant to IC § 4-21.5-5, this Final Order is subject to judicial review. Pursuant to IC § 4-21.5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

SO ORDERED April 10, 2025.

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Hon. Lori Kyle Endris  
Administrative Law Judge

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<sup>70</sup> Transcript, pp. 22:14-17.

<sup>71</sup> Transcript, p. 22:23.

<sup>72</sup> Transcript, p. 57:2-10.

<sup>73</sup> Transcript, pp. 35:2-3, 56:13-19, 68-69:20-1.

<sup>74</sup> Transcript, pp. 56-57:21-1.

<sup>75</sup> Transcript, pp. 84:9-21.