

**County Health Permit for Large Concentrated Animal Feeding Operations
Ordinance # 11-10-08**

Statement of Purpose and Intent

The purpose and intent of this Ordinance is to protect public health, safety, welfare, and property in Union County by establishing health regulations for concentrated animal feeding operations; providing standards for the permitting of concentrated animal feeding operations; providing definitions; providing an effective date; and providing for severability.

This is an Ordinance pertaining to the location, design, construction, and operation of concentrated animal feeding operations in Union County.

WHEREAS, IC 36-2-4, provides that the County Commission may make and promulgate Ordinances as will tend to enhance the public health and prevent the entrance of infectious; contagious, communicable or dangerous disease into such county; and

WHEREAS, the Union County Board of Commissioners, and Board of Health recognize that the agricultural industry is a vital element of our economy and culture and, like living in any environment, living in a farming community contains some risks to public health; and

WHEREAS, the Union County Board of Commissioners, and Board of Health find that, if not appropriately controlled, concentrated animal feeding operations (CAFOs) may present unacceptable significant threat to the health of persons living near CAFOs; and

WHEREAS, the Union County Board of Commissioners, and Board of Health find that when threats to public health become significant it is necessary to establish appropriate safeguards to protect human health and the environment of our citizens; and

WHEREAS, health standards and criteria for concentrated animal feeding operations consistent with state law have been prepared based upon state law and professional studies considered by the Union County Board of Health; and

WHEREAS, the adoption and enforcement of said standards is hereby found to be necessary in order to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into Union County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF UNION COUNTY, INDIANA, AS FOLLOWS:

“County Health Permit for Large Concentrated Animal Feeding Operations”, ordinance as attached hereto.

This ordinance shall be in full force and effect from and after its enactment and approval by the Board of County Commissioners of Union County.

1. Purpose

The purpose of these standards is to acknowledge that agriculture remains an essential component of the Union County economy and that, through technology and market trends, agricultural activities have evolved into agricultural industries. These standards apply to any new Large Concentrated Animal Feeding Operation (CAFO) and to the expansion of an existing CAFO and are intended to minimize the impact of such feeding operations on public health. These standards are in addition to the rules, regulations and procedures set forth by the Indiana Department of Environmental Management (IDEM), the United States Environmental Protection Agency (USEPA), or any other agency or board designated at the federal, state or local level to monitor or regulate concentrated animal feeding operations.

2. Conflicting Ordinances

These standards are in addition to the rules, regulations and procedures set forth by the Indiana Department of Environmental Management (IDEM), the United States Environmental Protection Agency (USEPA), or any other agency or board designated at the federal, state or local level to monitor or regulate concentrated animal feeding operations. In the case of conflicting standards and/or regulations, the more restrictive shall prevail. Compliance with these standards shall be maintained throughout the life and proper closure of any operation.

3. Incorporation by Reference

All rules, regulations, and requirements of the Indiana Department of Environmental Management (IDEM) related to Large CAFOs, including but not limited to 327 IAC 5, 327 IAC 15, and 327 IAC 16 are hereby incorporated into this ordinance both in current form and as amended or augmented in the future.

4. Reporting Requirement Substitution

In the case where a report requiring information of the same character must be filed to meet a Federal or State requirement, the report may be copied and submitted to the Health Department in lieu of otherwise applicable reporting requirements under this Ordinance. Any information required by this Ordinance which is not included in the Federal or State report, must be submitted additionally.

5. Definitions

Except as defined below, the terms of IC 13 and 327 IAC 5, 15, and 16, as each may be amended from time to time, shall have the same definition whenever used in this Ordinance. For purposes of this Ordinance, the terms below shall be defined as follows:

- A. **Adjacent Property:** Any property which is not owned in whole or in part by the owner of the property on which a Large CAFO is located but which shares a boundary with a property on which a Large CAFO is located or a property that shares a boundary with a property on which manure from a Large CAFO is applied. Federal and State highways are not considered adjacent properties. Properties with only a Federal or State highway separating them are considered adjacent.
- B. **CAFO Unit:** A unit of measurement used to determine the total number of single animal types or combination of animal types and sizes which are fed, maintained, or stabled at a concentrated animal feeding operation. To determine the number of CAFO Units for an operation, divide the number of each type of animal located at the facility by the number of

animals of that type required to minimally constitute a Large CAFO per 327-IAC 5-4-3(7). The sum of these numbers rounded down to the nearest whole number is the number of CAFO units. [eg: If IDEM considers 2500 swine over 55 Lbs to be the lower threshold for a Large CAFO, then an operation confining 4500 swine equals 4500/2500 rounded down, or 1 CAFO Unit.]

- C. **Applicant:** A person who applies for a County Health Permit for Concentrated Animal Feeding Operation pursuant to this ordinance.
- D. **Application:** Form provided by the Union County Health Department to apply for a County Health Permit for a concentrated animal feeding operation.
- E. **ASTM:** An acronym for American Society for Testing Materials.
- F. **CU:** An abbreviation for CAFO Unit.
- G. **Board of Health:** The Union County Board of Health.
- H. **BOD5:** Biochemical Oxygen Demand. A measurement of the rate of oxygen use by organisms over a 5 day period at 20 degrees C in the dark.
- I. **CAFO:** An acronym for Concentrated Animal Feeding Operation.
- J. **Church:** Any tax exempt building or portion thereof used to conduct religious services on a regular basis.
- K. **COD:** Chemical Oxygen Demand. A measurement of the amount of oxygen used while fully oxidizing the organic compounds in a sample of water. For the purposes of this document, the process described in ISO 6060 shall be the standard for COD measurement.
- L. **Large Concentrated Animal Feeding Operation or Large CAFO:** Any property or contiguous properties and all structures and animals contained thereon that are owned in whole or in part by the same person(s) confining only one category of livestock and matching the definition of “large CAFO” as defined in 327-IAC 5-4-3 (7) or confining more than one category of livestock where the number of animals in two or more categories are in the range defined for a “medium CAFO” in 327 IAC 5-4-3 (10). (See Exhibit A for the current text of 327-IAC 5-4-3.)
- M. **County:** Union County, Indiana.
- N. **County Health Permit:** Written authorization issued by the Union County Health Department to construct, modify or operate a Large CAFO.
- O. **Daycare Facilities:** Has the same meaning as a child care center as defined in IC 12-7-2-28.4 and a child care home as defined in IC 12-7-2-28.6 and a child care ministry as defined in IC 12-7-2-28.8
- P. **E. Coli:** *Escherichia coli*, a bacterium frequently found in the lower intestine of warm-blooded animals.
- Q. **Existing CAFO:** A CAFO is considered to exist for purposes of this ordinance if the CAFO’s confinement structure(s) or manure storage structure(s) have been constructed as of the effective date of this ordinance or IDEM has issued a final CAFO permit for the CAFO as of the effective date of this ordinance.
- R. **FEMA:** Acronym for the Federal Emergency Management Agency.

- S. **Flood Plain:** Means the area adjoining a river or stream that has been or may be covered by flood water as defined in 312 IAC 1-1-15 or as may be amended from time to time. For the purposes of this ordinance, Union County, Indiana Flood Hazard Boundary Maps Community Panel Number 180411 001 A and Community Panel Number 180411 002 A of the U.S. Department of Housing and Urban Development Effective Date: March 4, 1977 shall be used to determine the boundaries for flood plains.
- T. **Floodway:** The channel of a river or stream; and the parts of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the flood water or flood flow of a river or stream as defined in 312 IAC 1-1-16 or as may be amended from time to time.
- U. **Frozen Ground:** When the air temperature at or near ground level is at or below twenty-eight degrees Fahrenheit, the ground below the point of measurement is Frozen Ground.
- V. **Health Department:** The Health Department of Union County, Indiana.
- W. **Health Officer:** The Health Officer of the Union County or the Health Officer's duly authorized representative.
- X. **Highly Permeable Soil:** Soil with a Ksat rating of 100 or more micrometers per second.
- Y. **IAC:** An acronym for the Indiana Administrative Code.
- Z. **IC:** An acronym for the Indiana Code.
- AA. **IDEM:** An acronym for the Indiana Department of Environmental Management..
- BB. **Manure:** Any animal feces or urine and any biological material such as bedding which has been in contact with animal feces or urine and any storm water, groundwater, or process water that has been commingled with animal feces or urine.
- CC. **Medical Facility:** Any facility that, for a fee, treats ill, injured, or disabled patients or has residents that need daily assistance to perform normal living activities and who routinely stay at the facility for 24 hours a day for 14 days or more such as hospitals, long-term care facilities, and other similar facilities.
- DD. **Muck Soils:** Unconsolidated soil material consisting primarily of highly decomposed organic material (usually between 20 percent and 50 percent) in which the original plant parts are not recognizable and exhibiting the highest bulk density and the lowest water content at saturation of all organic soil material.
- EE. **Municipality:** Any incorporated area of Union County.
- FF. **Nitrate:** Any salt of nitric acid containing a nitrate ion (NO₃-).
- GG. **Non-potable Well:** Any well not intended or used for drinking water or culinary purposes except wells for fire suppression and environmental monitoring.
- HH. **Off-Site Well:** Any potable water supply well which is not on the property that contains a CAFO.
- II. **Permit Stipulations:** Permit-specific requirements issued by the Health Department to address unique issues raised by the specific site or situation.
- JJ. **Person:** Any of the following or their authorized representative. Any individual, trust, firm, joint stock company, Federal agency, corporation (including a government corporation),

limited liability company, partnership, co-partnership, company, estate, municipal corporation, non-profit organization, church, City, School City, Town, School Town, School District, School Corporation, County, State Agency, association, State, municipality, commission, political subdivision of the State, any interstate entity or any other legal entity or their legal representative.

- KK. Process Water:** Any water that comes in contact with animals, pens, barns, manure, litter, feed, bedding, or milk, eggs or other commercial products and any spillage or release of such water.
- LL. Property Owner:** Any person or their authorized representative who owns a property or facility in whole or in part subject to the requirements of this Ordinance.
- MM. Public Tile:** Any drain tile that is required to be maintained by the County.
- NN. Residence:** A place that is listed on the County tax roles where at least one person routinely performs their primary residential activities such as eating, sleeping, and recreating.
- OO. RZD:** An acronym for residential zoning district.
- PP. Residential Zoning District:** An area designated under the Union County Zoning Ordinance as R1, R2, or a Planned Unit Development.
- QQ. Saturated Soil:** Soil from which water will flow from the soil profile into an unlined auger hole.
- RR. Sensitive Receptor:** A facility or location which poses an increased need for protection from a threat(s) to public health such as schools and medical facilities.
- SS. School:** Any publicly or privately owned building or group of buildings where more than twenty five (25) students are provided academic, technical, or vocational instruction an average of at least 130 days per year.
- TT. Waters of the State:** Water as defined in IC 13-11-2-265.
- UU. Vector:** An insect or organism that is a carrier of disease and spreads infection by conveying pathogens from one host to another.

6. Applicability

This Ordinance applies to the location, design, construction, and operation of concentrated animal feeding operations in Union County. Certain provisions of this ordinance do not apply to Existing CAFOs.

7. Review

The Union County Health Board shall review this Ordinance as often as deemed necessary and at least every four years, and recommend changes to the ordinance, as deemed appropriate.

This Ordinance shall not create a liability for any member of the Union County Health Board for any damage that may result from any advice or recommendations made pursuant to service to the Union County Health Board. The Ordinance shall not create a liability for Union County or any of its divisions or employees for any damage that may result from the using or not using the advice or recommendations of the Union County Health Board.

8. Permitting

a. General requirements

- i. No person shall start construction of or operate a CAFO without first obtaining a County Health Permit from the Health Department, subject to exception described in Section 8.a.iii.
- ii. An applicant for a County Health Permit shall submit a permit application to the Health Department at the same time the applicant submits a permit application for the CAFO to Indiana Department of Environmental Management (IDEM), subject to exception described in Section 8.a.iii.
- iii. Any existing Large CAFO shall have one hundred eighty (180) days from the effective date of this Ordinance to submit a complete permit application to the Health Department.
- iv. If a person receives an exemption from IDEM for any provision of 327 IAC 5, 15, or 16 which effects any provision of this Ordinance, the applicant shall also apply for and obtain a variance from the Health Department or the exemption may not be implemented.
- v. Permits shall expire five years after the date of issuance or on the date that the IDEM CAFO approval expires, which ever occurs first.
- vi. A permit renewal application shall be submitted no later than 180 days prior to the expiration of an existing permit with the permit fee.
- vii. Any proposed changes to the information contained in an application for which a permit has been issued shall be provided to the Health Department for approval prior to making the change. Such changes shall include but shall not be limited to changes in:
 1. The maximum number, sizes and types of animals at the site,
 2. Structural changes or additions to manure storage, animal confinement, or feed storage facilities.
 3. Change in ownership. (Requires re-submission of the affidavit described in 8.c.iv.)

b. Permit application

- i. The permit application shall:
 1. Be submitted on forms prescribed by the Health Department,
 2. Include drawings made to scale which shall show the applicable setbacks and separation distances, and
 3. Contain the following information:
 - a. A completed application form,
 - b. A farmstead plan as defined in 327 IAC 15-15-17,
 - c. An emergency spill response plan as defined in 327 IAC 15-15-16,
 - d. A manure management plan as defined in 327 IAC 16-7-11,
 - e. Any other reasonable and necessary information required by the Health Officer to process the application.
- ii. Fees
 1. A non-refundable processing fee of \$635 shall be required at the time the application is submitted.
 2. If reduced setbacks are requested and granted, an additional fee of \$365 is required at the time of approval to cover the costs of verifying compliance.
 3. If the IDEM permit for the Large CAFO expires before the Health Department Permit, the fees will be reduced by 20% for each full year of difference in expiration date.

- iii. Obtaining a permit from the Health Department does not release any person from obtaining any other required permit or approval.
- c. Application processing and approval
 - i. Within twenty (20) days of receipt of a completed permit application the Union County Board of Commissioners, Union County Highway Department, Union County Area Plan Director, Union County Surveyor, and the Union County Drainage Board shall be notified of the application and provided a copy to ensure each department is aware of the planned facility and possesses the information necessary to assess the impact, if any, of the planned facility on resources and infrastructure under the purview of that department.
 - ii. Within forty-five (45) days of receipt of a completed permit application for a Large CAFO that will be a “Significant ground water withdrawal facility” as defined in IC 14-25-4-6, the Health Department shall contact the DNR and request an assessment of the pumping capacity and nitrate and E-Coli content of all existing wells within a one (1) mile radius of the Large CAFO property boundary. The Health Department shall assist the DNR by contacting all residents within this area and explaining the purpose of the assessment. A copy of each assessment shall be kept on file at the Health Department as baseline reference material should any resident seek declaration of a “Ground water emergency” per IC14-25-4-9.
 - iii. The Board of Health, Health Officer and the Health Department shall review the application and all plans submitted pursuant to Section 8.b.i.3 for compliance with this Ordinance:
 - 1. Request any other information deemed reasonable and necessary to process the application,
 - 2. Notify all residents, businesses, and other facilities where people live or work within one mile of the proposed facility and provide them with a summary of the application and information on how they may comment on the application and the applicant shall pay all cost associated with notification,
 - 3. Require changes in the application necessary to comply with this Ordinance.
 - 4. Establish site specific permit stipulations as necessary to address specific environmental and health issues. Include these stipulations along with those established pursuant to Section 8.c.i as requirements in the permit.
 - 5. Approve the application upon a determination that the application meets all requirements of this Ordinance.
 - iv. A signed affidavit stating that all persons who own any portion of the land and/or structures of the concentrated animal feeding operation (CAFO) have no outstanding or unresolved violations relating to concentrated animal feeding operations nor has a history of more than 4 violations in the last five (5) years prior to the date of the application, with the Indiana Department of Environmental Management, the U.S. EPA, or other governmental agency relating to concentrated animal feeding operations.
 - v. The Health Department shall not issue a permit to any person that:
 - 1. Has an unresolved violation with the EPA, IDEM, the Health Department or any other environmental regulatory agency concerning a CAFO,
 - 2. Has intentionally misrepresented or concealed any material fact in any application for a CAFO Health Permit applicable to the proposed CAFO, or

3. Has been convicted more than twice of any felony or misdemeanor violation of state, or federal environmental protection laws concerning concentrated animal feeding operations.
- d. Sewage Disposal Permit
- i. The Health Department shall not issue an on-site sewage disposal permit until a County Health Permit has been approved and issued.

9. Setbacks From Residences, Residential Zoning Districts, and Municipalities

- a. General requirements
- i. No Large CAFO shall be constructed or allowed to operate, except as provided in Section 9.a.iii, closer to a residence, residential zoning district (RZD), or municipality than the reduced setbacks shown in Section 9.b.
 - ii. No Large CAFO shall be required pursuant to this Ordinance to be constructed or operate farther from a residence, RZD, or municipality than the standard setbacks shown in Section 9.b.
 - iii. All structures at Large CAFOs which exist as of the effective date of this Ordinance shall be exempt from the setbacks listed in Section 9.b, however, all additions or expansions of existing facilities shall be subject to the setbacks established in Section 9.b.
 - iv. Regardless of the setback of any Large CAFO, it shall be a violation of this Ordinance for any Large CAFO to operate in a manner that becomes a threat to public health and the Health Department shall exercise its authority under IC 16-20 and other State statutes to protect public health.
 - v. All setbacks shall be measured as the straight line distance from the nearest point of any structure at the Large CAFO that contains animals or manure to the:
 1. Nearest point on the outside wall of any residence for residential setbacks,
 2. The nearest boundary of any RZD for a RZD setback, and
 3. The nearest boundary of any municipality for a municipality setback.
 - vi. Only residences, RZD boundaries, and municipality boundaries in existence as of the date the Large CAFO application is submitted to the Health Department shall be used to establish setbacks.
 - vii. Neither the Health Department nor the Board of Health shall issue a variance to reduce the setbacks to less than the reduced setbacks except under a variance issued pursuant to Section 9.c.ii.
- b. Reduced and standard setback distances
- i. The following table lists the reduced and standard residential, RZD, and municipality setbacks for CAFOs.

RESIDENTIAL, RZD, AND MUNICIPALITY SETBACKS

Size of CAFO	Residential ²	RZD or Municipality ²
1 CU	1320	2000
2 CU	1320	3600
3 CU	1800	4600
4 CU	2300	5300
5 CU	2600	5800
6 CU	2900	6400
7 CU	3200	7000
8 CU	3500	7400
9 CU	3700	7800
¹ 10 CU	3900	8400

¹For each CU above 10 CU the following shall be used to calculate the setbacks:

The Residential setback shall equal the square root of the total number of CU times 1000 rounded to the nearest 100 feet.

The RZD or municipality setback shall be twice the Residential setback as calculated above.

²All setbacks are shown in feet.

c. Reduction of setbacks

i. Reduced setbacks noted below apply to any CAFO that utilizes the following processes or practices for the reduction of Hydrogen Sulfide gas. Note that if multiple methods are used, the percentages are applied cumulatively from the source outward.

1. The use of Pit or Lagoon additives shall reduce the setback provided the applicant provides the Health Department with a third-party analysis of the effectiveness of the additives. The setback shall be reduced by the percentage of Hydrogen Sulfide Decrease multiplied by the Decrease Certainty. [eg., If the Decrease is 37% and the Decrease Certainty is 95%, a CAFO of size 3 CU could reduce the minimum residential setback by 35.15%: from 2300 feet to roughly 1500 feet. If this method of reduction is used, the applicant must supply the Health Department with proof that the additives are being applied on an ongoing basis in the quantity recommended by the manufacturer.

2. Use of Biofiltration shall reduce setbacks provided the installer provides the Health Department with test results verified by a third party demonstrating the percentage of Hydrogen Sulfide removed. This percentage will then equal the setback reduction percentage so long as the applicant continues to supply the Health Department with proof of adequate maintenance of the system.

3. Landscaping to slow dispersion may be used to reduce setbacks:

a. Planting and maintenance of a “shelterbelt” of at least three rows of evergreen trees on 20 foot centers covering 90% of the perimeter shall reduce the setback distance by 10%.

b. Creation of berm or combination of natural terrain and manmade berm that enclose 90% of the perimeter with an embankment 6 feet

or more above the level of the source(s) of H₂S emissions shall reduce the setback distance by 10%.

4. Use of anaerobic digester equipment, subject to approval of Health Department will reduce the setback distance by the percentage of demonstrated reduction in Hydrogen Sulfide emissions, provided that:
 - a. The anaerobic digester equipment and processes must have been in use at more than 2 locations for a sufficient length of time to allow a sound judgment to be made of its long-term effectiveness.
 - b. Its effectiveness in achieving the claimed reduction must be independently assessed by analysts from a government agency, university, or other similar organization.
 - c. Verifiable documentation of the assessment of effectiveness must be submitted to the Health Department prior to approval.
 - d. Annually, records are provided to the Health Department sufficient to establish that the processes and equipment are maintained on an ongoing basis.
 - e. If the equipment and processes result in the liquid effluent stored in uncovered lagoons meeting the following criteria, the bond required in section 18.c. may be reduced by 50%:
 - i. BOD₅ < 30 mg/l ;
 - ii. COD < 100 mg/l ;
 - iii. Nitrate < 20 mg/l ;
 - iv. pH 6.5 – 8.5 ;
 - v. Fecal Coliform < 500
 - vi. MPN/100ml ;
 - vii. E. Coli < 250 MPN/100ml.
 - viii. If chlorine is used in treatment, Cl < .5 mg/l.
 5. Any method developed after the adoption of this ordinance that produces substantial and verifiable reductions in the emission of Hydrogen Sulfide may be considered on a case-by-case basis for a setback reduction at the discretion of the County Health Officer.
 6. Any method developed after the adoption of this ordinance that produces substantial and verifiable reductions in the pathogens or toxic compounds contained in uncovered lagoons may be considered on a case-by-case basis for a reduction of the bond required in section 18.c. at the discretion of the County Health Officer.
- ii. Any operation that receives approval for a reduced setback but does not implement and maintain the conditions upon which the setback is based shall be subject to the enforcement provisions of the ordinance and shall be required to reduce the number of animals at the operation to comply with the standard setback requirements.

d. Standard setbacks

- i. Standard setbacks shall apply to those Large CAFOs that do not meet or maintain the requirements for the reduced setbacks.
- ii. The Health Department may approve a variance for a reduction to the standard residential setback if the applicant obtains a waiver(s) voluntarily signed by the owner(s) of a residence that would otherwise be within the setback and only if the proposed Large CAFO was a CAFO as of the effective date of this ordinance or denial of the variance would create an undue hardship on the applicant.

1. The Health Department reserves the right not to approve a variance based on a waiver if, in their opinion, the waiver would involve an unacceptable risk to public health.
 2. Any variance issued pursuant to Section 9.d.ii shall be disclosed to prospective buyers by the property owner if the property which is the subject of the waiver is to be sold.
 - iii. The Health Department may approve a variance for a reduction to the standard setbacks based on the prevailing wind direction, speed, and frequency.
 - iv. The Health Department shall determine the amount of reduction warranted by the methods described in Section 9.d.ii, and iii.
 - v. If a reduction in a residential setback is approved by the Health Department based on reductions in air emissions, it shall apply to the RZD and municipality setbacks in equal proportion to the residential setback reduction.
- e. Setback protection
- i. When an applicant applies for a permit from the Health Department, the applicant may register for the maximum setback for which the site qualifies.
 - ii. No person shall construct a residence or any other facility within the setback previously established in a permit issued pursuant to this ordinance.
- f. Reduced Setback Operational Requirement
- Any person that receives a permit for reduced setbacks under 9.c shall complete construction of the facilities or implementation of technology and procedures according to the reduced setback requirements of the permit prior to bringing animals on-site.

10. Separation Distances Between Large CAFOs.

- a. A proposed Large CAFO may be located within two (2) miles of any existing Large CAFO(s) only if the following separation distances are met, as applicable.
 - i. If there is one and only one Large CAFO within two (2) miles of a proposed Large CAFO, when the residential setback of the proposed Large CAFO is multiplied by two (2) it shall not intersect with the residential setback of the existing Large CAFO.
 - ii. If there is more than one (1) Large CAFO within two (2) miles of the proposed Large CAFO, when the residential setback of the proposed Large CAFO is multiplied by five (5) it shall not intersect with the residential setback of an existing CAFO.
 - iii. The requirements of 10.a.i and ii notwithstanding, no Large CAFO shall be required to be more than two miles from any other Large CAFO.
 - iv. The separation distances between Large CAFOs do not alter the residential, RZD, or municipality setbacks.
- b. Reduction in separation distance between Large CAFOs
 - i. The Health Department may approve a reduction in the separation distance between Large CAFOs when there is more than one (1) Large CAFO within two (2) miles of the proposed Large CAFO if the conditions described in Section 10.b.i.1 through 3 are met.
 1. The separation distance may be reduced by incorporating measures to reduce the exposure of nearby residents to air emissions to the satisfaction of the Health Department. The burden of proof for establishing the effectiveness of a technology to reduce emissions shall be on the applicant. In order to

receive full consideration for a proposed technology by the Health Department, the technology must meet the following requirements.

- a. It must have been in use at numerous locations for a sufficient length of time to allow a sound judgment to be made of its long-term effectiveness.
 - b. Its effectiveness must have been independently assessed by experts from a government agency, university, or other similar organization.
 - c. Verifiable documentation must be provided to the Health Department.
2. The separation distance may be reduced if, in the opinion of the Health Department, the geographic relationship of the Large CAFOs is unlikely to result in unacceptable exposure to any resident from any airborne contaminant.
 3. Neither the Health Department nor Board of Health may reduce the separation distance pursuant to Section 10.b.i to less than the following:
 - a. When the residential setback of the proposed Large CAFO is multiplied by three it shall not intersect with the residential setback of any existing Large CAFO.
 - ii. The Health Department shall determine the amount of reduction warranted under Sections 10.b.i. subject to the limitations described in Section 10.b.i.3.
 - iii. If a Large CAFO owner fails to implement any of the items on which the reduction is based, the Health Department shall order a reduction in the number of animals at the site consistent with the enforcement provisions of the ordinance and the permittee shall comply with the order.
- c. Reduction in separation distance for an existing CAFO applying for a Large CAFO permit.
 - i. An existing CAFO located one (1) mile or more from a Large CAFO may be approved for a Large CAFO permit under this ordinance if all standard setback conditions are met and there is only one Large CAFO within two miles of the existing CAFO applying for the permit.

11. Separation Distances Between Large CAFOs and Sensitive Receptors

- a. No Large CAFO structure or area which stores manure or confines animals, except as provided in Section 11.b, shall be located within the distance shown in the following table.

SENSITIVE RECEPTOR SEPARATION DISTANCES

Sensitive Receptor	Minimum Separation Distance
Churches and Public Use Areas	One half of the residential setback
Daycares	Equal to the Residential Zoning District setback
Medical Facilities	Equal to the Residential Zoning District setback
Schools	Equal to the Residential Zoning District setback

- b. All Large CAFO structures that exist as of the effective date of this Ordinance shall be exempt from the separation distances in Section 11.a, however, additions or expansions to manure storage or animal confinement areas or facilities shall be subject to the separation distances listed in 11.a.

- c. All setbacks shall be measured as the straight line distance from any structure on the CAFO that stores manure or contains animals to the nearest point on the outside wall of the structure or the nearest property line or road right of way, as appropriate.

12. Separation Distances Between Large CAFOs and Water Features

- a. No Large CAFO waste lagoon or solid manure storage structure, except as provided in Section 12.c, shall be located within the distance shown in the following table.

WATER FEATURE SEPARATION DISTANCES

Water feature	Separation Distance	
	Waste Lagoon	Solid Waste Storage Structure
Public water supply well	1500 feet	300 feet
Water well on the CAFO	100 feet	100 feet
Off site well	300 feet	100 feet
Non-potable well	500 feet	100 feet
Waters of the State	500 feet	100 feet
Drainage inlets	500 feet	100 feet
Sediment basins	500 feet	100 feet
Sinkholes	500 feet	100 feet
Public Tiles	75 feet from all Large CAFO structures.	
Flood plains	300 feet from all Large CAFO structures plus two feet of freeboard	

- b. No Large CAFO shall be constructed within a wellhead protection area that is based on the five year time of groundwater travel to the wellhead and which has been designated or approved by IDEM or the Health Officer.
- c. All Large CAFO waste lagoons and solid manure storage structures that exist as of the effective date of this Ordinance shall be exempt from the separation distances in Section 12.a and b, however, additions to or expansion of these structures shall be subject to all separation distances in Section 12.a and b.
- d. Waste lagoon, solid waste storage structure, public water supply, waters of the state, drainage inlets, sediment basins, and sinkholes shall have the same meaning as the meaning established by the Indiana Water Pollution Control Board.
- e. The separation distances shall be measured as the straight line distance from any structure on the Large CAFO that contains animals or manure to the nearest point of the water feature.
- f. The Health Department may reduce the setback from a public water supply well to 1000 feet if the lagoon is not located in an area with high permeability soils.
- g. The Health Department may approve a reduction in the setbacks from lagoons for non-potable wells, waters of the State, drainage inlets, sediment basins, and sinkholes to three hundred (300) feet if:
 - i. filter strip at least thirty five (35) feet wide is installed and maintained near the water feature,
 - ii. A berm is constructed near the lagoon to protect the water feature, or

- iii. The surface water feature is at least two (2) feet higher in elevation than the up slope toe of the lagoon and the floor of the solid waste storage structure, as applicable.

13. Design Requirements

a. General Requirements:

- i. All Large CAFO structures that exist (see definition in Section 5.O) as of the effective date of this Ordinance shall be exempt from the requirements of Section 13.b and 13.c except all existing facilities shall comply with Section 13.b.ii, within three hundred sixty five (365) days of the effective date of this Ordinance.
- ii. All applicable county permits must be obtained prior to initiating construction of any facility or structure.

b. Manure Storage Facilities

- i. All structures for the storage of manure shall be designed and constructed to prevent the release of contaminants to the environment.
- ii. All structures for the storage of solid manure shall be designed and constructed to prevent precipitation from contacting the manure and to prevent the release of liquids to the environment from material within the structure.
- iii. All structures for the storage of store solid manure shall be designed and constructed to be two feet in elevation above the surrounding terrain or the applicant shall submit engineering data showing that the facilities would not be flooded by a twenty four (24) hour one hundred (100) year precipitation event to the satisfaction of the Health Department.
- iv. All lagoons that contain manure or liquid that comes in contact with manure shall have a high density polyethylene (HDPE) liner equal to or greater than a design thickness as specified by using ASTM Standard D 5199 for measurement of a smooth HDPE liner or an equivalent alternative which shall be subject to the approval of the Health Department. The installation of the liner, including the welding of all seams, shall be performed according to the recommendations of the manufacturer.
- v. If a lagoon is constructed in high permeability soils or where the seasonal water table is within four feet of the bottom of the lagoon, groundwater monitoring wells shall be installed and sampled according to the requirements of the Health Department.

c. Animal Confinement and Silage Storage Structures

- i. All structures designed to confine animals or store silage shall be designed and constructed to:
 - 1. Prevent the release of contaminants to the environment and
 - 2. Be two feet in elevation above the surrounding terrain or the applicant shall submit engineering data showing that the facilities would not be flooded by a twenty four (24) hour one hundred (100) year precipitation event to the satisfaction of the Health Department.
- ii. If a confinement structure exhaust fan(s) distribute exhaust in the direction of one or more nearby resident(s) the Health Department may order that wind breaks or other reasonable and necessary measures be implemented to reduce the exposure of the residents.

14. Operational Requirements

a. General Requirements

- i. All operational requirements contained in Section 14 shall be applicable to all Large CAFO operations. If compliance with any portion of Section 14 as of the effective date of this Ordinance would constitute an undue hardship to an owner of an existing Large CAFO, the Health Department may grant a waiver for up to three hundred sixty five (365) days for the owner to come into compliance.
- ii. No person shall institute, permit, or maintain a practice or condition while storing or applying manure or confining animals that may transmit, generate, or promote disease.
- iii. All liquid manure must be contained in an approved containment structure until removed for land application or other disposition approved by the Health Department.
- iv. Silage which has spoiled and is not to be feed to the confined animals shall be disposed of in accordance with the approved waste disposal plan.
- v. A Large CAFO owner and/or operator must immediately contact the Health Department and implement their approved emergency response plan upon a determination that a release to the environment may contaminate surface water, groundwater, or an adjacent property.
- vi. If the Health Department determines there is evidence that any soil, surface water, or groundwater has been or is being contaminated by the operation of a Large CAFO, the Health Department shall immediately notify IDEM of such evidence in writing.
- vii. There shall be no discharge or release of manure, litter, or process water pollutants to waters of the state unless allowed by an existing National Pollution Discharge Elimination System Permit.
- viii. All manure shall be stored, managed, and land applied according to the requirements of 327 IAC 15 and the additional requirements of this Ordinance.

b. Site Maintenance

- i. All spills or releases of manure and any material that has come into contact with manure, other than approved land application, on or off the Large CAFO property to the soil or surface water shall be immediately cleaned up.
- ii. All open air manure storage structures shall be maintained to prevent damage to the structural integrity of the storage structure. Maintenance shall, at a minimum, include the following requirements:
 - 1. Woody vegetation shall be removed from any earthen lagoon,
 - 2. Burrowing animals shall be removed from any earthen lagoon, and
 - 3. Vegetation around lagoons shall be mowed and/or trimmed to prevent a breeding ground for vectors.
- iii. Vectors and rodents shall be controlled so they do not become a public health nuisance to neighbors. Notification to the Health Department shall be required if procedures for vector control will result in a range outside of the Large CAFO property boundaries prior to application of procedures.

15. Issuance of Standards and Requirements

- a. The Board of Health may adopt, amend or rescind any rules, regulations or standards as deemed appropriate and necessary for proper enforcement of and to carry out the purposes and intent of this Ordinance subject to the following requirements:

- i. Public comment periods, public meetings, and public hearings, as appropriate, in accordance with State law shall be used when developing rules, regulations or standards.
- b. The Health Department may adopt, amend, or rescind policies and procedures for the appropriate implementation of this Ordinance.
- c. The rules, regulations, standards, policies and procedures issued pursuant to this Ordinance may not:
 - i. Threaten public health or
 - ii. Violate any provision of this Ordinance or other applicable federal, state, or county laws or regulations.

16. Enforcement

- a. Enforcement Authority
 Except as provided for elsewhere in this Ordinance, the Health Department is authorized and charged with enforcing this Ordinance.
- b. Reporting Violations of State and Federal Law
 - i. If the Health Department is made aware of an actual or alleged violation of any State or Federal law or regulation regarding CAFOs occurring in Union County, it shall become the duty of the Health Department to investigate and report as follows:
 - 1. If the Health Department is made aware of the alleged violation via a citizen complaint, the Health Department shall make a reasonable attempt to corroborate the information within one working day of the complaint and shall attach any findings to subsequent reports.
 - 2. The Health Department shall provide notification of the alleged or actual violation to the agency with authority to enforce the law or regulation via phone immediately.
 - 3. The Health Department shall follow up the phone notification with a report of the same facts in writing to the same agency within one working day of the phone report.
- c. Right-of Entry for Inspections
 - i. Any application for a permit that includes reduced setback provisions submitted under the provisions of this Ordinance shall constitute permission for representatives of the Health Department bearing proper credentials and identification to enter the grounds of the Large CAFO identified in the application to verify compliance with the requirements for reduced setbacks.
 - ii. No representative of the Health Department shall enter animal confinement structures.
 - iii. After the issuance of a permit including reduced setback provisions, representatives of the Health Department bearing proper credentials and identification, may enter upon and inspect any property except animal confinement buildings listed in the permit application as part of the operation for such purposes as inspecting, observing, measuring, sampling, testing or examining records necessary to carry out the provisions of this Ordinance.
 - iv. In the event a person who has common ownership over a building, structure, or land subject to a Large CAFO permit that includes reduced setback provisions does not allow an inspection, the following shall occur:
 - 1. The application submitted or permit issued pursuant to this Ordinance shall be immediately cancelled,

2. All work being performed, except that necessary to protect the health of animals, shall be immediately suspended, and
 3. The work may only commence upon the approval of the Health Department.
 - v. The Health Department shall attempt to inspect each Large CAFO holding a permit that includes reduced setback provisions as often as deemed necessary and no less than twice each year subject to the availability of resources.
- d. Corrective Action for Violations of the Ordinance
- i. When the Health Department has reasonable grounds to believe that there has been a violation of this ordinance which is also a violation of IDEM's requirements, the Health Department shall notify IDEM and may work with IDEM to implement a joint enforcement action or may defer enforcement to IDEM.
 - ii. Whenever the Health Department determines there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, the Health Department shall issue a written order to abate the violation to the person(s) responsible for the violation consistent with the following requirements:
 1. The abatement order shall be sent by certified mail to the last known address of the responsible person.
 2. If the certified letter is returned, a copy of the letter shall be posted at the property and the posting shall constitute due notice.
 3. The abatement order shall include:
 - a. A statement explaining the nature of the violation or condition,
 - b. A description of the remedies required to abate the violation or condition,
 - c. A reasonable time for correcting the violation or condition, and
 - d. A description of the penalty that is imposed for the violation, if any.
 - iii. Any person notified of a corrective action requirement by the process identified above shall comply with the order or they shall be in violation of this ordinance and subject to the enforcement and penalty provisions of this ordinance.
- e. Issuance of Emergency Orders
- i. Whenever the Health Officer finds that an emergency exists which requires immediate action to protect public health, the Health Officer may, without notice or hearing, issue an emergency abatement order to any person reciting the existence of such an emergency and requiring that action be taken as the Health Officer deems reasonable and necessary to meet the emergency. Notwithstanding any other provisions of this Ordinance, such order shall be effective immediately. An emergency abatement order may include, but need not be limited to, an order to:
 1. Immediately discontinue any practice that threatens public health or the environment.
 2. Remove any contamination that has entered the environment, and/or
 3. Carry out any other action necessary to protect public health or the environment.
 - ii. Any person receiving an emergency abatement order:
 1. Shall comply with and carry out the order,
 2. May seek a hearing under Section 17.e while carrying out such order, and
 3. Shall have the right to recover any of its response costs to the extent that the order or any portion thereof is found to have been arbitrary or capricious or not otherwise in accordance with law.
 - iii. If a person fails to perform the lawful measures ordered by the Health Officer pursuant to Section 17.d, the Health Department:

1. May enter the property without prior notice to take or cause to be taken any emergency order and
 2. Shall be reimbursed by the person who failed to perform the emergency order for all costs incurred by the Health Department associated with taking the action ordered.
- f. Appealing an Order of the Health Department:
- i. Any person affected by an order of abatement or any decision issued by the Health Department pursuant to the enforcement of this Ordinance may petition for and shall be granted a hearing on the matter before the Health Officer, provided that such person shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within fifteen (15) days after service of an order of abatement or issuance of the decision. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.
 - ii. Upon receipt of such petition, the Health Officer shall arrange a time and place for such hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall be more than thirty (30) days after receipt of the petition. At such hearing the petitioner shall be given an opportunity to be heard and to show cause why such notice or decision should not be enforced.
 - iii. The Health Officer shall sustain, modify, or withdraw the notice to the petitioner as soon as practicable and in no case later than fifteen (15) days following the hearing.
 - iv. A decision by the Health Officer to approve, amend, or disapprove an order or decision shall be final subject only to review by a court of competent jurisdiction.

17. Variances

- a. The Health Officer may issue a written variance to any provision of this Ordinance on a case by case basis, except where restricted herein.
- b. The Health Officer shall approve, amend, or disapprove a written petition by another party for a variance from any provision of this Ordinance, except where restricted herein, as soon as practical after receiving the petition and in no case more than thirty (30) days after the petition is filed or sixty (60) days if the petition is for a reduction in residential setbacks or the distance between Large CAFOs.
- c. If the variance request is for a reduction in the residential setback as allowed in Section 9.c and 9.d or a reduction in the distance between Large CAFOs allowed by Section 10.b, the Health Officer shall follow the process described in Section 18 but shall additionally:
 - i. Request the opinion of the Board of Health on the appropriateness of the proposed reduction,
 - ii. Hold a public meeting, and
 - iii. Issue a determination of the setback based on the Health Department's assessment of the appropriateness of the proposed setback and the comments, data, and opinions of the applicant, Board of Health, and the public.
- d. Any person affected by a decision by the Health Officer to approve, amend, or disapprove a variance may petition for and shall be granted a hearing on the matter before the Board of Health subject to the following conditions.
 - i. The petitioner shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within fifteen (15) days after issuance of a decision on a waiver by the Health Officer. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.

- ii. Upon receipt of such petition, the Board of Health shall arrange a time and place for a hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall be more than thirty (30) days after receipt of the petition. At such hearing the petitioner shall be given an opportunity to be heard and to show cause why such variance should or should not be enforced.
- iii. The Board of Health may appoint a committee to hear the petition and make a report to the Board of Health.
- iv. The Board of Health shall render a decision in the matter as soon as practical and, in no case, later than sixty (60) days after receipt of the petition. A decision by the Board of Health shall be final and may be appealed only to a court of competent jurisdiction.
- e. Neither the Health Officer nor the Board of Health may approve a variance that:
 - i. Threatens public health or
 - ii. Would result in a violation of any applicable federal, state, or county law, regulation, or rule.

18. Financial Security

- a. No County Health Permit shall be issued unless adequate security has been furnished to ensure proper cleanup and disposal as required by sections 18.b and 18.c hereto .
- b. A cash or surety bond shall be furnished to the Union County Commissioners for any manure storage system. A manure storage system may include one or more lagoons at any single Large CAFO. If the bond is a surety bond, the surety shall be approved by the Union County Commissioners and found to be of reputable character and financially sound with respect to the obligation incurred. The bond shall be furnished before construction and during the life of the operation. The bond shall remain with the Union County Commissioners until the operator has complied with all Federal, State and Local laws, rules and ordinances in operation of the facility and until the prompt clean up and proper-disposal of any waste improperly handled or disposed of at the facility and restoration of the premises upon which the facility is operated and to ensure proper closure of the manure storage system and/or to prevent discharge contamination into surface waters of the state. If a cash bond is posted all interest earned thereon shall become part of the bond subject to terms and conditions, including the condition of release. The Union County Commissioners shall give approval before release of the bond.
- c. The amount of Cash or Surety Bond shall be in an amount equal to \$1,500 for each 100,000 gallons of manure storage capacity, prorated for smaller amounts.
- d. The amount of Cash or Surety Bond shall be reduced by fifty (50) percent for a new concentrated animal feeding operation with the approval of methods or equipment meeting the requirements of 9.c.i.4.
- e. A liability insurance policy shall be furnished in addition to the cash or surety bond in an amount equal to or greater than the amount of the cash or surety bond.

19. Penalties

- a. Any person determined by the Health Officer to be in violation of this Ordinance shall be penalized for each offense by a penalty established by the Health Officer of not more than Five Hundred Dollars (\$500.00) for the first offense; not more than One Thousand Dollars (\$1,000.00) for the second; and by not more than Two Thousand Five Hundred Dollars (\$2,500.00) for each subsequent offense.
- b. Penalties shall be payable to Union County Commissioners.

- c. Each day a person fails to perform the corrective action in accordance with the schedule identified in an abatement order issued by the Health Officer shall constitute a distinct and separate violation and said person shall be subject to the penalties identified in 19.a.
- d. Any person violating any provisions of this Ordinance shall be liable to the Health Department for any expense, loss, or damage occasioned it by reason of such violation, including the costs for labor, supplies, equipment, and services necessary to enforce an order of abatement .
- e. The Health Officer may restrict, suspend, or revoke any permit for:
 - i. Repeated substantive violations of this Ordinance,
 - ii. Failure to perform a corrective action ordered by the Health Department, or
 - iii. Providing false information to the Health Department.

20. Severability

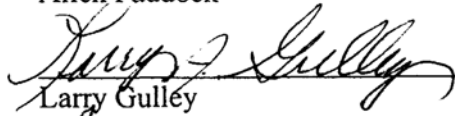
If any section or part of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of the Ordinance, and the remaining portions shall be and remain in full force and effect.

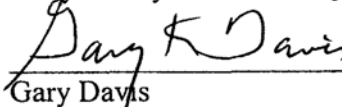
21. Disclaimer

- a. The Ordinance shall not create liability on the part of the Health Department or any officer, employee, or agent thereof for any damage that may result from reliance on this Ordinance or on any administrative decision lawfully made thereunder.
- b. All inspections shall be at the discretion of the Health Department and nothing in this Ordinance shall be construed as requiring the Health Officer to conduct any inspection nor shall any inspection imply a duty to conduct any other inspection. Nothing in this Ordinance shall be construed to hold the Health Officer responsible for any damage to persons or property by any failure to make an inspection or reinspection or for inspections that fail to identify unacceptable conditions or procedures.

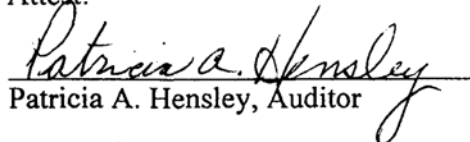
Union County Commissioners

Allen Paddock


Larry Gullley


Gary Davis

Attest:


Patricia A. Hensley, Auditor

Nov. 19, 2008
Date

Exhibit A

Current Text of 327-IAC 5-4-3 (b)(7)

- 7) "Large concentrated animal feeding operation" or "large CAFO" means an AFO that stables or confines at least as many as the number of animals specified in any of the following categories:
- a. Seven hundred (700) mature dairy cows, whether milked or dry.
 - b. One thousand (1,000) veal calves.
 - c. One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, the following:
 - i. Heifers.
 - ii. Steers.
 - iii. Bulls.
 - iv. Cow/calf pairs.
 - d. Two thousand five hundred (2,500) swine each weighing at least fifty-five (55) pounds.
 - e. Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.
 - f. Five hundred (500) horses.
 - g. Ten thousand (10,000) sheep or lambs.
 - h. Fifty-five thousand (55,000) turkeys.
 - i. If the AFO uses a liquid manure handling system, either of the following:
 - i. Thirty thousand (30,000) laying hens or broilers.
 - ii. Five thousand (5,000) ducks.
 - j. If the AFO uses other than a liquid manure handling system, any of the following:
 - i. One hundred twenty-five thousand (125,000) chickens, other than laying hens.
 - ii. Eighty-two thousand (82,000) laying hens.
 - iii. Thirty thousand (30,000) ducks.

Current Text of 327-IAC 5-4-3 (b)(10)(a)

- 10) "Medium concentrated animal feeding operation" or "medium CAFO" means the following:
- a. An AFO, where the type and number of animals that are stabled or confined at the operation falls within the following ranges:
 - i. Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry.
 - ii. Three hundred (300) to nine hundred ninety-nine (999) veal calves.
 - iii. (iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves.
Cattle includes, but is not limited to, the following:
(AA) Heifers.
(BB) Steers.
(CC) Bulls.
(DD) Cow/calf pairs.
 - iv. Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing at least fifty-five (55) pounds.
 - v. Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.
 - vi. One hundred fifty (150) to four hundred ninety-nine (499) horses.
 - vii. Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.
 - viii. Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.
 - ix. If the AFO uses a liquid manure handling system, either of the following:
(AA) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers.
(BB) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks.
 - x. If the AFO uses other than a liquid manure handling system, any of the following:
(AA) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens.
(BB) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens.
(CC) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks.