



**SRAP**  
Socially Responsible  
Agriculture Project

## Guide to Confronting Concentrated Animal Feeding Operations in

# ARIZONA



# Guide to Confronting Concentrated Animal Feeding Operations in ARIZONA

**A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT  
WITH THE ASSISTANCE OF MIDWEST ENVIRONMENTAL ADVOCATES, INC.<sup>1</sup>**

For more than 20 years, Socially Responsible Agriculture Project (SRAP) has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations and to advocate for a food system built on regenerative practices, justice, democracy, and resilience. Our team includes technical experts, independent family farmers, and rural residents who have faced the threats of factory farms in their communities. When asked for help, SRAP offers free support, providing communities with the knowledge and skills to protect their right to clean water, air, and soil and to a healthy, just, and vibrant future. For more information, visit [www.srapproject.org](http://www.srapproject.org).

## **SRAP HELP HOTLINE**

Facing a factory farm? Contact SRAP for support.

[www.srapproject.org/help](http://www.srapproject.org/help)

(503) 362-8303

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**Date of publication: October 2018**

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<sup>1</sup> Midwest Environmental Advocates is a nonprofit environmental law center that works for healthy water, air, land, and government for this generation and the next. For more information, visit [midwestadvocates.org](http://midwestadvocates.org).





# CAFO Guide Overview

This guide outlines CAFO laws, regulatory processes, and useful resources for advocates. Below is an overview of actions communities can take if a CAFO is being built, expanding, or violating regulations.

## EDUCATE YOURSELF

Learn how CAFOs harm communities at [sraproject.org](https://sraproject.org). Use this guide to find state agencies that regulate CAFOs; state permitting requirements for zoning, construction, etc.; and public open meetings and records laws. Use SRAP's Federal Guide to learn relevant federal laws like the Clean Water Act, Clean Air Act, and Endangered Species Act.

## LOOK FOR PUBLIC NOTICES

Look for public notices of CAFOs in newspapers, state agency websites, and at government buildings. The window for public participation is often brief. Find rules and deadlines for public comment, hearing requests, and appeals. Respond before deadlines.

## REQUEST AND REVIEW PUBLIC RECORDS

Search for public records related to the CAFO; if necessary, make a public records request.

## NEW OR EXPANDING CAFOS

### REVIEW ZONING ORDINANCES

Review municipal or county codes and zoning ordinances to determine if any requirements must be met at the local level.

### REVIEW PERMIT APPLICATIONS

Determine if any local, state, or federal permit applications are required; review application materials to make sure all requirements are met.

### COLLECT DATA

Test water before the CAFO siting or expansion to establish a baseline. This may show that new pollution came from the CAFO.

## EXISTING CAFOS

### REVIEW CAFO DOCUMENTS

Review permits, applications, manure management plans, nutrient management plans, monitoring reports, etc. Familiarize yourself with permit and plan provisions so you can spot violations.

### COLLECT DATA

Conduct well, soil, water, and/or air testing to establish a connection between the facility and harmful pollution. Keep a log of odor and other impacts.

### MONITOR CAFOS AND BUILD A RECORD

Submit complaints to regulators if you observe violations. Take photos and keep a log. Don't trespass!

### FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

Did the agency take action? If a state agency isn't complying with state or federal environmental laws, contact your U.S. EPA Regional Office.

### ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

Consider forming a nonprofit if you plan long-term advocacy.

### SEEK LEGAL ADVICE

Consider contacting law firms or pro-bono clinics for help with legal matters related to CAFOs.

### IDENTIFY IMPAIRED WATER BODIES

Determine if impaired waters may be impacted by discharge from the existing or proposed CAFO.

### CONTACT STATE OR LOCAL HEALTH DEPARTMENT

The Health Department may monitor or oppose the CAFO due to public health impacts.

### CHECK FOR PUBLIC FINANCING

If the CAFO received government-backed loans, see if an Environmental Assessment was conducted.

### TRACK PUBLIC NOTICES

CAFO permits come up for renewal, so look for public notices and comment opportunities.

### REVIEW STATE RIGHT-TO-FARM LAW

Find exceptions to the law's nuisance liability shield (e.g., compliance with laws and permits is often a prerequisite to nuisance claim protection).

### AGENCIES & STATE DEFINITIONS

Familiarize yourself with your state's livestock operation definitions, and with the agencies that regulate the industry. (Definitions and relevant agencies vary by state.)

### SEEK PROPERTY TAX ADJUSTMENT

Neighbors may be able to reduce their property taxes due to CAFOs' negative impact on property values.

### ENGAGE IN RULEMAKING PROCESSES

Attend regulatory meetings and share your concerns. If your state allows it, develop local ordinances to protect communities.

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## INTRODUCTION: CAFOs IN ARIZONA

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Animal agriculture in Arizona is dominated by beef and dairy cattle operations. According to the United States Department of Agriculture National Agriculture Statistics Service, Arizona had around 1.5 million cattle in its livestock inventory in early 2016. Based on value of sales, Arizona ranks 13<sup>th</sup> in the nation for dairy, 24<sup>th</sup> for cattle, and 32<sup>nd</sup> for total value of agricultural products sold.<sup>2</sup> Ranching and agriculture are the state's second largest source of revenue.<sup>3</sup> There are approximately 20 thousand farm operations spanning over 26 million acres.<sup>4</sup> Farmland covers over one-third of the state and remains the primary consumer of water resources. Unlike other parts of the country where water is plentiful, water is a scarce resource in Arizona, and with the advancement of climate change, lingering drought in the West and Southwest, and the increasing demand for animal agricultural products, the state is forced to consider the environmental costs and benefits of continued growth of its animal agricultural industry.

Arizona is renowned for its unique topography, natural beauty, and desert climate. It is home to the Grand Canyon, Painted Desert, Petrified Forest, Sonora Desert, a portion of the Colorado Plateau, and mountains that are part of the Mexican Highland range. The Colorado River is Arizona's major river, with the Little Colorado River and Gila River as main tributaries. However, Arizona shares the Colorado River resources with California, Nevada, New Mexico, Utah, Wyoming, Colorado, and Mexico, and usage of this precious water resource is strictly regulated. Arizona is authorized by the federal government to use a predetermined portion of the river.<sup>5</sup> There are few natural lakes and the state relies heavily on dams, artificial lakes, and reservoirs to supply enough water for the state's agricultural operations. Agriculture uses approximately 70% of Arizona's water and water demand exceeds supply rates.<sup>6</sup> Approximately 43% of the state's water usage is drawn from groundwater, or aquifers.<sup>7</sup> As a result, groundwater levels are dropping and causing dangerous

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<sup>2</sup> 2015 State Agricultural Overview, U.S. DEP'T AGRICULTURE, [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=ARIZONA](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=ARIZONA).

<sup>3</sup> Farming and Ranching, THE ARIZONA EXPERIENCE, <http://arizonaexperience.org/land/farming-and-ranching>.

<sup>4</sup> 2015 State Agricultural Overview, U.S. DEP'T AGRICULTURE, [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=ARIZONA](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=ARIZONA).

<sup>5</sup> Known as the "Law of the River" authorizes Arizona to use 2.8 million feet of the Colorado River. Colorado River Compact (1922); Boulder Canyon Project Act, H.R. 5773 (1928).

<sup>6</sup> Securing Arizona's Water Future, Arizona Department of Water Resources, <http://www.azwater.gov/AzDWR/PublicInformationOfficer/documents/supplydemand.pdf>.

<sup>7</sup> *Id.*

cracks, or fissures, in the ground. The state struggles to safeguard the environment and fragile natural resources while also protecting its agricultural interests.

Despite the prevalent water concerns, the number and size of factory farms has risen in Arizona. The average size of dairy animal feeding operations (AFOs) in Arizona has increased from 1,451 in 1997 to 2,784 in 2013.<sup>8</sup> Arizona appears to address environmental pollution and groundwater concerns by requiring CAFOs to obtain both an Arizona Pollution Effluent Discharge System (AZPDES) CAFO General Discharge Permit as well as an Aquifer Protection Permit (APP). However, as of 2013, only 2 Arizona CAFOs had AZPDES CAFO General Discharge permits, yet the Arizona Department of Environmental Quality (ADEQ) estimated in 2004 that there are approximately 170 CAFOs in Arizona.<sup>9</sup> Basically, every CAFO claims that they do not discharge, so they don't need a permit and the state hasn't done much to challenge this practice. Additionally, the AZPDES CAFO General Permit expired in 2009 and ADEQ is not accepting Notices of Intent to Discharge until the general permit is reissued or replaced. Therefore, Arizona CAFOs appear largely unregulated as they continue to consume precious water resources while contributing to soil, air, and water pollution in Arizona's communities.

While Arizona definitely appears to drop the regulatory ball regarding CAFO water pollution, it is one of the few states that have enacted air quality measures, which apply to livestock operations, in excess of what is required by the federal Clean Air Act. This is partly due to the poor air quality in the state and the impact of animal agriculture's emissions. Arizona requires air permits from facilities that emit large enough quantities of particulate matter. While only very large operations trigger this requirement, the size and number of operations in Arizona is growing and this may be a useful tool in a community's fight against a large CAFO.

It is also worth pointing out that Arizona is one of the states that has largely stripped power out of the people's hands by limiting what local governments can do. The state preempts the authority of local government and has placed restrictions on a local government's ability to pass any ordinance that could interfere with the siting or operation of agricultural operations. Therefore, you'll have to look to the state laws

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<sup>8</sup> Factory Farm Nation 2015 Edition, FOOD & WATER WATCH, at page 8, <http://www.factoryfarmmap.org/wp-content/uploads/2015/05/FoodandWaterWatchFactoryFarmFinalReportNationMay2015.pdf>.

<sup>9</sup> Fact Sheet for the Issuance of AZPDES CAFO General Permit AZG2004-02, ARIZONA DEP'T OF ENV'TL QUALITY, <http://legacy.azdeq.gov/environ/water/permits/download/cafofact.pdf>; Agricultural census data indicates that approximately 100 other medium and large CAFOs are operating without the required AZPDES permit.

and regulations to identify opportunities for involvement, oversight, and enforcement of CAFOs in Arizona.

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## CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

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### What is a CAFO?

Arizona distinguishes between animal feeding operations (AFOs) and CAFOs based on the number of animals at a particular operation, whether the operation discharges, and whether the state has determined the operation is a significant contributor of pollutants.<sup>10</sup>

AFOs are facilities that confine animals for 45 days or more in any 12-month period and do not sustain crops or vegetation in the normal growing season.<sup>11</sup>

**Large CAFO Requirement:** An AFO with the number of animals specified in ARIZ. ADMIN. CODE R18-9-A901(15) (see the table below) is a Large CAFO. At first glance, it appears simple—if they are an AFO with over 1,000 animal units, they are a Large CAFO and should need an AZPDES permit.<sup>12</sup> However, despite this definition, almost none of the large CAFOs in the state have sought an AZPDES permit. This is because the current AZPDES CAFO permit is expired and because Arizona also allows for Large CAFOs to seek a “No Potential to Discharge” determination and thereby avoid AZPDES permitting.<sup>13</sup>

**Medium CAFO Requirements:** An AFO with the number of animals specified in ARIZ. ADMIN. CODE R18-9-A901(19) (see table below) and discharges pollutants into navigable waters is a Medium CAFO that must obtain the required AZPDES permits. Needless to say, no facility admits to discharging pollutants so there are practically no permitted Medium CAFOs in the state.

**Designated CAFO Requirement:** An AFO that is a significant contributor of pollutants to any navigable water, regardless of AFO size, may be designated as a CAFO and

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<sup>10</sup> ARIZ. ADMIN. CODE R18-9-D901(B)–(E)

<sup>11</sup> 40 C.F.R. 122.23.

<sup>12</sup> ARIZ. ADMIN. CODE R18-9-A901(15)

<sup>13</sup> ARIZ. ADMIN. CODE R18-9-D903.



required to obtain AZPDES permits.<sup>14</sup> ADEQ must conduct a site inspection before deciding to designate a facility as a CAFO.

**TABLE 1: Arizona CAFO Requirements**

<b>Animal</b>	<b>Large CAFO<sup>15</sup></b>	<b>Medium CAFO<sup>16</sup> + Discharge</b>	<b>Designated CAFO</b>
<b>Cattle</b> (bull, steer, heifer, veal, or calf)	≥ 1,000	300–999	<p>An AFO that ADEQ inspects and designates as a CAFO, regardless of the number of animals, where:</p> <ul style="list-style-type: none"> <li>• Pollutants are discharged from the operation into waters of the United States and</li> <li>• ADEQ determines that the AFO is a significant contributor of pollutants.</li> </ul>
<b>Dairy cow</b>	≥ 700	200–699	
<b>Horses</b>	≥ 500	150–499	
<b>Swine</b> (≥ 55 pounds)	≥ 2,500	750–2,499	
<b>Swine</b> (< 55 pounds)	≥ 10,000	3,000–9,999	
<b>Sheep/lambs</b>	≥ 10,000	3,000–9,999	
<b>Ducks</b> (with liquid manure handling)	≥ 5,000	1,500–4,999	
<b>Ducks</b> (with dry manure handling)	≥ 30,000	10,000–29,999	
<b>Laying hens</b> (with liquid manure handling system)	≥ 30,000	9,000–29,999	
<b>Laying hens</b> (using other than liquid handling system)	≥ 82,000	25,000–81,999	
<b>Chickens other than laying hens</b> (with liquid manure handling system)	≥ 30,000	9,000–29,999	
<b>Chickens other than laying hens</b> (using other than liquid manure handling system)	≥ 125,000	37,500–124,999	
<b>Turkeys</b>	≥ 55,000	16,500–54,999	

<sup>14</sup> A.A.C R18-9-D901(B)

<sup>15</sup> ARIZ. ADMIN. CODE R18-9-A901(15)

<sup>16</sup> ARIZ. ADMIN. CODE R18-9-A901(19)



## Who Decides if It's a CAFO?

For most operations, the AFO owner/operator determines if its operation is a CAFO based on the number of animals and if the operation discharges pollutants into waters of the state. It is no surprise that almost no AFO owner/operator has determined that they are a CAFO. However, the Director of the Arizona Department of Environmental Quality (ADEQ) may designate an operation as a CAFO (regardless of the number of animals or whether the operation discharges) if he or she believes that the operation is a significant source of pollution.<sup>17</sup> In order for the Director to make this determination, he or she must conduct an on-site inspection. The ADEQ and the Director consider the following factors in making a CAFO determination:

- The size of the operation and the amount of waste produced that could reach nearby waters
- The location of the operation in relation to nearby waters
- The various ways the animal waste will reach nearby waters
- A variety of factors which impact the likelihood and frequency of discharge of animal waste into nearby waters, such as slope, vegetation, rainfall, etc.
- Any other relevant factors.<sup>18</sup>

Based on this information, it may be a good idea for residents who live near an AFO to report and document any discharges to build a record within the agency that the AFO is actually a CAFO and should be subject to the permitting and oversight requirements that *should* accompany the CAFO designation.

## Responsible Regulatory Agencies

One of the most important steps in figuring out how to deal with a CAFO in the area is to understand which state agencies play a role in CAFO and CAFO-related regulation issues. Knowing which agency to reach out to with your concerns is a more efficient and effective use of everyone's time. Below is an outline of the various agencies in Arizona that could play a role in confronting a new, expanding, or existing CAFO in your community. This list is not meant to be exhaustive. There may be other departments, federal agencies, or local groups which you may want to contact but the entities below may be a general starting point.

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<sup>17</sup> A.A.C R18-9-D901 (B)

<sup>18</sup> A.A.C R18-9-D901 (B)(1)-(5)

## Natural Resources Agencies

### Arizona Department of Environmental Quality

The Arizona Department of Environmental Quality (ADEQ) is the agency responsible for administering most of the state's environmental laws and is involved in CAFO permitting and compliance.<sup>19</sup> ADEQ's three main programs are Air Quality, Water Quality, and Waste. ADEQ's Water Quality Division issues individual and general permits for the state's AZPDES program. However, this excludes tribal lands.

It is important to note that while ADEQ is responsible for administering the AZPDES program, there is a shocking lack of CAFO AZPDES permits issued in the state. The Department allows all the AFOs to claim they have no potential to discharge and they are not currently issuing any CAFO AZPDES permits. The most recent AZPDES CAFO General Permit expired in 2009 and ADEQ is not accepting new Notices of Intent for CAFO General Permit coverage until the new general permit is issued.

ADEQ also administers the Aquifer Protection Permit (APP) Nitrogen Management General Permit for CAFOs. This permit is intended to minimize discharges to state groundwater. For a complete list of the various permits ADEQ requires for agricultural operations, check their website.<sup>20</sup>

### Arizona Department of Water Resources

The Arizona Department of Water Resources implements the Arizona Groundwater Management Code and strives to secure long-term water resources within the state. It is also responsible for registering surface and groundwater rights, authorizing permits to drill wells, providing other agencies and individuals with technical assistance, managing floodplains, ensuring state dam safety, and representing Arizona in interstate water discussions.<sup>21</sup>

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<sup>19</sup> About Us, ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://azdeq.gov/node/209>.

<sup>20</sup> Permit(s) needed for an Agriculture Business, ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://azdeq.gov/node/322>.

<sup>21</sup> CAFO Ready Reference Guide, ARIZONA DEP'T OF AGRICULTURE, at page 26, <https://agriculture.az.gov/sites/default/files/CAFO%2520Web%2520Ready%2520PDF%2520Updated%2520122408.pdf>.

## Agricultural Agencies

### Arizona Department of Agriculture

The Arizona Department of Agriculture (ADA) regulates the state's agricultural production but has little involvement with the state's CAFO program. It administers the Animal Health and Welfare Program, which deals primarily with animal transport, dairy farm permits, food safety, meat inspection, feedlot licensing, and disease transmission.

### USDA Natural Resource Conservation Service

The NRCS offers technical assistance, guidance, and support to a state's local conservation districts. Involvement is voluntary and it does not have enforcement authority but it is a great resource for agencies, farmers, and residents to learn about conservation requirements and recommendations, nutrient management planning, and funding opportunities. NRCS also oversees the voluntary Environmental Quality Incentive Program (EQIP) that "promotes agricultural production and environmental quality as compatible goals" and provides technical and financial assistance for projects and practices "that optimize environmental benefits on working agricultural land."<sup>22</sup>

More information and service contacts are available on their [website](#).<sup>23</sup>

## Health Departments

### Arizona Department of Health Services

The Arizona Department of Health Services may inspect and regulate CAFOs for violations of any health law or rule of the state.<sup>24</sup> Unfortunately, there are few health laws which would apply to agricultural operations and Arizona has limited local government's ability to pass health ordinances that apply to CAFOs so you may want to explore other avenues before trying to involve this agency.

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<sup>22</sup>Environmental Quality Incentives Program, U.S. DEP'T OF AGRICULTURE NATURAL RESOURCE CONSERVATION SERVICE ARIZONA, <http://www.nrcs.usda.gov/wps/portal/nrcs/main/az/programs/financial/eqip/>.

<sup>23</sup> U.S. DEP'T OF AGRICULTURE NATURAL RESOURCE CONSERVATION SERVICE ARIZONA <http://www.nrcs.usda.gov/wps/portal/nrcs/site/az/home/>.

<sup>24</sup> ARIZ. REV. STAT § 36-136.

## County Health Departments

In addition to the state health department, each county has a county department of health or health services district.<sup>25</sup> Below are links to available county health departments or districts. But as previously mentioned, Arizona has limited local government's ability to pass health related ordinances that apply to agricultural operations so the county health departments may not be much help in a CAFO fight.

[Apache](#)

[County](#)

[Cochise](#)

[County](#)

[Coconino](#)

[County](#)

[Gila County](#)

[Graham](#)

[County](#)

[Greenlee](#)

[County](#)

[La Paz County](#)

[Maricopa](#)

[County](#)

[Mohave](#)

[County](#)

[Navajo County](#)

[Pima County](#)

[Pinal County](#)

[Santa Cruz](#)

[County](#)

[Yavapai](#)

[County](#)

[Yuma County](#)

## Local Conservation Districts

### Natural Resource Conservation Districts

The Natural Resource Conservation Districts (NRCDS), administered by the Arizona Land Department, are separate districts governed by elected and appointed officials to evaluate local restoration and conservation needs.<sup>26</sup> There are 32 NRCDS administered by the state Land Department and 10 NRCDS under tribal law. Arizona law states the purpose of NRCDS as,

To provide for the restoration and conservation of lands and soil resources of the state, the preservation of water rights and the control and prevention of soil erosion, and thereby to conserve natural resources, conserve wildlife, protect the tax base, protect public lands, and protect and restore this state's rivers and streams and associated riparian habitats, including fish and wildlife resources that are dependent on those habitats, and in such manner to protect and promote the public health, safety, and general welfare of the people.<sup>27</sup>

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<sup>25</sup> ARIZ. REV. STAT § 36-182.

<sup>26</sup> Natural Resource Conservation Districts, ARIZONA STATE LAND DEPARTMENT, <https://land.az.gov/natural-resource-conservation-districts>.

<sup>27</sup> ARIZ. REV. STAT § 37-1001.



Accordingly, NRCDs engage in activities like managing watersheds, restoring riparian areas, land use planning to improve air and water quality, and creating partnerships between state, federal, and local agencies to address natural resource concerns.<sup>28</sup> Given the local knowledge and expertise of individual conservation districts, consider using your local conservation district as a source of information about the district.

For information about Arizona NRCDs, see the State Land Department's NRCD [website](#),<sup>29</sup> the [NRCD Handbook](#),<sup>30</sup> and a [map](#) of Arizona NRCDs.<sup>31</sup>

## U.S. EPA Region 9

The U.S. Environmental Protection Agency (EPA) seeks to protect human health and the environment and has 10 regional offices across the country to help achieve these goals and oversee implementation of state and federal environmental programs. EPA Region 9 serves Arizona, California, Hawaii, Nevada, Pacific Islands, and 148 tribal nations. Arizona is authorized to implement NPDES and other environmental laws and regulations, but EPA retains ultimate oversight authority. The EPA Regional office steps in to implement federal laws when states cannot or will not. Reach out to the regional office if your state is not implementing or enforcing state or federal environmental laws or programs within the region. The EPA regional office may assist with education, interpretation, monitoring, information/document requests, compliance, and enforcement.

For EPA Region 9 contact information, see its [website](#).<sup>32</sup>

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<sup>28</sup> Natural Resource Conservation Districts, ARIZONA STATE LAND DEPARTMENT, <https://land.az.gov/natural-resource-conservation-districts>.

<sup>29</sup> Natural Resource Conservation Districts, ARIZONA STATE LAND DEPARTMENT, <https://land.az.gov/natural-resource-conservation-districts>.

<sup>30</sup> *Arizona's Natural Resource Conservation District Operations Handbook*, NATIONAL ASSOCIATION OF CONSERVATION DISTRICTS (June 2016), <https://land.az.gov/sites/default/files/NRCD%20Handbook.pdf>.

<sup>31</sup> *Natural Resource Conservation Districts*, ARIZONA STATE LAND DEPARTMENT, [https://land.az.gov/sites/default/files/documents/files/NRCD\\_district\\_map.pdf](https://land.az.gov/sites/default/files/documents/files/NRCD_district_map.pdf)

<sup>32</sup> Contact EPA Region 9, U.S. ENV'T'L PROTECTION AGENCY, <https://www.epa.gov/aboutepa/forms/contact-epa-region-9-pacific-southwest>.

### Arizona Pollutant Discharge Elimination System

#### **AZPDES CAFO Permit**

The EPA has authorized Arizona to implement the NPDES program and regulate the discharge of pollutants into waters of the United States. See the Federal Guide for detailed discussion of NPDES and the Clean Water Act. While the EPA always retains oversight and enforcement authority of federal and state NPDES programs, the ADEQ is the primary agency responsible for implementing the AZPDES.<sup>33</sup> The AZPDES program is governed by Title 18, Chapter 9, Article 9 of the Arizona Administrative Code.

The Arizona Administrative Code states that a CAFO owner or operator should seek an individual or general permit.<sup>34</sup> The CAFO permit controls the discharge of pollutants from the facility into waters of the United States that result from storage practices, waste and wastewater management, and waste application to land. It prohibits discharges from a CAFO unless several requirements are met. In theory, the discharge must not cause or contribute to non-attainment of water quality standards or impair a water of the U.S., or fail to conform to the water body's Total Maximum Daily Load (TMDL).

A General Permit may cover multiple facilities throughout the state, whereas an individual permit covers one facility and has more facility-specific terms and conditions. While ADEQ is authorized to issue individual permits, it appears that ADEQ only issues General Permits for CAFOs in order to regulate multiple CAFOs under the same permit. However, they are not currently accepting applications for the AZPDES CAFO General Permit. The current AZPDES CAFO General Permit went into effect in 2004 and expired in 2009, but it has been administratively extended for existing permitted operations until reissuance or replacement. General permits are used for categories of discharge with the following considerations:

- Substantially similar types of operations
- Similar types of waste discharges or disposal practices
- Similar effluent limitations and operating conditions

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<sup>33</sup> ARIZ. REV. STAT § 49-202.

<sup>34</sup> ARIZ. ADMIN. CODE § R18-9-D902(A).

- Similar monitoring requirements.<sup>35</sup>

A copy of the 2004 CAFO General Discharge Permit is available [here](#).<sup>36</sup>

As of 2013, EPA is aware of only two CAFOs with AZPDES General Permits. In 2004, ADEQ estimated there were approximately 170 CAFOs in Arizona. Since the AZPDES CAFO General Permit expired in 2009, ADEQ is not accepting new Notices of Intent for CAFO General Permit coverage until the new general permit is issued. This means that the majority of CAFOs in Arizona are not in compliance with the state's NPDES program.

Note: ADEQ does not have the authority to authorize AZPDES permits on tribal lands; CAFOs on tribal lands must seek NPDES Permits from U.S. EPA Region 9 or other tribal permitting authorities.

The AZPDES CAFO permit requires CAFOs to install waste containment structures to ensure containment of waste, wastewater, and stormwater during a 24-hour, 25-year storm event. The CAFO must also develop a manure, nutrient, and wastewater plan, as well as submit annual reports, due by February 19<sup>th</sup> of each year. The permitted CAFO must orally report any discharge to ADEQ within 24 hours, and in writing within 5 days, from when the discharge occurred. The CAFO may not need an AZPDES permit if the state determines there is no potential to discharge.<sup>37</sup> Failure to obtain or comply with a permit is a violation of both state and federal laws and the CAFO may be subject to the following:

- Injunctive relief
- Monetary penalties
- Incarceration
- Termination of permit
- Denial of permit renewal.

### **Nutrient Management Plan**

All AZPDES permitted CAFOs that apply waste to land must develop a Nutrient Management Plan (NMP) to control and minimize the movement of nitrogen and phosphorous to waters of the state. This includes restrictions on spreading waste on

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<sup>35</sup> *Fact Sheet for the Issuance of AZPDES CAFO General Permit AZG2004-002*, ARIZONA DEPT. OF ENV'T'L QUALITY (2004), <http://legacy.azdeq.gov/environ/water/permits/download/cafofact.pdf>.

<sup>36</sup> *Arizona Pollutant Discharge Elimination System General Permit for Concentrated Animal Feeding Operations*, ARIZONA DEPT. OF ENV'T'L QUALITY WATER QUALITY DIVISION (2004), <http://legacy.azdeq.gov/environ/water/permits/download/cafogp.pdf>.

<sup>37</sup> ARIZ. ADMIN. CODE§ R18-9-D903.

frozen or snow-covered soil since nutrients can easily travel to groundwater and surface water under these conditions. The NMP should include best management practices (BMPs) and comply with NRCS Nutrient Management and Conservation Practice Standard.<sup>38</sup>

See NRCS's [practice standards](#) for nutrient management.<sup>39</sup>

Anyone may request a copy of a CAFO's NMP from ADEQ.

### **Best Management Practices**

BMPs include land application rates, periodic manure and soil analyses for nitrogen and phosphorous, equipment inspection, setbacks for manure application near surface waters, and maintaining records of the operation's implementation of BMPs.

### **Additional Measures**

Permitted facilities must implement the following measures:<sup>40</sup>

- Install liquid wastewater impoundments and depth markers
- Perform weekly inspections of all devices carrying stormwater to wastewater/manure storage structures
- Perform weekly inspection of manure and wastewater impoundments and storage structures
- Ensure proper disposal of animal mortalities
- Take and document corrective actions
- Maintain complete records of implementation and compliance of the various permit requirements.

### **Bio-Solid Management**

In Arizona, a person intending to apply bulk bio-solids to land must register with ADEQ. Biosolids are defined as "sewage sludge...that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer."<sup>41</sup> This may apply to CAFOs that apply animal waste to lands in the state. A person who seeks to register with ADEQ to apply biosolids to land must

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<sup>38</sup> NRCS Nutrient Management Code 590.

<sup>39</sup> *USDA Natural Resource Conservation Service Conservation Practice Standard Arizona: Nutrient Management Code 590*, NATURAL RESOURCE CONSERVATION SERVICES (2002), <https://cals.arizona.edu/animalwaste/notebook/code590.html>.

<sup>40</sup> *Fact Sheet for the Issuance of AZPDES CAFO General Permit AZG2004-002*, ARIZONA DEPT. OF ENV'T'L QUALITY (2004), at page 10, <http://legacy.azdeq.gov/environ/water/permits/download/cafofact.pdf>.

<sup>41</sup> ARIZ. ADMIN. CODE § R18-9-1001(7).



provide public notice and should not apply bio-solids to land with the following conditions:<sup>42</sup>

- If the soil has less than 6.5 pH
- Within 10 meters of navigable waters
- Within 305 meters of a public drinking water supply well
- Within 25 feet of a public right-of-way or private property
- At a rate greater than the agronomic rate of the crops grown on the land
- if the land is flooded, frozen, or snow-covered
- Before crops are grown on the site
- Within 1,000 feet of a dwelling unless incorporated into the soil within 10 hours of application.

See [ADEQ's website](#) for more information about Biosolid Land Application Registration.<sup>43</sup>

### **AZPDES Construction Stormwater General Permit**

U.S. EPA requires the regulation of stormwater runoff as part of federal and state NPDES programs. In addition to the CAFO Discharge Permit, Arizona developed a Stormwater Construction General Permit (CGP) as a component of its AZPDES program. The CGP took effect in 2013 and applies to construction sites that disturb one or more acres of land. This permit may apply for new or expanding CAFO facilities.

See a [lengthy fact sheet](#) about the AZPDES CGP.<sup>44</sup>

See a [copy of the current CGP](#).<sup>45</sup>

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<sup>42</sup> ARIZ. ADMIN. CODE § R18-9-1007.

<sup>43</sup> Biosolids Land Application, ARIZONA DEPT. OF ENV'T'L QUALITY, <https://www.azdeq.gov/sites/default/files/bioland.pdf>.

<sup>44</sup> *AZPDES Fact Sheet: Construction General Permit for Stormwater Discharges Associated with Construction Activity*, ARIZONA DEPT. OF ENV'T'L QUALITY (June 2013), [http://legacy.azdeq.gov/environ/water/permits/download/cgp\\_final\\_fs-6-3-13.pdf](http://legacy.azdeq.gov/environ/water/permits/download/cgp_final_fs-6-3-13.pdf).

<sup>45</sup> Arizona Pollutant Discharge Elimination System General Permit for Stormwater Discharges Associated With Construction Activity to Waters of the United States, ARIZONA DEPT. OF ENV'T'L QUALITY WATER QUALITY DIVISION (2013), [http://legacy.azdeq.gov/environ/water/permits/download/2013\\_cgp.pdf](http://legacy.azdeq.gov/environ/water/permits/download/2013_cgp.pdf).

## **Wetlands**

Wetlands are uncommon in Arizona, constituting less than 1% of the state.<sup>46</sup> However, the wetlands that exist are an incredibly important natural resource for water quality and biodiversity that enjoy considerable state and federal protections. Federal law regulates actions that impact, modify, or destroy wetlands. See the Federal Guide for a discussion of the Clean Water Act, Section 404 permits, and the federal agency responsible for implementation.

## **Groundwater**

Arizona has laws in place to protect groundwater quality and quantity for a variety of uses, including maintaining safe drinking water. Groundwater contamination and management is addressed by Arizona's 1980 Ground Water Protection Act and Title 45, Chapter 2 of Arizona Revised Statutes.

### **Aquifer Protection Permit**

Arizona law requires any facility that discharges to obtain an Aquifer Protection Permit from ADEQ.<sup>47</sup> The APP seeks to ensure that facilities are constructed and operated in a way that minimizes the migration of pollutants to an aquifer or vadose zone. It seeks to protect the state's groundwater. Arizona Revised Statutes §§ 49-241-252 lay out the purpose and authorization of APPs. The details regarding APP process and requirements are found in Title 18 of the Arizona Administrative Code, Chapter 9, Article 1 through Article 3.

In general, a facility seeking a permit must demonstrate all of the following:

1. Compliance with aquifer water quality standards,
2. The facility is designed and operated to cause the least amount of discharge possible given available technology—also referred to as best available control technology (BACT),
3. Ability to monitor,
4. Financial assurances,
5. Technical capabilities, and
6. Compliance with zoning laws.

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<sup>46</sup> Arizona-Environmental Protection, CITY DATA, <http://www.city-data.com/states/Arizona-Environmental-protection.html>.

<sup>47</sup> ARIZ. REV. STAT § 49-241.

ADEQ must provide public notice and an opportunity for public comment on any APP determination.

Find [instructions](#) for an individual APP.<sup>48</sup>

### **Nitrogen Management Permit**

The Nitrogen Management Permit requires that CAFOs implement BMPs to minimize nitrogen discharge.<sup>49</sup>

- BMPs should control nitrogen discharge from the following:
  - Harvesting, stockpiling, and disposal of animal manure;
  - Disposal of manure-contaminated water from CAFO activities;
  - Construction and maintenance of the lining of any impoundment used to contain process wastewater or contact stormwater from a CAFO operation.

### **Water Quality**

#### **Water Quality Standards**

Arizona has outlined surface water quality standards<sup>50</sup> as well as aquifer water quality standards.<sup>51</sup> These standards are developed to maintain or achieve designated uses<sup>52</sup> and may be narrative and/or numeric.

ADEQ is required by the Clean Water Act to conduct an analysis of water quality data to determine if the water quality standards are being attained and whether designated uses are supported. The development of water quality standards and assessment satisfies federal requirements, ensures ongoing monitoring, identifies trends and problem areas, and provides the public with an opportunity to learn about water quality in their states and contest actions/CAFO permits which would further compromise water quality standards in the state.

See [ADEQ's website](#) for more detail regarding Arizona's aquifer and surface water quality standards.<sup>53</sup>

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<sup>48</sup> Instructions for an Individual Aquifer Protection Permit Application, ARIZONA DEPT. OF ENV'T'L QUALITY, [http://legacy.azdeq.gov/environ/water/permits/download/app\\_individual\\_permit\\_application11.pdf](http://legacy.azdeq.gov/environ/water/permits/download/app_individual_permit_application11.pdf).

<sup>49</sup> ARIZ. ADMIN. CODE § R18-9-402.

<sup>50</sup> ARIZ. ADMIN. CODE § R18-11-101-123.

<sup>51</sup> ARIZ. ADMIN. CODE § R18-11-401-408.

<sup>52</sup> ARIZ. ADMIN. CODE § R18-11-104.

<sup>53</sup> Standards, ARIZONA WATER QUALITY DIVISION, <http://legacy.azdeq.gov/environ/water/standards/index.html>.

Find [additional information](#), resources, and maps regarding water quality monitoring and assessment.<sup>54</sup>

### **Impaired Water Bodies**<sup>55</sup>

Broadly speaking, a primary intent of the federal Clean Water Act is to keep clean waters clean and improve the quality of polluted—also known as impaired—waters. See the Federal Guide for a discussion of the Clean Water Act section 303(d) listing of impaired waters. Based on EPA’s most recent [Arizona Water Quality Assessment Report](#),<sup>56</sup> approximately half of the waters that have been assessed are considered impaired. Arizona established methodology for identifying impaired waters in Arizona Administrative Code Title 18, Chapter 11, Article 6. The identification of impaired waters is intended to assist states in developing Total Maximum Daily Loads for Arizona’s waters.

See [a map](#) of impaired lakes and streams in AZ.

See [a list](#) of impaired waters in Arizona.<sup>57</sup>

### **Total Maximum Daily Load Program**

Find [information](#) about Arizona TMDLs.<sup>58</sup>

### **CAFO Inspections**

ADEQ is authorized to inspect animal operations for violation of both federal and state CAFO laws per Arizona Revised Statutes § 49-203. The ADEQ CAFO inspection program looks for things like unauthorized discharges of pollutants, adherence to BMPs and NMPs, compliance with the applicable permits and NPDES regulations, compliance with drinking water system regulations, and compliance with section 404 of the Clean Water Act. Some states make CAFO inspection and violation

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<sup>54</sup> Monitoring and Assessment, ARIZONA WATER QUALITY DIVISION,  
<http://legacy.azdeq.gov/environ/water/assessment/>.

<sup>55</sup> ARIZ. ADMIN. CODE § R18-11-601-606.

<sup>56</sup> Arizona Water Quality Assessment Report, U.S. ENV’T L PROTECTION AGENCY,  
[https://iaspub.epa.gov/waters10/attains\\_state.control?p\\_state=AZ](https://iaspub.epa.gov/waters10/attains_state.control?p_state=AZ).

<sup>57</sup> Arizona’s 2012/2014 Impaired Waters, ARIZONA DEPT. OF ENV’T L QUALITY,  
[http://legacy.azdeq.gov/environ/water/assessment/download/impaired\\_waters.pdf](http://legacy.azdeq.gov/environ/water/assessment/download/impaired_waters.pdf).

<sup>58</sup> Monitoring and Assessment: Total Maximum Daily Load, ARIZONA WATER QUALITY DIVISION  
<http://legacy.azdeq.gov/environ/water/assessment/tmdl.html>.



documents readily available to the public. Arizona does not appear to be one of those states. In order to get inspection information, residents will have to submit a records request to the appropriate authority—see the “Public Information Laws” section below.

See Arizona’s [CAFO Inspection Checklist](#).<sup>59</sup>

Note that while ADEQ is the primary authority for implementation, inspection, and enforcement, the U.S. EPA also has authority to inspect CAFOs independently, or jointly with ADEQ. If ADEQ is failing to respond to complaints, conduct inspections, or enforce state and federal water laws and regulations, contact your regional EPA office.

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## AIR

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The Clean Air Act (CAA) requires states to monitor and regulate certain air pollutants, and while the CAA authorizes the regulation of emissions from agricultural operations, the agricultural industry has largely evaded meaningful regulation in exchange for a number of voluntary monitoring and data-gathering agreements. See the Federal Guide for more information.

Although the Clean Air Act does little to regulate the agricultural industry, states may go beyond the federal requirements in order to achieve the state’s ambient air quality standards. Arizona is unique as it has attempted to regulate certain types of emissions from agricultural operations—particularly particulate matter, or dust.

### **Ambient Air Quality Standards<sup>60</sup>**

Below is a short outline of Arizona’s Air Quality Standards that are relevant to CAFO emissions. These standards are, in theory, what ADEQ should regulate and enforce.

#### Particulate Matter

- PM10 standards
- PM2.5 standards

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<sup>59</sup> Concentrated Animal Feeding Operation Inspection Checklist, ARIZONA DEPT. OF ENV’T L QUALITY, <http://legacy.azdeq.gov/environ/water/permits/download/cafocheck.pdf>.

<sup>60</sup> ARIZ. ADMIN. CODE §18-2-201-220.

### Sulfur Oxides

- Primary
- Annual mean: 0.03 parts per million
  - 24-hour concentration: 0.014 parts per million
  - 1-hour concentration: 75 parts per billion
- Secondary
  - 3-hour concentration no more than once per year: 0.5 parts per million

### Nitrogen Oxides

- Primary
  - Annual average concentration: 53 parts per billion
  - 1-hour average concentration: 100 parts per billion
- Secondary
  - Annual mean: .053 parts per million

While a significant portion of the state meets the air quality standards, several parts of the state struggle to attain air quality standards, posing serious human health risks. For instance, Phoenix, Arizona, regularly ranks as one of the worst cities in the U.S. for air pollution.<sup>61</sup> Apart from Phoenix, the majority of nonattainment areas are located in Maricopa, Pinal, and Pima counties—all of which have some of the highest concentrations of CAFOs and livestock animals in the state.<sup>62</sup> Indeed, an ADEQ study in 1995 identified agricultural activities as a significant source of particulate matter pollution in the state. Due to continued failure to attain air quality standards, particularly with regard to PM<sub>10</sub> (particulate matter 10 microns in diameter or smaller)<sup>63</sup> in Maricopa County, the state established an Arizona Agricultural Best Management Practices Committee and created the Agricultural PM<sub>10</sub> permit discussed below.

View a [fixed map](#) of Arizona's nonattainment areas<sup>64</sup> and ADEQ's interactive [GIS map of nonattainment areas](#).<sup>65</sup>

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<sup>61</sup> Lynne Peeples, *11 U.S. Cities with the Worst Air Pollution*, HEALTH, <http://www.health.com/health/gallery/0,,20490855,00.html/view-all>.

<sup>62</sup> See Water Quality and Animal Feeding Operations in Arizona: A Producer's Notebook, CAFO EDUCATION GROUP, at pages 13, 31, <http://ag.arizona.edu/animalwaste/docs/manual.pdf>; see also Factory Farm Map, FOOD AND WATER WATCH, <http://www.factoryfarmmap.org/>.

<sup>63</sup> ARIZ. ADMIN. CODE § R-18-2-101(104).

<sup>64</sup> Attainment and Nonattainment Areas, ARIZONA DEPT. OF ENV'TL QUALITY, <http://legacy.azdeq.gov/environ/air/plan/images/notmeet.jpg>.

<sup>65</sup> ARIZONA DEPT. OF ENV'TL QUALITY, <http://gisweb.azdeq.gov/arcgis/emap/?topic=nonattain>.

## Agricultural PM<sub>10</sub> General Permit

Arizona implemented the Agricultural PM<sub>10</sub> Permit to address the persistent PM<sub>10</sub> nonattainment areas in southern Arizona—a portion of the state with the most AFOs and animal agriculture. The permit applies to CAFOs larger than 10 acres that are located in an area that does not meet federal air quality standards.<sup>66</sup>

The PM<sub>10</sub> permit is intended to reduce dust and particulate matter on and around CAFOs by requiring these operations to implement best management practices (BMPs) that control their particulate emissions.<sup>67</sup> The BMPs may vary depending on the area, regional or geographic conditions, or crop patterns.<sup>68</sup> CAFOs must obtain the permit from the Air Quality Division of ADEQ. There is no fee for the PM<sub>10</sub> General Permit.

See the Agricultural BMP Committee's [Guide to Agricultural PM<sub>10</sub> Best Management Practices](#).<sup>69</sup>

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## ZONING

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Zoning ordinances are established and enforced by your municipality or your county. Zoning ordinances vary in how protective they are of agricultural, residential, or business interests. They specify areas where, and under what conditions, certain activities and development can take place. It is a mechanism by which local government should protect local health and safety while minimizing adverse impacts of activities on neighboring properties. Engagement in the zoning process can impede new CAFOs looking to come into a community or existing CAFOs seeking to expand. Unfortunately for those seeking to challenge agricultural operations in their communities, many agricultural and ranching activities are exempt from zoning regulations in Arizona. A.R.S. §11-812 states, “Nothing contained in any ordinance authorized by this chapter shall...[p]revent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous

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<sup>66</sup> ARIZ. ADMIN. CODE § R18-2-6 609-611.01.

<sup>67</sup> ARIZ. ADMIN. CODE § R18-2-610.01.

<sup>68</sup> ARIZ. REV. STAT § 49-457.

<sup>69</sup> *Guide to Agricultural PM<sub>10</sub> Best Management Practices: Agriculture Improving Air Quality*, GOVERNOR'S AGRICULTURAL BEST MANAGEMENT PRACTICES COMMITTEE (2008), <http://legacy.azdeq.gov/envIRON/air/plan/download/webguide.pdf>.

commercial acres.” However, this does not function as a blanket exception statewide. Counties may impose restrictions beyond what is contained in the state law. Therefore, consult your municipal or county zoning authority for more information.

### **Ordinances and General Plans**

While zoning is primarily a local issue, state law does provide guidance for municipalities to develop, implement, and enforce their own zoning ordinances. Zoning and land use are primarily governed under A.R.S. Title 11 and A.R.S. Title 9. A county’s board of supervisors function to:

conserve and promote the public health, safety, convenience and general welfare and pursuant to this chapter,...provide for the future growth and improvement of its area of jurisdiction, coordinate all public improvements pursuant to the plan, form a planning and zoning commission to consult with and advise it regarding matters of planning, zoning and subdivision platting and, in the manner provided in this chapter, adopt and enforce those rules, regulations, ordinances and plans as may apply to the development of its area of jurisdiction.<sup>70</sup>

See A.R.S. § 9-462.01 for zoning and land use requirements generally. Additionally, state and county laws impose hearing requirements for changes to any ordinances or approval for certain activities, providing an important opportunity for public participation and input in a municipality’s zoning activities.<sup>71</sup>

State law also requires each municipality to develop a comprehensive, long-range general plan that guides growth and development that is compatible with community and neighborhood interests. The general plan includes a vast array of elements and considerations. See A.R.S. § 9-461.05 for more information on the authority and scope of General Plans.

Below is a list of each known county and municipal general land use plan.<sup>72</sup>

[Apache Junction](#)

[Avondale](#)

[BuckeyeCarefree](#)

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<sup>70</sup> ARIZ. REV. STAT § 11-802(A).

<sup>71</sup> ARIZ. REV. STAT § 11-813.

<sup>72</sup> General Land Use Plans for Arizona, CHAMPION: A TENANT FRIENDLY DEVELOPMENT COMPANY, <http://www.cpchampion.com/about/general-land-use-plans>.



[Casa Grande](#)  
[2020](#)  
[Cave Creek](#)  
[Chandler](#)  
[El Mirage](#)  
[Eloy](#)  
[Flagstaff](#)  
[Florence](#)  
[Fountain Hills](#)  
[Gila Bend](#)  
[Gilbert](#)  
[Glendale](#)  
[Goodyear](#)

[Litchfield Park](#)  
[MAG White Tank](#)  
[Marana](#)  
[Maricopa](#)  
[Mesa](#)  
[Mohave County](#)  
[Oro Valley](#)  
[Paradise Valley](#)  
[Payson](#)  
[Peoria – Loop](#)  
[303](#)  
[Peoria](#)  
[Phoenix](#)

[Pinal County](#)  
[Prescott Valley](#)  
[Prescott](#)  
[Queen Creek](#)  
[Scottsdale](#)  
[Superior](#)  
[Surprise](#)  
[Tempe](#)  
[Tolleson](#)  
[Tucson](#)  
[Wickenburg](#)  
[Yuma](#)

While state law authorizes and guides zoning ordinances, most of the action is at the local level. Therefore, the best place to start is looking up your county's planning and zoning website. Many counties post their zoning regulations online. There is wide variation in factors like lot size, minimum distance requirements, setbacks, and density, but keep in mind that many agricultural operations may be exempt from various zoning requirements.

Since zoning is handled primarily at the local level, it presents a valuable opportunity to get involved and cultivate change within their own communities. Consult your municipality's general plan. Familiarize yourself with your municipality's zoning ordinances. Keep an eye out for public notices and attend any meetings that impact CAFO development or expansion in your municipality. Zoning ordinances are supposed to protect public health and safety while also allowing for sustainable development. Public participation is vital to ensuring municipalities protect communities over potentially harmful industrial agricultural interests.

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## PERMITTING & PUBLIC PARTICIPATION

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### Permitting for Discharging CAFOs

#### Permit Process

- In order to obtain AZPDES permit coverage, the CAFO must submit a Notice of Intent to ADEQ. The ADEQ will notify the CAFO if it must seek an individual permit. An AFO may also request an individual permit instead of a general permit if they can provide reasoning behind the request.
  - [Notice of Intent for CAFOs under AZPDES Permit AZG2004-002](#)<sup>73</sup>
- If the CAFO will apply waste to lands, it must develop and implement a nutrient management plan (NMP) and follow best management practices (BMPs).
- An operation defined as a CAFO should seek coverage within 180 days of a newly constructed operation or within 90 days for an operation that becomes a CAFO due to an increase in the number of animals.

#### Individual Permits<sup>74</sup>

- ADEQ publishes notice that a draft individual permit has been prepared.
  - ADEQ publishes notice in one or more newspaper where the facility is or will be located.
- ADEQ provides a copy of the notice and draft individual permit to a number of state agencies and any person who requests it (**request must be made in writing**).
  - ADEQ accepts written comments from any interested person before a decision is made.
  - The public may submit comments, in writing, to ADEQ for up to 30 days from the date of the notice publication.
  - ADEQ will schedule a public hearing (and provide public notice for the hearing) if there is “significant public interest in a hearing” or if “significant issues or information” are brought to ADEQ’s attention.
    - The ADEQ Director determines whether a public hearing is necessary.
  - ADEQ accepts written comments until the end of the hearing, unless otherwise specified.
  - ADEQ sends a copy of the draft individual permit to the EPA

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<sup>73</sup> Notice of Intent for Concentrated Animal Feeding Operations Under AZPDES Permit No. AZG2004-002, ARIZONA DEPT. OF ENV'T'L QUALITY, <http://legacy.azdeq.gov/environ/water/permits/download/cafonotice.pdf>.

<sup>74</sup> ARIZ. ADMIN. CODE § R18-9-A907-908.

- EPA has 90 days to object to the individual permit. If they do not object or withdraw their objection, ADEQ issues the general permit.
- If EPA objects within 30 days of receiving the draft permit, the EPA comment period is extended 90 days.
- ADEQ notifies permit applicant and anyone who submitted comments or attended a public hearing of the final permit determination.

### **General Permits<sup>75</sup>**

- If ADEQ wants to issue a general permit to a category of discharge, ADEQ publishes a notice of the draft general permit in the *Arizona Administrative Register*.
- ADEQ accepts written comments from any interested person before a decision is made.
- The public may submit comments, in writing, to ADEQ for up to 30 days from the date of the notice publication.
- ADEQ will schedule a public hearing (and provide public notice for the hearing) if there's "significant public interest in a hearing" or if "significant issues or information" are brought to ADEQ's attention.
  - The ADEQ Director determines if a public hearing is necessary.
- ADEQ accepts written comments until the end of the hearing, unless otherwise specified.
- ADEQ sends a copy of the draft permit to the EPA
  - EPA has 90 days to object to the general permit. If they do not object or withdraw their objection, ADEQ issues the general permit.
- The Director publishes a general notice of the final permit determination in the *Arizona Administrative Register*.

### **Permitting for CAFO Construction**

#### **Stormwater Construction General Permit<sup>76</sup>**

- The facility must submit a Notice of Intent to ADEQ
- ADEQ considers a number of factors and permit requirements before issuing the permit.

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<sup>75</sup> ARIZ. ADMIN. CODE § R18-9-A907-908.

<sup>76</sup> A.A.C § R18-9-C901.

### Individual Stormwater Construction General Permit<sup>77</sup>

- ADEQ informs the permit applicant if the applicant should seek an individual permit. Or the applicant may request an individual permit.
- ADEQ will “grant the request if the reasons cited by the owner or operator are adequate to support the request.”

### Permitting for Aquifer Protection Permits

#### Individual Permits<sup>78</sup>

- Notice of Preliminary Decision regarding the issuance or denial of the permit in one or more newspapers that are circulated where the facility is or will be located.
- ADEQ accepts **written** comments for **30 days** following the public notice and preliminary decision.
- ADEQ will schedule a public hearing (and provide public notice for the hearing) if residents express “significant public interest” or if “significant issues or information” is brought to ADEQ’s attention.
  - ADEQ will accept written public comments until the close of the hearing period
- ADEQ send final decision to the permittee.

#### General Permits

- Public Notice and Public Participation requirements do not apply.<sup>79</sup>

### Public Notices

Public participation is key to putting pressure on CAFOs in your community. One of the most important opportunities for public participation is in the CAFO’s AZPDES permit process. See the Community Organizing Guide for more detailed information about public participation strategies. Public participation in the AZPDES process is addressed in Arizona Revised Statutes §§ 49-205 and 49-208. The specifics of public participation and hearings is outlined in Arizona Administrative Code § R18-9-A907 & A908.

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<sup>77</sup> ARIZ. ADMIN. CODE § R18-9-C902.

<sup>78</sup> ARIZ. ADMIN. CODE § R19-9-109.

<sup>79</sup> ARIZ. ADMIN. CODE § R18-9-108-109.

Individuals can see [current public notices on ADEQ's website](#).<sup>80</sup>

### **Draft Permits**

There are no current draft permits. The previous AZPDES CAFO General Permit expired in 2009 but no new drafts have been proposed for its renewal or reissuance.

### **Permit Appeals**

Arizona's Administrative Code does not specify an appeals process beyond mentioning that a permit applicant may appeal the permit determination—but Title 41 of Arizona Revised Statutes provides for the appeal of agency actions. "A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed..."<sup>81</sup>

### **Submitting Complaints**

Anyone can submit a complaint to ADEQ by filling out their online [complaint form](#).<sup>82</sup>

To speak with someone at ADEQ, see the [ADEQ organizational chart and contact list](#).<sup>83</sup>

Note: if ADEQ is failing to respond to or address complaints, the regional EPA office might be a valuable resource to exert pressure on the state's environmental department.

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<sup>80</sup> Events and Notices Calendar, ARIZONA DEPT. OF ENV'T'L QUALITY, <http://legacy.azdeq.gov/cgi-bin/vertical.pl?t=search&keyword=public>.

<sup>81</sup> ARIZ. REV. STAT § 41-1092.03.

<sup>82</sup> Compliance: File a Complaint, ARIZONA DEPT. OF ENV'T'L QUALITY, <http://legacy.azdeq.gov/function/compliance/complaint.html>.

<sup>83</sup> ADEQ Contacts, ARIZONA DEPT. OF ENV'T'L QUALITY, <http://legacy.azdeq.gov/function/about/download/org.pdf>.

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## RIGHT TO FARM & NUISANCE LAWS

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### Nuisance

A nuisance is something that interferes with the right to use and enjoy real property. Noise, odors, dust, smoke, pollution, pests, illness, or light could be considered nuisances. Courts may look to the extent of harm, the frequency of the nuisance, if plaintiffs came to the nuisance, or if the nuisance complies with applicable zoning ordinances. Many individuals and communities describe CAFOs as nuisances. CAFOs can decrease local property values, prevent people from using and enjoying their homes or yards, and can contribute to health issues. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield such facilities from nuisance liability—Arizona included. Arizona has enacted legislation to protect farmers from nuisance lawsuits.<sup>84</sup>

### Right-to-Farm/Agricultural Nuisance Shield

The following statute provides a formidable, but not impenetrable, liability shield for farmers in the state:

Arizona Revised Statutes § 3-112. *Agricultural operations; nuisance liability*

- A. Agricultural operations conducted on farmland that are consistent with good agricultural practices and established prior to surrounding nonagricultural uses are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety.
- B. Agricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practice and not adversely affecting the public health and safety.

While Arizona's nuisance law provides CAFOs with considerable protection against nuisance suits, its protection is not absolute. If individuals or communities can establish that a CAFO does not or would not be consistent with good agricultural practices, the CAFO was not there prior to surrounding nonagricultural uses, the CAFO is in violation of any applicable laws or regulations, or the CAFO would pose a threat to health and human safety, the operation remains vulnerable to nuisance lawsuits.

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<sup>84</sup> ARIZ. REV. STAT §§ 3-111-112.



## Environmental Nuisance

Arizona is unique in that it has separate legislation regarding environmental nuisances, which may prove useful for communities when traditional nuisance law has failed to protect residents and their local environment from CAFOs. Below is Arizona's environmental nuisance language.

### A.R.S. § 49-141

- A. The director may take action under this section to abate environmental nuisances. As used in this section, an environmental nuisance is the creation or maintenance of a condition in the soil, air or water that causes or threatens to cause harm to the public health or the environment and that is not otherwise subject to regulation under this title. Subject to this limitation, the following conditions may constitute environmental nuisances:
1. A condition or place in populous areas which constitutes a breeding place for flies, rodents, mosquitoes and other insects which are capable of carrying and transmitting disease-causing organisms to any person or persons.
  2. A place, condition or building which is controlled or operated by any governmental agency, state or local, and which is not maintained in a sanitary condition.
  3. Sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.
  4. A vehicle or container which is used in the transportation of garbage or human excreta and which is defective and allows leakage or spillage of contents.
  5. The maintenance of an overflowing septic tank or cesspool, the contents of which may be accessible to flies.
  6. The pollution or contamination of any domestic waters.
  7. The use of the contents of privies, cesspools, or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

8. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law and rule.
  9. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, which is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and which is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease-causing substances or organisms.
- B. The director may adopt rules that prescribe minimum standards for the prevention and abatement of environmental nuisances. In adopting rules pursuant to this subsection, the director shall incorporate the criteria set forth in section 49-282.06, subsection A and shall ensure that the nuisance is abated so that it will not recur.

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## ENFORCEMENT

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### Where to Find Data

ADEQ appears to keep track of permit and enforcement data in AZURITE database (Arizona Unified Repository for Informational Tracking of the Environment), but public access appears limited to license or permit application or land use restriction information. Unlike some other states, ADEQ does not make violation and enforcement actions for certain facilities readily available to the public, but you may request this information from the agency via state and federal information laws, discussed below.

To understand ADEQ's compliance and enforcement practices, see [ADEQ's Compliance and Enforcement Handbook](#).<sup>85</sup>

Individuals can access Arizona CAFO compliance information using EPA's [Enforcement and Compliance History Online \(ECHO\) search tools](#).<sup>86</sup> Simply search by

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<sup>85</sup> *Compliance Handbook*, ARIZONA DEPT. OF ENV'TL QUALITY, [http://legacy.azdeq.gov/function/compliance/download/Compliance\\_Enforcement\\_Handbook.pdf](http://legacy.azdeq.gov/function/compliance/download/Compliance_Enforcement_Handbook.pdf).

<sup>86</sup> Enforcement and Compliance History Online, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://echo.epa.gov/?redirect=echo>.

your city or zip code and look at applicable permits and compliance information for a number of facilities.

### **Filing a Complaint**

You can file a complaint on the ADEQ website using an [online complaint form](#).<sup>87</sup> However, the ADEQ Compliance and Enforcement Handbook states that residents seeking to file a complaint should first contact ADEQ staff over the phone, and the ADEQ employee will fill out the online complaint form. This also provides an opportunity to supply more information to ADEQ than what's requested in the form and to answer questions the ADEQ staff might have.

To speak with someone at ADEQ, see the ADEQ organizational chart and [contact list](#).<sup>88</sup>

When submitting a complaint, note the following disclaimer required by A.R.S. § 41-1010:

Arizona law requires you to provide your name during the course of reporting an alleged violation of law or rule. Under the law, your name will be placed in the public file unless the release of your name may result in substantial harm to any person, including yourself, or to the public health or safety. However, if you intend on remaining anonymous, ADEQ may not force you to identify yourself.

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## **PUBLIC INFORMATION LAWS**

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### **Freedom of Information Act**

The Freedom of Information Act (FOIA) is federal law that allows individuals to request access to information from government agencies, subject to some restrictions. See the Federal CAFO Guide for more information on FOIA.

### **Arizona Public Records**

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<sup>87</sup> Compliance: File a Complaint, ARIZONA DEPT. OF ENV'TL QUALITY, <http://legacy.azdeq.gov/function/compliance/complaint.html>.

<sup>88</sup> ADEQ Contacts, ARIZONA DEPT. OF ENV'TL QUALITY, <http://legacy.azdeq.gov/function/about/download/org.pdf>.

While FOIA applies to records from federal agencies, Arizona has public records laws and public meeting laws so that the public may access records and information from state agencies and entities. Arizona recognizes the public's right to access public records. This access is granted per Arizona Revised Statutes Title 39 (public access generally) and Title 49 (regarding record requests of the ADEQ). However, Title 39 also authorizes agencies to charge a significant fee for producing records. This fee is based on the "value of the reproduction on the commercial market as best determined by the public body,"<sup>89</sup> which ADEQ lists as around \$500 plus \$120 per hour.

To request compliance history for a facility, contact ADEQ's Records Management Center at (602) 771-4380.

For those seeking to avoid any costs to get information, there are a few agency databases, but you have to know what you are looking for and the searches may not produce the kind of information you are looking for. See ADEQ's [Megasearch](#) website.<sup>90</sup> A record request might be a better option if the websites do not contain the information you're looking for. Be sure to identify which agency or agencies may have the records and review their records request process.

### **EPA Region 9 FOIAs**

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for FOIA Requests. Contact information for the EPA Region 9 FOIA Officer is:

Regional Freedom of Information Officer  
U.S. EPA, Region 9  
75 Hawthorne Street (OPA-2)  
San Francisco, CA 94105  
(415) 947-4251

See the Federal Guide for more information on FOIA. Several EPA websites have useful summaries of the FOIA request process, response time guidance, and other pertinent information.<sup>91</sup> Of significant note, you're potentially entitled to a waiver of fees if

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<sup>89</sup> ARIZ. REV. STAT §39-121.03(A).

<sup>90</sup> Megasearch, ARIZONA DEPT. OF ENV'TL QUALITY, <http://megasearch.azdeq.gov/megasearch/>.

<sup>91</sup> FOIA Request Process, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process>.

requesting information that is “likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester.”<sup>92</sup> EPA will only consider waiver requests that are submitted at the same time as the corresponding FOIA request.<sup>93</sup>

A variety of maps, reports, and databases are available through the EPA that may help you find information and documents about regulated facilities. For example, EPA’s [MyPropertyInfo](#) database can provide information about a facility without having to file a FOIA request for the same records. While poking around EPA’s websites may be helpful, state or federal FOIAs will produce more records and information.

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## OTHER RESOURCES

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### State Organizations

#### Western Resource Advocates<sup>94</sup>

#### State Pro-Bono Clinics

Arizona does not appear to have any state pro-bono clinics that provide free or low-cost legal services to individuals or groups seeking to fight CAFOs in their communities.

#### CAFO Research Resources

[Socially Responsible Agriculture Project \(SRAP\)](#) provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at [www.sraproject.org](http://www.sraproject.org), and contact SRAP for support at 503-632-8303 or at [sraproject.org/help](http://sraproject.org/help).<sup>95</sup>

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<sup>92</sup> Fee Waivers, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process#wivers>.

<sup>93</sup> See *id.*

<sup>94</sup> WESTERN RESOURCE ADVOCATES, <http://westernresourceadvocates.org/>

<sup>95</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

[Arizona Cooperative Extension](#) through the University of Arizona has a variety of resources, publications, and programs regarding agriculture in the state.<sup>96</sup>

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### LIST OF STATUTES & REGULATIONS

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Below is a list of relevant statutes and regulations, most of which are discussed in this Guide. This list serves as a starting reference point for additional research or more in-depth analysis of environmental authority in Arizona.

<b>Arizona Revised Statutes</b>	<b>Subject</b>
A.R.S. § 3-112	Agricultural Operation Nuisance Liability
A.R.S. § 9-462.01	Zoning Regulations
A.R.S. § 11-802	County Zoning Commissions
A.R.S. § 11-812	Agricultural Zoning Exemption
A.R.S. § 11-813	Zoning Ordinances
A.R.S. § 36-136	Department of Health Services Authority
A.R.S. § 36-182	Establishing County Health Departments or Districts
A.R.S. § 37-1001	Natural Resource Conservation Districts
A.R.S. § 41-1092.03	Appealable Agency Actions and Contested Case Hearings
A.R.S. § 45-401-704	Groundwater Management
A.R.S. § 39 et seq	Public Records
A.R.S. § 49-141	Environmental Nuisance
A.R.S. § 49-202	ADEQ Authority
A.R.S. § 49-203(A)(1)	Authority to Adopt Water Quality Rules
A.R.S. § 49-203(B)(1)	Authority to Inspect Livestock Facilities
A.R.S. § 49-205, 208	AZPDES Public Participation
A.R.S. § 49-221	Water Quality Standards
A.R.S. § 49-247	Agricultural General Permits; Best Management Practices for Regulated Agricultural Activities
A.R.S. § 49-457	Agricultural Best Management Practices Committee
<b>Arizona Administrative Code</b>	<b>Subject</b>
A.A.C. § R18-2-201-220	Ambient Air Quality Standards
A.A.C. § R18-2-609-611.01	Agricultural PM10 Permits

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<sup>96</sup> UNIVERSITY OF ARIZONA COOPERATIVE EXTENSION, <http://extension.arizona.edu/>.



A.A.C.§ R18-9-101-110	Aquifer Protection Permits
A.A.C.§ R18-9-A901-D905	Arizona Pollutant Discharge Elimination System
A.A.C § R18-9-D901	CAFO Designations
A.A.C § R18-9-D903	No Potential to Discharge Determination
A.A.C. § R18-9-402	Nitrogen Management Permit
A.A.C. § R18-9-403	Nitrogen Management General Permits: Concentrated Animal Feeding Operations
A.A.C § R18-9-C901	AZPDES Construction Stormwater Discharge General Permit
A.A.C § R18-9-C902	AZPDES Construction Stormwater Discharge Individual Permit
A.A.C. § R18-9-A907-908	AZPDES CAFO Discharge Permits
A.A.C. § R18-9-1001(7)	Biosolids Definition
A.A.C. § R18-9-1007	Biosolid Application Requirements
A.A.C. § R18-11-101-123	Surface Water Quality Standards
A.A.C. § R18-11-401-408	Aquifer Water Quality Standards
A.A.C. § R18-11-601-606	Impaired Water Bodies