



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

CALIFORNIA



Guide to Confronting Concentrated Animal Feeding Operations in CALIFORNIA

A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT

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.sraproject.org.

SRAP HELP HOTLINE

Facing a factory farm? Contact SRAP for support.

www.sraproject.org/help

(503) 362-8303

Information in the following Guide is current to the best of the authors' knowledge as of publication. This document is presented with the understanding that SRAP hereby renders no legal or other professional service. Due to the rapidly changing nature of the law, information contained in this Guide may become outdated. In no event will funders or authors be liable for direct, indirect, or consequential damages resulting from use of this material. Readers of this publication should seek legal advice from an attorney with any case-specific questions or concerns.

Date of publication: June 2019



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. 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.

INTRODUCTION: CAFOs IN CALIFORNIA

Agriculture plays an important role in the culture and economy of California. According to the California Department of Food and Agriculture, the state accounts for over 13 percent of the nation's total agricultural value.¹ The state has approximately 69,400 farms spread across 24 million acres, and animal agriculture comprises a significant portion of the agricultural sector. As of 2018, California had over 5 million cattle, 550,000 sheep, 100,000 hogs, 11 million turkeys, and 290 million chickens,² and is the top dairy producing state in the nation.

Despite California's vast size and reputation for strong environmental regulation, it still struggles to control the air and water pollution created by animal agriculture. The state consistently receives failing grades from the American Lung Association for air quality,³ and according to the California State Water Resources Control Board, approximately 326 public water systems in the state are unable to provide safe drinking water⁴—most of which are located in key centers of California agriculture.⁵ As a result, California's laws and regulations typically go beyond the federally required minimums. California implements its own waste discharge permit system implemented by the State Water Resource Control Boards and the state frequently enforces its no-discharge requirements for confined animal facilities (CAFs). California is also one of a handful of states that regulates air emissions from agricultural operations. Furthermore, California's Global Warming Solutions Act calling for the reduction of greenhouse gases has resulted in oversight, monitoring, and regulation of greenhouse gas emissions from the livestock industry. Also, California has its own version of the National Environmental Policy Act, called the California Environmental Quality Act, which requires a review of actions taken or authorized by the state or local agencies that could impact the environment, and requires the agency to adopt all feasible measures to mitigate those impacts. In addition to California's environmentally focused regulation of animal agriculture, the

¹ *Id.*

² 2018 State Agriculture Overview: California, U.S. DEPARTMENT OF AGRICULTURE NATIONAL AGRICULTURAL STATISTICS SERVICE, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=CALIFORNIA.

³ Report Card: California, AMERICAN LUNG ASSOCIATION, <https://www.lung.org/our-initiatives/healthy-air/sota/city-rankings/states/california/>.

⁴ Human Right to Water Portal, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/hr2w/.

⁵ California's Water Quality Challenges, PUBLIC POLICY INSTITUTE OF CALIFORNIA, <https://www.ppic.org/publication/californias-water-quality-challenges/>; Jose Del Real, "They Grow the Nation's Food, but They Can't Drink the Water", NEW YORK TIMES (May 21, 2019), available at <https://www.nytimes.com/2019/05/21/us/california-central-valley-tainted-water.html>.

state's Prevention of Farm Animal Cruelty Act places restrictions on how animals are confined. The act requires that veal calves, egg laying hens, and pigs be given enough space to lie down, stand up, fully extend their limbs, and turn around freely. In short, California engages in considerable regulation of animal agriculture. However, regulation is relatively decentralized compared to other states. Most regulations are implemented by local or regional boards with varying requirements based on their district. It can be confusing to determine who regulates or oversees the various aspects of animal agriculture in the state, so consult your local boards for the most accurate, up-to-date information.

AGENCIES & STATE DEFINITIONS

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

Agencies

State Water Resource Control Board (SWRCB)

The SWRCB is the primary agency responsible for water quality regulation in the state. However, as mentioned previously, California has a relatively decentralized system of state regulation that relies heavily on regional boards and agencies to implement and enforce state and federal laws. SWRCB appears to leave most permitting, monitoring, inspections, and enforcement to the regional water boards, and only gets involved when regional board actions are petitioned for review. For more information, see [SWRCB's website](#).⁶

Regional Water Quality Control Boards (RWQCB)

The SWRCB oversees the Regional Water Quality Control Boards (RWQCB), which implement and enforce state and federal laws relating to water quality within their regions. There are nine RWQCBs. Some RWQCBs engage with CAF regulation more than others depending on density of operations in their region. Most CAFS in California are located in Regions 5, 8, 1, and 2.

⁶ CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, <https://www.waterboards.ca.gov/>.

- North Coast Region (1)
www.waterboards.ca.gov/northcoast
- San Francisco Bay Region (2)
www.waterboards.ca.gov/sanfranciscobay
- Central Coast Region (3)
www.waterboards.ca.gov/centralcoast
- Los Angeles Region (4)
www.waterboards.ca.gov/losangeles
- Central Valley Region (5)
www.waterboards.ca.gov/centralvalley
- Lahontan Region (6)
www.waterboards.ca.gov/lahontan
- Colorado River Basin Region (7)
www.waterboards.ca.gov/coloradoriver
- Santa Ana Region (8)
www.waterboards.a.gov/santaana
- San Diego Region (9)
www.waterboards.ca.gov/sandiego

For a map of the nine RWQCBs, see [SWRCB's waterboards map website](#).⁷

California Air Resources Control Board (ARB)

The ARB is the primary agency responsible for air quality policy and regulation in the state. It's also responsible for developing plans and programs to help the state achieve its greenhouse gas reduction goals. Similar to its water regulations, California's air regulations are relatively decentralized and most authority for air-related rule-making, permitting, and enforcement rests with local agencies and districts. For more information, see [California ARB's website](#).⁸

California Air Quality Management Districts (AQMDs) and Air Pollution Control Districts (APCDs)

The ARB is the primary agency responsible for protecting public health from air pollution but most regulation happens at the local level in one of the state's 35 local air pollution control districts. AQMDs and APCDs are county or regional authorities that bear the primary responsibility for controlling air pollution in their districts. Find your air district using ARB's [California Map for Local Air District Websites](#).⁹

US EPA Region 9

⁷ State and Regional Water Boards, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/waterboards_map.html#rwqcb.

⁸ CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/homepage>.

⁹ California Map for Local Air District Websites, CALIFORNIA AIR RESOURCES BOARD <https://ww3.arb.ca.gov/capcoa/dismap.htm>.

California is part of the U.S. EPA Region 9, Pacific Southwest, which also includes Nevada, Arizona, and Hawaii. While most animal feeding operation regulation happens at the state and local level, EPA has some oversight authority regarding the state's implementation of federal laws. For more information about EPA Region 9 and its involvement in California, see its [website](#).¹⁰

Definitions

Confined Animal Facility (CAF)

23 CCR § 2601

Unlike other states that mirror federal CAFO definitions or set a threshold of the number or animal unit to qualify as an AFO or CAFO, California diverges and creates its own definition that is more expansive than federal for AFOs or CAFOs. A confined animal facility (CAF) is "any place where cattle, calves, sheep, swine, horses, mules, goats, fowl, or other domestic animal are corralled, penned, tethered, or otherwise enclosed or held where feeding is by means other than grazing."¹¹

Large Confined Animal Facility (LCAF)

17 CCR §86500

The large confined animal facility (LCAF) definition is important regarding air permitting in the state. The thresholds for LCAFs were developed based on emissions factors and vary depending on the type of animal and whether the facility is located in an attainment zone for air quality standards. If the CAF is located in a federal ozone nonattainment area and has the following number of animals on any one day, then it is an LCAF:

- 1,000 or more milk-producing dairy cows
- 3,500 or more beef cattle
- 7,500 or more calves, heifers, or other cattle
- 100,000 or more turkeys
- 650,000 or more chickens other than laying hens
- 650,000 or more laying hens
- 3,000 or more swine

¹⁰ EPA Region 9: Pacific Southwest, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/aboutepa/epa-region-9-pacific-southwest>; EPA in California, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/ca>.

¹¹ 23 California Code of Regulations § 2601.

- 15,000 or more sheep, lambs, or goats
- 2,500 or more horses
- 650,000 or more ducks
- 30,000 or more rabbits or other animals.

If the CAF is not located in a federal ozone nonattainment area, it may still be an LCAF if it has the following number of animals any one day:

- 2,000 or more milk-producing dairy cows
- 7,000 or more beef cattle
- 15,000 or more calves, heifers, or other cattle
- 200,000 or more turkeys
- 1,300,000 or more chickens other than laying hens
- 1,300,000 or more laying hens
- 6,000 or more swine
- 30,000 or more sheep, lambs, or goats
- 5,000 or more horses
- 1,300,000 or more ducks
- 60,000 or more rabbits or other animals.

Animal Feeding Operation (AFO)

An animal feeding operation (AFO) is defined in federal regulations as a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the lot or facility.

Concentrated Animal Feeding Operation (CAFO)

In addition to California's CAF definition, the state does follow the federal CAFO definition, but regional boards may adopt their own more stringent definitions. Consult your regional boards for varying definitions. For example, the Santa Ana RWQCB considers any facility with more than 20 cows or 50 heifers to be a CAFO, which must be regulated by the regional board.

WATER

Most states are responsible for implementing the Clean Water Act and several other programs and permits that address water quality and availability across the state.

In general, California's regulation of water resources and activities that impact surface and groundwater are more stringent than federal laws and regulations. This increased regulation is largely due to the state's ongoing struggle with deteriorating surface and groundwater quality in agricultural areas as well as limited availability due to droughts and high demand. Water quality in California is governed by the Porter-Cologne Act,¹² which authorizes RWQCBs to carry out federal and state water quality laws and regulations with the guidance and oversight of the SWRCB. As a result, the degree of regulation can vary; residents should consult their RWQCB for region-specific rules and regulations. Although regulation varies between regions, the following sections briefly address state minimums.

Discharge Rules & CAF/CAFO Minimum Standards

27 CCR §22560–22565;

In California, all discharges of wastes are prohibited with a few limited exceptions. The California Code of Regulations, Title 27, Sections 22560 to 22565 outline the statewide minimum standards for CAFs. The minimum standards must be implemented in the WDR as well as any additional requirements imposed by the RWQCB. The code prohibits animals from entering surface waters, requires that CAFs are designed and constructed to retain wastewater and precipitation from a 25-year, 24-hour storm, imposes flood protection requirements, calls for reasonable manure and wastewater application to disposal fields or crops, requires that manured areas be managed to minimize infiltration of water to underlying soils, and states that the RWQCB can require the CAF/CAFO to undertake a monitoring program.

California Implementation of National Pollutant Discharge Elimination System (NPDES)

California is authorized to implement the National Pollutant Discharge Elimination System (NPDES). However, since each regional water board develops its own regulatory programs, and since discharges of pollutants are prohibited in California,

¹² California Water Code, Section 7.

few of the state's CAFs/CAFOs operate under a NPDES permit. Most CAFs and CAFOs in the state are regulated by their RWQCB's Waste Discharge Requirements (WDR) order. A few RWQCBs have a general NPDES permits, so check the rules for CAFs/CAFOs in your region.¹³ As of the end of 2017, of the 1,082 CAFOs in California,¹⁴ only around 140 had NPDES permits;¹⁵ the remaining CAFOs and CAFs are regulated under WDRs. For more information about NPDES in California, see the CA SWRCB website [NPDES & CAFOs](#).¹⁶

Nutrient Management

27 CCR §22563 & 22564

California regulations state that "application of manure and wastewater to disposal fields or crop lands shall be at rates which are reasonable for the crop, soil, climate, special local situations, management system, and type of manure"¹⁷ and should be managed to minimize percolation to ground water¹⁸ and infiltration to underlying soils.¹⁹ The parts of the state with high concentrations of dairies and CAFs are struggling with contaminated groundwater that has been linked to excess nutrients and salts from the agricultural sector. In response, regional water boards may impose requirements to address excess nutrients, such as requiring CAFs/CAFOs to develop and implement nutrient management plans (NMPs). NMPs are required if the facility is seeking a NPDES permit but the requirements vary if the operation is seeking a WDR order. Check your regional nutrient management regulations for more detailed and accurate information.

Water Monitoring, Reporting, and Recordkeeping Requirements

27 CRR § 22565

CAFOs or CAFs may be subject to monitoring and reporting requirements, which may vary based on the type of permit, animals, or region. "The RWQCB can require

¹³ RWQCBs Regions 7 & 8.

¹⁴ This number of 1,082 CAFOs is the number of AFOs with numbers of animals above the size thresholds set out for large CAFOs as defined under NPDES federal regulations.

¹⁵ NPDES CAFO Permitting Status Report: National Summary Endyear 2017, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf.

¹⁶ National Pollutant Discharge Elimination System: Concentrated Animal Feeding Operations, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/npdes/cafo.html.

¹⁷ 27 CCR § 22563(a).

¹⁸ 27 CCR § 22563(b).

¹⁹ 27 CCR § 22564.

confined animal facility operations to undertake a monitoring program as a condition to the issuance or waiver of WDRs.”²⁰ Dairy operations are of particular concern and may be required to conduct additional monitoring and reporting beyond those required of other types of operations. See your region’s rules for monitoring, reporting, and recordkeeping requirements that may apply to CAFs/CAFOs in your community.

Setbacks

In conformity with federal regulations, the state minimum standard requires that land application of manure and process wastewater occur at least 100 feet from down-gradient surface waters, open tile line intakes, sinkholes, well heads, or other conduits to surface or groundwater. The 100-foot setback may be reduced to 35 feet with a vegetated buffer or other methods with protection equivalent to the 100-foot setback. The state also requires animal enclosures to be located more than 100 feet from supply wells. Regional boards or counties may increase these setbacks so check local laws and regulations.

Wetlands

Wetlands are a critically important resource that require strong governmental protections. Wetlands act as a filter to improve water quality, provide critical habitat to flora and fauna, reduce the severity of floods, act as buffers to control shoreline erosion, and promote recreation and wildlife watching. As a result, there are both federal and state laws protecting and regulating these resources.

Approximately 90 percent of California’s historic wetlands have been lost to development and human activity, but the state has created laws and rules to protect wetland resources and ensure no overall net loss of wetlands.²¹ The state recently adopted rules to define wetlands, determine if they are waters of the state, and clarify requirements for permit applications to discharge dredged or fill material to waters of the state.

Generally, any modification to wetlands, including depositing fill, excavating, or draining, will require a federal 404 permit from the U.S. Army Corps of Engineers (US

²⁰ 27 CCR § 22565.

²¹ Media Release: California Water Board Adopts Statewide Wetland Definition and Procedures, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, (April 2, 2019) available at https://www.waterboards.ca.gov/press_room/press_releases/2019/pr04022019_swrcb_dredge_fill.pdf.

ACoE). However, Section 401 of the CWA prevents a federal agency from issuing a permit for any activity that may result in a discharge to water (including wetlands) until the state where the discharge would occur has granted or waived Section 401 certification. Denying 401 certification prevents the federal permit or license from being issued. This process ensures that the issuance of federal permits will not violate state water quality standards.

For more information about state water quality certification, see [SWRCB's 401 Water Quality Certification and Wetlands Program website](#).²²

For more information about U.S. ACoE's role in 404 wetland permitting, see [USACoE's website](#).²³

For more information about wetland protection in California, see the [SWRCB Wetland Riparian Area Protection Policy website](#)²⁴ or the most current version of the [California Wetland Program Plan](#).²⁵

If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they haven't, submit a complaint to the appropriate agency.

To locate wetlands in your area, see [U.S. Fish & Wildlife Service's Wetlands Mapper](#).²⁶

Water Quality

Water Quality Control

California Water Code §§ 13100–13287; Porter–Cologne Water Quality Control Act

²² 401 Water Quality Certification and Wetlands Program, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/cwa401/.

²³ Regulatory Program and Permits, U.S. ARMY CORPS OF ENGINEERS, <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>.

²⁴ Wetland Riparian Area Protection Policy, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html.

²⁵ California Wetland Program Plan 2017–2022, CALIFORNIA WETLAND INTERAGENCY TEAM, https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/ca_wetland_program_plan_2017_2022_signed.pdf

²⁶ National Wetlands Inventory: Wetlands Mapper, U.S. FISH & WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Mapper.html>.

Water quality objectives for both surface and ground water are found in the Water Quality Control Plans adopted by the SWRCB and each of the nine regional water boards. See your regional Water Quality Control Plan for water quality assessment thresholds. For more information, see SWRCB's website [Compilation of Water Quality Goals](#).²⁷

Impaired Waters

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments²⁸ and identify waters not meeting the state's water quality standards.²⁹ The state publishes a report and the state or regional water board develops Total Maximum Daily Loads (TMDLs) for impaired waters. Since states are supposed to protect waters from further degradation and restore impaired waters, it may be important to note if a CAF/CAFO or its waste application areas are located near an already impaired water of the state. Learn more about surface water quality assessments and find the most recent Integrated Report on CWRCB's [Surface Water Quality Assessment website](#).³⁰

Groundwater

The Clean Water Act calls for the regulation of discharges to surface waters, but states have varying degrees of protection for groundwater. California's definition of waters of the state includes "any surface or groundwater, including saline waters, within the boundaries of the state"³¹ and California has a number of regulations and programs to address groundwater quality in the state.

California is heavily dependent on groundwater, supplying 40–60 percent of the state's total water supply and using more groundwater than any other state.³² Approximately 33 million Californians rely on public or private groundwater for their drinking water supply,³³ and long droughts and growing pollution concerns have

²⁷ A Compilation of Water Quality Goals, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/.

²⁸ CWA § 305(b).

²⁹ CWA § 303(d).

³⁰ Surface Water Quality Assessment, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/#impaired.

³¹ California Water Code § 13050(e).

³² Groundwater Issue: Groundwater Quality, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/groundwater/issue_gq.html.

³³ *Id.*

demonstrated the need for increased groundwater regulation by the state and regional water boards. Below are a few rules and programs that regulate groundwater in the state.

- Groundwater Quality Monitoring Act³⁴
- Groundwater Ambient Monitoring and Assessment (GAMA) Program
- California Antidegradation Policy
- Waste Discharge Requirements (WDR) Program
- Composting rules
- The Sustainable Groundwater Management Act (SGMA), Groundwater Sustainability Agencies, and Groundwater Sustainability Plans³⁵
- Groundwater Management Program³⁶
- Emergency conservation regulations during droughts
- SWRCB must identify communities that rely on contaminated groundwater, the sources of the contaminants, and potential solutions to provide safe drinking water
- Irrigated Lands Regulatory Program

Construction & Stormwater

A CAF/CAFO may also require a permit in order to begin construction. The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.³⁷ A General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit) is required for construction activity that will disturb one or more acres of earth. For more information, see [SWRCB's Construction Stormwater Program](#) website³⁸ or the most recent [Construction General Permit](#).³⁹

³⁴ California Water Code § 10780-10783.

³⁵ California Water Code § 10733.2; 23 California Code of Regulations §350 et seq.

³⁶ California Water Code § 10927-10936.

³⁷ CWA § 402; 40 C.F.R. §§ 122.26, 450.

³⁸ Construction Stormwater Program, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html.

³⁹ Storm Water Program: 2009-0009-DWQ Construction General Permit, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml.

California regulates air emissions from animal agriculture more than most states in the country.

Air Quality

SB 700

Industrial livestock operations are a significant source of odors and air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, animal agriculture may be regulated, but the industry has largely evaded meaningful regulation. While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions. California's regulations are stronger than in most states.

While many other states exempt agriculture from air quality regulation, California eliminated this exemption, but left it up to local air districts to adopt air quality rules and regulations based on their region and requirements. The requirements vary widely depending on the district's attainment issues and the types of sources/industries within their district.

Districts with high concentrations of animal agriculture—particularly dairy—and ongoing attainment issues for particulate matter and ozone have some of the most stringent requirements for agricultural sources. See South Coast AQMD Rule 223, San Joaquin Valley APCD Rule 4570, and Imperial County APCD Rule 217 & 420. Some of the requirements include mitigation measures, fugitive dust reduction, monitoring, recordkeeping, storage specifications, new source review, registering diesel engines, and development of an emission mitigation plan, conservation management practices, or dust control plan. All of this varies from district to district, with different triggers for regulation, so be sure to check your local district's rules.

For information about air quality regulations and permit requirements that apply to CAFs or AFOs in your region, research your local air district. Locate your air district using the [ARB's Map for Local Air District Websites](#).⁴⁰

⁴⁰ California Map for Local Air District Websites, CALIFORNIA AIR RESOURCES BOARD, <https://ww3.arb.ca.gov/capcoa/dismap.htm>.

Odors

California Health and Safety Code §§ 41700 & 41705

California does not appear to regulate odors from agricultural operations. California code states that “Except as otherwise provided in Section 41705, a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property.”⁴¹ However, Section 41705 states that Section 4170 does not apply to odors emanating from “agricultural operations necessary for the growing of crops or the raising of fowl or animals.”⁴² Therefore, a district’s ability to make rules regarding odors from agricultural operations is limited, but check your local ordinances in case they’ve found a way to indirectly regulate odors from agriculture.

ENVIRONMENTAL REVIEW

California Environmental Quality Act

California Public Resources Code § 21000–21178; 14 California Code of Regulations § 15000–15387

California has a state version of the National Environmental Policy Act (NEPA). NEPA is an informational statute that requires federal agencies to evaluate and consider the environmental impacts of their actions. Along similar but slightly enhanced lines, California Environmental Quality Act (CEQA) requires state and local government agencies to evaluate and consider the potential environmental impacts of proposed projects, including private projects that require discretionary government approval. It also requires the agencies to prepare an Environmental Impact Report (EIR), provide the public with an opportunity to review and comment on the report/project, and to mitigate the impacts when feasible.

CEQA provides an opportunity for public involvement, mitigation, and oversight of state and local agency actions and permitting decisions that would have an adverse impact on the environment—including CAF, LCAF, or CAFO permitting decisions.

⁴¹ California Health and Safety Code § 41700.

⁴² California Health and Safety Code § 41705.

For more information, see the full text of the statute or the [California Natural Resources Agency website about CEQA](#).

ZONING & LAND USE

Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in a community.

Zoning and Local Control

Article XI of the California Constitution

While many states have removed local government's control over counties and municipalities, California grants considerable authority and enforcement powers to local governments to determine what's best for their jurisdiction as long as it doesn't conflict with state law. Local governments, counties, municipalities, agencies, or districts may increase state standards, but they may not weaken them. In order to exercise this increased local autonomy, the county or municipality must adopt a charter. If they do not adopt a charter, the county or municipality will be governed by the California General Code, thereby limiting their autonomy to make local governance decisions.

A chartered municipality or county may regulate land use in its jurisdiction and enact zoning ordinances that are reasonably necessary to protect the public health and welfare of its residents. These ordinances could impose additional requirements on animal agriculture in their jurisdictions (e.g., through increased setbacks, limitations on animal density, increased water monitoring, or moratoriums on new or expanding CAFOs/CAFs). Check your municipal, district, or county ordinances for applicable requirements.

Most land use decisions are made by the counties, and whenever there's discretion to issue a conditional use permit, CEQA is triggered and environmental impacts of the proposed project must be evaluated and mitigated.

PUBLIC PARTICIPATION

Take advantage of every opportunity to make your voice heard about industrial animal agriculture in your community; AFO operators and regulators won't take additional steps to check the industry unless the public demands it.

Public Notice

California Government Code §§ 36933, 65090–65094, 65853–65854

California provides considerable opportunity for public notice and comment for most state and local government actions. This includes notice for things like meetings, ordinance changes, permitting, rule changes, and program changes.

Note: each district has its own rules and procedures for public notice in their region and the they are updated regularly; check your district's most current rules to determine what and how they are required to give public notice and how residents can participate.

The degree of public notice in the permitting process varies based on the type of permit. Notice is not always required for a Notice of Intent to seek coverage under the General WDR Order, General NPDES permit, Authority to Construct, or Permit to Operate. However, public notice is required for a NPDES NMP, when agencies adopt changes to general permits, Title V air permits, or when a facility qualifies for "new source review" for air permitting.

See [here](#) for public notice regarding state level water resource actions.⁴³ The [Public Notice California website](#) provides a compilation of public notices published throughout the state.⁴⁴

Comments and Requesting a Public Hearing

Community members have limited time to submit comments after notice is published. This process moves very quickly, so it's important to submit written comments on time and to the correct contact person. Deadlines and contact information should be included in the public notice. When submitting written comments, review all application materials and any supporting documents or

⁴³ Public Notices, CALIFORNIA DEPARTMENT OF WATER RESOURCES, <https://water.ca.gov/News/Public-Notices>.

⁴⁴ Public Notice California, <https://www.cpublicnotice.com/>.

summaries. During the public comment period, you may want to request an extension for the public comment period and a public hearing. A public hearing provides the public with an opportunity weigh in on government decisions or proposals that impact them.

NUISANCE & RIGHT TO FARM LAW

When state and federal regulations fail to protect people from the harmful impacts of industrial livestock facilities, they may consider filing a nuisance lawsuit. Unfortunately, state Right to Farm Laws complicate or restrict this strategy in most cases.

Nuisance Claims

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. Many communities describe CAFOs as nuisances since they can decrease local property values, prevent people from using and enjoying their homes or yards, and impair human health. However, many states—including California—have enacted laws to shield livestock operations from nuisance liability.

State Right-to-Farm Laws

California Civil Code § 3482.5

Right to farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities experiencing unpleasant effects of agricultural production. California's right to farm law is very protective of agricultural operations—particularly if they have been around for more than three years, were not a nuisance when the operation began, and are in compliance with local, state, and federal laws and regulations.

Despite these ag-friendly protections, there are some protections for neighbors dealing with problematic operations. Residents interested in a nuisance claim against a CAF should consult a legal professional.

California's right to farm law states:⁴⁵

⁴⁵ California Civil Code § 3482.5.

(a) (1) No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began.

(2) No activity of a district agricultural association that is operated in compliance with Division 3 (commencing with Section 3001) of the Food and Agricultural Code, shall be or become a private or public nuisance due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began. This paragraph shall not apply to any activities of the 52nd District Agricultural Association that are conducted on the grounds of the California Exposition and State Fair, nor to any public nuisance action brought by a city, county, or city and county alleging that the activities, operations, or conditions of a district agricultural association have substantially changed after more than three years from the time that the activities, operations, or conditions began.

(b) Paragraph (1) of subdivision (a) shall not apply if the agricultural activity, operation, or facility, or appurtenances thereof obstruct the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin, or any public park, square, street, or highway.

(c) Paragraph (1) of subdivision (a) shall not invalidate any provision contained in the Health and Safety Code, Fish and Game Code, Food and Agricultural Code, or Division 7 (commencing with Section 13000) of the Water Code, if the agricultural activity, operation, or facility, or appurtenances thereof constitute a nuisance, public or private, as specifically defined or described in any of those provisions.

(d) This section shall prevail over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state. However, nothing in this section shall

preclude a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an ordinance that allows notification to a prospective homeowner that the dwelling is in close proximity to an agricultural activity, operation, facility, or appurtenances thereof and is subject to the provisions of this section consistent with Section 1102.6a.

(e) For purposes of this section, the term “agricultural activity, operation, or facility, or appurtenances thereof” shall include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur bearing animals, fish, or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.

ENFORCEMENT

Since few CAFO operators are eager to self-report violations of local, state, or federal law, it's often up to community members to report violations and push for enforcement. A record of noncompliance demonstrates that penalties or enforcement actions are necessary.

Submitting Complaints & Reporting Violations

If a CAF is not complying with its district or region-specific rules and regulations, residents should contact the air or water district responsible for enforcement. Each district has its own complaint procedures and contacts.

Note: state law provides that any person who knowingly makes any false statement, representation, or certification to the regional or state water board shall be punished by a substantial fine, imprisonment, or both.⁴⁶

⁴⁶ California Water Code § 133879(e).

Be sure to properly describe and document the compliance issue you are reporting. Take detailed notes and take pictures whenever possible but **do not trespass** in order to do so.

The state or regional board will investigate complaints and exercise civil, criminal, and administrative laws to compel enforcement when necessary.

Violation of air or water pollution laws may be subject to criminal or civil penalties. Penalties for violations of water quality are found in California Water Code § 13350 *et seq.* Penalties for violation of air quality are found in California Health & Safety Code § 42400 *et seq.*

For an overview of water quality enforcement, see the SWRCB website [Water Quality Enforcement Policy Amendments](#).⁴⁷ For an overview of air quality enforcement, see the [California ARB Enforcement Policy website](#).⁴⁸

PUBLIC INFORMATION LAWS

One of the first steps when dealing with a new, expanding, or problematic industrial livestock operation is gathering information. This can entail finding information online, submitting record requests, and attending public meetings. Fortunately, there are state laws that increase government transparency and provide public access to certain types of information.

Freedom of Information Act

5 U.S.C. § 552

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

⁴⁷ Water Quality Enforcement Policy Amendments, CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, https://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.shtml.

⁴⁸ Enforcement Policy, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/resources/documents/enforcement-policy>.

California Public Records Act (CPRA)

California Government Code § 6250 et seq.

The CPRA is meant to guarantee public access to “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁴⁹ Anyone can request the public records for any reason, and the government or agency should respond to the request within 10 days. (They don’t have to produce the records within 10 days, but they should inform the requester if identifiable public records exist and provide an estimated time or date when the requested records may be available.) Some public records may be exempt from production. Every agency may adopt its own records request procedures, so check the rules before requesting records.

For more details, consult the full text of the CPRA at California Government Code, Section 6250 *et seq.* For even more detail, see the League of California Cities’ [Guide to the California Public Records Act](#).⁵⁰

Public information and open meetings regulations and procedures change frequently, so consult the most current laws and agency rules before filing CPRA requests.

California’s Ralph M. Brown Act

California Government Code § 54950 to 54960.5

The Ralph M. Brown Act is California’s open meeting law. The code states,

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to

⁴⁹ California Government Code § 6252(e).

⁵⁰ *The People’s Business: A Guide to the California Public Records Act*, LEAGUE OF CALIFORNIA CITIES, (Revised April 2017), <https://www.cacities.org/Resources/Open-Government/THE-PEOPLE%E2%80%99S-BUSINESS-A-Guide-to-the-California-Pu.aspx>.

decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”⁵¹

The act sets out how public meetings should be conducted, when meetings may be closed, meeting notice requirements, how meetings are recorded, and penalties for violating the Act.

For more information, see California Government Code, §54950 to 54960.5. For more detail, see the League of California Cities’ [Guide to the Ralph M. Brown Act](#).⁵²

PROPERTY TAX APPEAL

Industrial livestock operations have been shown to reduce nearby property values by as much as 80 percent. Unfortunately, local governments often fail to adjust property value assessments accordingly, causing owners of nearby properties to pay more than their fair share of property taxes, in addition to enduring the other harmful impacts of industrial livestock production. In these cases, property owners may be able to seek a property tax reduction. This may also help convince local government officials that CAFs/CAFOs aren’t as economically beneficial to communities as their proponents claim.

[Property Tax Appeal](#)

California Constitution Article XIII, Section 16; California Revenue and Taxation Code § 1601-1645.5; California Code of Regulations Rule 301-326

For more information about assessment appeals, see the [Assessment Appeals Manual](#)⁵³ or the California State Board of Equalization’s [Assessment Appeals website](#).⁵⁴

⁵¹ California Government Code § 54950.

⁵² *Open & Public V: A Guide to the Ralph M. Brown Act*, LEAGUE OF CALIFORNIA CITIES, (Revised April 2016), <http://www.cacities.org/Resources-Documents/Resources-Section/Open-Government/Open-Public-2016.aspx>

⁵³ *Assessment Appeals Manual*, CALIFORNIA STATE BOARD OF EQUALIZATION, (Reprinted January 2015) <http://www.boe.ca.gov/proptaxes/pdf/aam2003final.pdf>.

⁵⁴ *Assessment Appeals*, , CALIFORNIA STATE BOARD OF EQUALIZATION, <http://www.boe.ca.gov/proptaxes/asmappeal.htm>.

OTHER RESOURCES

Fighting AFOs in your community is not easy. Avoid working alone by building relationships in your community, sharing your experiences, consulting specialists, and collaborating with other groups working on similar issues.

State and National Nonprofit Organizations

Socially Responsible Agriculture Project (SRAP)

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at www.sraproject.org and contact SRAP for support at 503-632-8303 or www.sraproject.org/help.⁵⁵

Leadership Counsel for Justice & Accountability

<https://leadershipcounsel.org/>

Center on Race, Poverty & the Environment

<https://crpe-ej.org/en/>

Public Justice

<https://www.publicjustice.net/>

Sierra Club California Chapters

<https://www.sierraclub.org/california>

Center for Food Safety

<https://www.centerforfoodsafety.org/>

Friends of the Earth

<https://foe.org/issues/food-and-technology/>

Food & Water Watch

<https://www.foodandwaterwatch.org>

⁵⁵ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>.