



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

ILLINOIS



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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.

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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 ILLINOIS

Concentrated animal feeding operations (CAFOs) have been a growing problem in Illinois for some time. The U.S. Department of Agriculture's National Agricultural Statistics Service indicates that as of 2022, Illinois produced approximately 5.3 million hogs¹, 6.7 million laying hens², and 1 million cattle annually.³ According to the USDA Economic Research Service, as of 2021, Illinois produced around 1.8 trillion pounds of milk annually.⁴ The state ranks 6th in the nation for agricultural production based on cash receipts for commodities in calendar year 2021,⁵ and 4th in the nation for hog production, behind Iowa, Minnesota, and North Carolina, in 2022.⁶ While agriculture is an important industry in the state, it's imperative that CAFOs comply with local, state, and federal laws intended to protect the environment, animals, and people from their harmful impacts.

Like many other states, Illinois has experienced a decline of small farms and a rise of industrial-scale operations. The trend toward bigger livestock confinements has created significant consolidation of Illinois' hog population; the number of animals kept in large-scale confinement operations has grown by nearly 2,500 percent between 1978 and 2016, while those raised on smaller farms decreased by 87 percent.⁷ This threatens the state's environment and natural resources, the quality of life in surrounding communities, and the public health of all residents.

Several entities regulate CAFOs in Illinois:

- **Illinois Department of Agriculture (IDOA)** regulates siting and construction;
- **Illinois Environmental Protection Agency (Illinois EPA or IEPA)** administers the state's environmental protection laws as they apply to CAFOs that are in operation. This is done per regulations enacted pursuant to the Illinois Environmental Protection Act, and via the state's federally delegated programs, such as the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) and the federal Clean Air Act.

¹ USDA, National Agricultural Statistical Service, Illinois Hogs and Pigs, 2022.

https://www.nass.usda.gov/Statistics_by_State/Illinois/Publications/Current_News_Release/2022/20221223-IL-December-Hogs-News-Release.pdf

² USDA, National Agricultural Statistical Service, Chicken and Eggs: 2022 Summary, 2023.

<https://downloads.usda.library.cornell.edu/usda-esmis/files/1v53jw96n/8g84p051j/v692vk48g/ckegan23.pdf>

³ USDA, National Agricultural Statistical Service, Illinois Cattle, 2023.

https://www.nass.usda.gov/Statistics_by_State/Illinois/Publications/Current_News_Release/2023/20230131-IL-2023-Cattle-News-Release.pdf

⁴ USDA, National Agricultural Statistical Service, 2022.

<https://www.ers.usda.gov/webdocs/DataFiles/48685/milkcowsandprod.xlsx?v=5216.6>

⁵ USDA, Economic Research Service, Cash receipts by commodity State ranking, 2021.

<https://data.ers.usda.gov/reports.aspx?ID=17844>

⁶ USDA, National Agricultural Statistics Service, Quarterly Hogs and Pigs, 2022.

<https://downloads.usda.library.cornell.edu/usda-esmis/files/rj430453j/37721p56r/rn302c239/hgpgl222.pdf>

⁷ Jackson, David and Gary Marx, "The price of pork: Cheap meat comes at high cost in Illinois," Chicago Tribune, Aug. 3, 2016, available at: <https://www.chicagotribune.com/investigations/ct-pig-farms-illinois-met-20160802-story.html>

- **U.S. EPA** ensures that the state is administering these regulatory programs in accordance with federal law. Beyond this oversight authority, U.S. EPA has the ability to regulate and pursue enforcement against CAFOs in Illinois under federal law, particularly when a facility is located in multiple states or when an extremely large operation impacts waters of the United States, as well as cases with egregious pollution problems.
- **The Illinois Attorney General's Office** prosecutes violations of the state's environmental laws on behalf of IEPA and IDOA.

While Illinois has taken some steps to regulate CAFOs, it has a long history of inadequate regulation and enforcement under the Clean Water Act.⁸ The state also has a reputation for having some of the weakest environmental laws for the siting and operation of CAFOs, as well as a lack of local control and public transparency regarding CAFOs.⁹ Documenting the impact of the shift toward larger confinement operations under Illinois' regulatory framework, in 2016 the Chicago Tribune "found a state regulatory system that failed to protect rural communities as pork producers repeatedly exploited weak Illinois laws to build and expand the massive facilities."¹⁰ U.S. EPA characterized the situation similarly when it conducted an investigation in response to a 2008 petition filed by the Illinois Citizens for Clean Air & Water (ICCAW).¹¹ The petition, which is still pending today, seeks federal withdrawal of the state's authority to administer the federal Clean Water Act due to IEPA's failure to adequately regulate CAFOs.¹² After a nearly two-year investigation responding to ICCAW's petition, U.S. EPA found that "the Illinois EPA NPDES program for CAFOs does not meet minimum thresholds for an adequate program."¹³ The U.S. EPA's investigation report noted the state's failure to:

- Issue NPDES permits to CAFOs that applied for them;
- Adequately respond to public complaints;

⁸ See Diamond, Danielle. "Illinois' Failure to Regulate Concentrated Animal Feeding Operations in Accordance with the Federal Clean Water Act," *11 Drake J. Agric. L.* 185 (2006), available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/dragl11&div=15&id=&page=&t=1560816397>; See also Hawthorne, Michael, "Illinois Takes a Hit Over Factory Farms," *Chicago Tribune*, Sept 29, 2010, available at: <https://chicagotribune.newspapers.com/image/233265793/?terms=%22factory%2Bfarms%22%2Bepa&match=2>

⁹ Drake Journal; See also, Editorial Board, "Editorial: 'The price of pork' in Illinois: Poisoned creeks yet limited regulation," *Chicago Tribune*, Aug. 11, 2016, available at: <https://www.chicagotribune.com/opinion/editorials/ct-price-pork-hogs-pigs-farms-containments-edit-0812-20160811-story.html>

¹⁰ Jackson, David and Gary Marx, "The price of pork: Cheap meat comes at high cost in Illinois," *Chicago Tribune*, Aug. 3, 2016, available at: <https://www.chicagotribune.com/investigations/ct-pig-farms-illinois-met-20160802-story.html>

¹¹ Illinois Citizens for Clean Air & Water Petition to Withdraw Illinois' delegated NPDES Program, March 27, 2008, available at: https://archive.epa.gov/region5/illinoisworkplan/web/pdf/il_report_201009_appendix_a_petitiontowithdraw.pdf; see also generally, <https://archive.epa.gov/region5/illinoisworkplan/web/html/index.html>. (Note, ICCAW changed its name to the Illinois Coalition for Clean Air & Water in 2020 to honor all people regardless of their citizenship status.)

¹² Id.

¹³ Region 5, U.S. EPA, "Initial Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program for Concentrated Animal Feeding Operations in the State of Illinois," September 2010, available at: https://archive.epa.gov/region5/illinoisworkplan/web/pdf/iepa_cafo-report.pdf.

- Assess adequate penalties or refer cases for formal enforcement despite chronic or serious noncompliance;
- Conduct comprehensive compliance inspections; or
- Maintain a program capable of making a comprehensive survey of CAFOs in accordance with NPDES program requirements.¹⁴

One of the most alarming failures of Illinois' CAFO regulatory program is that IEPA has been unaware of the actual locations of the vast majority of livestock operations in the state, making it difficult to regulate them and account for their environmental impact. The Chicago Tribune found that over a near 10-year period, water pollution incidents tied to Illinois hog confinements caused more than double the fish kills of other industry. However, in some cases, the precise location of a polluting confinement could not be determined from public government records.¹⁵

To date, it's unclear if IEPA has an adequate accounting of CAFOs in Illinois. In an IEPA CAFO rulemaking before the Illinois Pollution Control Board in 2012, IEPA could not provide a calculation of how many of the estimated 24,500 livestock facilities in the state could be defined as CAFOs.¹⁶ While estimates at that point suggested there were 500–3,500 CAFOs in Illinois (including at least 350–400 large facilities), IEPA had only reviewed and approved about 35 facility waste plans, meaning IEPA had no meaningful information about the vast majority of CAFOs in the state.

While in 2012, IEPA estimated that there were 350–400 Large CAFOs in Illinois,¹⁷ it's likely that number is closer to 500. Yet despite significant public scrutiny over the past decade related to IEPA's inadequate inventory of CAFOs, and despite mandates made by U.S. EPA to develop one per ICCAW's Clean Water Act Delegation Petition action, IEPA still doesn't know exactly how many large CAFOs exist in Illinois and/or where they're located. During a 2017 hearing before a subcommittee in the Illinois Senate, an official from the IEPA

¹⁴ Region 5, U.S. EPA, "Initial Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program for Concentrated Animal Feeding Operations in the State of Illinois," September 2010, at 34–40, available at: https://archive.epa.gov/region5/illinoisworkplan/web/pdf/iepa_cafo-report.pdf; see also Michael Hawthorne, *Illinois Takes a Hit Over Factory Farms: State Fails to Crack Down on Water Pollution at Sites, Federal EPA Says*, CHICAGO TRIBUNE, (Sept. 29 2010), http://articles.chicagotribune.com/2010-09-29/health/ct-met-epa-farms-20100929_1_factory-farms-cafos-illinois-epa.

¹⁵ Jackson, David and Gary Marx, Ryan Marx, Hog waste spills damage Illinois waterways, Chicago Tribune, July 29, 2016 (Reporters at the Tribune created a useful interactive hog confinement map showing patterns of pollution), available here: <http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farm-pollution-illinois-htmlstory.html>

¹⁶ Environmental Groups, Illinois Pollution Control Board, and Case # R 2012-023, In the matter of Concentrated Animal Feeding Operations: Proposed Amendments to 35 ILL. ADM. Code 501, 502 and 504, Environmental Groups Final Comments, Electronic Filing, Received, Clerk's Office, January 16, 2013. P.C. #20, at 6, available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-78597>.

¹⁷ Illinois Pollution Control Board, Case # R2012-023, In the Matter of: Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504, Illinois EPA's Post Hearing Comments; Affidavit of Bruce J. Yurdin; Illinois EPA's Memorandum of Law Regarding Authority for an Illinois CAFO Registration Requirement (PC# 6), Oct. 8, 2012, see Affidavit of Bruce J. Yurdin, Sept. 20, 2012 at 2., available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-77662>.

acknowledged that the agency still does not know how many large hog confinements exist in the state or where many of them are located.¹⁸ This is of serious concern to residents, given that once a CAFO in Illinois is approved to construct or expand by IDOA and goes into operation, it becomes IEPA's responsibility to ensure regulatory compliance and pollution prevention. It's hard to imagine how an agency could exercise effective regulatory oversight over a pollution source if the agency isn't aware of its existence or location.

Beyond the problems associated with IEPA's CAFO regulatory program, IDOA's siting and construction permitting program has been criticized due to its promotion of factory farms and because local governments and potentially impacted residents are unable to meaningfully weigh in on CAFO development projects. IDOA is known for overriding the wishes of local government and local residents when permitting the siting and construction of factory farms.

STATE AGENCIES & REGULATORY DEFINITIONS

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

Agencies

Illinois Department of Agriculture (IDOA)

The Illinois Department of Agriculture (IDOA) oversees siting and construction permitting for new and expanding CAFOs in Illinois via requirements set forth in the Illinois Livestock Management Facilities Act (LMFA) and its accompanying regulations.

Illinois Environmental Protection Agency (IEPA)

Once a livestock facility is constructed and operating, it's IEPA's responsibility to regulate it to ensure that it doesn't pollute. IEPA's responsibilities are set forth in the Illinois Environmental Protection Act and its accompanying regulations, and include monitoring CAFOs and pursuing informal and formal enforcement, with formal enforcement occurring via referrals to the Attorney General's Office if any state environmental laws are broken. IEPA has also been given the responsibility to administer applicable federal environmental laws by U.S. EPA Region 5. IEPA is responsible for the administration, monitoring, and enforcement of the state's NPDES permit program for CAFOs and for issuing NPDES permits and monitoring permittees by conducting on-site inspections and reviewing discharge monitoring reports. Learn more about IEPA's regulatory responsibilities for factory farms [here](#).¹⁹

Illinois Pollution Control Board (IPCB)

The Illinois Pollution Control Board (IPCB) develops and defines environmental protection standards for the state, such as developing water quality standards

¹⁸Jackson, David and Gary Marx, State officials defend hog confinement regulations, Chicago Tribune, Nov. 7, 2017, available at: <https://www.chicagotribune.com/investigations/ct-pork-met-20171107-story.html>.

¹⁹ <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/cafos/Pages/default.aspx>

and environmental regulations. The Board also handles permitting issues, such as permit appeals, and pollution control facility siting determinations made by local governments. The Board also hears complaints about violations of the Illinois Environmental Protection Act and other IEPA regulations filed by residents or the Illinois Attorney General's Office.

Illinois Attorney General's Office

The Illinois Attorney General's Office prosecutes environmental violations on behalf of the state. The Attorney General's Office typically receives referrals from IEPA before bringing an enforcement case.

Illinois Department of Natural Resources (IDNR)

Illinois Department of Natural Resources (IDNR) has a limited role in the regulatory program for CAFOs. IDNR administers the Illinois Endangered Species Protection Act and the Illinois Natural Areas Preservation Act, which require state agencies and local governments to consult IDNR about proposed development actions that they will authorize, fund, or perform.²⁰ Therefore, when a CAFO seeks to obtain a siting permit from IDOA, IDOA must submit the plans for the proposed project to IDNR for consultation as to whether or not the project will negatively impact natural resources. The consultation process is typically initiated by IDNR's Ecological Compliance Assessment Tool (EcoCAT).²¹ IDNR is also responsible for assessing damages to natural resources and collecting compensation for those damages or associated losses.²² In the case of CAFOs, IDNR's main role is to assess damages caused by illegal discharges of pollutants into state waters and to conduct associated fish kill inventories.

Illinois Department of Public Health (IDPH)

The Illinois Department of Public Health (IDPH) has a very limited role in regulating CAFOs. IDPH has a dairy permitting program designed to regulate the production, processing, and distribution of dairy products from the farm to the consumer.²³ Dairies are required to be permitted and routinely inspected to prevent disease and milk contamination with pathogenic bacteria, etc. Dairies must submit preconstruction plans to IDPH for review to ensure certain standards are met with the facility, production equipment, piping, etc. to prevent contamination or recontamination of the finished dairy product. IDPH doesn't have any programs for other types of livestock operations and therefore has no role in the permitting process for CAFOs besides dairies. Given IEPA's failure to keep track of CAFOs in Illinois, IDPH's dairy program records have proven useful; state agencies and members of the public have used these records to identify the existence and locations of dairy CAFOs to develop a more complete, accurate, and up-to-date facility inventory.

U.S. EPA Region 5

Illinois is part of U.S. EPA Region 5, which includes Minnesota, Wisconsin, Michigan, Ohio, Indiana, and 35 tribes.²⁴ Its headquarters are in Chicago, Illinois. Most AFO regulation occurs at the state level, and in limited

²⁰ <https://www.dnr.illinois.gov/NaturalResources/environmentreporter/Pages/CERP-FAQs.aspx>

²¹ <https://dnr2.illinois.gov/EcoPublic/>

²² <https://www.dnr.illinois.gov/programs/NRDA/Pages/default.aspx>

²³ <http://www.dph.illinois.gov/topics-services/food-safety/dairy-program>

²⁴ See U.S. EPA Region 5, <https://www.epa.gov/aboutepa/epa-region-5>

circumstances at the local level, in each of the Region 5 states and tribal nations. However, U.S. EPA has oversight authority over state implementation of federal environmental laws, such as the federal Clean Water Act and Clean Air Act. Learn more about U.S. EPA Region 5 and its CAFO program on its [website](#).²⁵

Definitions

Two main sets of laws in Illinois apply to CAFOs; one set is administered by IEPA pursuant to the Illinois Environmental Protection Act (IEPAct), and one is administered by IDOA pursuant to the Livestock Management Facilities Act (LMFA). These are the definitions that apply to CAFOs provided in each agency's regulations:

IEPA/IEPAct

Animal Feeding Operation (AFO)

According to regulations administered by IEPA and IPCB per the Illinois Environmental Protection Act, an AFO is defined as:

- a) A lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 1. 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
 2. Crops, vegetation, forage growth or post-harvest residues that are grown in place are not sustained in the normal growing season over any portion of the lot or facility.
- b) Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.²⁶

Concentrated Animal Feeding Operation (CAFO)

According to IEPA and IPCB regulations, a CAFO is defined as:

An Animal Feeding Operation (AFO) that is defined as a Large CAFO pursuant to 35 Ill. Adm. Code 502.103 or as a medium CAFO pursuant to 35 Ill. Adm. Code 502.104, or that is designated as a CAFO pursuant to 35 Ill. Adm. Code 502.106.²⁷

²⁵ Region 5, U.S. Environmental Protection Agency, <https://www.epa.gov/aboutepa/epa-region-5>

²⁶ Illinois Administrative Code, Title 35, Subtitle E, Section 501.225 [35 IL ADC 501.225]

²⁷ 35 IL ADC 501.238

Large CAFO

According to 35 Ill. Adm. Code 502.103, an Animal Feeding Operation is defined as a Large CAFO if at least the numbers of animals specified in any of the following categories are stabled or confined:

Animal Type	Number of Animals
Mature dairy cows, whether milked or dry	700
Veal calves	1,000
Cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.	1,000
Swine, each weighing 55 pounds or more	2,500
Swine, each weighing less than 55 pounds	10,000
Horses	500
Sheep or lambs	10,000
Turkeys	55,000
Laying hens or broilers, if the AFO uses a liquid manure handling system	30,000
Chickens (other than laying hens), if the AFO uses other than a liquid manure handling system	125,000
Laying hens, if the AFO uses other than a liquid manure handling system	82,000
Ducks, if the AFO uses other than a liquid manure handling system	30,000
Ducks, if the AFO uses a liquid manure handling system ²⁸	5,000

²⁸ Large CAFOs, 35 IL ADC 502.103

Medium CAFO

According to 35 Ill. Adm. Code 502.104:

- a) An Animal Feeding Operation is defined as a Medium CAFO if the following numbers of animals specified in any of the following categories are stabled or confined and the provisions of subsection (b), (c) or (d) of this Section is met:

Animal Type	Number of Animals
Mature dairy cows, whether milked or dry	200–699
Veal calves	300–999
Cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.	300–999
Swine, each weighing 55 pounds or more	750–2,499
Swine, each weighing less than 55 pounds	3,000–9,999
Horses	150–499
Sheep or lambs	3,000–9,999
Turkeys	16,500–54,999
Laying hens or broilers, if the AFO uses a liquid manure handling system	9,000–29,999
Chickens (other than laying hens), if the AFO uses other than a liquid manure handling system	37,500–124,999
Laying hens, if the AFO uses other than a liquid manure handling system	25,000–81,999
Ducks, if the AFO uses other than a liquid manure handling system	10,000–29,999
Ducks, if the AFO uses a liquid manure handling system	1,500–4,999

- b) Pollutants are discharged into waters of the U.S. through a man-made ditch, flushing system or other similar man-made device;
- c) Pollutants are discharged directly into waters of the U.S. that originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation; or
- d) The AFO is designated as a CAFO by the Agency pursuant to Section 502.106.²⁹

Small CAFO

An AFO is a Small CAFO if it is designated as a CAFO by the Agency pursuant to Section 502.106, and it is not a Medium CAFO.³⁰

Case-by-Case Designation

Any AFO may be designated as a CAFO for purposes of requiring the facility to obtain and NPDES permit as follows:

Notwithstanding any other provisions, the Agency may require any AFO to obtain an NPDES permit by designating the AFO as a CAFO upon

²⁹ Medium CAFOs, 35 IL ADC 502.104

³⁰ Small CAFOs, 35 IL ADC 502.105

determining that it is a significant contributor of pollutants to waters of the United States...³¹

Livestock Management Facility

A Livestock Management Facility is defined as any animal feeding operation, livestock shelter or on-farm milking and accompanying milk-handling area.³²

Livestock Waste Handling Facility

A Livestock Waste-Handling Facility is defined as follows:

Individually or collectively those constructions or devices, except sewers, used for collecting, pumping, treating or disposing of livestock waste or for the recovery of by-products from such livestock waste. Such a facility includes acceptable disposal areas, such as pasture or other suitable agricultural land, which can serve as an adequate filtering device to settle out and assimilate pollutants from livestock waste before the clarified water reaches a stream or other body of surface water or groundwater.³³

New Livestock Management Facility and New Livestock Waste Handling Facility

This means any livestock management facility or livestock waste-handling facility the construction or modification of which began or after January 1, 1978.³⁴

IDOA/LMFA

Note that the regulations administered by IDOA under the LMFA also have definitions for some of the same terms that are defined by IEPA's regulations. The definitions set forth in the LMFA and IDOA's administrative regulations are somewhat different, which has created some confusion as to which supersede. Generally speaking, IDOA applies its own definitions in its regulatory program implementation, and IEPA does so similarly. IDOA's definitions applicable to CAFOs are as follows:

Animal Feeding Operation (AFO) (per IDOA/LMFA)

Under the regulations administered by IDOA pursuant to the LMFA, an animal feeding operation" means a feeding operation as defined in the Illinois Environmental Protection Act and the rules promulgated under that act concerning agriculture-related pollution.³⁵

Animal unit means a unit of measurement for any animal feeding operation calculated as follows:

³¹ "b) The Agency, however, may not require a permit under subsection (a) for any AFO with less than the number of animals set forth in Section 502.104, unless it meets either of the following conditions:

1) Pollutants are discharged into waters of the U.S. through a man-made ditch, flushing system or other similar man-made device; or 2) Pollutants are discharged directly into waters of the U.S. that originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation..."

³² Livestock Management Facility, 35 IL ADC 501.285

³³ Livestock Waste-Handling Facility, 35 IL ADC 501.300

³⁴ New Livestock Management Facility and New Livestock Waste-Handling Facility, 35 IL ADC 501.330

³⁵ 510 ILCS 77/10.7.

Brood cows and slaughter and feeder cattle multiplied by 1.0.
Milking dairy cows multiplied by 1.4.
Young dairy stock multiplied by 0.6.
Swine weighing over 55 pounds multiplied by 0.4.
Swine weighing under 55 pounds multiplied by 0.03.
Sheep, lambs, or goats multiplied by 0.1.
Horses multiplied by 2.0.
Turkeys multiplied by 0.02.
Laying hens or broilers multiplied by 0.005.
Laying hens or broilers multiplied by 0.01 (if the facility has continuous overflow watering).
Laying hens or broilers multiplied by 0.03 (if the facility has a liquid manure handling system).
Ducks multiplied by 0.02.³⁶

For species of animals in an animal feeding operation not specifically listed in this definition, the animal unit factor shall be determined by dividing the average mature animal weight by 1,000. The average mature animal weight shall be determined by the Department with guidance from the University of Illinois Cooperative Extension Service.³⁷

Livestock Management Facility (Per IDOA/LMFA)

Livestock management facility means any animal feeding operation, livestock shelter, or on-farm milking and accompanying milk-handling area. Two or more livestock management facilities under common ownership that are separated by less than ¼ mile and share a common livestock waste handling facility shall be considered a single livestock management facility. Livestock management facilities at educational institutions, livestock pasture operations, facilities where animals are housed on a temporary basis such as county and state fairs, livestock shows, racetracks, and horse breeding and foaling farms, and market holding facilities are not subject to the Livestock Management Facilities Act or the requirements of this Part.³⁸

Livestock Waste Handling Facility (Per IDOA/LMFA)

Livestock waste handling facility means individually or collectively those immovable constructions or devices, except sewers, used for collecting, pumping, treating, or disposing of livestock waste or for the recovery of by-products from the livestock waste. Two or more livestock waste handling facilities under common ownership that are separated by less than ¼ mile shall be considered a single livestock waste handling facility.³⁹

Livestock waste handling facilities at educational institutions, livestock pasture operations, facilities where animals are housed on a temporary basis, such as county and state fairs, livestock shows, racetracks, and horse breeding and foaling farms, and market holding facilities, are not subject to the Livestock Management Facilities Act or the requirements of this Part.⁴⁰

³⁶ 510 ILCS 77/10.10.

³⁷ 8 IL ADC 900.103

³⁸ 8 IL ADC 900.103; 510 ILCS 77/10.30

³⁹ 510 ILCS 77/10.40

⁴⁰ 8 IL ADC 900.103

New Facility (Per IDOA/LMFA)

A “New facility” means a livestock management facility or a livestock waste handling facility the construction or expansion of which began on or after the effective date of this Act. Expanding a facility where the fixed capital cost of the new components constructed within a two-year period does not exceed 50 percent of the fixed capital cost of a comparable entirely new facility shall not be deemed a new facility as used in this Act.⁴¹

CONSTRUCTION AND EXPANSION OF CAFOs

Siting Process

Illinois Department of Agriculture (IDOA) administers Illinois’ livestock facility siting and construction permitting process. The requirements for permitting are set forth in the [Illinois Livestock Management Facilities Act \(LMFA\)](#)⁴² and the Department’s accompanying [regulations](#).⁴³

Residents can find out if CAFO construction has been proposed in their community using the IDOA [website](#).⁴⁴

While there is not a formal process for the public to participate in permitting decisions made by IDOA, there is an option for county boards to hold public informational meetings on new livestock facility proposals if a facility meets a size threshold of at least 1,000 animal units or will utilize a waste lagoon. Upon receiving notice from the Department about a proposal, a county may automatically request a meeting. Otherwise, county residents can petition the county board to hold one if they present a petition to the board with at least 75 signatures of residents.

This is the only opportunity the public has to weigh in on IDOA livestock facility permitting decisions. After the county informational meeting, the county board makes a non-binding recommendation to IDOA as to whether or not the proposed operation meets eight specific siting criteria set forth in the LMFA. These criteria include:

- 1) Whether registration and livestock waste management plan certification requirements, if required, are met by the notice of intent to construct.
- 2) Whether the design, location, or proposed operation will protect the environment by being consistent with this Act.
- 3) Whether the location minimizes any incompatibility with the surrounding area’s character by being located in any area zoned for agriculture where the county has zoning or, where the county is not

⁴¹ 510 IL ST CH 77/10.45

⁴² 510 ILCS 77/et. seq., Livestock Management Facilities Act, available at: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1720&ChapterID=41>

⁴³ 8 IL ADC 900, available at:

<https://www2.illinois.gov/sites/agr/Animals/LivestockManagement/Documents/lmfareg.pdf>

⁴⁴ IDOA, Livestock Management Facilities Act, Recent Notices of Intent to Construct, available here: <https://www2.illinois.gov/sites/agr/Animals/LivestockManagement/Pages/Recent-Notices-of-Intent-to-Construct.aspx>

zoned, the setback requirements established by this Act are complied with.

- 4) Whether the facility is located within a 100-year floodplain or an otherwise environmentally sensitive area (defined as an area of karst or with aquifer material within 5 feet of the bottom of the livestock waste handling facility), and whether construction standards set forth in the notice of intent to construct are consistent with the goal of protecting the safety of the area.
- 5) Whether the owner or operator has submitted plans for operation that minimize the likelihood of any environmental damage to the surrounding area from spills, runoff, and leaching.
- 6) Whether odor control plans are reasonable and incorporate reasonable or innovative odor-reduction technologies given the current state of such technologies.
- 7) Whether traffic patterns minimize the effect on existing traffic flows.
- 8) Whether construction or modification of a new facility is consistent with existing community growth, tourism, recreation, or economic development or with specific projects involving community growth, tourism, recreation, or economic development that have been identified by government action for development or operation within one year through compliance with applicable zoning and setback requirements for populated areas established by this Act.

For more information on how IDOA county informational meetings are conducted, view transcripts from previous public meetings [here](#).⁴⁵ Learn more about IDOA's permitting process [here](#).⁴⁶

Note that the above discussed Section 12 of the LMFA controls the notice and processing requirements for "new" livestock management facilities that will house 1,000 or more animal units and those that will use lagoons for waste containment.⁴⁷ A "new facility" is a livestock or waste handling facility built after 1996 having fixed construction costs within a two-year period that are greater than 50 percent of the costs of a comparable entirely new facility⁴⁸ (so if this type of facility expands, it's not subject to the same public input and informational meeting requirements described above). In addition, if a livestock management or waste-handling facility has operated for 4 consecutive months at any time within the previous 10 years, it will not be considered a "new facility." In essence, this allows existing facilities to expand significantly every two years without the same type of agency and public review required of brand-new facilities. This has led to a number of

⁴⁵ IDOA LMFA Public Informational Meetings, transcripts available at: <https://www2.illinois.gov/sites/agr/Animals/LivestockManagement/Pages/LMFA-Public-Information-Meetings.aspx>

⁴⁶ IDOA Livestock Management Facilities Program webpage, available at: <https://www2.illinois.gov/sites/agr/Animals/LivestockManagement/Pages/default.aspx>

⁴⁷ 510 ILCS 77/12; see also 8 IAC 900.301 through 409.

⁴⁸ 510 ILCS 77/10.45; see also 8 IAC 900.103, Definition of "New Facility."

controversial CAFO development and expansion projects that many believe are inappropriate for the areas in which they are sited.⁴⁹

Furthermore, County Board recommendations are non-binding and IDOA may choose to approve the CAFO as long as it's decided that "more likely than not," the Act's purpose is met.⁵⁰ Thus, even when the public has opposed CAFO development projects at county informational meetings and the county boards subsequently recommend denial of the application to the Department, in some cases IDOA has still approved construction. In essence, IDOA has the sole authority to site CAFOs in Illinois via the LMFA and rarely, if ever, denies applications to construct.

Setback Distances

The LMFA mandates specific setback requirements only for new facilities.⁵¹ Before IDOA issues a public notice for a new livestock operation, it will determine if the project meets setback requirements. Setbacks are measured from the nearest corner of a residence, common assembly, or populated area to the nearest corner of a waste lagoon or livestock facility.⁵² (Populated areas have greater setbacks than single residences.) A populated area is any area where "at least 10 inhabited non-farm residences are located or where at least 50 persons frequent a common place of assembly or a non-farm business at least once per week."⁵³ New facilities with 50–1,000 animal units must abide by setback requirements that begin at ¼ mile from an occupied residence and ½ mile from a populated area.⁵⁴ For facilities with 1,000–7,000 animal units, the setbacks are the same as above, but increase 220 feet for each additional 1,000 animal units over the first 1,000 for residences, and increase 440 feet for each additional 1,000 animal units over the first 1,000 for populated areas.⁵⁵ For livestock facilities with more than 7,000 animal units, the setback is ½ mile from residences and 1 mile from populated areas.⁵⁶

IDOA's setback requirements for livestock facilities do not address other typical siting setback distances from features such as sensitive natural areas, surface waters, etc. However, some construction and waste management standards set forth in the LMFA do deal with some environmental factors (see below). In addition, IEPA's regulations address setbacks from waterways, such as in 35 IAC 501.402.

⁴⁹ See e.g., *Rochester Buckhart Action Grp. v. Young*, 887 N.E.2d 49, 58 (Ill. App. Ct. 2008) (plaintiffs from surrounding rural residential area organized as a not-for-profit farm suing for an injunction to stop the expansion of a small pasture-based dairy to a large hog CAFO facility).

⁵⁰ 510 ILCS 77/12.1. Note: the IDOA will consider evidence presented at an informational meeting regarding the eight siting criteria when determining whether the Act has "more likely than not" been met.

⁵¹ 510 ILCS 77/35

⁵² *Id.* at 77/35(c)(1).

⁵³ *Id.* at 77/10.60.

⁵⁴ See 510 ILCS 77/35(c)(3) and 8 IAC 900.202

⁵⁵ 510 ILCS 77/35(c)(4) and 8 IAC 900.202(c)(4),(5).

⁵⁶ 510 ILCS 77/35(c)(5) and 8 IAC 900.202(c)(6)

Construction Standards

IDOA has different construction standards for livestock management facilities that utilize lagoons⁵⁷ versus those that do not.⁵⁸ Groundwater monitoring and financial assurances for proper closure are only required of facilities that use lagoons⁵⁹

New facilities are subject to more stringent environmental review standards and standards for construction in floodplains, karst areas, and areas with shallow aquifer material.⁶⁰ In accordance with Illinois law, a waste facility cannot be constructed on a 100-year floodplain, but can be constructed on the fringe of a 100-year floodplain as long as the facility is protected from flooding.

Waste facilities constructed above areas classified as karst must be designed to prevent any livestock waste from seeping into groundwater. CAFOs should consult professionals to determine the presence of karst areas. Additionally, a waste facility cannot be built within 400 feet of a natural depression in a karst area.

Also, waste management is dealt with under the LMFA as part of the IDOA siting and construction permitting process. However, facilities of less than 1,000 animal units are not required to prepare and maintain a waste management plan.⁶¹ Facilities that house or store waste for 1,000–5,000 animal units are required to “prepare, maintain and implement a waste management plan” within 60 working days after beginning operations or exceeding 1,000 animal units. However, these plans are not required to be submitted to the Department for review or approval and are thus not made publicly available, unlike the federal NPDES program which requires such. Facilities of 5,000 or more animal units are required to prepare, maintain, implement, and submit to the Department the waste management plan for approval, which must meet certain requirements.⁶² While the LMFA’s waste management plan requirements and some of IEPA’s waste management requirements apply to all CAFOs, due to the state’s regulatory framework, only those facilities that have NPDES permits or that have over 5,000 animal units are currently required to have their plans reviewed and approved by regulatory agencies. Since only a small fraction of Illinois CAFOs meet these criteria, there is virtually no meaningful regulatory oversight of the vast majority of CAFO waste in the state to prevent pollution.

Before a CAFO can begin construction, a National Pollution Discharge Elimination System (NPDES) permit for construction activities will be required from IEPA if more than an acre of land will be disturbed during construction. Learn more about this permit [here](#).

⁵⁷ For facilities that utilize a lagoon, see 510 ILCS 77/15-17 and 8 IAC 900.601 through 900.720 502, 503

⁵⁸ For facilities that do not utilize a lagoon, see 510 ILCS 77/13 and 8 IAC Section 900.501 – 511

⁵⁹ For groundwater: 510 ILCS 77/15(b); 8 IAC 900.611; Financial assurance: 510 ILCS 77/17; 8 IAC 900.701 – 720.

⁶⁰ 510 ILCS 77/13 (b)

⁶¹ 510 ILCS 77/20 (b)

⁶² 510 ILCS 77/20 (d)

As of 2020, per the [National Pollutant Discharge Elimination System \(NPDES\) Electronic Reporting Rule](#),⁶³ IEPA transitioned all NPDES General Storm Water Permits for Construction Site Activities to EPA's online reporting site, the [EPA Central Data Exchange \(CDX\)](#).⁶⁴ These NPDES permits must be applied for using the NeT Tool on CDX. EPA doesn't list public information on CDX; instead, find any important NPDES information on [EPA ECHO](#) (Enforcement and Compliance History Online). Learn more about applying for an NPDES permit for construction activities [here](#).

Beyond an NPDES permit for construction activities, other approvals or permits may be required depending on certain circumstances. If you're concerned about a specific livestock facility proposal, contact SRAP to learn what to look for.

WATER

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

[Illinois National Pollutant Discharge Elimination System \(NPDES\)](#)

IEPA administers the federal Clean Water Act's NPDES program. IEPA has taken the position that it should only require an NPDES water pollution control permit from a CAFO if it discharges into waters of the United States. Unless the discharge is reoccurring without correction or ongoing, an NPDES permit will not be required. A CAFO must apply for a NPDES permit if it discharges and the CAFO must submit a nutrient management plan with its permit, which becomes part of the terms of the permit when it issues.⁶⁵ Unsurprisingly, most operations claim that they do not discharge and therefore do not need a permit. In cases that have had a discharge, a CAFO can claim to have fixed the problem that caused the discharge and thus avoid permitting. As a result, very few Illinois CAFOs have recently been regulated under the NPDES program. According to IEPA's website, no NPDES permits have been issued to CAFOs since 2014, while we know many CAFOs have had water pollution problems.⁶⁶ This is a major criticism of Illinois' implementation of its Clean Water Act program for CAFOs. Many believe all CAFOs should be regulated by federal NPDES permits or equivalent state operating permits regardless of their discharge status.

⁶³ The National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule aims to modernize Clean Water Act (CWA) reporting for municipalities, industries and other facilities. The rule replaces most paper-based NPDES reporting requirements with electronic reporting. EPA published this rule on October 22, 2015. Per this rule, states can either build their own electronic reporting tools for NPDES general permits and program reports, or they can elect to use EPA's NeT software on the CDX platform (like Illinois and others). This rule does not change the process for how and when public comments can be submitted on draft NPDES general permits.

⁶⁴ <https://www2.illinois.gov/epa/topics/forms/water-permits/storm-water/Pages/construction.aspx>

⁶⁵ 35 IL ADC 502.310(g)

⁶⁶ <http://www.epa.state.il.us/water/permits/cafo/index.php>

Illinois also has an expired General Permit for CAFOs that should be renewed. NPDES permits typically provide coverage for a five-year period. The Illinois General Permit was issued in 2009 and expired in 2014.⁶⁷ IEPA collected public comments on a new draft CAFO NPDES General Permit in July and August 2020, but hasn't released any further information as of February 2022.⁶⁸ CAFOs that were issued coverage under the old permit may have those standards extended until the new permit is issued. Any new CAFOs should apply for an individual NPDES permit, as opposed to seeking coverage under an expired General Permit.

Water pollution control standards and NPDES standards administered by IEPA for livestock operations and AFOs are primarily set forth in the Illinois Administrative Code, Title 35, Subtitle E: Agricultural Related Water Pollution, Parts 501, 502, 503 and 506 and 560, 570 and 580.⁶⁹

Part 502 identifies which AFOs are subject to NPDES permit requirements and specifies those requirements.⁷⁰ Part 502 also provides technical standards for waste management plans applicable to permitted CAFOs. It also sets forth some requirements for land application activities for AFOs that are defined as large CAFOs, but do not have NPDES permits.

Requirements that apply to unpermitted large CAFOs are contained in Section 502.102. Unpermitted CAFOs must comply with these standards to claim an agricultural storm water exemption (i.e., discharges from land application areas due to precipitation).⁷¹ While unpermitted CAFOs are not specifically required to have nutrient management plans, they must comply with the requirements in Section 502.510(b) to qualify for the exemption.⁷² These requirements include recordkeeping requirements and other standards that are also required of permitted facilities.⁷³

Part 503 contains the requirements applicable to fish and aquatic animal production facilities, irrigation activities, and silvicultural activities. Part 506 implements the Livestock Management Facilities Act,⁷⁴ which is administered by the Illinois Department of Agriculture. Part 560 deals with "Design Criteria for Field Application of Livestock Waste."⁷⁵ Part 570 provides maintenance criteria for runoff field application systems (commonly called vegetative filter

⁶⁷ <http://www.epa.state.il.us/water/permits/cafo/general-mpdes-permit.pdf>

⁶⁸ The public comment period is open until Aug. 25, 2020. See the Draft Permit at: <https://external.epa.illinois.gov/WebSiteApi/api/PublicNotices/GetDocument/11606>

⁶⁹ 35 IL ADC 501.103, see also Sections 501-580 at: <https://pcb.illinois.gov/SLR/IPCBandIEPAEnvironmentalRegulationsTitle35>. Part 501 contains definitions and incorporations by reference applicable to Parts 501, 502 and 503. Subpart C of Part 501 contains the requirements applicable to all livestock waste-handling facilities and livestock management facilities, whether or not those facilities are defined as animal feeding operations (AFOs) or concentrated animal feeding operations (CAFOs) and without regard to whether the facility is subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements.

⁷⁰ 35 IL ADC 502.102

⁷¹ 35 IL ADC 502.510

⁷² 502.510(b)

⁷³ So, in effect, a site-specific nutrient management plan and related recordkeeping should be maintained by unpermitted CAFOs.

⁷⁴ 510 ILCS 77

⁷⁵ This part calls for the adoption of guidelines for livestock waste application to land, Purpose, 35 IL ADC 560.101.

systems).⁷⁶ Part 580 provides standards for reporting procedures for releases of livestock waste.⁷⁷

Today, the federal NPDES program and subsequently Illinois' NPDES program apply to a much smaller number of CAFOs than in years past as a result of legal challenges to U.S. EPA's CAFO rules since issuing its CAFO Final Rule in 2003.⁷⁸ While states can and should go above the minimum standards set by federal law, Illinois does not. Many other states have clean water operating permit programs that apply to CAFOs that are essentially equivalent to federal NPDES permits and that go above and beyond what is minimally required by federal law. Illinois is one of the few states in the region that does not require ongoing regulatory permitting program oversight of waste management and CAFO operations once they are built.⁷⁹

However, state law does disallow threatening pollution and illegally discharging without a permit. According to EPA Act 415 ILCS 12/5:

No person shall:

- a. **Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois**, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.
- b. Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.
- c. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.
- d. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended and regulations pursuant thereto....⁸⁰

⁷⁶ 35 IL ADC 570.101

⁷⁷ 35 IL ADC 580.100

⁷⁸ https://www.epa.gov/sites/production/files/2015-10/documents/cafo_toc_fedrgstr.pdf

⁷⁹ See generally, Diamond, Danielle. "Illinois Failure to Regulate Concentrated Animal Feeding Operations in Accordance with the Federal Clean Water Act." *Drake Journal of Agricultural Law*, 2006, at 212-218.

⁸⁰ Actions prohibited, IL ST CH 415 § 5/12

Therefore, while there's currently no water pollution operating permit regulating the vast majority of CAFOs in Illinois, CAFOs can be found to be in violation of the IEPA for causing, threatening, or allowing pollution to occur, or for causing the discharge of pollutants or for activities tending to cause pollution. This gives IEPA and the Illinois Attorney General's Office the ability to pursue enforcement actions against CAFOs regardless of whether or not they are required to have a NPDES permit or whether or not an actual water pollution event occurs. However, in practice, IEPA is not known for strict enforcement of the water protection measures set forth in the IEPA when it comes to CAFOs.

In the unlikely event a CAFO is required to apply for an NPDES permit by IEPA, the application is subject to state public notice and input requirements similar to those under federal law. Under Section 502.310, CAFOs seeking coverage under the NPDES general permit must submit a notice of intent that meets the requirements of Section 502.201 and Subpart E. The Agency must notify the public of its proposal to grant coverage under the general permit to the CAFO. This public notice must include the CAFO's nutrient management plan.⁸¹ Pursuant to Section 309.108(d), the Agency must circulate public notice within the geographical area of the proposed discharge and may include or all or some of the following: posting in the post office and public places of the nearest municipality; at the entrance of the applicant's subject site; publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation; and by mail to any person or group upon request.⁸²

The time period for the public to comment and request a hearing is 30 days from the date the notice is issued.⁸³ All written comments submitted during the 30-day comment period shall be retained by the Agency and considered in the formulation of its final determinations with respect to the NPDES application. When a public hearing is held, the Agency must respond to significant comments received during the comment period. The period for comment may be extended at the discretion of the Agency by publication as provided in Section 309.109.⁸⁴ If necessary, the Agency will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage.

Antidegradation of Existing Use and Outstanding Resource Waters

Illinois has antidegradation standards intended to maintain the quality of waters with quality that exceed water quality standards, and to prevent unnecessary deterioration of waters of the State.⁸⁵ Waters must maintain the same use standards as their existing uses; outstanding resource waters⁸⁶ and high-quality waters must not be lowered in quality unless certain standards are followed. IEPA must assess any proposed increase in pollutant loading that necessitates a new, renewed, or modified NPDES permit or any activity

⁸¹ 502.310(c)

⁸² Public Notice, 35 IL ADC 309.109

⁸³ 502.310(d)

⁸⁴ 309.109

Public Notice, 35 IL ADC 309.109

⁸⁵ 302.105

⁸⁶ 35 Ill.Adm.Code 303.205 and listed in 35 Ill.Adm.Code 303.206.

requiring a Clean Water Act Section 401 certification. The assessment must consider certain criteria,⁸⁷ such as whether lowering water quality is necessary to accommodate important economic or social development and whether alternatives considered by the applicant and identification of any provisions or alternatives imposed to lessen the load increase associated with the proposed activity.⁸⁸ The assessment includes Agency public notice and public participation requirements.⁸⁹

Impaired Water Bodies

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments⁹⁰ and identify waters not meeting the state's water quality standards.⁹¹ Since states are supposed to protect waters from further degradation, it's important to note if a CAFO is seeking to discharge into or near an already impaired water of the state. Find this information on IEPA's [website](#)⁹² and in its [Integrated Water Quality Report and Section 303\(d\) List](#).⁹³ Check to see if pollutants that CAFOs generate already impair the receiving water body. This information can be relevant for NPDES permit comments, as well as in other permitting and regulatory decision making regarding a proposed CAFO.

Filling of Wetlands and Streams

Filling wetlands or streams for CAFO development can cause pollution and the loss of important habitat wildlife. Section 404 of the federal Clean Water Act requires that such impacts be minimized and mitigated. The Act requires that anyone who proposes to dredge or discharge dredged or fill material into waters of the U.S., including wetlands and streams, must get a permit from the U.S. Army Corps of Engineers (U.S. ACoE) before doing so. Before a permit can be issued, the applicant must demonstrate that:

- 1) There are no practical alternatives;
- 2) The project will not cause significant degradation;
- 3) All negative impacts on the wetland and/or streams are mitigated; and
- 4) Illinois EPA certifies that the project will not violate water quality requirements.

If these requirements are not met, the permit must be denied. Public notice and input opportunities are included in the permitting and certification process.

Whenever a CAFO is proposed for development or expansion, look for potential impacts to wetlands and streams from dredging, filling, rerouting, or relocating jurisdictional waters.⁹⁴ Locate wetlands in your area using the U.S.

⁸⁷ These criteria are stated in Section 302.105(c)(2).

⁸⁸ Antidegradation, 35 IL ADC 302.105(B)

⁸⁹ This is done through the public notice procedures found in 35 Ill. Adm. Code 309.109 for Clean Water Act Section 401 certifications.

⁹⁰ Clean Water Act Section 305(b).

⁹¹ CWA § 303(d)

⁹² Here: <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/303d-list.aspx>

⁹³ <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Documents/Draft-2018-Integrated-Report-11-14-2018.pdf>

⁹⁴ <https://www.mvr.usace.army.mil/Missions/Regulatory/Jurisdictional-Determinations/>

Fish & Wildlife Service's [Wetlands Mapper](#).⁹⁵ Often neither IEPA, nor the Corps is able to monitor and patrol all watersheds in the state to prevent activities from taking place without required permits, and CAFOs are often constructed without obtaining these required approvals. If you see construction or development activities near a wetland or stream or if it appears that dirt is being pushed into or dug out of a waterway, contact your local Corps Office immediately to report the activity and find out if they have a permit. The state is covered by four ACoE Districts, which you can find on this [online map](#).⁹⁶

Section 401 of the CWA prevents the 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. The certification criteria considered by IEPA are set forth in 35 IL ADC 395.401. IEPA can issue a joint public notice and hold a joint hearing on the issuance of the Clean Water Act 404 permit license issued by the U.S. ACoE and the State's 401 certification.⁹⁷ The public can submit comments and IEPA may hold a public hearing about the certification.⁹⁸ In determining whether to hold a public hearing, IEPA will consider:

- 1) Evidence of interest as demonstrated by comments and requests for hearing received from members of the public;
- 2) Evidence that a cause-and-effect relationship exists between the proposed activities and the concerns of the public;
- 3) Expectation that a public hearing will provide information useful to the Agency for making its determination on the request for certification.⁹⁹

Notice shall be given at least 30 days before a hearing is held and the notice shall be published in at least one newspaper of general circulation in the county where the discharge originates or will originate.¹⁰⁰ Notices are also posted on IEPA's [website](#).¹⁰¹

If a new or existing facility is engaging in or will engage in activities that will impact wetlands or other jurisdictional waters, raise the issue. Check if the operation sought the appropriate permit and permit certification; if they haven't, submit complaints to U.S. ACoE and IEPA. The federal Clean Water Act emphasizes the importance of public participation in regulatory agency decisions and residents are encouraged to review and comment on proposals for Clean Water Act 404 U.S. ACoE permits and Clean Water Act Section 401 permit certifications. If you believe water quality will be impacted by the

⁹⁵ Wetland Mapper, US FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Mapper.html>

⁹⁶ U.S. Army Corps of Engineers, locations: <https://www.usace.army.mil/Locations.aspx>
From this map you can identify the district you are located in and view any public notices issued for that district, as well as appropriate contact information. The Chicago District covers Lake, McHenry, Cook, Kane, DuPage, and Will Counties (312-846-5330); the [Rock Island District](#) covers the Northern half of Illinois, except counties in Chicago District (309-794-5729); the [Louisville District](#) covers the Southeast portion of the state, specifically near the Wabash River basin (502-315-6766), and the [St. Louis District](#) covers the southwest portion of the state (314-331-8002).

⁹⁷ 35 IL ADC 395.202

⁹⁸ 35 IL ADC 395.206

⁹⁹ 35 IL ADC 395.206

¹⁰⁰ 35 IL ADC 395.206

¹⁰¹ <https://www2.illinois.gov/epa/public-notices/Pages/section-401-notices.aspx>

development project, ask U.S. ACoE to deny the Section 404 permit and ask IEPA to deny the Section 401 certification of the permit.

Groundwater

The Clean Water Act calls for regulation of discharges to surface waters, but states have varying degrees of protection for groundwater. The federal Safe Drinking Water Act and its state counterpart primarily applies to community water supplies, and therefore does not offer adequate protections for rural residents who often depend on private wells for drinking water. While Illinois has a Groundwater Protection Act,¹⁰² to our knowledge, this Act doesn't offer protections for private wells and we're unaware of any Illinois regulations that protect groundwater from CAFO pollution, aside from the LMFA standards for monitoring groundwater near waste lagoons (see above). However, setbacks from potable water supplies and wells must be adhered to under both the LMFA and the IEPA Act, and there are specific standards for CAFOs located in karst areas(see below).¹⁰³ The LMFA implements siting restrictions for sensitive environmental areas, which, under the Act, include floodplains, karst areas, aquifers, and aquifer material within five feet of the bottom of the waste facility.¹⁰⁴ A waste facility must be setback 100 feet from any groundwater, non-potable well, abandoned or plugged well, drainage well, or injection well.¹⁰⁵

Construction & Storm Water

The federal Clean Water Act and the NPDES program administered by IEPA requires permits for discharges from construction activities that disturb one or more acres, and discharges from smaller sites that are part of a larger common plan of development or sale. Learn more about this program [here](#).¹⁰⁶ CAFOs are development projects subject to this permitting requirement. They must submit a Notice of Intent for Coverage for their construction project along with a Storm Water Pollution Prevention Plan (SWPPP) for construction activities on the [U.S. EPA Central Data Exchange \(CDX\)](#). This must be done 30 days prior to construction. Unless notified by IEPA with a Notice of Incompleteness letter, coverage under the permit is automatic, and storm water-related discharges are authorized from construction sites under the terms and conditions of the permit 30 days after the date the NOI is received by IEPA via the CDX platform.

You can check to see if a CAFO development project has submitted an NOI for coverage under the General NPDES storm water construction permit on U.S. EPA's [Permit Lookup website](#).¹⁰⁷ You can also find the General Storm Water Permit for Construction Activities on IEPA's [website](#).¹⁰⁸ Permittees must follow the terms of the General Permit and the terms of their SWPPPs to be in

¹⁰² See 415 ILCS 55/1) (from Ch. 111 1/2, par. 7451) Sec. 1. This Act shall be known as and may be cited as the "Illinois Groundwater Protection Act."

¹⁰³ See 510 ILCS 77/13(b)(3) and 35 IAC 506.304(a)(8).

¹⁰⁴ 510 ILCS 5/13(b); see also 8 IAC 900.502.

¹⁰⁵ 35 IAC 506.304(a)(8).

¹⁰⁶ IEPA, NPDES Permit For Construction Activities webpage, available here:

<https://www2.illinois.gov/epa/topics/forms/water-permits/storm-water/Pages/construction.aspx>

¹⁰⁷ <https://permitsearch.epa.gov/epermit-search/ui/search>

¹⁰⁸ <https://www2.illinois.gov/epa/topics/forms/water-permits/storm-water/Pages/general-permits.aspx>

compliance. Discharges may occur from the site, as long as the SWPPP and permit terms are adhered to. Residents should monitor construction sites to ensure pollution prevention practices, such as installing silt fences and other runoff controls as set forth in the permittee's SWPPP, are being done. If not, a complaint should be filed with IEPA.

Karst

Karst is a geological formation where soluble carbonate rocks such as limestone or dolomite occur at or near the surface and dissolve to create sinkholes, sinking streams, depressions, caves, and subterranean drainage. Karst terrain is particularly susceptible to groundwater contamination because it provides a fast and easy route for pollutants from the land surface to reach the aquifer. As a result, some states take karst into account when making land use decisions (e.g., by requiring additional construction or waste application setbacks from known sinkholes). Illinois has a considerable amount of karst terrain and therefore does address CAFO siting issues in karst areas.

The LMFA defines karst as land area with "sinkholes, large springs, disrupted land drainage, and underground drainage systems associated with karstified carbonate bedrock and caves," or even land surface areas without these features "but containing a karstified carbonate bedrock unit generally overlain by less than 60 feet of unconsolidated materials."¹⁰⁹ If a CAFO is located on these geological formations it must meet extra requirements.

"Owners or operators of proposed facilities should consult with the local soil and water conservation district, the University of Illinois Cooperative Extension Service, or other local, county, or State resources relative to determining the possible presence or absence of such areas. Notwithstanding the other provisions of this subsection (b), after July 13, 1999, no non-lagoon livestock waste handling facility may be constructed within 400 feet of any natural depression in a karst area formed as a result of subsurface removal of soil or rock materials that has caused the formation of a collapse feature that exhibits internal drainage. For the purposes of this subsection (b), the existence of such a natural depression in a karst area shall be indicated by the uppermost closed depression contour lines on a USGS 7 1/2 minute quadrangle topographic map or as determined by Department field investigation in a karst area. Construction standards and specifications shall be utilized as set forth in Subpart C of 35 Ill. Adm. Code 506."¹¹⁰

Note that this section of the law says owners or operators "should" consult with various authorities to determine the presence of karst areas. Use of the word "should" essentially makes this standard optional. However, CAFOs must conduct soil samples that are at least 5 feet deep within the waste facility area or within 20 feet of its boundaries to determine the presence of aquifer material or karstified carbonate bedrock.¹¹¹ If any bedrock material is present, additional samples must be taken to determine the presence of aquifer

¹⁰⁹ 510 ILCS 77/10.24.

¹¹⁰ 8 IAC 900.502(b).

¹¹¹ 35 IAC 506.302(b)(1).

material or karstified carbonate bedrock.¹¹² A waste facility must be constructed with rigid materials, such as concrete or steel, rather than earthen materials.¹¹³ Regulations encompassing earthen lagoon livestock waste structures are similar to non-lagoon structures, but there are some differences given the higher probability of environmental contamination from earthen waste lagoons.¹¹⁴

AIR

Some states regulate AFO air pollution or odor more than others. Unfortunately, Illinois does not have particularly strong air pollution and odor regulations that apply to CAFOs.

Air Quality & Odors

According to IEPA's regulations, "adequate odor control methods and technology shall be practiced by operators of new and existing livestock management facilities and livestock waste-handling facilities so as not to cause air pollution."¹¹⁵ Further,

Operators of livestock waste handling facilities shall practice odor control methods during the course of manure removal and field application so as not to affect a neighboring farm or non-farm residence or populated area by causing air pollution as described in Section 501.102(d). Odor control methods include, but are not limited to:

1. Soil injection or other methods of incorporation of waste into the soil including disking or plowing;
2. Consideration of climatic conditions, including wind direction and inversions;
3. For liquid livestock waste: whether supernatant used for irrigation purposes has been stored in a livestock waste lagoon system that is designed and operated in accordance with "Design of Anaerobic Lagoons for Animal Waste Management," as incorporated by reference at Section 501.200.
4. Other methods as described in "Management of Manure Odors", as incorporated by reference at Section 501.200.¹¹⁶

Per IDOA's regulations at 8 IL ADC 900.816:

- a. Operators of livestock waste handling facilities shall practice odor control methods during the course of manure removal and field application. Odor control methods shall be those methods identified in the rules adopted pursuant to the Illinois Environmental Protection Act

¹¹² Id.

¹¹³ Id. § 506.312(b).

¹¹⁴ 510 ILL. COMP. STAT. 77/15(a-5)

¹¹⁵ 35 IL ADC 501.402(c)(3),

¹¹⁶ 35 IAC 501.405 Field Application of Livestock Waste

concerning agriculture related pollution as set forth in IEPA's regulations.¹¹⁷

- b. Upon the occurrence of a violation of this Section, the following procedures shall be followed:
 1. For a first violation of this Section by the owner or operator of a livestock management facility or livestock waste handling facility, the Department shall send the owner or operator a written notice of the violation by certified mail, return receipt requested.
 2. If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a second violation of this Section, the Department shall impose on the owner or operator a civil administrative penalty in an amount not exceeding \$1,000. The Attorney General may bring an action in the circuit court to enforce the collection of a penalty imposed under this Section.
 3. If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a third violation of this Section, the Department shall enter an administrative order directing that the owner or operator cease operation of the facility until the violation is corrected.
 4. If a livestock management facility or livestock waste handling facility has not committed a violation of this Section within the five years immediately preceding a violation, the violation shall be construed and treated as a first violation.¹¹⁸

Note: these standards apply to land application of waste, but not to controlling odor from the livestock facility itself.

The requirements for odor and/or air pollution control from a CAFO facility are limited, and it's uncommon for IDOA to respond to community air and odor complaints, since the responsibility to regulate pollution from CAFOs after they're constructed lies primarily with IEPA.

IEPA's regulations state that:

Adequate odor control methods and technology shall be practiced by operators of new and existing livestock management facilities and livestock waste-handling facilities so as not to cause air pollution.¹¹⁹

Air Pollution is defined as:

"[t]he presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property."¹²⁰

This definition is very close to what would be considered a nuisance under common law. Often odor and air pollution from CAFOs in Illinois are addressed via nuisance-based litigation.

¹¹⁷ 35 Ill. Adm. Code 501.405(b); 510 ILCS 77/25(a)

¹¹⁸ 8 IAC § 900.816; 510 ILCS 77/25(d)

¹¹⁹ 35 IL ADCIAC 501.402(3)

¹²⁰ 35 Ill. Adm. Code 501.215

ZONING & LAND USE

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

Zoning

Counties in Illinois are restricted from regulating land uses in agricultural areas in the Illinois Counties Code.¹²¹ Counties are further restricted in having a say regarding land use matters involving CAFOs due to the role they're given in the LMFA, which is to make "advisory" and "non-binding" recommendations to IDOA regarding siting decisions.

While counties have no authority over CAFO zoning, the Illinois Municipal Code arguably enables a municipality to create a comprehensive plan for the development of land within municipal boundaries and contiguous areas and to implement the plan by ordinances.¹²² Thus, municipalities currently have the ability to regulate contiguous land uses up to 1.5 miles from their corporate boundaries. Further, municipalities are not restricted from regulating land uses in agricultural areas. In this regard, municipalities therefore have greater power to regulate agricultural land uses within 1.5 miles of their corporate boundaries than counties have.

PUBLIC PARTICIPATION

Take advantage of every opportunity to make your voice heard about industrial animal agriculture in your community. CAFO operators and regulators will not take additional steps to check the industry unless the public demands it.

Public Notice and Input

Requirements for facilities NOT subject to a public informational meeting

- Within 10 calendar days after receiving the Department's acknowledgment of setback compliance for a proposed CAFO, the owner or operator must mail by certified mail, return receipt requested, a copy of the complete notice of intent to construct to the owners¹²³ of the property located within the setback areas.
- Construction shall not begin until the acknowledgment of setback compliance has been issued by the Department to the owner or operator pursuant to this Section, copies of the complete notice of

¹²¹ 55 ILCS 5/5-12001

¹²² City of Urbana v. Champaign County, 389 N.E.2d 1185, 1186, 27 Ill. Dec. 777, 778, 76 Ill.2d 63, 67 (Ill., 1979).

¹²³ The owners of the property located within the setback areas are presumed, unless established to the contrary, to be the persons shown by the current tax collector's warrant book to be the party in whose name the taxes were last assessed.

intent to construct form have been mailed to owners of property within the setback areas, and construction plans for the livestock waste handling facility have been approved by the Department.¹²⁴

Requirements for facilities subject to the public informational hearing
(i.e., new facilities with 1,000 or more animal units or those using a lagoon):

- If a public informational meeting is not held, the Department shall issue an acknowledgment of setback compliance to the owner or operator within 10 calendar days after the expiration of the time period for the county board to request a meeting pursuant to Section 900.403 of this Part if the Department has determined that the owner or operator has complied with the setback and notice of intent to construct requirements of this Part.
- If a public meeting is held, within 10 calendar days after notification by the Department to the owner or operator that all application information has been submitted, the owner or operator of the proposed facility shall mail by certified mail, return receipt requested, a copy of the complete notice of intent to construct form to the owners¹²⁵ of property located within the setback areas.¹²⁶
- Then, within seven calendar days after receiving a complete form giving notice of intent to construct, the Department must:
 - Send a copy of the notice form to the county board of the county in which the facility will be located;
 - Publish a public notice in a newspaper of general circulation within the county in which the facility will be; and
 - Send a copy of the notice to be published in the newspaper, pursuant to subsection (a)(2) of this Section, to the owner or operator.¹²⁷
- Within 30 calendar days after receipt of notice, the county board may request in writing that the Department conduct an informational meeting about the proposed construction¹²⁸ based on its own discretion, or based on a petition, received by the county board within 30 calendar days after receipt of notice by 75 registered voters from within the county.
- After receiving the request to hold an informational meeting, the Department is to publish a notice of the meeting in a newspaper of general circulation in the county where the facility will be located, as well as in the State newspaper. In addition, a copy of the notice is to be sent to the county board, so the board can post the notice at least 10 days prior to the meeting.¹²⁹

¹²⁴ 8 IAC 900.410

¹²⁵ The owners of the property located within the setback distances are presumed, unless established to the contrary, to be the persons shown by the current tax collector's warrant book to be the party in whose name the taxes were last assessed.

¹²⁶ 8 IAC 900.303 (b)

¹²⁷ 510 ILCS 77/12(a); 8 IAC 900.402

¹²⁸ 510 ILCS 77/12(a)

¹²⁹ 8 IAC 900.404

- At the meeting, members of the public should be given an opportunity to ask questions and present oral or written comments about the proposed construction.¹³⁰ Written comments can also be submitted, and should be addressed to the IDOA Director or Hearing Officer, Illinois Department of Agriculture, State Fairgrounds, P.O. Box 19281, Springfield, IL 62794-9281, unless otherwise instructed by the hearing officer.

Permit Appeals

While the LMFA provides of an elaborate public notice and input process for the siting and construction of new facilities, courts have held that neighboring residents do not have standing to challenge IDOA decisions.¹³¹ Thus, despite the public notice, input, and hearing requirements set forth in the LMFA, the public really doesn't have a meaningful role in the process. It's unclear if any person or entity would have the right to challenge an IDOA CAFO permitting decision, aside from the CAFO owner or operator seeking a permit.

This is dissimilar to IEPA's NPDES permitting process, which provides for public notice, input, and hearings, but also allows for appeal of an agency decision. However, since so few Illinois CAFOs are currently required to apply for NPDES permits, this guide will not go into detail about IEPA's NPDES public input process.

NUISANCE & RIGHT-TO-FARM LAW

When state and federal regulations fail to protect residents from the harmful impacts of industrial livestock facilities, these individuals may consider filing a common law nuisance lawsuit. Unfortunately, Illinois' Right-to-Farm Law makes this strategy more difficult.

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 individuals and communities describe CAFOs as nuisances since they can decrease local property values, prevent people from using and enjoying their homes or yards, and can impair human health. While this sounds like a perfect example of a nuisance, many states—including Illinois—have enacted laws to shield livestock operations from nuisance liability.

¹³⁰ 510 ILCS 77/12(a)

¹³¹ In a Sangamon County case, a community group filed petition for certiorari, seeking review of IDOA's determination that a proposed hog farm more likely than not met the requirements of the LMFA. Ultimately, the Appellate Court held that the community group lacked standing to seek certiorari review of the Department's determination. *Save Our Sandy v. Department of Agriculture*, 2016 IL App (4th) 150582 (Ill. App. 4 Dist.,2016). This case was preceded by a 2010 Jo Daviess County decision in which the Appellate Court held that a community group did not have standing to seek review of the Department's decision to approve construction and that the LMFA did not create implied private right of action. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill.App.3d 669 (Ill. App. 2 Dist.,2010).

State Right-to-Farm Laws

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. Illinois' right-to-farm law (or Farm Nuisance Suit Act) states:

No farm or any of its appurtenances shall be or become a private or public nuisance because of any changed conditions in the surrounding area occurring after the farm has been in operation for more than one year, when such farm was not a nuisance at the time it began operation, provided, that the provisions of this Section shall not apply whenever a nuisance results from the negligent or improper operation of any farm or its appurtenances.¹³²

In any nuisance action in which a farming operation is alleged to be a nuisance, a prevailing defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in the defense of the nuisance action, together with a reasonable amount for attorney fees. This means that if someone sues a CAFO for being a nuisance and loses the case, they'll be required to pay the CAFO's attorney fees, etc.¹³³

This can be an insurmountable risk for most people if the right-to-farm law is applicable. This Act has deterred many residents from bringing nuisance suits against livestock operations, particularly in light of the way courts have interpreted its provisions.

ENFORCEMENT

It's not surprising that industrial agriculture isn't eager to self-report violations of local, state, or federal law. Given Illinois' sporadic inspection schedule, it's often up to residents to report violations and push for enforcement. A record of compliance issues demonstrates that penalties or enforcement actions are necessary.

Submitting Complaints & Reporting Violations

If a CAFO is polluting air, water, or land, or violating any other environmental regulations, you can submit a complaint to IEPA through its [online environmental complaint form](#).¹³⁴ If an operation has a spill and is discharging waste directly into a waterway, or there's some other emergency, use the emergency hotline: 1-800-782-7860 through the [Illinois Emergency Management Agency](#).

You can report non-emergency pollution complaints by:

- Completing and submitting the [Citizen Pollution Complaint](#) form online.

¹³² Farm Nuisance Suit Act (Illinois Compiled Statutes Annotated, 740 ILCS § 70/1, et seq.

¹³³ 70/4.5. Costs and fees, IL ST CH 740 § 70/4.5

¹³⁴ IEPA, Citizen Pollution Complaint Online Form, available at:

<https://www2.illinois.gov/epa/pollution-complaint/Pages/Submit-A-Complaint.aspx>.

- Completing a hard copy Citizen Pollution Complaint Form, which is available at [any agency field office](#), and mailing it to the agency.¹³⁵

We recommend emailing complaints and evidence to support the complaint so there's a record of it that you can maintain for future reference. You can call the main IEPA phone line to find out where to send your emailed complaint.

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

Note: Any complaints are public record; however, you can file them anonymously if you choose.

State Enforcement Mechanisms

Under Illinois' current regulatory scheme, IEPA does not have administrative authority to impose corrective actions or penalties for NPDES violations. (Many other states have granted their environmental agencies the right to bring facilities into compliance by issuing administrative orders and collecting administrative penalties.) In order to ensure compliance in Illinois, IEPA must go through an elaborate negotiation process with violators before referring cases to the Attorney General's office for prosecution. This process has been found to be highly ineffective in deterring future violations since an overwhelming majority of violations are never fully prosecuted.

Generally speaking, the primary way NPDES permits and standards under the IEPA are enforced is by IEPA referring cases to the Illinois Attorney General. The Attorney General then brings actions for penalties before the IPCB. Typically, IEPA institutes enforcement proceedings only after being made aware of alleged violations—usually after receiving complaints. Within 180 days of becoming aware of a violation, IEPA will issue a written notice informing the facility of the alleged violation.¹³⁶ The violator has 45 days to file a written response to the notice. If the complaint is valid, the response should include a proposed compliance agreement.¹³⁷ The agency will issue a written notice of acceptance or rejection of the proposed compliance agreement in its reply. If the violator abides by the compliance agreement, the agency is precluded from referring the violation to the Attorney General's office.¹³⁸ This cumbersome process most often results in an agreement between IEPA and the violator, which precludes Attorney General prosecution of significant violations.

Residents can also bring suits against Clean Water Act violators pursuant to both state and federal regulations.¹³⁹ Notice, complaint, and hearing requirements and procedures are essentially the same for both Attorney General and citizen suits. See the Federal Guide for more information on Clean

¹³⁵ *Id.* at <https://www2.illinois.gov/epa/pollution-complaint/Pages/default.aspx>

¹³⁶ 415 ILCS 5/31(a)(1)

¹³⁷ *Id.* at 5/31 (a)(2)

¹³⁸ *Id.* at 5/31(a)(10)

¹³⁹ 33 U.S.C. §1365(b) (2003); 415 ILCS 5/31(d).

Water Act citizen suits. In Illinois, a citizen suit can be brought in state or federal court, or before the IPCB.

Inspections

IEPA's policy is to inspect all permitted CAFOs at least once during the five-year permit period.¹⁴⁰ However, since very few CAFOs have NPDES permits, these inspections are limited. IEPA is also required to inspect unpermitted AFOs to determine if they are Large or Medium CAFOs and in compliance with NPDES program requirements. IEPA also conducts inspections in response to public complaints.

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, state laws exist that are intended to increase government transparency and provide public access to 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.

Illinois Freedom of Information Act (FOIA)

Under the Illinois Freedom of Information Act,¹⁴¹ records in possession of public agencies may be accessed by the public upon written request. "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, cards, tapes, recordings, electronic data processing records, recorded information, and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed, or under the control of any public body.¹⁴² Records that are not subject to release via the FOIA process include confidential and trade secret information.

Each state or local governmental may have its own standard procedures to adhere to the FOIA, as long as they conform to state law. Agencies "...may charge fees that are reasonably calculated to reimburse its actual cost for reproducing and certifying public records..."¹⁴³ Some agencies charge different costs determined by what is reasonable. However, fees may be waived or reduced under certain circumstances. In general, a waiver or reduction of fees

¹⁴⁰ This is consistent with USEPA's National Compliance Monitoring Strategy and Region 5 USEPA workplan agreements with IEPA, see e.g., <https://archive.epa.gov/region5/illinoisworkplan/web/pdf/il-workplan-20130204.pdf>.

¹⁴¹ 5 ILCS 140/1, available at : <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=85&ChapterID=2>

¹⁴² 5 ILCS 140/2(c)

¹⁴³ 5 ILCS 140/6

will be granted when it is determined to be in the public interest to do so.¹⁴⁴ IEPA's FOIA webpage outlines its FOIA policies and provides instructions on how to file information requests:

<https://www2.illinois.gov/epa/foia/Pages/default.aspx>

IDOA's webpage does the same:

<https://www2.illinois.gov/sites/agr/About/Pages/Freedom-of-Information-Act-Request.aspx>.

FOIAs need to be responded to within five working days of receipt of the request. An extension of five working days is allowed with written notification to the requester.¹⁴⁵ If a request is denied, the requester may request review within 60 days of the date of the denial letter with the Illinois Attorney General's Public Access Counselor.¹⁴⁶ Find information on how to contact the Public Access Counselor on the Attorney General's [website](#).¹⁴⁷ A requester also has the right to file suit for injunctive or declaratory relief in the county circuit court in which the public body denying the request has its principal office or where the requestor resides, in accordance with procedures set forth in Section 11 of FOIA.¹⁴⁸

Illinois also has an Open Meetings Act to create open and transparent government. (Learn more [here](#).)¹⁴⁹ In general, "it is the intent of [the] Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly."¹⁵⁰ Questions about whether a governmental entity is conducting itself appropriately in accordance with the state's Open Meetings Act may be directed to the Attorney General's Public Access Counselor.¹⁵¹

PROPERTY TAX APPEALS

Industrial livestock operations have been shown to reduce nearby property values by as much as 90 percent depending on their size and proximity. 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 CAFOs aren't as economically beneficial to communities as their proponents claim.

¹⁴⁴ 5 ILCS 140/6(b)

¹⁴⁵ 5 ILCS 140/3 (d)

¹⁴⁶ 5 ILCS 140/9.5

¹⁴⁷ <https://foiapac.ilag.gov/>

¹⁴⁸ 5 ILCS 140/11

¹⁴⁹ 5 ILCS 120/1, available at:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=84&ChapAct=5%20ILCS%20A0120/&ChapterID=2&ChapterName=GENERAL+PROVISIONS&ActName=Open+Meetings+Act.&Print=True%20>

¹⁵⁰ 5 ILCS 120/1

¹⁵¹ <https://foiapac.ilag.gov/>

Property Tax Appeals

In Illinois, property taxes can be appealed by a process that begins at the county level. Deadlines and procedures vary by county, so check with your County Board of Review (BOR) once you have your assessment. Generally, the deadline is within 30 calendar days of the date of the assessment. If you don't get your assessment reduced at the county level, you can appeal the BOR's decision to the State Property Tax Appeal Board (PTAB) or the court system. Several Illinois residents have successfully appealed their property taxes and had them reduced by the PTAB due to the location of a factory farm near their residences.

OTHER RESOURCES

Protecting your community from factory farms is difficult. Avoid working alone by building relationships in your community, consulting with experts, and collaborating with groups working on similar issues.

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.srapproject.org, and contact SRAP for support at 503-632-8303 or through our [website](#).¹⁵²

State and Nonprofit Organizations

- **[Illinois Environmental Council](#)**¹⁵³
- **[Prairie Rivers Network](#)**¹⁵⁴
- **[Sierra Club, Heart of Illinois Chapter](#)**¹⁵⁵
- **[Food Animal Concerns Trust](#)**¹⁵⁶
- **[Helping Others Maintain Environmental Standards](#)**¹⁵⁷
- **[Neighbors Opposing Polluted Environment](#)**¹⁵⁸

Note: see the Federal Guide for national organizations.

¹⁵² Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.srapproject.org/contact/>

¹⁵³ <https://ilenviro.org>

¹⁵⁴ <https://prairierivers.org>

¹⁵⁵ <https://www.sierraclub.org/illinois/heart-illinois>

¹⁵⁶ <https://www.foodanimalconcernstrust.org>

¹⁵⁷ <https://stopthemegadairy.org>

¹⁵⁸ <http://nopefulton.weebly.com>

APPENDIX: ILLINOIS CAFO DATABASE AND MAPPING GUIDE

This appendix provides instructions on how to navigate Illinois CAFO databases, find past CAFO violations, create custom aerial maps of CAFOs, and more. If you have any questions or comments, please contact:

WaterRangers@sraproject.org

Illinois EPA CAFO Permit Documents

Use these sites to find existing livestock permit applications under the General NPDES Permit

To view the list of existing CAFO permits and their permit application documents:

- Use [this site](#)¹⁵⁹
- Click the blue “View” button for details on the application, manure analysis, soil samples, and more.

To view permit information for CAFOs that are under permit:

- Use [this site](#)¹⁶⁰
- If you have the CAFO name, enter it next to “Main / Organization Name”
- To do a general search, enter “Swine,” “Dairy,” or “Poultry” next to “Main / Organization Name”
- Make sure “State” is “IL”
- Click Submit
- You can find the ID# for permits
 - Note: You can’t access permit documents from this site. To get permit documents, you must make a FOIA request.

Illinois Notices of Intent to Construct¹⁶¹

Use this site to find recent proposals and expected animal counts for CAFO construction on new and existing facilities.

To view the number of animals at a site:

- Click blue “+” icon in left column
- “Projected Animal Units” is the estimated number of animal units that will be added to the facility as a result of the construction project
- “Total Site Animal Units” is the total number of animal units at the facility following construction (i.e., total animal units at the facility under current operations, plus any new animal unit capacity added during construction).

¹⁵⁹ <http://www.epa.state.il.us/water/permits/cafo/>

¹⁶⁰ <http://epadata.epa.state.il.us/TieFileData/>

¹⁶¹ <https://www2.illinois.gov/sites/agr/Animals/LivestockManagement/Pages/Recent-Notices-of-Intent-to-Construct.aspx>

Animal	Animal Unit Equivalent	Animal Equivalent of 1,000 Animal Units
Brood cows and slaughter and feeder cattle	1.0	1,000
Milking dairy cows	1.4	714
Young dairy stock	0.6	1,666
Swine weighing over 55 lb.	0.4	2,500
Swine weighing under 55 lb.	0.1	10,000
Sheep, lambs, or goats	0.1	10,000
Horses	2.0	500
Turkeys 7 lb. or more	0.018	55,555
Turkeys less than 7 lb.	0.005	200,000
Laying hens or broilers 3 lb. or more	0.01	100,000
Laying hens or broilers less than 3 lb.	0.0025	400,000
Ducks	0.04	50,000

[Illinois Enforcement Database](#)¹⁶²

Use this site to find past CAFO enforcement documents.

To search previous enforcement documents for CAFOs:

- Select "Enforcement" in the "Action Type" drop-down menu
- Select a county if applicable
- Select "Livestock" from the "Program" drop-down menu under the water program section
- Click "Search"
- Click "View" next to the case of interest
- Click the blue "View Order" button in the lower left of the screen to view the official enforcement documentation.

[NEPAssist](#)¹⁶³

Use this tool to map CAFOs and impaired waterways.

- Click "Launch the NEPAssist Tool" on right
- Type the address/city/location you want to view on the top left
- Go to the drop-down menu under "Basemap" on the top menu. Click "Bing Maps Hybrid" to add a satellite image base map
- Use the "Select Map Contents" section on the right to add layers to the map

¹⁶² <http://www.epa.state.il.us/cgi-bin/en/orders/orders.pl>

¹⁶³ <https://www.epa.gov/nepa/nepassist>

- To make an impaired waterway map:
 - Click the + sign next to “Water”
 - Click “Impaired Streams”
 - Click “Impaired Waterbodies”
 - Print or save map
- You can add more layers by clicking each + beside other map layer items to make maps with more/different information.

[Enviromapper](#)¹⁶⁴

Use this tool to map impaired waterways and find impaired waterway reports indicating the reason for impairment

- Enter a location such as address, zip, city, county, waterbody, park name, etc. (e.g., 22207; Arlington, VA; Jones Creek; etc.)
- Click “More Data” at top
- Click “Additional Data Layers”
- Click “Water Features”
- Click “Impaired Streams”
- Click “Impaired Waterbodies”
- If you click the red impairment line, you’ll get a text box
- Click “MORE INFO” next to the “WaterbodyReportLink”
- This will give you the cause of impairment on the right side of your screen
- Print or save.

[FWS Wetland Mapper](#)¹⁶⁵

Use this site to identify wetlands near CAFOs.

- Click the “Wetlands Mapper” link at the bottom of the page to launch the map
- On the left, there will be two drop-down boxes:
 - Base Maps Includes:
 - Streets
 - Satellite
 - Hybrid
 - Topo
 - Terrain
 - Gray
 - Open Street Map
 - NATGEO
 - USGS Topo
 - NAT’L MAP
 - Map Layers Includes:
 - Wetlands
 - Riparian
 - Riparian Mapping Areas
 - Areas of Interest

¹⁶⁴ <https://enviro.epa.gov/enviro/em4ef.home>

¹⁶⁵ <https://www.fws.gov/wetlands/Data/Mapper.html>

- FWS Managed Lands
 - Historic Wetland Data
- Choose your preferred basemap, then click all boxes under Map Layers
 - The USGS Topo basemap will provide a topographic map with waterways; the Satellite basemap shows an aerial view of the land
- Type an address or coordinates
- Zoom in or out to adjust picture
- Wetlands will be shown on the map
- Take your arrow and click on wetland
 - A box will open to give total acreage of wetland and a description
- To measure the distance from a wetland to a CAFO:
 - Click "Measure" in the upper left corner
 - Click the ruler with arrows going left and right above it
 - Click your cursor on the map and drag it to the location to which you want to measure
 - View the distance in the gray box
- To measure the acreage of an area:
 - Click "Measure" in the upper left corner
 - Select the ruler icon with a green shape behind it
 - Select points on the map to measure the acreage of an area
 - De-select the ruler icon to exit the tool
- Click Print on the map to create a physical copy

[Water Quality Standards by State](#)¹⁶⁶

Use this site to find your state's water quality standards.

- Scroll down to the colorful map of the United States
- Select a state
- Use the links under "State Standards in Effect for CWA Purposes" to find the state's water quality standards.

¹⁶⁶ <https://www.epa.gov/wqs-tech/state-specific-water-quality-standards-effective-under-clean-water-act-cwa>