

**Guide to Confronting Concentrated Animal
Feeding Operations in**

KENTUCKY

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

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.

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Date of publication: March 2019

¹ Midwest Environmental Advocates is a nonprofit environmental law center that works for healthy water, air, land, and government for this generation and the next. For more information, visit midwestadvocates.org.



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 KENTUCKY

Agriculture and animal livestock production plays a significant role in Kentucky's economy and cultural identity. According to the United States Department of Agriculture (USDA), there are approximately 32,000 farm operations in Kentucky.¹ The top crop and livestock items are tobacco, hay, corn, soybeans, wheat, broiler chickens, layers, cattle, and hogs.² According to the USDA, about half of all Kentucky farms owned cattle—mostly beef cattle—but poultry production is steadily increasing.³ Kentucky has reached the rank of 7th place for broilers in the U.S., with around 761 billion head in 2012, and shows no signs of slowing.⁴ The counties that contain most animal agriculture are Graves, Hickman, Carlisle, Todd, Muhlenberg, McLean, Marren, and Barren.⁵

Kentucky engages in minimal regulation of animal agriculture; the state does not go beyond the federal minimum requirements and there are no air quality requirements. According to the Environmental Protection Agency, only 2 of Kentucky's 150 Large CAFOs have the necessary National Pollutant Discharge Elimination System (NPDES) permits.⁶ The state does have an operating permit for non-discharging operations—which they all claim to be—but the requirements are not extensive and enforcement is uncommon.

STATE REGULATORY DEFINITIONS

In Kentucky, CAFOs must obtain a Kentucky Pollutant Discharge Elimination System (KPDES) permit and some animal feeding operations (AFOs) must obtain a state operating permit. Therefore, it's important to understand how CAFOs and AFOs are defined by the state to see what permits or regulations may apply.

Some states expand the definitions to encompass a greater number or type of operations, and some states mirror the federal definition. Kentucky's laws and regulation refer to the federal definition of AFOs and CAFOs with one primary difference: Kentucky says the operation must discharge in order to be a CAFO. Unlike other states

¹ Quick Stats, United States Department of Agriculture, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=KENTUCKY.

² Id.

³ Kentucky Agriculture – Snapshot of Bluegrass State Farming, <https://www.usda.gov/media/blog/2015/04/30/kentucky-agriculture-snapshot-bluegrass-state-farming>.

⁴ Id.

⁵ Factory Farm Map, Food & Water Watch, <http://www.factoryfarmmap.org/#animal:all;location:KY;year:2012>.

⁶ NPDES CAFO Permitting Status Report National Summary Endyear 2017, U.S. Environmental Protection Agency, https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf.

that raise the bar by requiring permits for operations based solely on size, Kentucky does not. Therefore, if an operation that would be classified as a CAFO based on number of animal claims that it doesn't discharge, it avoids a CAFO designation and subsequent regulation in Kentucky.

See 401 KAR 5:002 for definitions and references to federal code regarding AFOs and CAFO.

See 401 KAR 5:060 for KPDES permit application requirements.

See 401 KAR 5:005 for permits to construct, modify, or operate a facility (including Kentucky No Discharge Operational Permits for AFOs).

See 40 C.F.R. 122.23 for federal small, medium, and large CAFO definitions.

Animal Feeding Operation (AFO)

An AFO is a lot or facility where animals:

Have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.⁷

Concentrated Animal Feeding Operation (CAFO)

A CAFO is an AFO that discharges pollutants into waters of the United States through a ditch, flushing system, or man-made device; or pollutants are discharged directly into waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.⁸ It's not surprising that few operations admit to discharging pollutants and therefore only a handful of operations in Kentucky are considered CAFOs that require discharge permits.

In many other states, size is an element of a CAFO designation—it's assumed that a large AFO has the potential to discharge and should therefore be regulated. But in Kentucky, the size of the AFO is irrelevant in determining whether the operation is a CAFO. However, the state does distinguish between small, medium, and large AFOs;⁹ its size thresholds for categorization mirror U.S. EPA's small, medium, and large CAFO definitions shown in the chart below.

⁷ 40 C.F.R. 122.23(b)(1); Animal Feeding Operations and Concentrated Animal Feeding operations, Kentucky Division of Water, <http://water.ky.gov/permitting/Pages/AFOsandCAFOs.aspx>

⁸ 40 C.F.R. 122.23(b)(6).

⁹ 401 KAR 5:002. Definitions for 401 KAR Chapter 5.

Table: EPA's CAFO Size Chart¹⁰

Animal Sector	Size Thresholds (number of animals)		
	Large CAFOs	Medium CAFOs ¹	Small CAFOs ²
cattle or cow/calf pairs	1,000 or more	300 - 999	less than 300
mature dairy cattle	700 or more	200 - 699	less than 200
veal calves	1,000 or more	300 - 999	less than 300
swine (weighing over 55 pounds)	2,500 or more	750 - 2,499	less than 750
swine (weighing less than 55 pounds)	10,000 or more	3,000 - 9,999	less than 3,000
horses	500 or more	150 - 499	less than 150
sheep or lambs	10,000 or more	3,000 - 9,999	less than 3,000
turkeys	55,000 or more	16,500 - 54,999	less than 16,500
laying hens or broilers (liquid manure handling systems)	30,000 or more	9,000 - 29,999	less than 9,000
chickens other than laying hens (other than a liquid manure handling systems)	125,000 or more	37,500 - 124,999	less than 37,500
laying hens (other than a liquid manure handling systems)	82,000 or more	25,000 - 81,999	less than 25,000
ducks (other than a liquid manure handling systems)	30,000 or more	10,000 - 29,999	less than 10,000
ducks (liquid manure handling systems)	5,000 or more	1,500 - 4,999	less than 1,500

¹Must also meet one of two "method of discharge" criteria to be defined as a CAFO or may be designated.

² Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.

Note: KY requires discharge for any size operation to be considered a CAFO.

Concentrated Aquatic Animal Production Facility (CAAPF)

A CAAPF is a hatchery, fish farm, or other facility that is determined to be a significant contributor of pollution to waters of the U.S.¹¹ A CAAPF is considered a point source and a KPDES permit is required.¹² The rules deciding that an aquatic animal production facility

¹⁰ Regulatory Definitions of Large CAFOs, Medium CAFOs, and Small CAFOs, U.S. Environmental Protection Agency, https://www.epa.gov/sites/production/files/2015-08/documents/sector_table.pdf.

¹¹ 40 C.F.R. 122.24.

¹² 401 KAR 5:060 section 6.

is a CAAPF are vague¹³ and often rely on case-by-case determinations and onsite inspection.¹⁴

STATE REGULATORY AGENCIES

One of the most important steps in responding to a new or expanding AFO is to understand which state agencies play a role in AFO regulation and AFO-related issues. Knowing which agency to contact is crucial for efficiency of time and resources, both for residents and decisionmakers. Below is a list of Kentucky agencies that may be useful. This list is not exhaustive; other departments, federal agencies, or local groups may also be helpful.

Department for Environmental Protection, Division of Water

The primary agency responsible for permitting the AFOs and CAFOs in Kentucky is the Division of Water Quality (DOW) of the Kentucky Department for Environmental Protection (KDEP) from the Energy and Environment Cabinet (EEC). For questions about the permits, contact the Surface Water Permits Branch at 502-564-3410 or swpbsupport@ky.gov.

DOW is also responsible for ensuring compliance with the Kentucky Agriculture Water Quality Act¹⁵ (KAWQA), which applies to all landowners with 10 or more acres used for farming or silviculture operations. KAWQA requires operations to develop and submit an Agriculture Water Quality Plan and works with landowners and conservation districts to ensure compliance.

DOW's central office is in Frankfurt, and its regional offices are in Bowling Green, Columbia, Florence, Frankfort, Hazard, London, Louisville, Madisonville, Morehead, and Paducah. The regional offices conduct KPDES inspections.

Department for Environmental Protection, Division of Air Quality

KDEP's Division of Air Quality (DAQ) is responsible for preventing and reducing air pollution in Kentucky. There are no agriculture-related air pollution permits or regulations in Kentucky, but the state does have an odor standard,¹⁶ which could apply to particularly malodorous AFOs. DAQ handles odor complaints and inspections. You can submit odor complaints to DAQ via its complaint line: (502)-782-6592.

¹³ When making the decision, they consider the following factors (i) location and quality of receiving waters; (ii) holding, feeding, and production capacities of the facility; (iii) quality and nature of the pollutants reaches waters; and (iv) other relevant factors. 40 CFR 122.24(c).

¹⁴ 40 CFR 122.24.

¹⁵ KRS 224.71-100-145.

¹⁶ 401 KAR 53:010.

Conservation Districts

Kentucky's 121 conservation districts are subdivisions of state government that develop and implement conservation programs throughout the state. Conservation districts mostly help landowners deal with soil and water resource issues. While they do little to help residents facing a problematic AFO, their considerable knowledge of the natural resources in the area could be useful. Every county in Kentucky is represented by its own conservation district. Find contact information for each district on [EEC's Natural Resource Conservation website](#).¹⁷

Department of Agriculture

The Kentucky Department of Agriculture focuses on agricultural marketing, pesticides, animal health and disease prevention, and product promotion. It doesn't engage in much regulation of AFOs/CAFOs beyond composting and disposal, slaughter, and rendering of deceased animals.

The Environmental Protection Agency Region 4 (southeast)

The EPA Region 4 (Southeast) is the region agency with authority over Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and six Tribes.¹⁸

- The main number is 404-562-9900.
- For NPDES permitting, contact 404-562-9236 or davis.molly@epa.gov.
- The Kentucky State agency number is 502-564-2150.
- Find other contact numbers on EPA's website:
<https://www.epa.gov/aboutepa/forms/contacting-epa-region-4-southeast>.

Note that the majority of states, including Kentucky, have authority to issue water pollution permits to regulated operations in their respective states. However, EPA retains oversight authority to take enforcement action when states fail to meet federal requirements like those outlined in the Clean Water Act (CWA). Therefore, EPA CAFO contacts are important if you're tracking specific large-scale livestock operations or have questions about a state CAFO program's compliance with federal laws. See the Federal Guide for more about the interplay between states and the U.S. EPA.

¹⁷ Conservation Districts, Kentucky Energy and Environment Cabinet, <https://eec.ky.gov/Natural-Resources/Conservation/Pages/Conservation-Districts.aspx>.

¹⁸ About EPA Region 4 (Southeast), Environmental Protection Agency, <https://www.epa.gov/aboutepa/about-epa-region-4-southeast>.

WATER

Water quality and availability are essential to Kentucky's way of life, playing a critical role in drinking water, recreation and tourism, ecological health, and many of the state's main industries. Kentucky has 13 major river basins, over 89,400 miles of streams and 720,000 acres of wetlands, and 55 percent of the state's rare and endangered species are either located in or dependent upon wetland areas.¹⁹ While there are many sources of water pollution in Kentucky, agriculture is certainly one of them,²⁰ particularly in the western parts of the state where AFOs are most densely concentrated. Despite efforts to address water quality issues, Kentucky continues to struggle with water quality and drinking water standards.²¹ According to 2014 data, 67 percent of assessed rivers and streams are considered impaired, as are 40 percent of assessed lakes, reservoirs, and ponds.²² Though the state has regulations, programs, and permits in place to address water quality, it's often up to residents to report violations, submit complaints, and push for further regulation.

Kentucky's administrative regulations regarding water can be found in Title 401, Chapters 4-11 of the Kentucky Administrative Regulations.

The Kentucky Pollutant Discharge Elimination System permit

U.S. EPA has authorized all but four states²³ to implement their own NPDES programs to control water pollution as part of the Clean Water Act. States carry out the programs, but the EPA retains oversight authority. The EPA delegated NPDES authority to Kentucky in 2008 and the Kentucky Pollutant Discharge Elimination System (KPDES) permit is a component of that program.²⁴

A KPDES permit is required for the discharge of pollutants from a point source into waters of the Commonwealth.²⁵ Requirements for the KPDES program are found in

¹⁹ Water Quality in Kentucky, Kentucky Conservation Committee, <http://kyconservation.org/water-quality-in-kentucky/>.

²⁰ Kentucky Water Quality Assessment Report, U.S. Environmental Protection Agency, https://ofmpub.epa.gov/waters10/attains_state.control?p_state=KY#total_assessed_waters.

²¹ "Kentucky ranks poorly in new water quality study," Courier Journal, (May 2, 2017), available at <https://www.courier-journal.com/story/tech/science/environment/2017/05/02/kentucky-ranks-poorly-new-water-quality-study/308899001/>.

²² Kentucky Water Quality Assessment Report, U.S. Environmental Protection Agency, https://ofmpub.epa.gov/waters10/attains_state.control?p_state=KY#total_assessed_waters.

²³ These four states are Idaho, Massachusetts, New Hampshire and New Mexico.

²⁴ National Pollutant Discharge Elimination System Memorandum of Agreement Between the Commonwealth of Kentucky and the United States Environmental Protection Agency Region 4, <https://www.epa.gov/sites/production/files/2013-09/documents/ky-moa-npdes.pdf>.

²⁵ 401 KAR 5:055, section 11 icw section 2.

Kentucky Revised Statutes 224.70 and Title 401 of Kentucky Administrative Regulations Chapters 5 and 10.

The permit includes effluent limitation set by the KDEP DOW. *The General Procedures for Limitations Development* document explains the details of how effluent limitations are developed and monitored.²⁶ These considerations are complex; if you're reviewing a water pollution permit and have concerns about water quality standards, consider asking scientific experts for assistance.

If a KPDES permit applicant aims to discharge to waters categorized as "Exceptional or High Quality Waters," the Antidegradation Implementation Procedure requires the applicant to conduct a socioeconomic demonstration and alternative analysis to justify compromising local water quality to accommodate economic or social development in the area.²⁷

A CAFO that must obtain a KPDES permit must submit Form B to DOW at least 180 days prior to discharge.²⁸ The application requires the following types of information:²⁹

- Facility contact information;
- Facility location and description;
- CAFO characteristics (weight, type, and number of animals confined);
- Manure, litter, and/or wastewater production and use;
- Nutrient management plan; and
- Best management practices for land application that will be implemented.

However, the vast majority of AFOs in Kentucky claim that they don't discharge and therefore don't need a KPDES permit.

The Kentucky No Discharge Operational Permit (KNDOP)

Since Kentucky requires an AFO to discharge before requiring a KPDES CAFO permit, the more common permit an AFO may need to obtain is the Kentucky No Discharge Operational Permit (KNDOP). AFOs with liquid manure waste handling systems are required to obtain a KNDOP.

²⁶ General Procedures for Limitations Development, Department for Environmental Protection Division of Water Surface Water Permits Branch, Revised August 2016, available at <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/General%20Procedures%20for%20Limitations%20Development.pdf>.

²⁷ 401 KAR 10:030, section 1.

²⁸ General Instructions, Kentucky Pollutant Discharge Elimination System, Kentucky Division of Water, <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/Instructions.pdf>.

²⁹ Form B, Kentucky Pollution Discharge Elimination System for Animal Waste Management Permit Application, <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/Form%20B.pdf>.

The KNDOP is valid for five years and there's no fee for application. Small and medium operations can apply for the general KNDOP; large operations must apply for an individual permit. There does not appear to be public notice for KNDOPs. Find the permit [here](#).³⁰

Further requirements for KNDOP holders can be found in 401 KAR chapter 5.

Construction and Stormwater permit

Construction Permit

Any operation that plans to build a liquid manure waste handling system must obtain a construction permit before starting construction. The application should include the design criteria for the structure and the permit is valid for one year.

Stormwater Permit for Construction

When an operation aims to build holding ponds, barns, feeding areas or any activities that disturb one acre or more, including contiguous construction activities that cumulatively disturb one acre or more, it requires a stormwater permit for construction. This is a stormwater general permit KYR10. Find a copy of the permit on EEC's [website](#).³¹ The permit requires no fee and is valid for one year.³² One requirement of the permit is the development and implementation of a Stormwater Pollution Prevention Plan (SWPP).

The construction activity will not require a stormwater permit if they have already obtained a KPDES permit, but considering how few AFOs are required to get KPDES permits, the exclusion is unlikely to apply to most AFO construction activities.

If an operation engages in construction activities without obtaining the appropriate construction and stormwater permits, report the violation to DOW.

See the [permit](#) for more details and requirements.³³

Other requirements

- **Best Management Practices (BMPs)**—Each operation should implement BMPs as part of the Kentucky Agriculture Quality Water Plan. Assistance to implement the plan can be provided through local conservation district offices with

³⁰ Authorization to Operate Under the Kentucky No Discharge Operational Permit (KNDOP) System, AI No.: 35050, effective Oct. 1, 2016, Kentucky Department of Environmental Protection Division of Water, available at [https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/KNDOP\(AFO\)%20Permit.pdf](https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/KNDOP(AFO)%20Permit.pdf).

³¹ Authorization to discharge under the KPDES Permit KYR10, Division of Water, available at <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/KYR10Permit.pdf>.

³² Id.

³³ Id.

assistance from the Natural Resources Conservation Service and a variety of technical agencies.³⁴ ‘Best management practices’ means, for agriculture operations, the most effective, practical, and economical means of reducing and preventing water pollution provided by the USDA Soil Conservation Service and the Soil and Water Conservation Commission. BMPs establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices.³⁵ They’re dependent on the facility location, its proximity to a water source, the suitability and cost for BMP, the willingness of the landowner to participate, and the potential load reduction.³⁶

However, BMPs are not being implemented consistently in Kentucky. A 2014 survey by University of Kentucky students found that in the Kentucky River Watershed, only 74 percent of responding farmers said they used at least one BMP, and only 7 percent of those said they used the BMP for waste storage facilities (the majority used the BMP for animal fences).³⁷

- **Nutrient Management Plans (NMP)**—This is not a permit, but every operation is required to have an NMP consistent with the Agriculture Water Quality Act, KRS 224.71-100 through 224.71-145 and the Natural Resource Conservation Service Conservation Practice Standard Code 590 for Kentucky.³⁸ Large AFOs must submit the NMP along with their construction or operational permit.
- **Notice of Intent (NOI)**—An NOI is required when applying for a KPDES permit. The NOI generally contains information about the construction of the CAFO, and is not required when reapplying for a permit.

Water quality

Kentucky adopted the Agriculture Water Quality Act (KRS 224.71-100 through 224.71-140) in 1994 under the Division of Conservation. The act creates the Agriculture Water Quality Authority to evaluate, develop, and improve Best Management Practices with regards to water quality.

³⁴ Kentucky Agriculture Water Quality Act, University of Kentucky, https://water.ca.uky.edu/files/kawqa_4-20_brochure.pdf.

³⁵ KRS 224.71-100 under (3).

³⁶ Bacon Creek Agricultural Best Management Practices Implementation Plan, Kentucky Waterways Alliance, <https://kwalliance.org/wp-content/uploads/2013/01/Bacon-Creek-Agricultural-BMP-Implementation-Plan-2014.pdf>.

³⁷ Zhong, H. and Hu, W., ‘Farmers’ Adoption of Best Management Practices in Kentucky’ (2014), University of Kentucky, 5.

³⁸ 401 KAR 5:005 section 25.

All agricultural operations with more than 10 acres must establish an Agriculture Water Quality Plan (AWQP).³⁹ The AWQP is not required as part of the submittal of the permit application, but must be provided when requested by DOW. If water pollution is determined and the AWQP does not prevent this, it's up to the Agriculture Water Quality Authority to identify necessary plan modifications to prevent pollution. If pollution from an agricultural operation is detected, DOW notifies local conservation districts, the Soil and Water Conservation Commission, and the person who is in noncompliance.⁴⁰ The owner of the operation is obliged to submit a compliance plan within a reasonable time and correct the failure. If they fail to respond or comply, enforcement actions could follow.⁴¹

The quality of the water in Kentucky is continually assessed by the College of Agriculture of the University of Kentucky in cooperation with the Division of Conservation and the Kentucky Farm Bureau.⁴² Furthermore, DOW samples and assesses the waters in Kentucky and rates them to inform people whether the water is safe for swimming, fishing, drinking water, aquatic life, fish consumption, or whether it's an 'outstanding state resource water.'⁴³ DOW also samples waters to determine a TMDL of pollutants that a body of water can receive and still meet its designated uses.

Wetlands

Wetlands are a critically important resource that require strong protections from federal and state government. Wetlands influence groundwater discharge rates, assist with stormwater and flood control, filter pollutants and nutrients from the water, reduce erosion, and provide critical habitat for plant and animal species. As of 2015, Kentucky lost approximately 81 percent of its original wetlands due to agriculture, urbanization, transportation, logging, and other commercial uses.⁴⁴ Various federal and state laws are designed to protect the state's remaining wetlands from degradation and destruction. See the Federal Guide for more about federal wetlands regulation.

Any operation that will place dredged or fill material in waters of the United States should contact the U.S. Army Corps of Engineers (USACE) and the Kentucky DOW Quality Certification Section to obtain the necessary permits. Such activities would likely require a 404 permit from USACE and a 401 Water Quality Certification from the Kentucky DOW.

³⁹ Kentucky Revised Statutes (KRS) 224.71-120.

⁴⁰ KRS 224.71-120 and KRS 224.71-130.

⁴¹ KRS 224.71-130.

⁴² KRS 247.088.

⁴³ Kentucky's Water Health Guide, Kentucky Division of Water, http://watermaps.ky.gov/WaterHealthPortal/files/KY_WHP_Definitions.pdf.

⁴⁴ Kentucky Division of Water, Wetland Program Plan 2015-2018, (January 2015), <https://eec.ky.gov/Environmental-Protection/Water/Monitor/Wetlands%20Documents/KY-WPP.pdf>

For more information see DOW's [§ 401 Water Quality Certification](#) website⁴⁵ or its *Water Quality Certification Fact Sheet*.⁴⁶

Learn about DOW's wetland monitoring, mapping, wetland program plan, and assessment methods on its [Wetlands](#) website.⁴⁷

For more information on mitigation, see *Kentucky Guidelines on Wetland Mitigation* in the *Guidelines for Stream and Wetland Protection in Kentucky*.

AIR

As in many states, air pollution regulations in Kentucky are not structured to address air quality impacts from livestock operations. The inapplicability of air pollution regulations to CAFOs is understandably concerning for residents who are impacted by odors, air pollution, and related nuisances from these facilities.

Air quality

Kentucky's air quality regulations can be found in Title 401 of Kentucky Administrative Regulations, Chapters 50–61. While agriculture is not specifically exempted, it's also not specifically addressed, and air permits are generally not required. Most CAFO emissions are fugitive or secondary and are not easily measured or estimated. Also, the permitting thresholds for registration, state origin permit, or Title V air permit would only potentially apply to very large operations.⁴⁸ For more details about air quality permitting in Kentucky, see the [Air Quality Potential to Emit Compliance Guide](#).⁴⁹

Odor

While most air quality regulations don't appear to regulate CAFOs, Kentucky does have some odor regulations that could apply to livestock operations. The DEP's Division for Air Quality (DAQ) intends for odor abatement plans and related requirements contained in agricultural permits to serve as the primary tool for managing odor at agricultural facilities. Kentucky's ambient air quality regulations can be found at 401 KAR § 53:010.

⁴⁵ Kentucky Division of Water, *§ 401 Water Quality Certification*, <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/WQ401Cert/Pages/default.aspx>

⁴⁶ Kentucky Division of Water, *Water Quality Certification Fact Sheet*, <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/WQ401Cert/Documents/Water%20Quality%20Certification%20Fact%20Sheet.pdf>

⁴⁷ Kentucky Division of Water, *Wetlands*, <https://eec.ky.gov/Environmental-Protection/Water/Protection/Pages/Wetlands.aspx>

⁴⁸ Kentucky's Permitting/Registration Thresholds, <https://eec.ky.gov/Environmental-Protection/Air/Documents/KentuckyPermitting.pdf>.

⁴⁹ Air Quality Potential to Emit Compliance Guide, <https://eec.ky.gov/Environmental-Protection/Compliance-Assistance/ECAP%20Resources/DCAPotentialToEmitComplianceGuide2019.pdf>.

The standard for odors is that a mixture of one volume of ambient air and seven volumes of odorless air shall have no detectable odor.⁵⁰ If the inspector detects odor, they will document the violation. This isn't very helpful to those struggling with CAFO odors because people—including inspectors—have varying sensitivity to smell, the air sample is diluted, and there do not appear to be procedures for the location, frequency, or timeliness of air sample collection. Note that the odor standard above is only applicable when DAQ receives a complaint.⁵¹ Therefore, if odors from an operation are strong or problematic, consider submitting a complaint.

Call the complaint line at (502) 782-6592, and provide the following information:

- Address or location of the source of the odor;
- Name of the source;
- Description of the problem and the odor; and
- Description of the time, duration, and frequency of the odor.

ZONING

Since local governments are often the first to know about CAFO construction or expansion proposals, it's crucial to know your local elected officials and establish a working relationship.

Kentucky has been a 'home rule' state since 1980, when the General Assembly passed KRS 82.082, which states:

A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute.⁵²

In addition to cities, municipalities and counties may also pass zoning and land use ordinances that address agricultural land uses in accordance with the comprehensive plan.

Chapter 100 of Kentucky Revised Statutes outlines zoning authority and requirements in the state. Although some states restrict local governments from passing ordinances that restrict agricultural operations, Kentucky's zoning laws don't appear to limit local authority as long as the ordinance doesn't conflict with state or federal law. However, the state's right to farm law (discussed below) seems to limit local authority to pass ordinances that make an agricultural operation a nuisance.

⁵⁰ 401 KAR 53:010.

⁵¹ 401 KAR 53:005.

⁵² KRS 82.082.

Since Kentucky has many counties and local government branches, this guide doesn't discuss zoning regulations of them all. Check the zoning regulation in your county and consider advocating for ordinances that are protective of rural communities.

PERMITTING AND PUBLIC PARTICIPATION

Public notice

DOW has a public email list for KPDES permits and other wastewater permits; you can subscribe to this list or check [DOW's Water Public Notices and Hearings](#) website for current public notices.⁵³

The public notice period expires after 30 days, so be careful not to miss your opportunity to comment on permits and agency actions you have concerns about. You can submit comments to DOWPublicNotice@ky.gov or a written comment to the public notice coordinator, Division of Water, 300 Sower Blvd, 3rd floor, Frankfort, KY 40601. Include the applicant's name and KPDES number in your comments.

DOW will consider comments submitted during the public notice period, followed by a determination. Be sure to request a public hearing in your comments. If DOW deems necessary, it can hold a public hearing,⁵⁴ which is a valuable opportunity to rally your neighbors and voice your concerns.

For public comments and public hearings, gather as much information as you can about the operation; ask for permit applications, fact sheets, site assessments, water quality certifications, facility plans, waste management plans, and any other information that will help you identify problems and write an informed response.

PUBLIC INFORMATION LAWS

One of the first steps when dealing with a new, expanding, or problematic AFO is gathering information by searching online, submitting record requests, and attending public meetings. Fortunately, there are state laws designed to increase government transparency and provide access to certain types of information.

⁵³ Water Public Notices and Hearings, Kentucky Division of Water, <https://eec.ky.gov/Environmental-Protection/Water/Pages/Water-Public-Notices-and-Hearings.aspx>.

⁵⁴ 401 KAR 5:075 and 40 CFR 124.12.

Before requesting public records, try to find information online; you can search KY DEP's Search Online website for many agency related records, including permit applications, permit approvals, permit activity, unsubmitted discharge monitoring reports, and licenses.⁵⁵ There may be other online resources too, so look around. If you can't find all relevant public records online, consider filing a public records request.

Freedom of Information Act

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 Guide for more information.⁵⁶

Kentucky Open Record Act

The Kentucky Open Records Act (KORA) guarantees public access to government/public agency records that are not exempt from disclosure. This applies to all state, county, and municipal officers, governing bodies, agencies, divisions, bureaus, departments, committees, boards, districts, commissions, and any other entities created or funded⁵⁷ by state or local authority. Each agency must develop and adopt its own set of rules that conform with KORA, so check the agency's rules and procedures when requesting records.

KORA requests should be made in writing. Investigate if the agency or government specifies if they require that requests be mailed or submitted electronically. No specific form is required to make a KORA request, but you can find a sample Kentucky KORA request [here](#).⁵⁸ You don't have to provide the reason that you're requesting the documents, and the agency has three days to respond to record requests unless they request an extension. Note that you may be charged fees for copies of the records—usually 10 cents per page.

For more details about KORA, see the statute at KRS 61.870–884 or the [Kentucky Attorney General's Outline of the Open Records and Open Meetings Laws](#).⁵⁹

Kentucky Open Meetings Act

One of the best ways to get information and participate in government is to attend public meetings. The Kentucky Open Meetings Act (KOMA) specifies how public

⁵⁵ Welcome to Search Online, Kentucky Department of Environmental Protection, <https://dep.gateway.ky.gov/eSearch/default.aspx>.

⁵⁶ 5 U.S.C. § 552.

⁵⁷ Any body which derives at least twenty-five percent of its funds from state or local authority.

⁵⁸ Kentucky Sample FOIA Request, National Freedom of Information Coalition, <https://www.nfoic.org/kentucky-sample-foia-request>.

⁵⁹ Open Records and Open Meetings, Commonwealth of Kentucky Office of the Attorney General, https://ag.ky.gov/publications/AG%20Publications/OROM_Outline.pdf.

meetings are conducted. It's intended to prevent the public's business from being conducted in private. It includes requirements regarding time, place, notice, schedule, content, voting, recording of minutes, availability of minutes for public inspection, and media access. Note that while KOMA grants access to public meetings, it doesn't grant the right to speak in the meeting, and some meetings may be closed to the public.

For more about KOMA, see KRS 61.805–850 or the [Kentucky Attorney General's Outline of the Open Records and Open Meetings Laws](#).⁶⁰

NUISANCE

A nuisance is something that interferes with the right to use and enjoy real property. Noise, odors, dust, smoke, pollution, pests, illness, or light could be considered nuisances. Many communities describe CAFOs as nuisances since they can decrease local property values, prevent people from using and enjoying their homes or yards, and can contribute to health issues. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield such facilities from nuisance liability—Kentucky included.

RIGHT TO FARM LAW

To protect farmers from nuisance lawsuits, Kentucky adopted a right-to-farm law in 1980 with the objective of reducing the loss of the state's agricultural resources to nuisance claims.⁶¹ While it sounds great to protect farmers from complaints by people who move into rural areas, right to farm laws have enabled industrial livestock operations to harm the very communities they claim to protect. These large operations push out small sustainable farms, tear up county roads, pollute surrounding air and water, and are shielded from liability or responsibility to their neighbors.

Kentucky's right to farm law states that an agricultural operation cannot be or become a nuisance, private or public, or violate any zoning ordinance by any changed conditions in or about the locality after operating for more than one year if the operation was not a nuisance at the time it began. This law restricts local authority to regulate agriculture that is a nuisance to the community and imposes a very short window for neighbors to complain before all recourse is lost. Note that protection under the right to farm law only exists when the operation is in compliance with all "applicable

⁶⁰ Id.

⁶¹ KRS 413.072.

laws and administrative regulations, and is performed in a reasonable and prudent manner customary among farm operators.”⁶² Therefore, it’s important to understand state and local laws relating to AFOs and to report violations to appropriate agencies as soon as they occur.

For the full text of the statute, see KRS § 413.072.

ENFORCEMENT

Submitting a Complaint

If an operation is violating local, state, or federal laws or regulations, report it. Reporting violations lets the AFO know their neighbors are watching. It lets the agency know that there’s an issue and that further enforcement or regulation may be necessary. It also builds a record of compliance issues that can weaken the nuisance liability shield provided by the right to farm law.

For air pollution or odor complaints, call DEP’s complaint line at (502) 782-6592. See [DEP’s website on Air Pollution complaints](#) for details about what to include in a complaint.⁶³

For water pollution complaints, contact DOW’s complaint line at (502) 564-3410. See [DEP’s website on Citizen Concerns or Complaints](#) for details about what to include in a complaint.⁶⁴

You should also consider contacting your DEP regional office with complaints or concerns. See [DEP’s Regional Offices website](#) for contact information for each division’s regional offices.⁶⁵ You can remain anonymous when submitting a complaint, but it will make it harder to follow up on the status of the complaint and inspection results.

Important: Do not trespass when documenting violations!

⁶² KRS 413.072(3)(a).

⁶³ Air Pollution Complaints, Department of Environmental Protection, <https://eec.ky.gov/Environmental-Protection/Air/Pages/Air-Pollution-Complaints.aspx>. See also Odor Complaints, <https://eec.ky.gov/Environmental-Protection/Air/Pages/Odor-Complaints.aspx>.

⁶⁴ Citizen’s Concerns or Complaints, Department of Environmental Protection, https://eec.ky.gov/Environmental-Protection/Water/Comp_Insp/Pages/CitizenConcerns.aspx.

⁶⁵ Regional Offices, Department of Environmental Protection, <https://eec.ky.gov/Environmental-Protection/Pages/regional-offices.aspx>.

Enforcement and Data

The Kentucky Department of Environmental Protection Division of Enforcement consists of two branches: The Civil Enforcement Branch (CEB) and the Compliance and Operations Branch (COB). COB determines compliance with Kentucky's environmental regulations and issues Notices of Violations (NOVs). However, regional field offices may issue their own notices of violations without COB when a violation is discovered by their field inspectors. If a regulated entity fails to comply with the remedial measures contained in a NOV, the violation may be referred to CEB. CEB reviews and pursues violations referred to it by other programs and divisions within DEP and when necessary, refers cases for prosecution.

For more information about environmental enforcement in Kentucky, see the [Division of Enforcement's annual report](#).⁶⁶

Despite claims of robust enforcement in DEP's annual report, enforcement of the state's environmental laws has dropped over the last two decades.⁶⁷ According to WFPL analysis:

Repeated budget cuts have reduced environmental protection programs to 60 percent of the capacity they were two decades ago, there has been a precipitous drop in enforcement cases under the legal system, and [recent administrations] issued fewer [NOVs].⁶⁸

Some feel that the repeated budget cuts send the message that environmental enforcement isn't a priority in Kentucky and that there's a lack of political will to take tough actions against entities that break the law.⁶⁹ This makes it all the more important to learn about polluting industries and how they are regulated, report violations, follow up on complaints, and push for enforcement.

PROPERTY TAX APPEALS

Industrial livestock operations have been shown to reduce nearby property values by up 26 percent and by as much as 88 percent for neighboring properties AFO.⁷⁰

⁶⁶ Annual Reports, Kentucky Department of Environmental Protection, <https://eec.ky.gov/Environmental-Protection/Enforcement/Pages/annual-reports.aspx>.

⁶⁷ Erica Peterson, "Kentucky Environmental Sanctions Plummet under Beshear," WFPL, <https://wfpl.org/lack-of-resources-politics-mean-major-reduction-in-kentuckys-environmental-enforcement/>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ John A. Kilpatrick, Animal Operations and Residential Property Values, The Appraisal Journal (Winter 2015), http://www.myappraisalinstitute.org/webpac/pdf/TAJ2015/TAJ_WI15_p041-050_Feat3-AnimalOperations.pdf.

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 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.

Section 172 of Kentucky's Constitution requires that property is assessed for taxation at its fair cash value each year. If a property owner disagrees with the assessed value of their property, they must schedule a conference with the Property Value Administrator (PVA) before the end of the tax roll inspection period—each county's inspection period schedule must be published in the local newspaper. If the property owner and PVA can't reach an agreement in the conference, the property owner can file an assessment appeal with the county clerk's office. For more details about the appeals process, see the Kentucky Department of Revenue's guidance document, [Appeals Process for Real Property Assessments](#).⁷¹

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.sraproject.org, and contact SRAP for support at 503-632-8303 or through our [website](#).⁷²

State organizations

- Kentucky Waterways Alliance⁷³
- Southern Sustainable Agriculture Working Group⁷⁴
- Kentucky Environmental Foundation⁷⁵

See the Federal Guide for national-level organizations.

⁷¹ Appeals Process for Real Property Assessments, Commonwealth of Kentucky Department of Revenue, Office of Property Valuation,

[https://revenue.ky.gov/ClerkNetwork/PublishingImages/Pages/default/62F003%20\(7-17\)%20Appeals%20Process%20for%20Real%20Property%20Assessments.pdf](https://revenue.ky.gov/ClerkNetwork/PublishingImages/Pages/default/62F003%20(7-17)%20Appeals%20Process%20for%20Real%20Property%20Assessments.pdf).

⁷² Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

⁷³ <https://kwalliance.org>

⁷⁴ <http://www.ssawg.org>

⁷⁵ <http://www.kyenvironmentalfoundation.org>