
INTRODUCTION: CAFOs IN MARYLAND

Animal agriculture in Maryland is dominated by poultry and cattle operations. According to the United States Department of Agriculture, Maryland has approximately 12,200 farms on more than one-quarter of the state's acreage.² As of January 2016, Maryland was home to approximately 200,000 cattle, 21,000 hogs, and 303,500,000 broiler chickens and the state was 36th in the nation for agricultural products sold and 7th for broiler chickens. Maryland's animal production is particularly problematic given its rank as 42nd for land area. That's a lot of animals in a small state that borders a critically important but considerably impaired waterbody in the mid-Atlantic region—the Chesapeake Bay.

Animal feeding operations pose serious risks to water, air, and soil quality, local ecosystems, and public health. These risks are a result of the vast amounts of animal waste and wastewater generated by these facilities, and the logistical difficulties of responsibly disposing of so much waste in a small geographic area. One CAFO can produce as much waste as a large U.S. city. However, unlike human waste, which is subject to thorough treatment and processing to remove chemical and biological contaminants, CAFO waste is largely untreated and is ultimately spread onto land where it can easily seep into groundwater and local surface waters. Maryland has implemented various measures and programs to regulate or control the harmful effects of animal agriculture on the environment while also protecting the states' agricultural interests. While the state has made strides toward environmental quality, there's considerable room for improvement.

A discussion of animal agriculture in Maryland is not complete without noting its impacts on the Chesapeake Bay. Most of Maryland's waterways are part of the Chesapeake Bay watershed and the entire southern portion of the state borders the bay. The bay is an impaired waterbody plagued by pollution and nutrient overloading, and agriculture is the single largest source of nutrient pollution.³ Maryland is responsible for approximately 20% of the total nitrogen (39% from agriculture) and approximately 20% of the total phosphorous (19% from agriculture) pollution in the bay.⁴ Other agricultural pollutants include pathogens, antibiotics,

² 2015 State Agriculture Overview. USDA National Agricultural Statistics Service Maryland Field Office. https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=MARYLAND

³ Rena Steinzor & Yee Huang, *Manure in the Bay: A Report on Industrial Animal Agriculture in Maryland and Pennsylvania*, page 10, CENTER FOR PROGRESSIVE REFORM, June 2012.

⁴ Rena Steinzor & Yee Huang, *Manure in the Bay: A Report on Industrial Animal Agriculture in Maryland and Pennsylvania*, page 5, CENTER FOR PROGRESSIVE REFORM, June 2012.

cleaning fluids, heavy metals, fertilizers, and pesticides.⁵ After decades of failed restoration efforts, in 2010, the U.S. Environmental Protection Agency established a Chesapeake Bay Total Maximum Daily Load (TMDL), setting pollution limits and requiring pollution reduction from Maryland, Delaware, Virginia, West Virginia, Pennsylvania, New York, and the District of Columbia.⁶

In order to meet Maryland's TMDLs, the state's CAFO program goes beyond minimum federal standards. While the Clean Water Act NPDES program requires permits for facilities that discharge or propose to discharge, states are authorized to require more in order to protect their waters. Maryland has opted to set the bar higher than it has to by requiring that AFOs of a certain size or type must obtain a permit, even if they do not discharge or do not propose to discharge—this type of facility is called a Maryland Animal Feeding Operation (MAFO). Under Maryland's CAFO Program, both CAFOs and MAFOs must seek AFO General Discharge Permits and must submit nutrient management plans. Therefore, Maryland requires more operations to obtain permits than what is required by federal laws and regulations. The EPA approved Maryland's NPDES program in January of 2010 and it officially began in 2011.

While Maryland's CAFO program goes beyond federal minimums, it has struggled to implement the higher standards due to shortages in staffing, technical resources, and funding. These shortages impact permit issuance, monitoring, inspections, and enforcement. Many CAFOs and MAFOs are not registered with Maryland Department of Environment (MDE). A small number of permit writers struggle to keep up, and MDE has yet to collect any permit application or annual fees from any CAFOs/MAFOs to help financially support the program. According to the Center for Progressive Reform, as many as 25% of eligible facilities are evading registration with MDE.⁷ As a result, it is imperative that local residents get involved and participate in the process by doing things like requesting public hearings, voicing their concerns, and reporting permit violations. Maryland appears to be trying to address the environmental issues associated with CAFOs but it's a work in progress and local advocates will play a critical role in its improvement.

⁵ Rena Steinzor & Yee Huang, *Manure in the Bay: A Report on Industrial Animal Agriculture in Maryland and Pennsylvania*, page 2, CENTER FOR PROGRESSIVE REFORM, June 2012.

⁶ Chesapeake Bay TMDL Fact Sheet. U.S. ENVIRONMENTAL PROTECTION AGENCY.
<https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>.

⁷ Maryland Falling Behind in CAFO Pollution Control, CENTER FOR PROGRESSIVE REFORM,
http://www.progressivereform.org/md_cafo_permitting_1310.cfm.

CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

Defining AFOs, CAFOs, and MAFOs

Maryland's CAFO Program is unique in that it goes beyond federal minimum standards by regulating AFOs of certain size and type, regardless of whether they discharge pollutants into waters of the United States (See Federal Guide for more information of what is required from CAFOs under the Clean Water Act). In order to understand Maryland's requirements, we must understand the distinctions between AFOs, CAFOs, and MAFOs.

Animal Feeding Operation (AFO)⁸

An AFO is a facility where animals are fed and confined for at least 45 days in a year and the facility does not grow crops or forage where the animals are confined. So this could apply to a handful of animals kept in a small barn, outbuilding, or hobby farm for 45 days or more. Being an AFO alone does not prompt state regulation, but it is a necessary component of CAFO or MAFO designations.

Below are the size distinctions between small, medium, and large AFOs, which may be considered CAFOs depending on facility size, animal quantity, or discharge requirements discussed further in the following sections.

⁸ COMAR § 26.08.03.09(A).

AFO/CAFO Size Chart

Animal	Large	Medium	Small
Cattle (bull, steer, heifer, or calf)	≥ 1,000	300–999	< 300
Dairy cow	≥ 700	200–699	< 200
Horses	≥ 500	150–499	< 150
Veal	≥ 1,000	300–999	< 300
Swine (≥ 55 pounds)	≥ 2,500	750–2,499	< 750
Swine (< 55 pounds)	≥ 10,000	3,000–9,999	< 3,000
Sheep/lambs	≥ 10,000	3,000–9,999	< 3,000
Ducks (with liquid manure handling)	≥ 5,000	1,500–4,999	< 1,500
Ducks (with dry manure handling)	≥ 30,000	10,000–29,999	< 10,000
Chickens (with liquid manure handling)	≥ 30,000	9,000–29,999	< 9,000
Laying hens (with dry manure handling)	≥ 82,000	25,000–81,999	< 25,000
Chickens (other than laying hens) with dry manure handling	≥ 125,000 Or ≥ 100,000 square feet	37,500– 124,999 Or < 100,000 square feet	< 37,500
Turkeys	≥ 55,000	16,500–54,999	< 16,500

Concentrated Feeding Operation (CAFO)⁹

A CAFO is:

- A large AFO or
- A medium AFO or
- A small AFO designated as a CAFO by the Regional Administrator of the EPA, where a discharge of manure, litter, or process wastewater to surface waters does or could occur.

Note: An AFO that makes efforts to remove water from the production area indicates that it proposes to discharge.

A CAFO must obtain a General Discharge Permit and a Comprehensive Nutrient Management Plan.

⁹ COMAR § 26.08.03.09(B); 40 C.F.R. §122.23.

Maryland Animal Feeding Operation (MAFO)¹⁰

A MAFO is

- A medium AFO or
- A large AFO or
- A chicken AFO (chickens other than laying hens)
 - With dry manure handling
 - ≥ 75,000 square feet housing capacity
 - That has not submitted a certification of conformance or
 - The certification of conformance was rejected
 - And does not or will not discharge into surface waters.
 - Note: This includes an AFO that does not discharge to surface waters, but may discharge to ground waters.

A MAFO must obtain

- General Discharge Permit and either a
- Comprehensive Nutrient Management Plan (CNMP), or a
- Current Plan, including the following:
 - Nutrient management plan
 - Soil conservation plan
 - Water quality plan

Regulated Chicken AFO

Chicken AFOs (other than laying hens):

- Where based on construction, operation, and maintenance, a discharge could not occur
- With housing capacity between 75,000–100,000 square feet

Must submit a Certification of Conformance prior to operation.

- Failure to obtain a Certificate of Conformance triggers a MAFO designation and requires the facility to obtain coverage under the General Discharge Permit.

A Regulated Chicken AFO must have either:

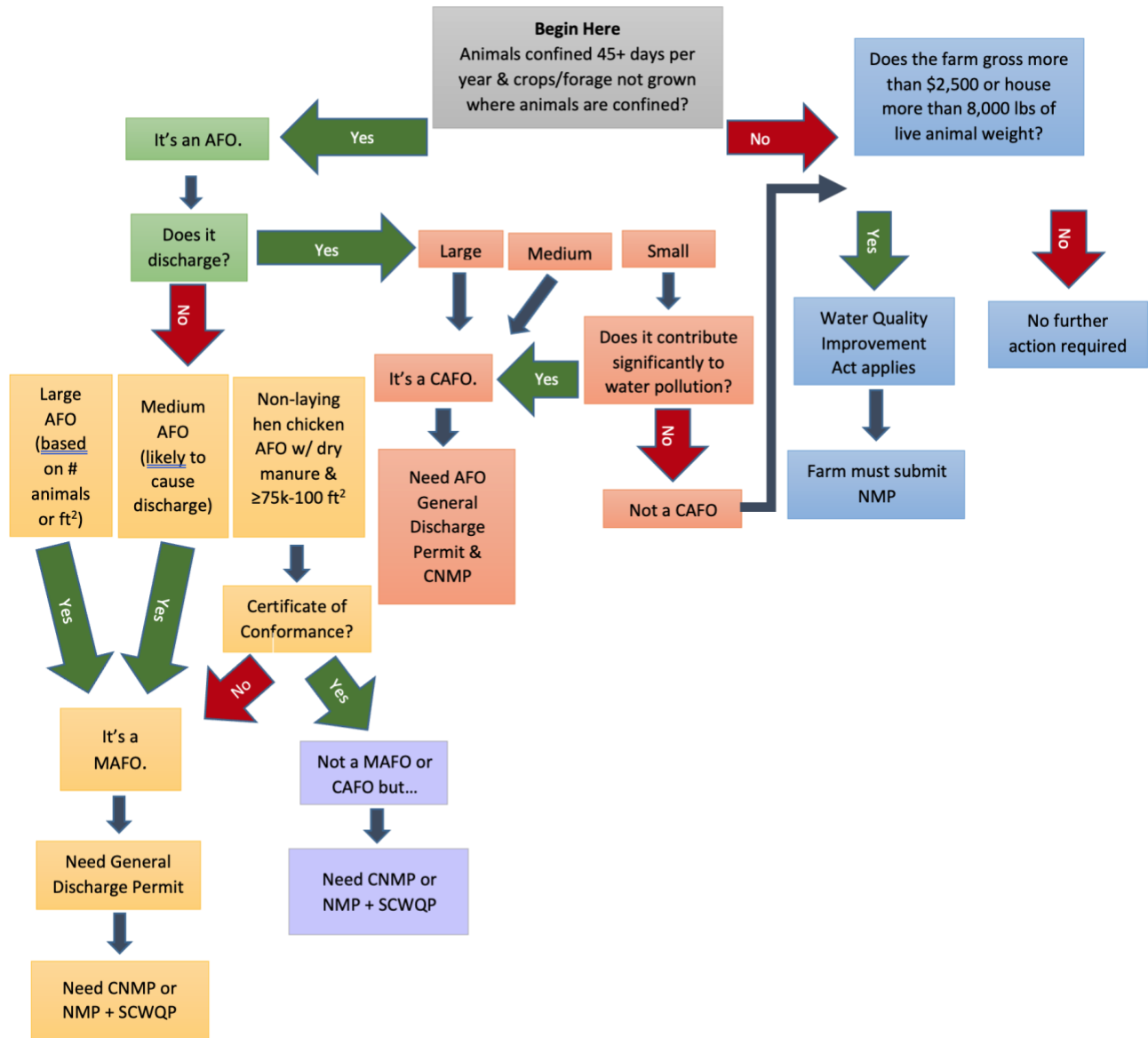
- A Comprehensive Nutrient Management Plan, or
- A Current Plan, including the following:
 - Nutrient management plan

¹⁰ COMAR § 26.08.01(B)(42-1); COMAR § 26.08.03.09(C).

- Soil conservation plan
- Water quality plan

AFO, CAFO, MAFO Flowchart

This chart shows the distinction between AFOs, CAFO, and MAFOs and what Maryland requires from the operations (AFO General Discharge Permits, Nutrient Management Plans (NMPs), Comprehensive Nutrient Management Plans (CNMPs), and Soil Conservation and Water Quality Plans (SCWQPs)). The laws, permits, and plan requirements are discussed later in the guide.



Who Decides if it's a CAFO/MAFO?

Short Answer: The AFO operator, but MD Department of Environment has the final say.

The owner or operator of the facility determines if the operation is a CAFO or MAFO. The Maryland Department of Environment will let the owner or operator know if their determination is incorrect. While Maryland agencies have a good idea of the number and size of farms in the state, it's possible that there are qualifying facilities that have erroneously decided they are not CAFOs or MAFOs and are evading regulation. This is particularly an issue for smaller AFO facilities that significantly contribute to pollution but have flown under the radar and nobody has brought it to the state's attention. If nearby residents believe that an AFO in their community should be a CAFO or MAFO, but has not filed with the appropriate state agency, they can contact the Maryland Department of Environment to look into the matter. Failure to obtain the necessary permits can result in fines and sets an example for other operations in the community.

Responsible Regulatory Agencies

Maryland Department of Environment

The Maryland Department of Environment is the primary state agency which develops, implements, and enforces state and federally authorized environmental laws and regulations. It is composed of a number of administrations or sub-departments that help implement the variety of environmental laws and programs that regulate AFOs in the state. See MDE's [AFO Program website](#) for information about permits, forms, guidance documents, and AFO-related links and resources.¹¹

Land Management Administration

MDE's Land Management Administration administers the CAFO program and:

- Issues CAFO/MAFO General Discharge Permits.
 - For more information on CAFO/MAFO permitting, see MDE's [AFO Permit Guide Fact Sheet](#).¹²
- Assists in writing and development of a CAFO/MAFO Comprehensive Nutrient Management Plan.

¹¹ AFO (CAFO/MAFO) Information Page, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Land/RecyclingandOperationsprogram/AFO/Pages/index.aspx>.

¹² General Discharge Permits for Wastewater Discharges from CAFOs and MAFOs, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Permits/Documents/2008permitguide/WAS/2.23.pdf>.

- Assists in writing and development of nutrient management plan, and soil and water conservation plan for MAFOs or Regulated AFOs.

The CAFO program has approximately three inspectors, three permit writers, and a significant backlog. See this [map](#) of Maryland's CAFOs and MAFOs and the time it takes MDE to process permits.¹³

Water Management Administration

The Water Management Administration issues permits for discharges to surface and groundwater. They issue permits for alterations to wetlands, animal waste storage construction, and construction stormwater permits.

For more information about Waste Management Administration, visit [WMA's Website](#).¹⁴

Air and Radiation Management Administration

The Air and Radiation Management Administration seeks to improve and maintain airy quality. They handle air quality planning, monitoring, permitting, and compliance programs.

For more about ARMA's permits and approvals, see its [website](#).¹⁵

Department of Agriculture

Maryland Department of Agriculture

The Maryland Department of Agriculture is responsible for implementing and enforcing the state's Water Quality Improvement Act, Nutrient Management Program, and Agricultural Certainty Program. MDA also provides educational, financial, and technical assistance to farmers and agricultural communities.

For more about the Maryland Department of Agriculture, see its [website](#).¹⁶

¹³ AFO Map, CHESAPEAKE COMMONS, <http://chesapeake-commons.org/afo/>.

¹⁴ Water Management Permits, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Permits/WaterManagementPermits/Pages/Permits/WaterManagementPermits/index.aspx>.

¹⁵ Air and Radiological Health Management Permits and Approvals, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Permits/AirManagementPermits/Pages/permits/airmanagementpermits/index.aspx>.

¹⁶ MARYLAND DEPARTMENT OF AGRICULTURE, <http://mda.maryland.gov/Pages/default.aspx>.

USDA Natural Resource Conservation Service

The USDA Natural Resource Conservation Service is a federal office that provides technical assistance for agricultural operations and certifies technical service providers to develop and write Comprehensive Nutrient Management Plans. However, it doesn't have enforcement responsibilities.

Department of Natural Resources

The Maryland Department of Natural Resources manages public lands and protected space in the state so that residents and visitors can enjoy significant ecological and cultural landscapes for a variety of outdoor recreational activities. While they do not get involved in CAFO/MAFO regulation, the siting of large CAFOs/MAFOs can have serious impacts on the environmental quality of nearby public or protected lands.

Department of Health

Maryland Department of Health and Mental Hygiene

The Maryland Department of Health is a possible resource for communities seeking to fight CAFOs/MAFOs due to the adverse human health impacts. You can try to keep track of the health impacts in their area using resources available from the state health department. For example, the Environmental Health Bureau tracks environmental and health data. See [Maryland Environmental Public Health Tracking Program](#).¹⁷

In addition to tracking health-related data, you may request Health Investigations by a health officer to determine if a condition exists which does, or has the potential, to adversely impact human health and is a "state of nuisance."¹⁸ Therefore, it might be worth trying to get state and local health departments involved in, or at least weigh in on, CAFO/MAFO discussions.

See [Maryland Department of Health and Mental Hygiene](#)¹⁹ for [contacts](#)²⁰ and more information.

¹⁷ Maryland Environmental Health Tracking Program, MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE, <http://phpa.dhmh.maryland.gov/oehtp/eh/tracking/Pages/home.aspx>.

¹⁸ MD CODE ANN., HEALTH & GENERAL § 20-307.

¹⁹ MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE, <http://dhmh.maryland.gov/pages/index.aspx>.

²⁰ Contact Us, MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE, <http://dhmh.maryland.gov/docs/Frequent%20Requested%20Numbers-Contact%20Us%20061615.pdf>.

Local Health Departments

Each county in Maryland has its own local health department which administers state, county, or municipal health-related laws, programs, and regulations. The local health department may provide insight and guidance on how the health laws and ordinances could apply to the health concerns caused by CAFOs/MAFOs in the region. The Maryland Department of Health and Mental Hygiene oversees these local health departments.

For more about your local health department, see Maryland's [guide to Local Health Departments](#).²¹

Local Conservation Districts

Soil Conservation District

There are 24 Soil Conservation Districts in Maryland. They are self-governing political subdivisions of the state that work with operators and local, state, and federal authorities to protect soil and water conservation needs. The conservation districts don't have regulatory authority or enforcement responsibilities but they work with the Department of Agriculture and the USDA Natural Resource Conservation Service to reduce soil erosion and improve water quality.

Soil conservation districts are excellent resources for enhancing farming operations, while also working with various parties and resources to protect soil and water quality.

For more information and contacts, see the Maryland Association of Soil Conservation Districts' [website](#).²²

U.S. EPA Region 3

Maryland is part of the U.S. EPA Region 3, the Mid-Atlantic, which also includes Delaware, District of Columbia, Pennsylvania, and West Virginia. While a considerable amount of CAFO regulation happens at the state level, the EPA has oversight authority; contact the regional office if the state is not performing its duties or is

²¹ Local Health Departments, MARYLAND MANUAL ON-LINE, <http://msa.maryland.gov/msa/mdmanual/01glance/html/healloc.html>.

²² Conservation Districts, MARYLAND ASSOCIATION OF SOIL CONSERVATION DISTRICTS, <http://www.mascd.net/districts/default.html>.

failing to regulate CAFOs under the applicable federal and state environmental laws. Region 3 locations and contact information can be found on their [website](#).²³

WATER

Maryland Pollutant Discharge Elimination System Program

The U.S. EPA has authorized Maryland to implement the National Pollutant Discharge Elimination System (NPDES), a component of the Clean Water Act, at the state level. The Maryland Department of Environment is the primary agency involved in issuing permits for a variety of activities which result in a discharge of pollutants into waters of the state. These permits may be required for existing facilities, new facilities, or construction activities, and allow for discharge to surface or ground waters under specific circumstances.

General Discharge Permits for Animal Feeding Operations

CAFOs and MAFOs must apply for coverage under the General Discharge Permit for Animal Feeding Operations (NPDES Permit No. MDG01). Maryland has not yet issued individual discharge permits to any AFOs. As of late 2014, approximately 548 CAFOs and 22 MAFOs registered for the General Discharge permit.²⁴

- The General Discharge Permit specifies minimum measures and best management practices to protect water quality and includes conditions to protect surface and groundwater from pollution from qualifying AFOs.
- The General Discharge Permit is good for five years; after which it must be renewed or reissued. The current General Discharge Permit went into effect on December 1, 2014 and will expire on November 30, 2019.
- Here is a link to the current [AFO General Discharge Permit](#).²⁵
- The permit turnaround time for previously registered AFOs is around 3 years and the permit turnaround time for new AFOs is around 160 days.

²³ EPA Region 3 (Mid-Atlantic), U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/aboutepa/epa-region-3-mid-atlantic>.

²⁴ Maryland Animal Agricultural Program Assessment. U.S. ENVIRONMENTAL PROTECTION AGENCY, at page 6, <https://www.epa.gov/sites/production/files/2015-09/documents/marylandanimalagricultureprogramassessment.pdf>.

²⁵ General Discharge Permit for Animal Feeding Operations, MARYLAND DEPARTMENT OF THE ENVIRONMENT, http://www.mde.state.md.us/programs/Land/RecyclingandOperationsprogram/AFO/Documents/gd_permit%20signed.pdf.

- There are some differences between CAFO and MAFO General Discharge Permits—such as permitted discharges during a 25-year 24-hour storm event, fees, recordkeeping requirements, and manure stockpiling conditions.

General Permit for Stormwater Associated with Construction Activities

A person planning to engage in construction activity of a certain magnitude must obtain a General or Individual Permit for Stormwater Associated with Construction Activity. For more information about this permit, see [MDE's website](#) or the discussion on CAFO Construction found later in this guide.²⁶ See the text of the [current Stormwater Construction Permit](#).²⁷

Notice of Intent

CAFOs and MAFOs are required to submit a Notice of Intent to seek coverage under the General Discharge Permit.

Permit Application Process

Below is an overview of the AFO General Discharge Permit application process:

1. The operator determines if the AFO is a CAFO or MAFO (MDE can override this).
2. The operator submits Notice of Intent (NOI) and the required plan:
 - a. A CAFO must submit a Comprehensive Nutrient Management Plan.
 - b. A MAFO must submit a Comprehensive Nutrient Management Plan or a Nutrient Management Plan plus a Soil Conservation and Water Quality Plan.
3. MDE reviews the application.
4. MDE publishes a notice of approval on its [Status of Animal Feeding Operation Applications](#) website.²⁸
 - a. This is the primary opportunity for individuals to voice their concerns by submitting public comments and requesting a public hearing.
 - b. Individuals may submit comments and/or request a public hearing.

²⁶ General Permit for Stormwater Associated with Construction Activity, MARYLAND DEPARTMENT OF THE ENVIRONMENT, http://www.mde.state.md.us/programs/Permits/WaterManagementPermits/WaterDischargePermitApplications/Pages/permits/watermanagementpermits/water_applications/gp_construction.aspx.

²⁷ General Permit for Stormwater Associated with Construction Activity, MARYLAND DEPARTMENT OF THE ENVIRONMENT (2014), <http://www.mde.state.md.us/programs/Permits/WaterManagementPermits/WaterDischargePermitApplications/Documents/2014MDRC-GeneralPermit.pdf>.

²⁸ Status of Animal Feeding Operations (AFO) Applications, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Land/RecyclingandOperationsprogram/AFO/Pages/CAFO.aspx>.

- c. MDE will hold a public hearing **ONLY IF** it receives a written request for a public hearing within 20 days of the public notice.
 - d. MDE will receive comments for up to 30 days following the public notice.
5. MDE sends the permit approval letter.

Types of Permits & Fees

The AFO General Discharge Permit is the primary discharge permit available for AFOs in Maryland and MDE has not yet issued any Individual Discharge Permits—permits that are tailored to the individual operation. The AFO General Discharge permit fees are between \$120 and \$1,200, but the state has waived fees until further notice to encourage facilities to participate.

AFOs may also need to seek a General or Individual Permit for the Discharge of Stormwater Associated with Construction Activities. The Stormwater permit fees are between \$100 and \$2,500 depending on the size of the construction project.

See the following [Farm Permit Guide](#) for more information about the variety of permits and requirements that may apply to agricultural operations.²⁹

Maryland Nutrient Management Program

Maryland's Nutrient Management Program is an expansive plan that regulates around 5,500 farms throughout Maryland. It applies to any farm with a gross annual income of \$2,500 or more or with 8,000 lbs. or more of live animal weight. These plans may differ based on the size and type of facility but they attempt to implement best management practices in order to protect or minimize the impacts of agricultural operation on soil and water quality in the state.³⁰

For some AFOs, these nutrient management plans (NMPs) are an important component of a facility's discharge permit application and approval. An NMP must be written by a nutrient management planner who is certified by the Maryland Department of Agriculture (MDA) and must meet the requirements laid out in COMAR

²⁹ A Farmer's Guide to Environmental Permits, MARYLAND STATE SOIL CONSERVATION COMMITTEE, http://mda.maryland.gov/resource_conservation/Documents/farmpermitguide.pdf.

³⁰ Maryland Animal Agricultural Program Assessment. U.S. ENVIRONMENTAL PROTECTION AGENCY, at page 2, available at <https://www.epa.gov/sites/production/files/2015-09/documents/marylandanimalagricultureprogramassessment.pdf>.

15.20.07–08. The nutrient management planner should develop the plan according to the [Maryland Nutrient Management Manual](#) provided by the MDA.³¹

The farmer must update or revise the NMP every three years and must submit an Annual Implementation Report by March every year. MDA inspects approximately 13% of regulated farms and has determined that approximately 34% of farms are not in compliance.³²

In the past few years, Maryland has revised its nutrient management regulations to step up protection for Maryland’s waters and the Chesapeake Bay. These regulations require farmers to inject manure into the soil, establish larger setbacks of waste application near waters, and prohibit the application of waste on frozen or snow covered ground. Maryland has also published a Phosphorous Management Tool (PMT) to address where there is excess phosphorous beyond what is needed to grow crops—it’s an excellent resource for farmers, agencies, and residents to use to address phosphorous pollution.

Comprehensive Nutrient Management Plan³³

A Comprehensive Nutrient Management Plan (CNMP) addresses nutrient management, soil conservation, water quality, and best management practices. CAFOs are required to have a CNMP, and other AFOs/MAFOs may have a CNMP.

It is developed in accordance with NRCS planning policy and must meet NRCS technical standards.

- The AFO operator must submit CNMP written by NRCS staff or technical service providers who have been certified by NRCS

A CNMP must consider six elements:

- Manure and wastewater handling and storage
- Land application and treatment practices
- Nutrient management

³¹ Maryland Nutrient Management Manual, MARYLAND DEPARTMENT OF AGRICULTURE, http://mda.maryland.gov/resource_conservation/Pages/nm_manual.aspx.

³² Maryland Animal Agricultural Program Assessment. U.S. ENVIRONMENTAL PROTECTION AGENCY, at page 5, available at <https://www.epa.gov/sites/production/files/2015-09/documents/marylandanimalagricultureprogramassessment.pdf>.

³³ COMAR § 26.08.01.01(B)(13-1).

- Recordkeeping
- Feed management
- Other activities

Soil Conservation and Water Quality Plan³⁴

A Soil Conservation and Water Quality Plan (SCWQP) is required for all farms regulated under the CAFO/MAFO program in some form. The SCWQP is either incorporated into the CNMP or separate along with an NMP for facilities that do not require a CNMP.

SCWQPs are developed by:

- Soil conservation district or
- Maryland Department of Agriculture or
- A Natural Resource Conservation Services (NRCS) planner or
- Technical service provider certified by NRCS

SCWQPS should address the following:

- Storage for animal waste
- Stabilized surfaces in heavy use areas
- Diversion of stormwater away from the production area
- Construction and maintenance of filter strips or strips or water control structures between the production area and surface water
- Mortality management

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 numerous plant and animal species. Various federal and state laws are designed to protect wetlands from degradation and destruction (see the Federal Guide for details about federal wetlands regulations). In addition to federal protection of wetlands, Maryland has enacted further laws and programs designed to protect both tidal and nontidal wetlands.

³⁴ 26.08.01.01(B)(83-1)

Nontidal Wetlands Protection Act³⁵

The Nontidal Wetlands Protection Act regulates all activities which could impact nontidal wetlands acreage and function. Regulated activities include grading, filling, excavating, dredging, changing drainage patterns, disturbing water levels or the water table, and destroying or removing vegetation.

Nontidal wetland is defined as “(a) ...an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; (b) is determined according to the Federal Manual; (c) does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland.”

Maryland’s law expands the buffer requirement (from 25ft to 100ft) for wetlands of special concern, allows for delegation of authority to local governments, and calls for watershed management plans to be developed in accordance with the Nontidal Wetlands Protection Act so that local jurisdictions can protect wetlands as part of land use determinations.

Find [more information](#) about nontidal wetlands and the permit application process.³⁶

Tidal Wetlands Program

The Tidal Wetlands program seeks to allow for reasonable use of tidal wetlands while protecting natural resources. Tidal wetlands include “marshes, shrub swamps, forested wetlands, submerged aquatic vegetation, and open waters.”³⁷ Permits are required for major or minor projects and the application must demonstrate that the impacts are unavoidable and may need to demonstrate avoidance or mitigation of impacts. Agricultural facilities may require this permit for activities like dredging and shoreline control.³⁸

³⁵ Nontidal Wetlands (Nontidal Wetlands and Waterways Permits), MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Permits/Documents/2008permitguide/WMA/3.19.pdf> ; COMAR § 26.23

³⁶ Nontidal Wetlands (Nontidal Wetlands and Waterways Permits), MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Permits/Documents/2008permitguide/WMA/3.19.pdf>.

³⁷ Tidal Wetlands Licenses and Permits, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Permits/Documents/2008permitguide/WMA/3.18.pdf>.

³⁸ MDE/Federal Permits, MARYLAND DEPARTMENT OF THE AGRICULTURE, http://mda.maryland.gov/plants-pests/Pages/mde_federal_permit.aspx.

Learn more about Maryland Tidal Wetlands Act [here](#).³⁹

Permit Application

Individuals or operations seeking to alter any floodplain or wetlands in the state of Maryland are required to submit the following [Joint Federal and State Application](#).⁴⁰

If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they haven't, submit a complaint to the appropriate agency. If the operation applied for a permit, submit public comments and request a public hearing. Emphasize the importance of Maryland's wetlands to protect groundwater, the Chesapeake Bay, and biodiversity.

Water Quality

Water Quality Standards⁴¹

Maryland has established water quality standards which are intended to protect and maintain the quality of the state's surface waters. These standards may be numeric or narrative. The water quality standards are developed based on designated uses, water quality criteria, and an anti-degradation policy.

Designated Uses

Each water body in Maryland is assigned a designated use class which is or should be attainable.

- **Use Class I:** Water Contact Recreation, and Protection of Nontidal Warmwater Aquatic Life
- **Use Class I-P:** Water Contact Recreation, Protection of Aquatic Life, and Public Water Supply
- **Use Class II:** Support of Estuarine and Marine Aquatic Life and Shellfish Harvesting

³⁹Tidal Wetlands Licenses and Permits, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Permits/Documents/2008permitguide/WMA/3.18.pdf>.

⁴⁰ <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/alter.pdf>

⁴¹ COMAR § 26.08.01 & 26.08.02; Frequently Asked Questions: Chesapeake Bay Water Quality Standards, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://mde.maryland.gov/programs/Water/TMDL/Water%20Quality%20Standards/Pages/programs/waterprograms/tmdl/wqstandards/faqs.aspx>.

- **Use Class II-P:** Tidal Fresh Water Estuary – includes applicable Use II and Public Water Supply
- **Use Class III:** Nontidal Cold Water
- **Use Class III-P:** Nontidal Cold Water and Public Water Supply
- **Use Class IV:** Recreational Trout Waters
- **Use Class IV-P:** Recreational Trout Waters and Public Water Supply

View this [map of designated uses/classes](#).⁴²

Water Quality Criteria

Water quality criteria are minimum water quality thresholds which must be met in order to achieve the designated use. Water quality criteria is a great reference resource for individuals to understand, in quantifiable terms, what condition the waterbodies should be in, and whether the water bodies are achieving these standards. See the following [criteria for toxic substances](#)⁴³ and [criteria specific to designated uses](#).⁴⁴

Anti-degradation⁴⁵

The Clean Water Act requires that Maryland develop an anti-degradation policy to ensure that waters are not allowed to degrade to the minimum standards. In short, if they're clean, or close to clean, keep them that way or better. There are three tiers:

- **Tier I:** minimum standards
- **Tier II:** high quality waters
- **Tier III:** outstanding natural resource water
 - Note: there are no Tier III waters in Maryland at this time.

Anyone seeking a permit to discharge to Tier II waters should consider alternatives or provide justification.⁴⁶ You should be familiar with Tier II waters in their communities and point to COMAR § 26.08.02.04-1 to challenge AFO permitting which will impact these waters.

⁴² Maryland's Designated Uses/Use Class Map, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://mde.maryland.gov/programs/Water/TMDL/Water%20Quality%20Standards/Pages/DesignatedUsesMaps.aspx>.

⁴³ COMAR § 26.08.02.03-2.

⁴⁴ COMAR § 26.08.02.03-3.

⁴⁵ COMAR § 26.08.02.04.

⁴⁶ COMAR § 26.08.02.04-1(B).

View a [map](#) of Maryland's Tier II high quality waters on MDE's website.⁴⁷

Impaired Water Bodies

The Clean Water Act requires states to perform annual water quality assessments⁴⁸ and identify waters not meeting the state's water quality standards.⁴⁹ Maryland compiles and submits this information to the EPA as an Integrated Report of Surface Water Quality.⁵⁰ It can be helpful to know about impaired water bodies and their proximity to CAFOs/MAFOs in your region.

This information is available to the public; individuals can access various maps and resources on MDE's [Integrated Report \(IR\) Water Quality Assessment Maps](#) website⁵¹ or on [EPA's Maryland Impaired Waters and TMDL Information](#) website.⁵²

Total Maximum Daily Load

The Total Maximum Daily Load (TMDL) is the maximum amount of pollution a body of water can receive and still meet water quality standards.⁵³

For a list of TMDLs for various Maryland waters, see MDE's page on [Approved TMDLs](#).⁵⁴

Visit this [website](#) for information about the development or current status of TMDLs for various waterbodies near you in Maryland.⁵⁵

⁴⁷ Tier II High Quality Waters Map, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Water/TMDL/Water%20Quality%20Standards/Pages/HighQualityWatersMap.aspx>.

⁴⁸ CWA § 305(b).

⁴⁹ CWA § 303(d).

⁵⁰ Water Quality Assessment Report—Integrated Report of Surface Water Quality, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Water/TMDL/Integrated303dReports/Pages/Programs/WaterPrograms/TMDL/Maryland%20303%20dlist/index.aspx>.

⁵¹ Integrated Report (IR) Water Quality Assessment Maps, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Water/TMDL/Integrated303dReports/Pages/ImpairmentMaps.aspx>.

⁵² Maryland Impaired Waters and TMDL Information, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, https://iaspub.epa.gov/waters10/attains_state_control?p_state=MD&p_cycle=2010.

⁵³ Chesapeake Bay TMDL Fact Sheet, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>.

⁵⁴ Approved TMDLs, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://mde.maryland.gov/programs/water/tmdl/approvedfinaltmdls/pages/programs/waterprogram/s/tmdl/approvedfinaltmdl/index.aspx>.

⁵⁵ Current Status of Total Maximum Daily Load (TMDL) Development in Maryland, MARYLAND DEPARTMENT OF THE ENVIRONMENT,

Visit this [website](#) for opportunities to comment on draft TMDLs in your area.⁵⁶

Chesapeake Bay TMDL⁵⁷

In 2010, the EPA established Total Maximum Daily Load for Chesapeake Bay. The TMDL calls for reduction of nitrogen, phosphorous, and sediment and sets pollution limits to attempt to achieve water quality standards. The current reduction amounts are:

- 185.9 million pounds of nitrogen per year (= 25% reduction)
- 12.5 million pounds of phosphorous per year (= 24% reduction)
- 6.45 billion pounds of sediment per year (= 20% reduction)

It's an extensive undertaking made up of a combination of 92 smaller TMDLs for individual tidal segments. This is the largest and most complex TMDL ever developed by the EPA.⁵⁸ The TMDLs call for reductions and actions from various states and multiple sectors to improve the water quality of the bay. The Chesapeake Bay TMDL calls for reductions from Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

Since agriculture is the primary contributor of these nutrients and pollutants, the existence, addition, or expansion of CAFOs will interfere with Maryland's ability to meet its reduction goals and improve the water quality of the Chesapeake Bay.

Best Management Practices (BMPs)

Maryland has identified a number of BMPs to help meet the Chesapeake Bay TMDL and protect the environment from the adverse impacts of animal agriculture, including:

- Nutrient management planning

<http://mde.maryland.gov/programs/Water/TMDL/CurrentStatus/Pages/Programs/WaterPrograms/TMDL/Summittals/index.aspx>.

⁵⁶ Draft Total Maximum Daily Load (TMDL) Documents for Public Comment, MARYLAND DEPARTMENT OF THE ENVIRONMENT,

http://mde.maryland.gov/programs/Water/TMDL/DraftTMDLforPublicComment/Pages/Programs/WaterPrograms/TMDL/Pub_Notice/index.aspx.

⁵⁷ Chesapeake Bay TMDL Fact Sheet, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

<https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>.

⁵⁸ Maryland Animal Agricultural Program Assessment. U.S. ENVIRONMENTAL PROTECTION AGENCY, at page 18, available at <https://www.epa.gov/sites/production/files/2015-09/documents/marylandanimalagricultureprogramassessment.pdf>.

- Animal waste management systems
- Soil conservation and water quality plans
- Barnyard runoff control systems
- Stream fencing on pastures

Agricultural Certainty Program

The Agricultural Certainty Program seeks to accelerate implementation of water quality best management practices in order to achieve Chesapeake Bay TMDLs for nitrogen, phosphorous, and sediment. It is a voluntary program, but if the farm participates in the program, the farm receives a 10-year certainty certificate where the farm will not be subject to new laws adopted during that time period.⁵⁹

Watershed Implementation Plans

In addition to setting the Chesapeake Bay TMDLs, the EPA required Maryland and other bay area states to develop Watershed Implementation Plans (WIPs) to help achieve the state's TMDLs. WIP implementation goals for animal agriculture include implementing nutrient management plans, soil conservation and water quality plans, an animal waste management system, and barnyard runoff controls.

You can locate your watershed using MDE's [Map of Maryland's Watersheds](#)⁶⁰ and learn more about Maryland's WIP [here](#).⁶¹ If a region is not meeting its WIP milestones, MDE should work closely with individuals in that region to identify shortcomings and get back on track.

Water Quality Improvement Act

MD Department of Agriculture is responsible for implementing and enforcing the Water Quality Improvement Act, also known as the nutrient management law, which regulates the application of waste on facilities that are not regulated by CAFO/MAFO regulations and permit requirements.

The Water Quality Improvement Act Requires agricultural operators who gross more than \$2,500 annually or have more than 8,000 pounds of live animal weight to submit a nutrient management plan to the MD Department of Agricultural. Nutrient management plan must address nitrogen and phosphorous inputs and operators

⁵⁹ COMAR § 15.20.11 (The program went into effect in 2015).

⁶⁰ Map of Maryland's 8-Digit Watersheds, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Water/TMDL/DataCenter/Pages/8DigitWatershed.aspx>.

⁶¹ Maryland's Phase I Watershed Implementation Plan, MARYLAND DEPARTMENT OF THE ENVIRONMENT, http://www.mde.state.md.us/programs/Water/TMDL/TMDLHome/Pages/Final_Bay_WIP_2010.aspx.

must take soils samples every three years. It also requires owners/operators to submit an annual report describing how they implemented their nutrient management program during the previous year. While this does not apply to CAFOs/MAFOs, there are still around 5,500 operations that qualify under this act and demonstrates Maryland's efforts to improve water quality by expanding regulation of all types of agricultural operations.

MDA attempts to inspect around 10% of farms to verify nutrient management program compliance. The penalties under this act are:

- \$250 for qualifying facility that doesn't have a nutrient management plan
- \$100 per violation for failing to implement a nutrient management plan
- There is a maximum penalty of \$2,000 per year

CAFO Construction

Construction & Stormwater

The federal NPDES stormwater program calls for the control of pollution generated from runoff associated with construction activity.⁶² MDE administers the stormwater construction permits for the state and anyone planning a construction project that will disturb more than one acre of earth must obtain a construction permit.⁶³

- The permit may be for the general permit or for an individual permit for stormwater associated with construction activity.
- First, the applicant must submit a soil erosion and sediment control plan to the soil conservation district.
- Second, the applicant must submit Notice of Intent form
 - [MDE's online e-Permits interface](#)⁶⁴
- MDE will provide for a 14-day public notice period
 - [Notices for General Permit for Stormwater Associated with Construction Activity](#)⁶⁵
- The soil erosion and sediment control plan must be approved before MDE can issue a final approval following public notice.

⁶² CWA § 402; 40 C.F.R. §§ 122.26, 450.

⁶³ COMAR § 26.08.04.

⁶⁴ MDE e-Permits, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <https://egov.maryland.gov/mde/npdes/Account/Login>.

⁶⁵ Notices for Stormwater Associated with Construction Activity, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <https://egov.maryland.gov/mde/npdes/PublicNotice/Index>.

Animal Waste Storage Structure Construction

Operations are required to notify MDE of any plans to construct animal waste storage structures. The operation must submit notification to MDE's Land Management Administration by certified mail containing the following information:

- Type of structure
- Property sketch
- Zoning and land use considerations
- Design specifications
- Construction schedule

CAFO Inspections

Maryland has made efforts to minimize the harmful effects of factory farming by going beyond federal requirements, but there is considerable work to be done. There is a general shortage of staff, resources, and inspectors. Therefore, participation is crucial for holding these operations accountable.

It is MDE policy to inspect registered CAFOs at least once during the 5-year permit period—so 20% of permitted facilities per year. Inspections include review of records, physical inspection of the operation, and review of the CNMP. MDE prioritizes inspections of operations that pose the greatest risk to environment and public health based on factors like facility type, compliance history, location, and public complaints. CAFOs and MAFOs must also submit annual reports about waste generation and disposal.

Minor Violations

First offenses that do not pose an immediate threat to the environment or public health are considered minor violations. If the operation swiftly corrects the violation or comes back into compliance, MDE does not take further enforcement action.

- MDE does keep a record of these minor violations so keeping an eye on a nearby CAFO and reporting repeated minor violations builds the record to assert chronic non-compliance and helps move toward claims of major violations.

Major Violations

Violations that pose direct threat to the environment or public health are considered major violations. This can include patterns of chronic non-compliance. MDE may

take formal administrative or judicial enforcement actions such as corrective orders, monetary penalties, and imprisonment.

AIR

Air Quality

Animal agriculture is a significant source of air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, animal agriculture may be regulated since they are stationary sources that emit pollutants in amounts that jeopardize the environment and public health. However, the agricultural industry has largely evaded meaningful regulation, arguing that agriculture should not be regulated due to factors such as monitoring difficulties, variable climates, data collection methods, etc. In order to respect industry concerns while also working toward meaningful regulation to protect the air quality, the EPA has entered into agreements in which CAFOs monitor and collect air emissions data in exchange for immunity for violating air pollution laws. In short, federal law does not require much from CAFOs to address their impacts on air quality and public health.

See the Federal Guide for discussion of the Clean Air Act, air quality agreements, and regulations.

While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions. The state could regulate AFO air emissions as part of its State Implementation Plan (SIP), required by the Clean Air Act, to help the state achieve its air quality standards. However, it does not appear that Maryland regulates agricultural operations with regard to air emissions. For example, Maryland issues [Part 70 Operating Permits](#),⁶⁶ in accordance with Title V of the Clean Air Act, for facilities with the potential to emit more than 10 tons per year of a hazardous air pollutant, 25 tons per year of a combination of hazardous air pollutants, or 100 tons per year of any regulated air pollutant.⁶⁷ While there may be some large CAFOs/MAFOs which emit these thresholds, Maryland does not impose this permit requirement on any AFOs.

⁶⁶ Part 70 (Title V) Operating Permit, MARYLAND DEPARTMENT OF THE ENVIRONMENT, available at <http://www.mde.state.md.us/programs/Permits/Documents/2008permitguide/ARMA/1.06.pdf>.

⁶⁷ 42 USC § 7401et seq; COMAR § 26.11.02.

Learn more about Maryland's Air Quality Planning Programs on MDE's [website](#).⁶⁸

ZONING & LAND USE

Zoning

Zoning ordinances are established and enforced by your municipality or your county. Zoning ordinances vary in how protective they are of agricultural, residential, or business interests. They specify areas where, and under what conditions, certain activities and development can take place. Engagement in the zoning process can impede new CAFOs/MAFOs looking to come into a community or existing CAFOs/MAFOs seeking to expand. See your municipal or county zoning website to research zoning rules and determine if they're consistent with the objectives of the region's comprehensive plan, discussed below.

Comprehensive Plans

Counties or municipalities create and adopt comprehensive plans which detail how the area must develop. A comprehensive plan should address the following topics: land use, transportation, community facilities, mineral resources, development regulations, areas of state concern, sensitive areas, implementation, development capacity analysis, fisheries, municipal growth, water resources, environmental protection, and sewage. The plan must be reviewed and, if necessary, updated every six years. The Maryland Department of Planning reviews comprehensive plans for consistency with applicable state laws regarding things like land use, economic growth, resource protection, and sustainable growth. Comprehensive plans are significant because local zoning actions must be consistent with the plan's objectives and recommendations. These plans also present a meaningful opportunity for public participation and input.

More Information About Comprehensive Plans

Learn more about comprehensive plans on this Maryland Department of Planning [website](#).⁶⁹

View Your Comprehensive Plan

⁶⁸ Air Quality Planning Program, MARYLAND DEPARTMENT OF THE ENVIRONMENT, http://mde.maryland.gov/programs/air/airqualityplanning/pages/programs/airprograms/air_planning/index.aspx.

⁶⁹ Comprehensive Plans, MARYLAND DEPARTMENT OF PLANNING, <http://planning.maryland.gov/OurWork/CompPlans/welcome.shtml>.

Access comprehensive plans throughout the state [here](#).⁷⁰

Public Participation in Comprehensive Plans

For more about public participation, see Maryland Department of Planning’s “Citizen Participation: You are in the Mix” [website](#).

Maryland Agricultural Land Preservation Foundation

While zoning is primarily handled at the local and county level, Maryland has passed legislation intended to preserve agricultural land and control urban expansion.⁷¹ This can prevent zoning changes that allow for residential or industrial zoning of the state’s farmland. The Foundation, as part of the Maryland Department of Agriculture, purchases agricultural easements that restrict development on farmland and woodlands.⁷² The MALPF Board of Trustees approves requests for farm-related activities on property subject to the agricultural easement. The MALPF board considers factors like size, impact on soil productivity, compatibility with rural character, maintenance of best management practices, and impact on sensitive natural resources.⁷³ It is useful for local residents to know if a factory farm is protected by one of these easements and what MALPF seeks to accomplish.

PERMITTING & PUBLIC LAND USE

Permitting for CAFOs and MAFOs

AFO General Discharge Permit Process

Below is a simplified breakdown of the AFO General Discharge Permit application process:

- The operator determines if the AFO is a CAFO or MAFO (MDE can override this).
- The operator submits Notice of Intent (NOI) and the required nutrient plan to protect environmental quality.
- MDE reviews the application.

⁷⁰ Comprehensive Plans: View Draft Plans and Comments, MARYLAND DEPARTMENT OF PLANNING, <http://planning.maryland.gov/OurWork/CompPlans/ViewPlans.shtml>.

⁷¹ Code of Public Laws of Maryland § 2-501 et seq.

⁷² Maryland Agricultural Land Preservation Foundation. MARYLAND DEPARTMENT OF AGRICULTURE. http://mda.maryland.gov/Pages/Agland_Preservation_Foundation.aspx.

⁷³ Maryland Agricultural Land Preservation Program: Allowable Uses of MALPF Easement Properties, MARYLAND DEPARTMENT OF AGRICULTURE, available at <http://mda.maryland.gov/malpf/Documents/fact11.pdf>.

- MDE publishes a notice of preliminary approval.
 - **Note:** This is the primary opportunity for individuals to voice their concerns by submitting public comments and requesting a public hearing (see the following section on Public Notice for more information).
- If no comments are received, the preliminary approval becomes the final approval.
- If MDE received comments that are averse to the preliminary approval or if the final approval is substantively different from the preliminary approval, MDE will provide public notice of its final approval.
- MDE sends the final permit approval letter.
- An aggrieved person who submitted comments may request a Contested Case Hearing within **15 days** of the final permit approval.

Public Notice

AFO Permits

All AFO permit applications are subject to public notice requirements and must be published on MDE's website.⁷⁴ **This process moves quickly and public participation is crucial! If no one objects to the permit, it is automatically approved, no further notice is required, and individuals may not request a contested case hearing.**

MDE will hold a public hearing for an CAFO permit **ONLY IF** it receives a written request for a public hearing within **20 days** of the notice publication.

- MDE will accept written comments for **5 days** following a hearing.
- Requests for public hearings for MAFOs are subject to MDE's discretion.

Individuals may submit written public comments within **30 days** of the public notice.

Requests for a public hearing or written comments should be sent to:⁷⁵

Ms. Hilary Miller, Director
 Land Management Administration
 1800 Washington Blvd.
 Baltimore, MD 21230-1719

⁷⁴COMAR § 26.08.04.09N(3)(c).

⁷⁵ AFO Public Participation Process, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://mde.maryland.gov/programs/LAND/RecyclingandOperationsprogram/Pages/PubPartProcess.aspx>.

If anyone comments on the preliminary approval or if the final approval is substantively different from the preliminary approval, MDE must provide notice of final approval.

If no one comments or opposes the preliminary approval, MDE may register the CAFO or MAFO without additional public notice.

For more information and to search for AFOs seeking permit approval, see MDE's [Status of Animal Feeding Operations Applications](#) website.

You can find a list of operations seeking General Discharge Permits, notice of permit approvals, and notice for public hearings on MDE's [AFO \(CAFO/MAFO\) Information Page](#).⁷⁶

Construction Permits

Public notice is required for General Permits for Stormwater Associated with Construction Activity. See [Notices for General Permit for Stormwater Associated with Construction Activity](#) for a list of notices available for comment.⁷⁷ These permits are available for public comment for **14 days** prior to approval by MDE.

Members of the public may request that the site obtain an individual permit instead of a general permit if they submit a detailed explanation why the erosion and sediment control plan does not meet the standards.

Submit comments and request by mail or email to:

Technical Services and Permitting Section, MDE,
1800 Washington Boulevard, Suite 420
Baltimore, MD 21230
mde.constructionswnoi@maryland.gov

⁷⁶ AFO (CAFO/MAFO) Information Page, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Land/RecyclingandOperationsprogram/AFO/Pages/index.aspx>.

⁷⁷ MDE e-Permits: Notices for Stormwater Associated with Construction Activity, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <https://egov.maryland.gov/mde/npdes/PublicNotice/Index>.

Permit Appeals

Contested Case Hearing

A person who is aggrieved by MDE's approval of an AFOs Discharge Permit and plan may request a contested case hearing, in writing, within **15 days** of final approval.⁷⁸ The contested case hearing is limited to contesting the terms of the approved plans.

Requests for a contested case hearing should be sent to:

Ms. Hilary Miller, Director
Land Management Administration
1800 Washington Blvd.
Baltimore, MD 21230-1719

Submitting Complaints⁷⁹

MDE Land Management Administration

Contact MDE's Land Management Administration to report pollution problems with feedlots/animal feeding operations including CAFOs and MAFOs.

Central Office
1800 Washington Blvd., Suite 610
Baltimore, MD 21230
410-537-4423

MDE Water Management Administration

Contact MDE's Water Management Administration when chronic or willful mismanagement of agricultural resources or activities places wastes, soils, or agricultural fertilizers into waters of the state. The failure of a waste storage system falls into this category.

Central Division
1800 Washington Blvd.
Baltimore, MD 21230
410-537-351

⁷⁸ COMAR § 26.08.04.08K; COMAR § 26.08.04.09N.

⁷⁹ Maryland's Agricultural Inspection and Enforcement Agencies: Where to Call with Agricultural and Pollution Complaints, MARYLAND DEPARTMENT OF THE ENVIRONMENT, available at http://mda.maryland.gov/resource_conservation/counties/AgriculturalPollutionComplaints.pdf

Eastern Division
407 Race Street
Cambridge, MD 21613
410-901-4020

Western Division
Frostburg Office
160 South Water Street
Frostburg, MD 21532
301-689-1480]

Hagerstown Office
91 Eastern Blvd.
Hagerstown, MD 21740
301-665-2850

MD Department of Agriculture

Contact MDA when conditions exist that are likely to pollute or have resulted in unintentional water pollution. Examples include erosion problems or questionable manure management practices.

Southern and Central Maryland
50 Harry S. Truman Pkwy.
Annapolis, MD 21401
410-841-5893

Eastern Shore
27722 Nanticoke Road Unit 2
Salisbury, MD 21801
410-677-0802, ext. 1

Western Maryland
92 Thomas Johnson Dr. Suite 110
Frederick, MD 21702
301-695-2803, ext.142

RIGHT TO FARM & NUISANCE CLAIMS

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. Courts may look to the extent of harm, the frequency of the nuisance, if plaintiffs came to the nuisance, or if the nuisance complies with applicable zoning ordinances. Many individuals and communities describe CAFOs as nuisances since they can decrease local property values, prevent people from using and enjoying their homes or yards, contribute to health issues, and cause other problems. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield such facilities from nuisance liability—Maryland included.

State Right-to-Farm Laws

Right-to-farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors who experience some of the more unpleasant effects of agricultural production. Maryland's Right-to-Farm Law protects agricultural facilities by giving them an affirmative defense to nuisance suits.⁸⁰ While this provides considerable protection to farms, it is not without limits – CAFOs/MAFOs are not invulnerable to nuisance suits.

Here are the basics of Maryland's right-to-farm law:

- It applies to agriculture operations
- The operation must have been in business for at least a year before the nuisance suit is brought
- The operation must be in compliance with ALL applicable laws
- The operation must not be conducted in a negligent manner.

A review of Maryland's right-to-farm law reveals the importance of careful monitoring and reporting violations as they occur. A successful nuisance claim will rely on a record demonstrating the operation's failure or continued inability to comply with applicable federal, state, local, zoning, health, and permitting laws and regulations.

⁸⁰ MD. CODE ANN., CTS. & JUD. PROC. § 5-403.

See [Understanding Agricultural Liability: Maryland's Right-to-Farm Law](#) by the Center for Agricultural & Natural Resource Policy for a more detailed discussion of Maryland's Right to Farm Law.⁸¹

Local Right-to-Farm Laws

In addition to state right-to-farm laws and protection from nuisance actions, several counties have passed ordinances that contain additional right-to-farm components or requirements. For example, some ordinances include topics like a good neighbor policy, dispute resolution procedures, additional definitions, limitations of actions, mediation, arbitration, standing, bad faith, and notice.⁸² Find your county's right-to-farm-related ordinances to understand what protections and possible weaknesses exist to bring a nuisance claim against a CAFO/MAFO in the area.

See [Maryland's Right to Farm Statute and County Ordinances](#) for more information.⁸³

ENFORCEMENT

Where to Find Data

The Maryland Department of the Environment publishes an [Annual Enforcement and Compliance Report](#).⁸⁴ MDE also provides summaries of recent significant environmental enforcement actions.⁸⁵ While MDE maintains a number of data collection tools and databases to keep track of CAFO/MAFO implementation and enforcement, it does not provide much information about individual facilities and permit violation details to the public.

EPA Region 3 provides a list of NPDES program enforcement actions for CAFOs, but the list does not currently list any enforcement actions for Maryland.⁸⁶ However, you

⁸¹ Understanding Agricultural Liability: Maryland's Right to Farm Law, CENTER FOR AGRICULTURAL & NATURAL RESOURCE POLICY, available at <http://drum.lib.umd.edu/bitstream/handle/1903/15012/MD%20RTF%20Fact%20sheet.pdf;jsessionid=511C011916F308C1219678505A29D3B4?sequence=1>.

⁸² Maryland's Right to Farm Statute and County Ordinances, MARYLAND DEPARTMENT OF AGRICULTURE, available at <http://mda.maryland.gov/SiteAssets/Pages/acrs/Maryland%20Right%20To%20Farm.pdf>.

⁸³ *Id.*

⁸⁴ Department of the Environment Enforcement and Compliance, MARYLAND DEPARTMENT OF ENVIRONMENT, <http://mde.maryland.gov/AboutMDE/DepartmentalReports/Pages/AboutMDE/enfcomp.aspx>.

⁸⁵ *Id.*

⁸⁶ Enforcement in the NPDES Program, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www3.epa.gov/reg3wapd/npdes/enforcement.html?panell=00&tab1=2>.

can access Maryland AFO compliance information using EPA's [Enforcement and Compliance History Online \(ECHO\)](#) search tools.⁸⁷ Search by your city or zip code and find applicable permits and compliance information for a number of facilities.

Enforcement

MDE is the primary agency for compliance and enforcement regarding AFO discharge permits, while MDA addresses nutrient management compliance.

MDE handles compliance issues in accordance with MDE's Standard Operating Procedures for AFO Compliance and Enforcement. This may entail issuing a site complaint, notice of non-compliance, notice of violation, administrative order, or settlement agreement.

PUBLIC HEALTH

Health Investigation by the Maryland Department of Health

Those seeking to challenge CAFOs in their communities may request a health investigation from the Maryland Department of Health. Maryland Code allows residents to request a health investigation to determine if a condition is a public health nuisance.⁸⁸

- The request should include a written complaint of 2 licensed physicians.
- If the investigation reveals that the condition of the place injures or has the potential to injure the health of any individual, the place may be in a state of nuisance. If it is in a state of nuisance, the Secretary can order that the nuisance be abated.

Public Health Ordinances

Communities can pressure their counties to adopt public health ordinances to address the health impacts of CAFOs.

⁸⁷ Enforcement and Compliance History Online, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://echo.epa.gov/?redirect=echo>.

⁸⁸ MD CODE ANN., HEALTH & GENERAL § 20-307.

PUBLIC INFORMATION LAWS

[Freedom of Information Act](#)

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

[Maryland Public Information Act](#)

Maryland's Public Information Act (MD PIA) requires public agencies and officials to grant the public access to public records. In short, anyone may request public records that are not privileged for a fee (but you may request a fee waiver since the information sought is intended to serve the public interest). This is a powerful tool for seeking information about impending or noncompliant CAFOs in their communities.

For more information, see MDE's [Guide for MD PIA Information Requesters](#).⁸⁹ If you have additional questions or require assistance, contact MDE's PIA Coordinator, Amanda Degen, at Amanda.Degen@maryland.gov, (410) 537-4120, or Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230.

[Community Right-to-Know Laws](#)

See Emergency Planning and Community Right-to-Know Act (EPCRA) in the Federal Guide or see MDE's [website](#).⁹⁰

[Public Records](#)

[Public Records Directory](#)

It's wise to learn as much as possible about the operation you're challenging—size, property value, number of employees, land records, etc. You can look up property and tax information at the [Department of Assessment & Taxation](#) website.⁹¹ Anyone

⁸⁹ MDE Guide for PIA Information Requesters, MARYLAND DEPARTMENT OF ENVIRONMENT, <http://www.mde.state.md.us/programs/Marylander/PublicInfoAct/Pages/mdrequestersguide.aspx>.

⁹⁰ What is the Emergency Planning and Community Right to Know Act?, MARYLAND DEPARTMENT OF ENVIRONMENT, <http://mde.maryland.gov/programs/BusinessInfoCenter/Community%20Right%20To%20Know/Pages/BusinessInfoCenter/crtk/index.aspx>.

⁹¹ Real Property Data Search, MARYLAND DEPARTMENT OF ASSESSMENTS & TAXATION, <http://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx>.

can search for all kinds of Maryland public records using [Maryland's Free Public Records Directory](#).⁹²

EPA Region 3

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for FOIA Requests. Contact information for the EPA Region 3 FOIA Officer:

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street (3CG00)
Philadelphia, PA 19103
(215) 814-2050

See the Federal Guide for more information on FOIA. Several EPA websites contain useful summaries of the FOIA request process, response time guidance, and other pertinent information.⁹³ Note that you're potentially entitled to a waiver of fees if requesting information that is "likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester."⁹⁴ EPA will only consider waiver requests that are submitted at the same time as the corresponding FOIA request.⁹⁵

Maps, reports, and databases are also available through the EPA to find information and documents about regulated facilities. For example, EPA's [MyPropertyInfo](#) database provides information about a facility without having to file a FOIA request for the same records. While searching EPA's websites may prove helpful, state or federal FOIAs will produce more records and information.

CAFO PROPERTY TAX APPEALS

Neighbors of CAFOs may also be harmed by government inaction on another front: failure to account for the harmful presence of a CAFO when assessing a property for tax purposes. Without knowing how to challenge an uninformed assessment,

⁹² MARYLAND FREE PUBLIC RECORDS DIRECTORY, <http://publicrecords.onlinesearches.com/Maryland.htm>.

⁹³ FOIA Request Process, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process>.

⁹⁴ Fee Waivers, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process#wavers>.

⁹⁵ See *id.*

individuals can find themselves paying too much in property taxes on top of the other issues they face.

Property tax assessments are done every three years in Maryland and property owners may file an appeal when they believe that the assessment doesn't reflect the market value of the property.

Property owners may file an appeal when they receive their assessment notice, by petition for review, or upon purchase of the property.

Appeal on Assessment

Every three years, Maryland sends a notice of assessment to property owners informing them of the market value of their property. Property owners may appeal this notice within 45 days of receipt by signing and mailing the appeal form.

Petition for Review

Property owners may file a petition for review if circumstances or events have caused their property value to decline. A copy of the petition form can be found [here](#).⁹⁶

Appeal Upon Purchase

Property owners may file an appeal of property tax assessment within 60 days of the property purchase or transfer.

For more information about assessment and Maryland property taxes, see the [Homeowner's Guide to Property Taxes and Assessments](#).⁹⁷ For a detailed description of the tax appeal process, see the [Maryland Department of Assessment & Taxation's website](#).⁹⁸

⁹⁶ Petition for Review of Real Property, STATE OF MARYLAND DEPARTMENT OF ASSESSMENT AND TAXATION, <http://dat.maryland.gov/realproperty/Documents/petitnrv.pdf>.

⁹⁷ A Homeowner's Guide to Property Taxes and Assessments, STATE OF MARYLAND DEPARTMENT OF ASSESSMENT AND TAXATION, <http://dat.maryland.gov/realproperty/pages/HomeOwners-Guide.aspx>.

⁹⁸ Assessment Appeal Process, STATE OF MARYLAND DEPARTMENT OF ASSESSMENT AND TAXATION, <http://dat.maryland.gov/realproperty/Pages/Assessment-Appeal-Process.aspx>.

OTHER RESOURCES

Protecting your community from CAFOs can be 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](#).⁹⁹

State Organizations

[Center for Progressive Reform](#)¹⁰⁰

[Chesapeake Legal Alliance](#)¹⁰¹

[Maryland Clean Agriculture Coalition](#)¹⁰²

[Waterkeepers Chesapeake](#)¹⁰³

[Agriculture Law Education Initiative](#)¹⁰⁴

State Pro-Bono Clinics

University of Maryland School of Law Environmental Clinic

The Environmental Law Clinic at the University of Maryland School of Law “is the largest public interest environmental law firm in the State of Maryland devoted to providing free legal services to support environmental litigation and legal reform that protects the Chesapeake Bay Watershed.”¹⁰⁵

LIST OF STATUTES & REGULATIONS

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

⁹⁹ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

¹⁰⁰ CENTER FOR PROGRESSIVE REFORM, <http://www.progressivereform.org/>.

¹⁰¹ CHESAPEAKE LEGAL ALLIANCE, <http://www.chesapeakelegal.org/>.

¹⁰² MARYLAND CLEAN AGRICULTURE COALITION, <http://www.marylandcleanagriculture.org/>.

¹⁰³ WATERKEEPERS CHESAPEAKE, <http://www.waterkeeperschesapeake.com/>.

¹⁰⁴ Agriculture Law Education Initiative, University of Maryland, <http://umaglaw.org/>.

¹⁰⁵ Environmental Law Clinic, UNIVERSITY OF MARYLAND FRANCIS KING CAREY SCHOOL OF LAW, <https://www.law.umaryland.edu/programs/environment/clinic/>.

Statute	Subject
Annotated Code of Maryland § 9-234	Maryland Department of the Environment Approves Coverage Under General Discharge Permit
COMAR § 26.08.03.09A	General Permits for Stormwater Associated with Construction Activity
COMAR § 26.08.04.09N(3)(c)	Public Notification of General Discharge Permit
COMAR § 26.08.04.09N(3)	General Discharge Permit - Contested Case Hearing
COMAR § 26.08.01.01	Definitions
COMAR § 26.08.02.02	Water Quality Standards
COMAR § 26.08.02.03-2	Water Quality Criteria
COMAR § 26.08.02.04	Anti-Degradation
COMAR § 26.08.03.03	Effluent limitations
COMAR § 15.20.04	Nutrient Management Certification and Licensing
COMAR § 15.20.05	Manure Transportation Project
COMAR § 15.20.06	Nutrient and Commercial Fertilizer Application Requirements for Agricultural Land
COMAR § 15.20.07	Agricultural Operation Nutrient Management Plan Requirements
COMAR § 15.20.08	Content and Criteria for a Nutrient Management Plan Developed for an Agricultural Operation
COMAR § 15.20.11	Maryland's Agricultural Certainty Program