



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

MICHIGAN



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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.srapproject.org.

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Facing a factory farm? Contact SRAP for support.

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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: A BRIEF HISTORY OF CAFOs IN MICHIGAN

Animal agriculture plays a dominant role in Michigan's economy and dairy, hogs, and poultry operations constitute the majority of Michigan's livestock industry.¹ In recent years, much of the small family farming that made up Michigan's livestock industry has been replaced with large-scale operations called concentrated animal feeding operations (CAFOs). According to 2012 data from the United States Environmental Protection Agency (US EPA), approximately 25 percent—just over 200 out of 800—of the state's livestock operations are permitted as CAFOs,² and the number of CAFOs has been rising steadily in recent years. The relatively flat landscape, extensive shorelines, ample water resources, and tile drainage system that facilitate agriculture in the state also make it particularly susceptible to surface and groundwater contamination. As a result, Michigan's regulatory scheme seeks to address environmental concerns while also protecting the state's agricultural industry. CAFO operators in Michigan often argue that the regulations are too strict while residents and advocacy groups say they're not strict enough.

In some ways, Michigan is more proactive than other states regarding CAFO regulations. For example, the state requires CAFOs to obtain a water pollution permit or demonstrate that the operation would not discharge into Michigan's surface waters.³ Unlike other states, they do not assume that the operation will not discharge waste; there is a presumption of discharge for large facilities. In 2011, a court of appeals denied an argument from Michigan CAFO owners that regulations should only apply *after* water pollution occurred.⁴ Michigan also has one of the most robust reporting, recordkeeping, and public information systems. The state attempts to increase transparency by making much of the CAFO-related paperwork (permits,

¹ See U.S. Environmental Protection Agency, Michigan CAFO/AFO Program Summary, <https://www3.epa.gov/npdes/pubs/statecom.pdf>; see also National Agricultural Statistics Service, 2015 State Agriculture Overview, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=MICHIGAN.

² U.S. Environmental Protection Agency, Michigan CAFO/AFO Program Summary, <https://www3.epa.gov/npdes/pubs/statecom.pdf>.

³ Michigan Radio, Court of Appeals Rules Against Michigan CAFO Operators, <http://michiganradio.org/post/court-appeals-rules-against-michigan-cafo-operators#stream/0>; see also April Neihsl, *Court Upholds Permit Requirements for Concentrated Animal Feeding Operations*, <http://www.fosterswift.com/publications-Requirements-Concentrated-Animal-Feeding-Operations.html>.

⁴ Michigan Radio, Court of Appeals Rules Against Michigan CAFO Operators, <http://michiganradio.org/post/court-appeals-rules-against-michigan-cafo-operators#stream/0>.

applications, complaints, violation reports, enforcement actions, etc.) publicly available. While these are steps in the right direction, the harmful environmental and community impacts caused by CAFOs persist throughout the state.

The impacts of Michigan agriculture on the state's water resources are a topic of growing concern. A 2016 report presents the data of major discharges of toxic agricultural pollutants into Michigan's waterways from locations including Bay City, Plainwell, and Zeeland, Michigan.⁵ Agricultural pollution from states like Michigan has also been tied to the eutrophication of beaches, lakes, and parts of the Great Lakes. As a result of the increasingly visible impacts of water pollution in the state, Michigan CAFO regulation has undergone changes recently to address environmental concerns and promote recordkeeping while also protecting the state's CAFO industry.

The expiration of Michigan's General Permit for CAFOs in 2015 opened a timeline for public comment and hearings that shed light on ongoing water quality and other environmental concerns related to CAFO permitting and oversight.⁶ Numerous state and federal environmental organizations submitted questions regarding application of manure on frozen ground, surface and groundwater use and monitoring, and other similar issues.⁷ A number of residents and organizations pushed for Michigan to follow Ohio's lead in banning winter application of agricultural waste but Michigan did not follow Ohio's example. While the current CAFO General Permit—valid until April 2020—addressed some of the concerns expressed by residents and interested parties, Michigan still allows application of waste on snow-covered ground with some restrictions, and adequate enforcement of repeated permit violations remains a challenge.

CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

What is a CAFO?

Michigan distinguishes between animal feeding operations (AFOs) and CAFOs based on the number of animals at an operation, as well as whether the operation will discharge pollutants to surface waters. AFOs are facilities that confine animals for 45

⁵ John Rumpler, Environment America Research & Policy Center, Corporate Agribusiness and the Fouling of America's Waterways, 2016, p 30.

⁶ Letter from Elisabeth Holmes, Blue River Law, to Mike Bitondo, Michigan Department of Environmental Quality, (Jan. 25, 2015).

⁷ See *id.*

days or more in any 12-month period and do not sustain crops or vegetation in the normal growing season over any portion of the facility.⁸ An AFO is subject to increased regulation by state agencies when it also meets the definition of a CAFO or is designated a CAFO by the state. CAFO status is based on quantity of animals or whether the facility discharges into waters of the state.⁹ Once defined as a CAFO, an operation must submit a comprehensive nutrient management plan to the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

Large CAFO

An AFO with equal or greater than the following number of animals is a Large CAFO:

- 700 mature dairy cows, whether milked or dry
- 1,000 veal calves
- 1,000 cattle other than mature dairy cows or veal calves ("Cattle" includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.)
- 2,500 swine each weighing 55 pounds or more
- 10,000 swine each weighing less than 55 pounds
- 500 horses
- 10,000 sheep or lamb
- 55,000 turkeys
- 30,000 laying hens or broilers, if the farm uses a liquid manure handling system
- 125,000 chickens (other than laying hens) if the farm uses a system other than a liquid manure handling system
- 82,000 laying hens, if the farm uses a system other than a liquid manure handling system
- 30,000 ducks (if the farm uses a system other than a liquid manure handling system)
- 5,000 ducks (if the farm uses a liquid manure handling system)¹⁰

Medium CAFO

An AFO is a Medium CAFO if it has the following number of animals AND it discharges pollutants.¹¹

⁸ Mich. Admin. Code r. 323.2102(b); 40 C.F.R. § 122.23(b)(1) (2012).

⁹ Michigan Department of Environment, Great Lakes, and Energy, Concentrated Animal Feeding Operation (CAFO), <https://www.michigan.gov/egle/about/organization/water-resources/cafo>.

¹⁰ See, e.g., Mich. Admin. Code r. 323.2103(g), <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2103>.

¹¹ Mich. Admin. Code r. 323.2102(i).

- 200 to 699 mature dairy cows, whether milked or dry
- 300 to 999 veal calves
- 300 to 999 cattle other than mature dairy cows or veal calves (Cattle includes heifers, steers, bulls, and cow/calf pairs)
- 750 to 2,499 swine each weighing 55 pounds or more
- 3,000 to 9,999 swine each weighing less than 55 pounds
- 150 to 499 horses
- 3,000 to 9,999 sheep or lambs
- 16,500 to 54,999 turkeys
- 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system
- 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system
- 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system
- 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system
- 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system

Small CAFO

An AFO may be a small CAFO if it has equal to or less than the number of animals listed below but has been designated a CAFO by the state:¹²

- 199 mature dairy cows, whether milked or dry
- 299 veal calves
- 299 cattle other than mature dairy cows or veal calves (Cattle includes heifers, steers, bulls, and cow/calf pairs)
- 749 swine each weighing 55 pounds or more
- 2,999 swine each weighing less than 55 pounds.
- 149 horses
- 2,999 sheep or lambs
- 16,499 turkeys
- 8,999 laying hens or broilers, if the AFO uses a liquid manure handling system
- 37,499 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system

¹² Mich. Admin. Code r. 323.2104(o).

- 24,999 laying hens, if the AFO uses other than a liquid manure handling system
- 9,999 ducks, if the AFO uses other than a liquid manure handling system
- 1,499 ducks, if the AFO uses a liquid manure handling system

CAFOs, even those meeting the thresholds listed above, can avoid obtaining a water pollution permit by demonstrating that the operation will not discharge to surface water(s).¹³ On the opposite end of the spectrum, EGLE may regulate smaller livestock operations as CAFOs based on discharge of pollutant(s) to surface waters.¹⁴

Common Ownership

Multiple AFOs under common ownership may be combined into one operation for the purposes of animal units and CAFO status if they adjoin one another or use a common area or system of waste disposal.¹⁵ Some operations try to fly under the radar as multiple AFOs when they should actually be regulated as a CAFO.

Responsible Regulatory Agencies

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

State Natural Resources Agency

Michigan Department of Environment, Great Lakes, and Energy (EGLE)

EGLE is the Michigan government agency dedicated to safeguarding the state's environment "while supporting the economic growth and development crucial for

¹³ See *id.* at MICH. ADMIN. CODE r. 323.196(4).

¹⁴ MICH. ADMIN. CODE r. 323.2196(3); See also, e.g., Michigan State University Extension, Michigan regulations for manure, and contaminated wash and storm water on livestock farms, http://msue.anr.msu.edu/news/michigan_regulations_for_manure_and_contaminated_wash_and_storm_water_on_li.

¹⁵ Mich. Admin. Code r. 323.2103 (m)

Michigan's future."¹⁶ EGLE was previously the Michigan Department of Environmental Quality (MDEQ).

- EGLE issues water pollution permits to CAFOs, unless an operation can demonstrate that it will not discharge pollutants to Michigan's surface waters.¹⁷
- EGLE's CAFO website contains permits, general information, guidance documents, contacts, and other information for those who are tracking the impacts of large-scale agricultural operations.¹⁸ This includes a list of CAFO permitting contacts by county on a user-friendly map.¹⁹
- The EGLE website MiWaters allows you to track public notices, hearings, permit applications, site information, and violations.²⁰
- Note that EGLE is a distinct agency from the Michigan Department of Natural Resources, which does not oversee water quality but instead has authority over parks and trails, fishing, hunting, public lands, and wildlife.²¹

State Agricultural Agency

Michigan Department of Agriculture and Rural Development

MDA helps determine whether a CAFO's practices are sufficient to shield it from private nuisance actions.²² It develops Generally Accepted Agricultural and Management Practices (GAAMPs), which pertain to the state's Right to Farm Law and livestock siting process.

¹⁶ EGLE, About US, <https://www.michigan.gov/egle/about>.

¹⁷ Michigan Department of Environment, Great Lakes, and Energy, Concentrated Animal Feeding Operation (CAFO), <https://www.michigan.gov/egle/about/organization/water-resources/cafo>.

¹⁸ EGLE, Concentrated Animal Feeding Operations, <https://www.michigan.gov/egle/about/organization/water-resources/cafo>.

¹⁹ EGLE, Concentrated Animal Feeding Operation Staff, http://www.michigan.gov/documents/deq/wrd-cafo-staff_344825_7.pdf.

²⁰ EGLE, MiWaters Water Resources Information and Forms, <https://mienviro.michigan.gov/ncore/external/home>.

²¹ Michigan Department of Natural Resources, Department of Natural Resources, <http://www.michigan.gov/dnr/>.

²² See *id.*

- MDA’s Environmental Stewardship Division is responsible for “conflict resolution through the Right to Farm program, assistance and support to conservation districts, drain commissioners and other land users...”²³
- Livestock facilities are required to submit a Siting Request Application to MDA containing site plans, construction plans, odor management plans, and manure management system plans (addressing both nutrient and odor management).²⁴

State Department of Health

Michigan Department of Health and Human Services²⁵ is not involved in CAFO permitting or regulation. Despite the health concerns of CAFOs and the department’s duty to protect public health, there is little they can do to address the health impacts of CAFOs in the state.

- The Department’s Public Safety and Environmental Health²⁶ work focuses more on clean, safe water since the high-profile lead contamination case in the City of Flint.
- For regional Department of Health Offices, visit the MIDHHS’s [map](#).²⁷

Local Conservation Districts

Conservation districts are local units of government that focus on natural resource management. They often advise landowners on how to manage natural. They’re generally supportive of agriculture and have relatively little involvement with CAFOs, but they may be a useful resource because of their expertise.

- Michigan has 77 local conservation districts.²⁸

²³ Michigan Department of Agriculture & Rural Development, Overview, <http://www.michigan.gov/mdard/0,4610,7-125-1572-376590--,00.html>.

²⁴ Michigan Department of Agriculture & Rural Development, Livestock Production Facility Siting Request Application and Information Checklist, https://www.canr.msu.edu/uploads/234/76582/MDA_SitingChecklist_116499_7.pdf.

²⁵ Michigan Department of Health and Human Services, Department of Health and Human Services, <http://www.michigan.gov/mdhhs>.

²⁶ Michigan Department of Health and Human Services, Public Safety and Environmental Health, http://www.michigan.gov/mdhhs/0,5885,7-339-71548_54783---,00.html.

²⁷ Michigan Department of Health and Human Services, Map of County Offices, http://www.michigan.gov/mdhhs/0,5885,7-339-73970_5461---,00.html.

²⁸ Michigan Association of Conservation Districts, <http://macd.org/>.

- “The guiding philosophy of Michigan Conservation Districts is that local people should make decisions on conservation issues at the local level, with technical assistance provided by government.”²⁹
- A statewide organization, Michigan Association of Conservation Districts, provides assistance to each county district.³⁰

U.S. EPA Region 5 Contacts

The majority of states, including Michigan, have authority to issue water pollution permits to regulated industries in their respective states. However, U.S. EPA retains oversight authority to take enforcement and related action when states are not meeting minimal federal requirements such as those outlined in the Clean Water Act. For this reason, EPA CAFO contacts are useful if you’re tracking specific CAFOs or have questions about a state CAFO program’s compliance with federal laws. See the Federal Guide for more information.

See the Region 5: Chicago section of U.S. EPA’s Regional Animal Feeding Operation Contact List.³¹

WATER

Michigan Pollutant Discharge Elimination System Program

The Michigan Natural Resources and Environmental Protection Act³² reflects the federal Clean Water Act in part with a requirement that discharge of “waste or waste effluent into waters of this state” is not allowed without a valid permit.³³ Therefore, one of the first determinations you should make is whether a particular livestock operation has a permit or permits, and if so, the type of permit(s) with which the operation must comply.

As mentioned above, EGLE requires large CAFOs to operate pursuant to a water pollution permit unless an operation submits an application with information

²⁹ See *id.*

³⁰ See *id.*

³¹ US Environmental Protection Agency, Contact Us: Animal Feeding Operations (AFOs), <https://www.epa.gov/npdes/contact-us-animal-feeding-operations-afos#afosRegional>.

³² P.A. 451 of 1994, as amended.

³³ See MICH. COMP. LAWS § 324.3112(1), available at <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-451-1994-ii-1-31.pdf>.

necessary for the Department to make a “No Potential to Discharge” determination.³⁴ Once defined as a CAFO, an operation is a point source that must abide by a NPDES permit and all permit requirements outlined in R. 323.2196.³⁵

CAFOs receive a certificate of coverage under Michigan’s general CAFO permit³⁶ or an individual permit.³⁷ The state’s general permit covers multiple facilities as authorized by specific rules, whereas an individual permit covers one facility and has facility-specific terms and conditions. In either case, there is an opportunity for public comment and the permit process may be subject to oversight by the U.S. EPA to ensure compliance with federal Clean Water Act requirements.

All CAFO NPDES permits must, at minimum, reflect the requirements in R. 323.2196(5).³⁸ For example, CAFOs that discharge pollutants to surface waters of Michigan must:

- Have a Comprehensive Nutrient Management Plan with executive summaries submitted to EGLE;
 - EGLE’s CAFO website has user-friendly CNMP information, including CNMP Guidance.³⁹
- Prohibit runoff from the CAFO during dry weather conditions;
- Regulate storm water discharges from fields where animal waste or waste water is applied;
- Track with a manifest any waste or waste water that is sold, given away, or otherwise transferred;
- Submit annual reports to EGLE.⁴⁰

³⁴ MICH. ADMIN. CODE r. § 323.2196(4), available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2196>; see also Michigan Department of Environmental Quality, No Potential to Discharge Determinations for CAFOs, http://www.michigan.gov/documents/deq/wb-npdes-cafo-NPTDD_225428_7.pdf.

³⁵ MICH. ADMIN. CODE r. § 323.2196, available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2196>.

³⁶ Michigan Department of Environmental Quality, 2015 Permit No. MIG010000, at http://www.michigan.gov/documents/deq/wrd-npdes-cafo-GP_2015_488595_7.pdf

³⁷ MICH. ADMIN. CODE r. § 323.2196(1)(b), available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2196>.

³⁸ See *id.* at MICH. ADMIN. CODE r. § 323.2196(5).

³⁹ EGLE, Concentrated Animal Feeding Operation (CAFO), http://www.michigan.gov/deq/0,4561,7-135-3313_71618_3682_3713-96774--00.html.

⁴⁰ MICH. ADMIN. CODE r. § 323.2196(5), available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2196>.

CAFOs with “no potential to discharge”

EGLE defines and monitors no-discharge CAFOs pursuant to R. 323.2196(4).⁴¹ A CAFO owner or operator may request a “determination of no potential to discharge,” which EGLE grants or denies according to certain factors in R. 323.2196(4)(a) and, most significantly, an operation’s history of discharges to waters of the state.⁴²

Note that EGLE must public notice a request to make a “no potential to discharge” determination and the Department must consider all information both for and against its final decision in response to such a request.⁴³ Also significant is EGLE’s ongoing authority to require a permit if an operation discharges water pollution or if new circumstances or information arise after a no potential to discharge finding.⁴⁴

Community CAFO monitoring often includes questions about the spreading of manure on fields during the winter when frozen ground or freeze and thaw conditions generate risk of runoff, slick roads, water pollution, and other impacts. MARI is intended to help address such impacts.

- MARI “is an evaluation tool used to identify areas where wintertime manure spreading may cause potential risk for runoff losses of nitrogen and phosphorus.”⁴⁵
- MARI generally prohibits winter spreading in high-risk areas, where risk is determined by likelihood of phosphorus or nitrogen runoff.⁴⁶
- Although MARI is a complex technical tool,⁴⁷ you should use EGLE CAFO staff as an informational resource. An operation’s CNMP may also prove useful in determining whether a particular land-spreading field(s) of concern is appropriate for winter spreading.

Public access to permit documents

⁴¹ See *id.* at r. § 323.2196(4).

⁴² *Id.* at r. § 323.2196(4)(a).

⁴³ *Id.* at r. § 323.2196(4)(c).

⁴⁴ *Id.* at r. § 323.2196(4)(e)-(f).

⁴⁵ U.S. Environmental Protection Agency, Michigan CAFO/AFO Program Summary, https://www3.epa.gov/npdes/pubs/afo_michigan_profile.pdf.

⁴⁶ See *id.*

⁴⁷ Natural Resources Conservation Service, A Procedure for Determining the Land Available for Winter Spreading of Manure in Michigan, <http://www.animalagteam.msu.edu/uploads/files/20/marihandoutnoshade.pdf>.

You should closely review permits and related documentation to ensure that government is giving access to information to the full extent required by the state's open records laws.

Rule 323.2127 governs "public access to NPDES forms and department files and records" and states:

A copy of a state or national permit application, public notice, fact sheet, draft permit, and other NPDES forms relating thereto, including written public comment thereon, and other reports, files, and information relating to the application not classified as confidential information by the department pursuant to R 323.2128 shall be available for public inspection and copying during normal business hours at the department office in Lansing and an appropriate district office of the department in the geographical area of the applicant. Document inspection and copying procedures shall be according to R 323.1015.⁴⁸

Wetlands

Wetlands are a prominent feature of Michigan's landscape. Historically, the state was practically covered with them and they composed about 17 percent of the state's total land area. Wetlands play a valuable role in local ecosystems including wildlife habitat, water filtration, flood control, bird migration, and water regeneration. However, the extent of wetlands in Michigan did not provide for agriculture and development so almost 75% of the wetlands in the state have been drained. Michigan utilizes an extensive tile system to promote agriculture but the tile system also serves as a conduit for pollution to easily enter the state's surface and groundwater and contributes to the reduction of the state's wetlands. Now, when a proposed project or development will impact wetlands, the applicant must obtain a permit.

Wetland impacts, depending on the project details of a new or expanding CAFO, may provide another opportunity to review, comment on, and potentially decrease the environmental impacts of large-scale agriculture operations. Wetland mapping tools may help you determine whether an operation has the potential to impact wetlands resources. You can figure out if the operation is on or near a wetland using

⁴⁸ MICH. ADMIN. CODE r. § 323.2127, available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2127>.

online mapping tools available through the U.S. Fish & Wildlife Service [wetland mapper](#) website.⁴⁹ The Environmental Law Institute published a [2008 state wetlands profile](#) for Michigan,⁵⁰ which helps explain Michigan's approach to regulating wetlands.

EGLE has "primacy" of wetland regulation in the state, meaning it implements a permit system in the state on behalf of the federal government, i.e., U.S. Army Corps of Engineers, under the oversight of U.S. EPA. The draining, dredging, filling or construction in wetland requires a permit from EGLE under the Part 303 program. Wetlands over 5 acres in size in Michigan counties with a population of 100,000 or more persons, or within 500 feet of state-regulated waterways or water bodies are considered state-regulated. Man-made wetlands, such as from highway construction, whether intentional or accidental become jurisdictional after the passage of 5 years. Wetlands under active agriculture if left fallow and revert back to wetland conditions also become jurisdictional after the passage of 5 years. Wetlands within 1,000 feet of the Great Lakes or their connecting waterways are both state and federally-regulated, requiring a joint permit for regulated activities from both the EGLE and U.S. ACE. Each agency must approve of proposed permit activities within jointly regulated wetlands, i.e., each essentially possesses veto power over one another in permit reviews. To obtain a EGLE permit, applicants must show that they have performed a detailed alternatives analysis demonstrating: 1) wetland impact has been maximally avoided; 2) unavoidable wetland impact has been maximally minimized; and 3) the activities proposed are the least impacting to wetlands based on an adequate consideration of all the alternatives—including "no action." Permittees are only required to mitigate or replace wetland impact for permitted projects that result in impact of 1/3 of an acre or more of wetland.

Project types that may need a wetland permit or permits are discussed in detail on the EGLE wetlands permit website, which also lists regional wetlands contacts.⁵¹ Note that Michigan is a somewhat unique state in that it has the primary authority—along with the U.S. Army Corps of Engineers—to issue wetlands fill permits under the Clean

⁴⁹ U.S. Fish & Wildlife Service National Wetlands Inventory, Wetlands Mapper, <http://www.fws.gov/wetlands/Data/Mapper.html>.

⁵⁰ Environmental Law Institute, State Wetland Protection at Appendix: State Profiles Michigan https://www.eli.org/sites/default/files/docs/core_states/Michigan.pdf.

⁵¹ EGLE Wetland Permits, http://www.michigan.gov/deq/0,4561,7-135-3313_3687-10813--,00.html.

Water Act § 404 permit program.⁵² Many other states require permittees to request separate state- and federal-level permits for projects that require filling of wetlands.

The most pertinent state legal authority for wetlands regulation is Part 303 of the Michigan Natural Resources and Environmental Protection Act. The statute defines the following types of wetlands regulated under Part 303:

"Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, and which is any of the following:

- I. Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
- II. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size.
- III. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the department determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner.⁵³

If you're concerned about potential wetlands impacts from a Michigan CAFO, review Part 303 and be aware that federal and state wetlands laws continue to evolve based on legal challenges.⁵⁴ This evolution includes a 2013 Public Act that clarified

⁵² See, e.g., Environmental Law Institute, State Wetland Protection, https://www.eli.org/sites/default/files/docs/core_states/Michigan.pdf; DEQ, Introduction to Michigan's Wetland Program, <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/Wetlands/Introduction-to-Michigans-Section-404-Wetland-Program.pdf?rev=a1ad3d8e01bc42a680a0ed2bf47ff8c9>.

⁵³ MICH. COMP. LAWS § 324.30301(1)(m), available at [https://www.legislature.mi.gov/\(S\(2eluttdxm3n2bv3zd3xlbphz\)\)/mileg.aspx?page=getObject&objectName=mcl-324-30301](https://www.legislature.mi.gov/(S(2eluttdxm3n2bv3zd3xlbphz))/mileg.aspx?page=getObject&objectName=mcl-324-30301); as modified by Mich. Pub. Act 98 of 2013 at <https://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2013-PA-0098.pdf>.

⁵⁴ See, e.g., Sharon Newlon, *The Past, Present, and Future of Wetlands Permitting in Michigan*, Michigan Bar Journal, <https://www.michbar.org/file/journal/pdf/pdf4article2390.pdf>.

definitions and made other updates to Part 303.⁵⁵ Under Part 303, the state is required to inventory wetlands and otherwise assist people with questions about whether or not particular wetlands are regulated.⁵⁶

The general EGLE Wetlands Protection website⁵⁷ contains a wide array of information, including links to applicable laws and rules, public notice announcements, and discussion of uniquely regulated wetlands along the Great Lakes shoreline.⁵⁸

Groundwater

Michigan CAFOs with more than 5,000 animal units must obtain a groundwater permit.⁵⁹ The EGLE CAFO website links to several useful resources regarding groundwater permit requirements, including a CAFO Groundwater Permit Fact Sheet.⁶⁰ An animal unit equivalent table within that fact sheet shows whether a livestock operation of concern may be large enough to require a groundwater permit; for example, 275,000 turkeys and 12,500 hogs both are equivalent to 5,000 animal units.⁶¹ The fact sheet also highlights some of the more important permit requirements an operator must comply with, including quarterly sampling of monitoring wells and minimum engineering requirements for waste storage structures.⁶²

EGLE's MiEnviro Portal has information on operations, including large CAFOs, that have received a groundwater permit.⁶³ You may find that only a small number of

⁵⁵ Mich. Pub. Act 98 of 2013 at <https://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2013-PA-0098.pdf>.

⁵⁶ See, e.g., Mich. Comp. Laws § 324.30321, available at [https://www.legislature.mi.gov/\(S\(2eluttdxm3n2bv3zd3xlbphz\)\)/mileg.aspx?page=getObject&objectName=mcl-324-30321](https://www.legislature.mi.gov/(S(2eluttdxm3n2bv3zd3xlbphz))/mileg.aspx?page=getObject&objectName=mcl-324-30321); as modified by Mich. Pub. Act 98 of 2013 at <https://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2013-PA-0098.pdf>; see also Section EGLE, Water Quality and Pollution Control in Michigan 2022 Integrated Report, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/SWAS/2022-Integrated-Report.pdf?rev=0a6b006c0cc44bcd936c75d5608659ed&hash=03A5B2B0F3379B07D369F289BA32C483>.

⁵⁷ EGLE, Wetlands Protection, http://www.michigan.gov/deq/0,4561,7-135-3313_3687---,00.html.

⁵⁸ See *id.*

⁵⁹ See MICH. ADMIN. CODE r. § 323.2210(f) at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2210>.

⁶⁰ EGLE, Part 22 Rule Compliance Guidance for Concentrated Animal Feeding Operations (CAFOs) (Not Pertaining to Poultry Operations), <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/CAFO/Guidance-Part22.pdf>.

⁶¹ See *id.*

⁶² See *id.*

⁶³ EGLE MiEnviro Portal, Site Map Explorer, <https://mienviro.michigan.gov/ncore/external/home>

CAFOs have such a permit, but it's still important to monitor CAFOs and to report to EGLE if a large operation is improperly operating without permit coverage.

Find EGLE contact information, FAQ documents, training materials and other information on its [Groundwater Discharge Program website](#).⁶⁴

Wells

If you're curious about the proximity of a facility to nearby wells, use [EGLE's Water Well Log Retrieval System](#), which shows well records for all Michigan townships.⁶⁵

Water Quantity

Michigan CAFOs, depending on water use, may need to comply with water-use regulations in addition to surface water pollution requirements. Water quantity reporting and permitting provide another opportunity to direct questions and violations to state authorities.

- Agricultural water withdrawals over 100,000 gallons per day (gpd) must be reported to MDA.⁶⁶
- All other withdrawals over 100,000 gpd must be reported to EGLE.⁶⁷
- Withdrawals over 2,000,000 gpd must be permitted by EGLE.⁶⁸
- "Any proposed new or increased volume large capacity pumps must also consult the Michigan Water Withdrawal Assessment Tool (WWAT) prior to installation and subsequent reporting."⁶⁹

⁶⁴ EGLE, Groundwater Discharge, <https://www.michigan.gov/egle/about/organization/Water-Resources/groundwater-discharge>.

⁶⁵ EGLE, Wellogic System, <https://www.egle.state.mi.us/wellogic/Login.aspx?ReturnUrl=%2fwellogic%2fdefault.aspx>.

⁶⁶ Michigan Department of Agriculture & Rural Development, Michigan's Water Use Reporting, <https://www.michigan.gov/mdard/environment/maeap/maeap-technical-assistance/wateruse>.

⁶⁷ See *id.*

⁶⁸ See MICH. COMP. LAWS § 324.32723 (1), available at [http://www.legislature.mi.gov/\(S\(vgba2svimiddgirlezz4kr55\)\)/documents/mcl/pdf/mcl-451-1994-III-1-THE-GREAT-LAKES-327.pdf](http://www.legislature.mi.gov/(S(vgba2svimiddgirlezz4kr55))/documents/mcl/pdf/mcl-451-1994-III-1-THE-GREAT-LAKES-327.pdf).

⁶⁹ Michigan Department of Agriculture & Rural Development, Michigan's Water Use Reporting Program, <https://www.michigan.gov/mdard/environment/maeap/maeap-technical-assistance/wateruse>.

MDA Environmental Stewardship Division staff can answer questions about CAFO water use.⁷⁰ It may also be helpful to consult the EGLE [water use data](#) available by county and by sector.⁷¹

No clear citizen lawsuit remedy exists for violation of water quantity regulations and/or permits, but you should refer pertinent data to the state with a note that EGLE can ask the state attorney general to initiate corrective action.⁷²

Water Quality

Impaired Water Bodies

Broadly speaking, one intended purpose of the federal Clean Water Act is to keep clean waters clean and to improve the quality of polluted—also known as impaired—waters. Both the U.S. EPA and EGLE have databases for the interested public to determine whether a specific water body is impaired, and if so, the likely source of impairment.⁷³

An EGLE Water Division website acknowledges that water pollution permits must incorporate consideration of the receiving water(s), which are the water bodies where pollution is discharged from a facility such as a CAFO.

The State of Michigan's Part 4 Rules (of Part 31, Water Resources Protection, of Act 451 of 1994) specify water quality standards which shall be met in all waters of the state. The rules require that all designated uses of the receiving water be protected. Designated uses include: agriculture, navigation, industrial water supply, public water supply at the point of water intake, warm water or cold water fish and other indigenous aquatic life and

⁷⁰ Michigan Department of Agriculture & Rural Development, Michigan's Water Use Reporting Program, <https://www.michigan.gov/mdard/environment/maeap/maeap-technical-assistance/wateruse>.

⁷¹ EGLE, Michigan Water Use Data, http://www.michigan.gov/deq/0,4561,7-135-3313_3684_45331-370128-_-00.html.

⁷² See MICH. COMP. LAWS § 324.32713, available at [http://www.legislature.mi.gov/\(S\(vgba2svimiddgirlezz4kr55\)\)/documents/mcl/pdf/mcl-451-1994-III-1-THE-GREAT-LAKES-327.pdf](http://www.legislature.mi.gov/(S(vgba2svimiddgirlezz4kr55))/documents/mcl/pdf/mcl-451-1994-III-1-THE-GREAT-LAKES-327.pdf).

⁷³ See, e.g., EGLE Water Resources Division, Water Quality and Pollution Control in Michigan, 2014 Sections 303(d), 305(b) and 214 Integrated Report, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/SWAS/2022-Integrated-Report.pdf?rev=0a6b006c0cc44bcd936c75d5608659ed&hash=03A5B2B0F3379B07D369F289BA32C483>.

wildlife, partial body contact recreation, and total body contact recreation from May 1 to October 31.⁷⁴

EGLE opens a public comment period for draft reports that detail water quality, impairment, and designated uses.⁷⁵ Residents are encouraged to collaborate with other individuals and organizations to understand the strengths and weaknesses of proposed impaired waters lists from EGLE.

Considerations for CAFOs with discharge permits

The quality of the water into which a CAFO, or any permitted facility, discharges is important because the Clean Water Act requires water pollution permits to include limits that incorporate and protect water quality standards.⁷⁶ These considerations are complex, so if you're reviewing a water pollution permit and have specific concerns about water quality standards, contact scientific experts for assistance. Consider seeking advice from state organizations listed toward the end of this guide for information about technical experts and other assistance.

Considerations for other livestock operations

If you're tracking a new or expanding large-scale livestock operation, determine whether the operation is or would be in a watershed with projects that are funded by the U.S. EPA in order to address nonpoint pollution like runoff from agricultural fields.

Like most states, Michigan receives federal funding "to restore waters impaired by nonpoint source pollution and protect high quality waters from degradation. This funding source provides for the implementation of physical improvements as well as information/education strategies, land use planning, the installation of easements and related activities."⁷⁷ This federal assistance, called Clean Water Act Section 319 funding, encourages states to utilize a watershed-level approach reflecting the reality that a watershed's health is dependent upon practices of all local industries, whether a large-scale farm or a power plant. Section 319 funding goes toward

⁷⁴ EGLE, Water Quality Parameters, http://www.michigan.gov/deq/0,4561,7-135-3313_71618_3682_3713-10416--,00.html.

⁷⁵ See, e.g., Public Comment Draft 2022 Integrated Report: Chapter 3 Assessment Methodology, <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/SWAS/2022IR-draftAM.pdf?rev=a327be1c7da641fd86ce31c64f4a3f19>.

⁷⁶ See 33 U.S.C. §§ 1311(a), 1342(a) (West 2016); see also 40 C.F.R. § 131.10(b) (West 2015).

⁷⁷ EGLE, Nonpoint Source Pollution Control Grants – Federal Clean Water Act Section 319, http://www.michigan.gov/deq/0,4561,7-135-3307_3515-314500--,00.html.

nonpoint source pollution-related projects, many of which are detailed on an EGLE website.⁷⁸

The presence of agricultural and other nonpoint source pollution is a significant factor in defining funded projects and watersheds. As such, you should argue that it's an inefficient use of taxpayer dollars to allow unregulated water pollution from CAFOs particularly in these priority areas of Michigan. An important component of the Section 319 program is the requirement to report to the state on project results and related information, which EGLE then makes available to the public.⁷⁹ This data can be important for Michigan residents seeking to learn more about the extent and impact of nonpoint source pollution in the state.

CAFO Construction

Land disturbance and runoff from significant construction operations can be visually disconcerting and raise questions about environmental impacts. The interested public should be aware, as a starting point, that Michigan requires a construction permit "for any earth change activity which disturbs one or more acres of land or which is within 500 feet of a lake or stream."⁸⁰ EGLE cautions, however, that even projects that disturb less than an acre of land may have to comply with local ordinance(s).⁸¹ While Michigan counties are the primary permitting authority, EGLE retains oversight and permit review capacity.⁸²

The EGLE Soil Erosion and Construction Storm Water website is a useful initial resource with permitting and staff contact information to answer questions about the permitting scheme below.⁸³ (Note that the scheme is described broadly, with

⁷⁸ EGLE, Nonpoint Source Project Fact Sheets, http://www.michigan.gov/deq/0,4561,7-135-3313_71618_3682_3714-101788--,00.html.

⁷⁹ See *id.*, see also EGLE Water Resources Division, Michigan's Nonpoint Source Program Plan, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/NPS/General/program-plan-2019.pdf?rev=2e944aa1dbc9419dbe922204e2222980&hash=277EE091EC9EF14CIEAF92BB80835AE8>.

⁸⁰ EGLE, Soil Erosion and Construction Storm Water, http://www.michigan.gov/deq/0,1607,7-135-3311_4113---,00.html.

⁸¹ EGLE, Permits: Within 500 feet of a Lake or Stream and/or <1 acre of disturbance, http://www.michigan.gov/deq/0,4561,7-135-3311_4113-365526--,00.html.

⁸² EGLE, Part 91, Soil Erosion and Sedimentation Control, <https://www.michigan.gov/egle/about/organization/water-resources/soil-erosion/sesc-overview>.

⁸³ EGLE, Soil Erosion and Construction Storm Water, http://www.michigan.gov/deq/0,1607,7-135-3311_4113---,00.html.

citations to refer readers to more detailed statutes and regulations that discuss permit exemptions and other important program components.)

- Permits: Within 500 feet of a Lake or Stream⁸⁴
 - Must comply with a permit even if less than an acre.
 - Follow 1–5 acre permitting scheme unless disturbance is more than 5 acres.
- Permits: Greater than 1 Acre but Less than 5 Acres of Disturbance⁸⁵
 - “For sites disturbing one to five acres, the applicant/permittee receives automatic storm water coverage upon the applicant obtaining a Part 91 permit (or undertaking the project as an APA). Although the coverage is automatic, the permittee must comply with the requirements of Permit by Rule.”⁸⁶
 - Weekly inspections by a certified storm water operator are required, as are inspections within 24 hours of a discharge-producing rain event; permittees must submit certain records to EGLE and these records are typically available for public review.⁸⁷
 - EGLE has access to construction site to inspect potential water pollution.⁸⁸
 - Remedy for non-compliance: “The county or local enforcing agency may issue a cease and desist order or revoke a permit upon its finding that there is a violation of Part 91, these rules, or an approved local ordinance or a finding that there is a violation of a permit or an approved soil erosion and sedimentation control plan.”⁸⁹ Violations and other penalties are also potential remedies.

⁸⁴ EGLE, Permits: Within 500 feet of a Lake or Stream and/or <1 acre of disturbance, http://www.michigan.gov/deq/0,4561,7-135-3311_4113-365526--,00.html.

⁸⁵ EGLE, Permits: Greater than 1 Acre but Less than 5 Acres of Disturbance, http://www.michigan.gov/deq/0,4561,7-135-3311_4113-365524--,00.html.

⁸⁶ EGLE Construction Storm Water Program, http://www.michigan.gov/deq/0,4561,7-135-3311_4113-276617--,00.html.

⁸⁷ MICH. ADMIN. CODE r. § 323.2190(2)(i), available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2190>.

⁸⁸ MICH. ADMIN. CODE r. § 323.2190(2)(h), available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2190>.

⁸⁹ MICH. ADMIN. CODE r. § 323.1712, available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-432-1712>; also see MICH. COMP. LAWS §§ 324.9107, 324.113, 324.9121 at <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-451-1994-II-2-SOIL-CONSERVATION-EROSION-AND-SEDIMENTATION-CONTROL-91.pdf>.

- Permits: Greater than 5 Acres of Disturbance⁹⁰
 - “For sites disturbing five or more acres, the applicant/permittee must obtain a Part 91 permit (or undertake the project as an APA) and submit an application for Notice of Coverage (NOC) to the DEQ WRD. Along with the NOC application, the applicant/permittee must submit a copy of the SESC permit, approved SESC plan, site location map, and the \$400 permit fee.”⁹¹
 - Similar remedies for permit violations as those available pursuant to permit for between 1 and 5 acres.

You should also obtain and review the permit for a CAFO of concern for any construction-related provisions, including those relating to waste storage structures. For example, the General CAFO Permit No. MI0010000⁹² contains the following construction requirements:

- Part I, Section (B)(1)(b): CAFO Waste Storage Structures Physical Design & Construction Requirements; and
- Part I, Section (C)(2): Construction of New Waste Storage Facilities⁹³

Proper CAFO construction practices are important when an operation is initially proposed, but as these permit provisions indicate, there’s a need for community monitoring of new structure construction and other operation updates.

Threatened or Endangered Species

Another thing to consider when a CAFO is proposed or expanding is whether it may impact local threatened or endangered species or if it impairs critical habitat. Individuals can identify which species or habitat a project may impact by utilizing the Fish & Wildlife Service Information for Planning and Consultation website.⁹⁴ Michigan State Extension’s Natural Features Inventory Program maintains lists of all

⁹⁰ EGLE, Greater than 5 Acres of Disturbance, http://www.michigan.gov/deq/0,4561,7-135-3311_4113-365525--00.html.

⁹¹ EGLE Construction Storm Water Program, http://www.michigan.gov/deq/0,4561,7-135-3311_4113-276617--00.html.

⁹² EGLE, Permit No. MIG010000, http://www.michigan.gov/documents/deq/wrd-npdes-cafo-GP_2015_488595_7.pdf.

⁹³ See *id.*

⁹⁴ U.S. Fish & Wildlife Service, Information for Planning and Consultation, <https://ecos.fws.gov/ipac/>.

endangered, threatened, and special concern plant, animal, birds, and insect species, and rare landforms and natural features.

CAFO Inspections

According to a 2004 report from EPA Region 5, Michigan has had “a program for periodic, proactive inspection of CAFOs [since] . . . 2002.” The same report indicated that the state aims to investigate CAFOs once every five years, and also indicated that state investigations often focus on accuracy of animal unit counts and any potential for water pollution discharges.⁹⁵ It is important to note that statistics in that report have likely changed along with state regulatory updates and other efforts that have occurred since 2004.

Searching on the EGLE website for publicly available state monitoring and inspection information can save you the time and expense of submitting open records requests. One source of such information is the MiWaters website, the use of which is detailed in the Enforcement section below. Note that Michigan’s NPDES program rules grant you the right to review files in-person for inspection and other data.⁹⁶

The type and extent of data that the state collects from CAFOs is in large part determined by language in an operations permit(s). For example, Michigan’s General CAFO Permit, Part II(D)(7)–(9) outlines the state’s right of entry into a CAFO, the availability of CAFO reports for public inspection, and a CAFO’s duty to provide information requested by EGLE.⁹⁷ The General Permit language that is most pertinent for public access purposes is as follows:

8. Availability of Reports

Except for data determined to be confidential under Section 308 of the Federal Act and Rule 2128 (R 323.2128 of the Michigan Administrative Code), all reports prepared in accordance with the terms of this permit, shall be available for public inspection at the offices of the Department and the Regional Administrator. As required by the Federal Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as

⁹⁵ U.S. Environmental Protection Agency, Michigan CAFO/AFO Program Summary, <https://www3.epa.gov/npdes/pubs/statecom.pdf>.

⁹⁶ See, e.g., MICH. ADMIN. CODE R. § 323.2127.

⁹⁷ EGLE, CAFO General permit, http://www.michigan.gov/documents/deq/wrd-npdes-cafo-GP_2015_488595_7.pdf.

provided for in Section 309 of the Federal Act and Sections 3112, 3115, 4106 and 4110 of the NREPA.

Learn about the type of inspection records and related information that a CAFO permit file should contain, on the “Forms” Section of EGLE’s CAFO website.⁹⁸

AIR POLLUTION

As is the case in many states, air pollution statutes and regulations in Michigan are not structured to address air quality impacts from large-scale agricultural operations. The inapplicability of air pollution laws and regulations to CAFOs is understandably concerning for those who are impacted by odors, air pollution, and related nuisance from large-scale agriculture operations.

To help address the limited air quality oversight of livestock operations, consider analyzing whether a particular operation is reliant upon a manure processing plant or similar facility that accepts waste from a CAFO and may be subject to Michigan’s air pollution statutes and regulations. Media and public opinion also serve as powerful tools to address odor and other air quality impacts from CAFOs.

Note that large releases of certain hazardous substances such as ammonia and hydrogen sulfide trigger the need to control emissions and report data to the state and/or federal government.⁹⁹ The threshold for reporting is high and inapplicable for most livestock operations but may prove useful in limited circumstances, particularly for operations with egregious, irresponsible practices.

For example, if a facility emits more than 100 pounds of ammonia and hydrogen sulfide—pollutants that are commonly emitted from livestock operations—in a 24-hour period, the facility must comply with certain federal reporting regulations.¹⁰⁰ For

⁹⁸ EGLE, Concentrated Animal Feeding Operation, http://www.michigan.gov/deq/0,4561,7-135-3313_71618_3682_3713-96774--,00.html.

⁹⁹ EGLE, Concentrated Animal Feeding Operations, <https://www.michigan.gov/egle/about/organization/water-resources/cafo>; see also Michigan State University Extension, Update on air emissions reporting for CAFOs under EPCRA, https://www.canr.msu.edu/news/resources_for_livestock_farms_regarding_epa_air_emissions_reporting_require.

¹⁰⁰ Michigan State University Extension, Update on air emissions reporting for CAFOs under EPCRA, https://www.canr.msu.edu/news/resources_for_livestock_farms_regarding_epa_air_emissions_reporting_require.

other pollutant thresholds that apply under the federal Clean Air Act, refer to the federal supplement to this guide.¹⁰¹ You should also analyze the compliance of industries like manure processing with hazardous substances emissions limits.

EGLE has a user-friendly summary of reporting requirements and air quality impacts from large-scale agriculture.¹⁰² The Pollution Emergency Alerting System (PEAS) referenced in this guide is listed by EGLE as a resource for reporting certain air emissions from CAFOs:

- Pollution Emergency Alerting System (PEAS) hotline: 800-292-4706.

MICHIGAN ENVIRONMENTAL PROTECTION ACT¹⁰³

The Michigan Environmental Protection Act¹⁰⁴ holds that if a plaintiff makes a *prima facie*¹⁰⁵ showing that the defendant's conduct "has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust in these resources," the defendant must either: 1) rebut the plaintiff's proofs by providing contrary evidence, or 2) make an affirmative defense "that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction."

Community members, advocacy organizations, agencies, and grassroots groups have used MEPA in Michigan to intervene in and/or bring lawsuits, and to overcome the legal hurdle of standing to sue in environmental cases. Specifically, MEPA grants standing to sue to any person to bring an action against any other person for the protection of the environment.¹⁰⁶

A Plaintiff's Prima Facie Showing

¹⁰¹ See also Environmental Integrity Project, *Raising a Stink: Air Emissions from Factory Farms*, http://environmentalintegrity.org/pdf/publications/CAFOAirEmissions_white_paper.pdf.

¹⁰² EGLE, Spill and Release Reporting, <https://www.michigan.gov/egle/regulatory-assistance/emergency-planning-and-community-right-to-know/spill-release-reporting>.

¹⁰³ Adapted from the State Bar of Michigan, Environmental Law Section, Chapter 14, Michigan Environmental Protection Act, Jeffery K. Haynes.

¹⁰⁴ MCL 324.1703(1).

¹⁰⁵ A prima facie showing is relatively low legal standard of evidence that means "sufficient to establish a fact or raise a presumption unless disproved or rebutted."

¹⁰⁶ MCL 324.1701(1).

The Michigan Supreme Court has described a plaintiff's *prima facie* showing of pollution, impairment, or destruction as not being restricted to actual environmental degradation but also preventing probable, reasonably expected, or likely environmental degradation.¹⁰⁷ The term impairment under MEPA has been interpreted by the Michigan courts to mean the violation of regulatory standards for air, soil, surface water, groundwater, or wetland impact, and more generally to prevent any activity that may "affect (the environment) in an injurious manner."¹⁰⁸

Duties of MEPA Defendants

A MEPA defendant may rebut the plaintiff's *prima facie* showing reasonable certainty of a lack of pollution, impairment, or environmental destruction by submitting evidence to the contrary, consisting of expert testimony, environmental data, and/or scientific studies.¹⁰⁹ MEPA does not require a defendant to rebut plaintiff's *prima facie* showing if the defendant establishes an affirmative defense that no feasible and prudent alternative exists to the proposed action or past activity likely resulting in pollution, impairment or destruction, and that defendant's conduct "is consistent with the promotion of public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources..."¹¹⁰ In practice, MEPA's threshold of defense may be a high standard indeed.

¹⁰⁷ *City of Jackson v. Thompson-McCully Co, LLC*, 239 Mich App 482, 490; 608 NW2d 531 (2000); *West Michigan Environmental Action Council, Inc v. Natural Resources Comm'n*, 405 Mich 741, 760; 275 NW2d 538 (1979); *Michigan United Conservation Clubs v. Anthony*, 90 Mich App 99, 109; 280 NW2d 883 (1979); and *Ray v. Mason County Drain Commissioner*, 393 Mich 294, 309; 224 NW2d 883 (1975).

¹⁰⁸ *Michigan Citizens for Water Conservation v. Nestlé Waters North America, Inc*, 269 Mich App 25, 97; 709 NW2d 174 (2005) and 479 Mich 280, 291; 737 NW2d 447 (2007).

Michigan United Conservation Clubs v. Anthony, 90 Mich App 99, 105-106; 280 NW2d 883 (1979).

¹⁰⁹ MCL 324.1703(1);

[http://www.legislature.mi.gov/\(S\(isulld3sobxynmhlhe0pmcp\)\)/mileg.aspx?page=GetObject&objectname=mcl-324-1703](http://www.legislature.mi.gov/(S(isulld3sobxynmhlhe0pmcp))/mileg.aspx?page=GetObject&objectname=mcl-324-1703). Also see *Ray v. Mason County Drain Commissioner*, 393 Mich 294, 311-312; 224 NW2d 883 (1975).

https://scholar.google.com/scholar_case?case=9240070655644101952&q=393+mich+294&hl=en&as_sdt=2006.

¹¹⁰ MCL 324.1703(1); MCLA 691.1203

[http://www.legislature.mi.gov/\(S\(nxjeuwxgaiha4ij3qascblqy\)\)/mileg.aspx?page=GetObject&objectname=mcl-324-1703](http://www.legislature.mi.gov/(S(nxjeuwxgaiha4ij3qascblqy))/mileg.aspx?page=GetObject&objectname=mcl-324-1703); MSA 14.528(203); and *Ray v. Mason County Drain Commissioner*, 393 Mich 294, 311-312; 224 NW2d 883 (1975).

https://scholar.google.com/scholar_case?case=9240070655644101952&q=393+mich+294&hl=en&as_sdt=2006.

A "feasible" alternative has been determined by Michigan courts as an alternative able to be fully and successfully put into effect.¹¹¹ A "prudent" alternative is one that is capable of being undertaken considering economic cost. To be consistent with the public health, safety, and welfare, a defendant's conduct may not exacerbate or make worse existing environmental pollution or harm.¹¹²

The Court's Authority in MEPA Decisions

MEPA is considered ever-present and must be considered as a supplement to all other Michigan environmental law. In MEPA actions brought before the court, judges must make detailed findings of fact, and are not compelled to pay deference to state agencies' findings in permit decisions, the determination of the likelihood of environmental harm, or resolution of environmental disputes.¹¹³ Courts in MEPA decisions may undertake *de novo* review of the dispute, i.e., a new review from the beginning, and may designate a special master(s) to guide the court through the consideration of complex technical environmental matters.¹¹⁴ Courts in MEPA cases may provide injunctive relief¹¹⁵ (i.e., compelling a defendant to prevent pollution, impairment, or destruction and/or to remediate or cleanup past environmental harm), and/or declaratory relief, i.e., a court's determination of the liability of each of the parties in the dispute. The court may establish its own environmental standard(s)—essentially overruling state standards and agencies.¹¹⁶

¹¹¹ Wayne Cty Dep't of Health v. Olsonite Corp, 79 Mich App 668, 702; 263 NW2d 778 (1977)
https://scholar.google.com/scholar_case?case=1370874049195982857&q=79+mich+app+668&hl=en&as_sdt=2006.

¹¹² Dwyer v. City of Ann Arbor, 79 Mich App 113, 125; 261 NW2d 231 (1977)
https://scholar.google.com/scholar_case?case=933085241231751125&q=79+mich+app+113&hl=en&as_sdt=2006, rev'd on other grounds 402 Mich 915; 387 NW2d 926 (1978).

¹¹³ West Michigan Environmental Action Council v. Natural Resources Comm'n, 405 Mich 741, 752-754; 275 NW2d 538 (1979)
https://scholar.google.com/scholar_case?case=3727794087777450026&q=405+mich+741&hl=en&as_sdt=2006; and Nemeth v. Abonmarche Dev, Inc, 457 Mich 16, 34; 576 NW2d 641 (1998).
https://scholar.google.com/scholar_case?case=1108238039541734839&q=457+mich+16&hl=en&as_sdt=2006.

¹¹⁴ MCL 324.1703(2).

¹¹⁵ MCL 691.1204(1).

¹¹⁶ MCL 324.1701(2) authorizes a trial court to "determine the validity, applicability and reasonableness" of any environmental regulatory standard. If the court "finds a standard to be deficient, direct the adoption of a standard approved and specified by the court."
[http://www.legislature.mi.gov/\(S\(tfauoczoc4kjrdsflvbtqj\)\)/mileg.aspx?page=GetObject&objectname=mcl-324-1701](http://www.legislature.mi.gov/(S(tfauoczoc4kjrdsflvbtqj))/mileg.aspx?page=GetObject&objectname=mcl-324-1701).

Finally, MEPA provides that “costs may be apportioned to the parties if the interests of justice require.”¹¹⁷ Importantly, Michigan courts have determined that under MEPA “costs” do not include attorney fees.¹¹⁸

ZONING

The balance of state and local power is complex in all states. Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in a community. It is crucial to know who your local elected officials are and to establish a working relationship with them to facilitate a more efficient exchange of information and knowledge.

Local governments in Michigan are clearly prevented from certain types of regulation. For example, “township and county governments are not authorized to establish additional requirements on manure management.”¹¹⁹ In other arenas, such as wetlands protection, local governments are given more clear authority to enact certain regulations.¹²⁰ Legal consultation and/or review of more resources beyond this guide will be necessary if a local official or individual wants to understand the extent to which a particular community can locally regulate the impacts of agricultural operations.

One such resource is a *Handbook for Local Governments* published by Michigan State University Extension.¹²¹ Many of the laws and other guidance below are taken from that handbook, which acknowledges that careful local planning is a necessary

¹¹⁷ MCL 324.1703(3).

[http://www.legislature.mi.gov/\(S\(p42e3ygmlk4q2nknw3pmeezl\)\)/mileg.aspx?page=GetObject&objectname=mcl-324-1703](http://www.legislature.mi.gov/(S(p42e3ygmlk4q2nknw3pmeezl))/mileg.aspx?page=GetObject&objectname=mcl-324-1703).

¹¹⁸ *Nemeth v. Abonmarche Development, Inc.*, 457 Mich 16, 37–43; 576 NW2d 641 (1998).

https://scholar.google.com/scholar_case?case=1108238039541734839&q=457+mich+16&hl=en&as_sdt=2006.

¹¹⁹ Michigan State University Extension, Michigan regulations for manure, and contaminated wash and storm water on livestock farms,

http://msue.anr.msu.edu/news/michigan_regulations_for_manure_and_contaminated_wash_and_storm_water_on_li.

¹²⁰ See, e.g., EGLE, Local Wetland Regulations, http://www.michigan.gov/deq/0,4561,7-135-3313_3687-24312--,00.html.

¹²¹ Michigan State University Extension, Planning and Zoning for Animal Agriculture in Michigan: a Handbook for Local Governments, <http://lu.msue.msu.edu/pamphlet/AgrHandBook/PlnZanimalAg00Handbook.pdf>.

response to potential community division that large-scale agricultural operations can cause.¹²²

As a starting point, local governments in Michigan have broad authority to regulate under their police powers:

Local governments regulate the use and development of land under the police power . . . Stated simply, the police power is the right and duty to regulate private activity for the protection of the public health, safety and welfare . . . Courts in Michigan have broadly construed the concept of police power to uphold local zoning and land use controls.¹²³

With this broad police power as a starting point, the next question is whether any state or federal laws preempt certain local regulatory action:

When a higher level of government, such as the state, has, within its constitutional and statutory authority, regulated a matter, it is said that the higher government level preempts lower levels of government from regulating the same matter.¹²⁴

The state-level Generally Accepted Agricultural and Management Practices (GAAMPs) are one likely preemptive limitation upon local government ability to address the more common impacts of large-scale agriculture.¹²⁵ GAAMPs, which are discussed more extensively in the Right to Farm section below, exist in the following categories: (1) Manure Management/Utilization; (2) Site Selection; (3) Care of Farm Animals; (4) Nutrient Utilization; (5) Irrigation Water Use; (6) Pesticide Utilization/Pest Control; (7) Cranberry Production; and (8) Farm Markets.¹²⁶

Local regulation within these categories will likely be preempted unless a local government requests approval from MDA in accordance with procedures outlined in state law at Mich. Comp. Laws § 286.474(7). This process involves consultation with

¹²² See *id.* at Foreword, page iv.

¹²³ See *id.* at page 3-2, citing *Patchak v. Township of Lansing*, 361 Mich. 489, 105 N.W.2d 406 (1960).

¹²⁴ See *id.* at page 3-10.

¹²⁵ See *id.* starting at page 3-17.

¹²⁶ Michigan Department of Agriculture and Rural Development, Michigan Right to Farm Information, http://www.michigan.gov/mdard/0,4610,7-125-1599_1605---,00.html.

EGLE as well as state and local health departments.¹²⁷ The Michigan Attorney General has written an opinion asserting that the state's right to farm law preempts local ordinances that regulate farming activities and practices already addressed by the state—including GAAMPS.¹²⁸

Because Michigan state laws leave a small amount of room for some local control of CAFOs, always compare proposed local ordinances or other efforts against any conflicting requirements in state law. Since there are numerous counties and branches of local government in Michigan, this guide does not provide specific zoning regulations for each local governing body.

In sum, local government decision-making is crucial, particularly for issues concerning the protection of local public health and safety, which are traditional areas of local control. Learn more about local governments in Michigan using the following resources:

- **Counties:**
 - [Michigan Association of Counties](#)¹²⁹
- **Townships:**
 - [Find a Township](#)¹³⁰
- [Alphabetical list of City, Village and Township websites](#)¹³¹
- [Michigan Municipal League](#)¹³²

PERMITTING & PUBLIC PARTICIPATION

The sections below describe permit-specific opportunities for public review, comment, and hearings, but you should also review [EGLE's Public Involvement](#)

¹²⁷ Mich. Comp. Laws § 286.474(7), available at [http://www.legislature.mi.gov/\(S\(urewa5ctbesqyjisp4wzqw5v\)\)/mileg.aspx?page=getObject&objectName=mcl-286-474](http://www.legislature.mi.gov/(S(urewa5ctbesqyjisp4wzqw5v))/mileg.aspx?page=getObject&objectName=mcl-286-474).

¹²⁸ State of Michigan Attorney General Bill Schuette Opinion No. 7302, Right to Farm Act: Preemption of local ordinances concerning farming activities (March 28, 2018).

¹²⁹ <http://www.micounties.org/>.

¹³⁰ <https://michigantownships.org/find-a-township/>.

¹³¹ <https://www.michigan.gov/-/media/Project/Websites/mdhhs/Folder1/Folder23/PlaceListing.pdf?rev=62eb39487f06421da1dc406e23e4ea63>.

¹³² <https://www.mml.org/what-can-we-learn-from-other-cities-about-police-reform-models/>.

Handbook.¹³³ The sections below focus on resources for permits with open public notice.

Public Notice of Draft Permits

Both CAFO NPDES permits and EGLE's decision to make a "no potential to discharge" determination are subject to public notice. Two EGLE resources serve as overarching resources for those with questions regarding EGLE permits on public notice:

- [MiWaters](#)¹³⁴
- [EGLE Water Resources Division Permits on Public Notice](#).¹³⁵
 - Covers NPDES, stormwater, and groundwater permits, and typically affords 30-day notice period for individual permits and two weeks for general permits or Certificates of Coverage.¹³⁶
 - "Public notice requirements for draft permits are identified in Rule 323.2117, and provide for three options, which include posting the draft permit in a post office or other public building near the wastewater discharge, posting the draft permit at the entrance of the applicant's premises, or publishing notice in a local newspaper."¹³⁷ Preference currently is electronic publishing on MiWaters.¹³⁸
 - This website contains concise directions on the more important aspects of submitting permit comments, including procedures and contacts for electronic comment submission.

Below are pertinent provisions from EGLE NPDES program regulations that are not detailed elsewhere in this guide.

Public notice contents must comply with Rule 323.118 and contain:

- a) The date of posting or publication of the public notice.

¹³³ Michigan Department of Environmental Quality, Public Involvement Handbook, http://www.michigan.gov/documents/deq/deq-oea-cau-publicinvolvementhandbook_415012_7.pdf.

¹³⁴ <https://miwaters.deq.state.mi.us/miwaters/#/external/publicnotice/search>.

¹³⁵ <https://www.michigan.gov/egle/about/organization/Water-Resources/groundwater-discharge/permits-on-public-notice>.

¹³⁶ EGLE, Permits on Public Notice, http://www.michigan.gov/deq/0,4561,7-135-3313_4117-121556--,00.html; see also [Mich. Admin. Code r. § 323.2119 at http://w3.lara.state.mi.us/orr/Files/AdminCode/309_10287_AdminCode.pdf](#).

¹³⁷ EGLE, Permits on Public Notice, http://www.michigan.gov/deq/0,4561,7-135-3313_4117-121556--,00.html.

¹³⁸ See *id.*

- b) The address and telephone number of the department office in Lansing and the department district office nearest to the geographical location of the applicant.
- c) The name and address of the applicant.
- d) A concise description of the applicant's activities and operations which result in the discharge identified in the permit application.
- e) The name of the waterway to which the discharge is made or is proposed to be made, including the location of the proposed or existing discharge identified in the application.
- f) A statement of the department's tentative determination to issue or deny the permit for the discharge identified in the application.
- g) A concise description of the procedures for the formulation of final determinations, including information on the comment period prescribed in R 323.2119 or other means by which interested persons may comment on the tentative determinations.
- h) The address and telephone number of the department office where more information on the application may be obtained or where copies of the draft permit prepared pursuant to R 323.2115 and fact sheets may be obtained and any other applicable NPDES forms and related documents may be inspected or copied.¹³⁹

Public hearing determinations and scheduling must comply with Rule 323.2130.¹⁴⁰

Highlights of this rule include:

- “Any interested person” can request a permit public hearing within the 30-day comment period for individual permits.
- A hearing request must include specific basis or bases for the need for a public hearing.
- EGLE may grant a hearing for sufficient cause or sufficient public interest.
- EGLE must give at least 30 days of notice of a public hearing, which generally occurs in the geographical location of the permit applicant.¹⁴¹

¹³⁹ MICH. ADMIN. CODE r. § 323.2118, available at <https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-323-2218>.

¹⁴⁰ See *id.* at MICH. ADMIN. CODE r. § 323.2130.

¹⁴¹ See *id.*

EGLE's Environmental Calendar overview website, which includes an option for joining an email notification list, provides information about rule and permitting decisions, public hearings, and public training opportunities.¹⁴² A similar MDA website provides notice of public meetings.¹⁴³

Permit Appeals

"The permittee, the applicant, or any other person"¹⁴⁴ may request a water pollution permit appeal. Any of these parties must proceed with an appeal by filing a petition for a contested case hearing within 60 days of EGLE's final determination on a particular permit.¹⁴⁵ The filing must "set forth the grounds and reasons for the complaint."¹⁴⁶ The filing must also comply with all requirements in Michigan's Administrative Procedures Act at Mich. Comp. Laws § 24.201 to 24.328.¹⁴⁷ It is crucial to review that Act in full to ensure that appeals comport with all timing, venue, and other requirements that could prevent a substantively-good case from moving forward for procedural reasons.

The first step in a permit appeal is a contested case hearing; the procedures for these hearings are found in the Administrative Procedures Act Chapter 4, Section 24.271 through 24.287.¹⁴⁸ Judicial review of such hearings is feasible pursuant to Chapter 6 of the Act at Sections 24.301 through 24.306.¹⁴⁹

Submitting Complaints to MDA

¹⁴² EGLE, Environmental Calendar Overview, <https://www.michigan.gov/egle/outreach/calendar>.

¹⁴³ Michigan Department of Agriculture & Rural Development, Public Meetings Notices, http://www.michigan.gov/mdard/0,4610,7-125-1572_63576---,00.html.

¹⁴⁴ See R. 323.2133(2) ("An appeal to a final determination of the department made pursuant to subrule (1) of this rule, or to a condition of a permit issued, or the denial of a permit pursuant part 31 of the act and the rules shall be in accordance with and subject to section 3113 of part 31 of the act."); see also R. 324.3113(3) ("If the permit or denial of a new or increased use is not acceptable to the permittee, the applicant, or any other person, the permittee, the applicant, or other person may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the permit application may be rejected by the department as being untimely.").

¹⁴⁵ Mich. Admin. Code. R. § 324.3113(3).

¹⁴⁶ See *id.*

¹⁴⁷ Mich. Pub. Act 306 of 1969, available at [http://www.legislature.mi.gov/\(S\(3doz5drrys2i0i4t0sbt4fuo\)\)/mileg.aspx?page=getObject&objectName=mcl-Act-306-of-1969](http://www.legislature.mi.gov/(S(3doz5drrys2i0i4t0sbt4fuo))/mileg.aspx?page=getObject&objectName=mcl-Act-306-of-1969).

¹⁴⁸ See *id.*

¹⁴⁹ See *id.*

Main MDA Phone Number

- Customer Service Center at 1-800-292-3939.
- Operated Monday through Friday, 8 am to 5 pm ET.

Agricultural Pollution Emergency (APE) Hotline

Use this 24-hour hotline to report accidental agricultural pesticide, fertilizer, and manure spills.¹⁵⁰

- APE Hotline is 1-800-405-0101.

Submitting Complaints to EGLE

The EGLE Environmental Assistance Center accepts complaints and other questions via email or phone call during business hours.¹⁵¹ The 24-hour environmental emergencies hotline number is 800-292-4706.¹⁵² EGLE provides a template complaint form to assist residents in providing all requisite information necessary to process a complaint as efficiently as possible.¹⁵³ The Department's Pollution Emergency Alerting System Search (PEAS) tool allows retroactive search of complaints searchable by year and county.¹⁵⁴

EGLE's MiWaters system has an interface for reporting spills, pollution, and unauthorized activities.¹⁵⁵

Tracking Subsidies

Sometimes the operator of a CAFO proposal or expansion receives government money to do so as a loan, grant, or other financial assistance. It may be helpful to know where the money is coming from to construct these facilities. Additionally, the

¹⁵⁰ Michigan Department of Agriculture and Rural Development, How Do I Contact the Michigan Department of Agriculture and Rural Development? <https://www.michigan.gov/mdard/about/contact-mdard#:~:text=Contact%20Information&text=During%20regular%20business%20hours%2C%20Monday,see%20our%20Emergency%20Contact%20Information>.

¹⁵¹ EGLE, Environmental Assistance Center, <https://www.michigan.gov/egle/contact/environmental-assistance-center>.

¹⁵² EGLE, Pollution Emergency Alerting System (PEAS) Information, <https://www.michigan.gov/egle/contact/environmental-emergencies>.

¹⁵³ See *id.*

¹⁵⁴ Michigan Department of Environmental Quality, PEAS Search, <https://www.michigan.gov/egle/contact/environmental-emergencies>.

¹⁵⁵ Michigan Department of Environmental Quality, MiWaters—Water Resources Information and Forms, <https://miwaters.deq.state.mi.us/miwaters/#/external/home>; click "Report Spills, Pollution, Unauthorized Activities."

receipt of federal funds opens a facility up to additional requirements, such as an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) where the agency—generally the Farm Bureau or the Small Business Administration—must determine whether the agency action—in this case allocating funds to a project—will have a significant impact on the environment. See the federal guide for a more detailed discussion of NEPA implications of federal funding, but be aware that it may be worth digging into how these facilities are funded. Individuals can access some of this information on websites like www.usaspending.gov.

RIGHT TO FARM & NUISANCE LAWS

A nuisance is considered to be something that unreasonably interferes with the comfortable use and enjoyment of another's property. Things like sound, light, pollution, smoke, and odor could be nuisances. Based on this information, one might assume that a CAFO has the potential to be a nuisance to nearby property owners, but most states—Michigan included—have right to farm laws that protect agricultural operations from nuisance actions. While this makes sense for traditional agricultural operations (e.g., outsiders building homes in agricultural communities who get upset about the occasional whiff of farm odor or animal noise), it also applies to contemporary industrialized animal operations. This protects factory farms more than the few remaining sustainable family farms in the state. "The Michigan Right to Farm Act . . . was enacted in 1981 to provide farmers with nuisance protection."¹⁵⁶ The Right to Farm Act, Mich. Comp. Laws § 286.471 to 286.474, states in part as follows:

A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture. Generally accepted agricultural and management practices shall be reviewed annually by the Michigan commission of agriculture and revised as considered necessary.¹⁵⁷

¹⁵⁶ Michigan Department of Agriculture and Rural Development, Michigan's Right to Farm Program, <https://www.michigan.gov/mdard/environment/rtf>.

¹⁵⁷ See Mich. Comp. Laws § 286.473 Sec. 3. (1).

Farmers that comply with GAAMPs are “provide[d] [with] an umbrella of protection from nuisance litigation.”¹⁵⁸ GAAMPs fall into the following areas: (1) Manure Management/Utilization; (2) Site Selection; (3) Care of Farm Animals; (4) Nutrient Utilization; (5) Irrigation Water Use; (6) Pesticide Utilization/Pest Control; (7) Cranberry Production; and (8) Farm Markets.¹⁵⁹

GAAMPs are long, technical documents that this guide can’t comprehensively summarize. However, as an example, the Manure Management and Utilization GAAMPs contains best practices within four categories: runoff control and wastewater management, odor management, construction design and management for manure storage and treatment facilities, and manure application to land.¹⁶⁰

A Michigan State University Extension article describes the purpose of Michigan’s Right to Farm Law from the perspective of concerned residents:

For non-farmers, the Right to Farm Guidelines provide an avenue for complaints to be filed and for MDA to follow up with the farm in question and assess their compliance with the generally accepted practices. If the complaint documents a discharge to waters of the state, violating water quality standards, MDA is obligated to turn the complaint over to the DEQ.¹⁶¹

You should compare CAFO nutrient management plans to the actual practices of the operation in order to determine whether the CAFO is complying with GAAMPs. For non-CAFOs, consult the manure management and odor practice guidelines that the operation must comply with in order to avoid Right to Farm-based liability.¹⁶²

¹⁵⁸ See *id.*

¹⁵⁹ Michigan Department of Agriculture and Rural Development, Michigan Right to Farm Information, http://www.michigan.gov/mdard/0,4610,7-125-1599_1605---,00.html.

¹⁶⁰ Michigan Department of Agriculture and Rural Development, Generally Accepted Agricultural and Management Practices for Manure Management and Utilization, <https://www.michigan.gov/mdard/environment/rtf/gaamps>.

¹⁶¹ Michigan State University Extension, Michigan regulations for manure, and contaminated wash and storm water on livestock farms, http://msue.anr.msu.edu/news/michigan_regulations_for_manure_and_contaminated_wash_and_storm_water_on_li.

¹⁶² See *id.*

MDA maintains a comprehensive Right to Farm website with numerous publications and links to all GAAMPs that livestock operations must comply with to minimize risk of lawsuits from neighbors and others.¹⁶³

The practical impact of the Law is to make it more difficult for individuals to file private nuisance lawsuits against agricultural operations. For example, you may be able to file a private nuisance lawsuit for unpleasant odors from a facility that burns garbage, but the same sort of lawsuit is not legally feasible as against a large-scale farm.

The legal result of the Right to Farm Law is to stymie residents who might otherwise work with a private attorney to bring a nuisance claim against a neighboring farm for a threat to use and enjoyment of property, such as air pollution. This result demonstrates the importance of documenting and reporting permit violations and non-compliance with GAAMPs. The nuisance protection offered by the Right to Farm Law is compromised when non-compliance is established. Until the Right to Farm Law is successfully legally challenged or changed by the Michigan Legislature, alternatives to a nuisance claim against an agricultural operation are more likely to succeed.

The National Agricultural Law Center publishes brief Right to Farm guides for each state, including Michigan.¹⁶⁴ Frequently asked questions documents and other resources are also available at the state level.¹⁶⁵

¹⁶³ Michigan Department of Agriculture and Rural Development, Michigan Right to Farm Information, http://www.michigan.gov/mdard/0,4610,7-125-1599_1605---,00.html.

¹⁶⁴ The National Agricultural Law Center, States' Right to Farm Statutes, <http://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/michigan.pdf>.

¹⁶⁵ Michigan State University Extension, Right to farm: site selection for new and expanding livestock operations, http://msue.anr.msu.edu/news/right_to_farm_site_selection_for_new_and_expanding_livestock_operations; see also Michigan Department of Agriculture and Rural Development, Michigan's Right to Farm Act FAQ, <https://www.michigan.gov/mdard/environment/rtf>.

ENFORCEMENT

Where to Find Data

The EGLE Water Resources Division Enforcement website contains certain enforcement documents for recent fiscal years.¹⁶⁶ The EGLE MiWaters database also allows a search for violations by a particular facility.

- Go to <https://miwaters.deq.state.mi.us/miwaters/#/external/home>
- Click Site Map Explorer
- Type in a facility name, then explore the 'Compliance' and 'Documents' tab

In-person review of CAFO files with enforcement and other information is also an option (EGLE Rule 323.2127 affords a public right to review CAFO NPDES files at the Department's District Offices). See EGLE's website for a CAFO Staff map with contact names and EGLE District Office addresses.¹⁶⁷

Several existing groups are tracking and publishing CAFO violations.¹⁶⁸ Coordinating with these groups will minimize duplication of time and open records processing fees.

Fines/Penalties

Fines for violations of a CAFO NPDES permit are allowed pursuant to Michigan Act, Section 3115(2). This section is incorporated into permits; for example, part II(C)(15) of the General CAFO NPDES Permit No. MI0010000 states as follows (emphasis added):

The NREPA (Section 3115(2)) provides that a person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit, COC, or order issued or rule promulgated under this part, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or

¹⁶⁶ Michigan Department of Environmental Quality, Water Resources Division Enforcement, <https://www.michigan.gov/egle/about/organization/water-resources>.

¹⁶⁷ EGLE, Concentrated Animal Feeding Operations Staff. <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/About-Us/Staff-CAFO.pdf?rev=5b81e58b07b341018d511b7a7cf26b26>.

¹⁶⁸ See NoCAFOs.org, Confirmed Violations/Discharges from CAFOs and Liquid-System Livestock Operations to Bean/Tiffin Watershed and River Raisin Watershed, <http://nocafos.org/violations> ; see also Socially Responsible Agriculture Project, www.sraproject.org.

COC or in a notice or report required by the terms and conditions of an issued permit or COC, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the Department, is guilty of a felony and **shall be** fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, permit, or COC of the Department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

Because this language refers to state action, please refer to the Federal Guide for information about how you can initiate enforcement against permit violators pursuant to the citizen suit provision of the federal Clean Water Act. Also note that EGLE may replace the fines referenced in the above provision with corrective action, also known as Supplemental Environmental Projects, in certain appropriate instances.¹⁶⁹

Compliance information, including fines and penalties, is searchable via MiWaters as discussed above.

¹⁶⁹ EGLE, Supplemental Environmental Projects for Penalty Mitigation, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Funding/FD/04-002-Supplemental-Environmental-Projects-for-Penalty-Mitigation.pdf?rev=0927296c4e37430d85ce66f18efe02eb&hash=C90904DAF31D61E87E8C47AB1E28C4C9>.

PUBLIC INFORMATION LAWS

The key to effective strategizing is to have all the facts—or at least as much pertinent information as you can get your hands on. It can be difficult to comment on a facility's permit or operations if you do not know the details about the operation and their practices. When opposing an expansion, it may be helpful to point to a long history of non-compliance with existing requirements. Therefore, you should utilize the state's public information laws and recordkeeping systems to access as much information about the facility as possible. Below is a summary of Michigan's public record law, online resources, and state agency guidance documents regarding Michigan's CAFOs.

The Michigan Freedom of Information Act (FOIA)¹⁷⁰ is codified at Mich. Comp. Laws § 15.231-15.246. The Michigan Attorney General's office publishes a FOIA "pamphlet" that states, in part, as follows:

Coverage:

The FOIA sets requirements for the disclosure of public records by all public bodies in the state. All state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities are covered.

Public Records Open to Disclosure:

In general, all records except those specifically cited as exceptions are covered by the FOIA. The records covered include minutes of open meetings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with

¹⁷⁰ MICH. COMP. LAWS §15.231-15.246.

instructions, adopted or used by the agency in the discharge of its functions, are also covered.¹⁷¹

The National Freedom of Information Coalition has state-specific resources for Michigan, including a sample records request and useful publications.¹⁷² If you're requesting records, note that fee reduction or waiver is allowed by the Michigan Freedom of Information Act:

A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.¹⁷³

Although public entities like municipalities must comply with open records laws, each local government may have a unique way of accepting and providing public records. The Michigan Townships Association website includes a frequently asked questions page that serves as a useful guide on how townships should comply with FOIA.¹⁷⁴ Similarly, the Michigan Municipal League has published several "One Pager Plus" information sheets that discuss open records and open meetings requirements for local officials.¹⁷⁵

Contact your respective government officers for more information, keeping in mind that absent a specific exception, the presumption of almost all open records laws is to provide information and provide reasonable accommodations when doing so.

EGLE & MDA

¹⁷¹ Michigan Office of the Attorney General, Michigan's Freedom of Information Act, <https://www.michigan.gov/ag/foia/foia-bottom-link-pages/michigan-department-of-attorney-general-freedom-of-information-act-procedures-and-guidelines>.

¹⁷² National Freedom of Information Coalition, Michigan FOIA Resources, <http://www.nfoic.org/michigan-foi-resources>.

¹⁷³ See, e.g., Michigan Office of the Attorney General, Michigan's Freedom of Information Act, [http://www.legislature.mi.gov/\(S\(aqlreva3sq2h0nshn1pjmfnr\)\)/mileg.aspx?page=GetObject&objectname=mcl-15-231](http://www.legislature.mi.gov/(S(aqlreva3sq2h0nshn1pjmfnr))/mileg.aspx?page=GetObject&objectname=mcl-15-231) at 15.234 Sec. 4. (1) (page 14).

¹⁷⁴ Michigan Townships Association, 2015 Freedom of Information Act Compliance, https://www.michigantownships.org/wp-content/uploads/foia_policies_and_guidelines_mta_sample_april_2015_1.pdf.

¹⁷⁵ Michigan Municipal League, One-Pagers Plus, http://www.mml.org/resources/publications/one_pagers/onepagers.htm.

Michigan's Freedom of Information Act (FOIA), MCL 15.231 et seq, provides that certain persons can receive copies or make inspections of most public records of public bodies upon written request. The person must sufficiently describe the records he or she seeks. The public body may charge a fee to cover the cost of complying with a person's FOIA request.

FOIA requests to EGLE can be sent by email to EGLE-FOIA@Michigan.gov or by mail to:

Department of Environment, Great Lakes, and Energy
ATTN: FOIA Coordinator
P.O. Box 30457
Lansing, MI 48909-7957
Fax: 517-241-0858

The Department of Environmental Quality provides FOIA materials, including a page with general information,¹⁷⁶ the standardized FOIA request form,¹⁷⁷ a five-page guide to submitting FOIA requests,¹⁷⁸ and a guide with written procedures, guidelines, and helpful definitions on responses to FOIA requests.¹⁷⁹ Make sure your requests are processed by the proper agency or intra-agency division.

Open records requests for EGLE's Water Resources Division should go to:

DEQ-WRD-FOIA@michigan.gov
Lorinda Lehner—FOIA Liaison
Department of Environmental Quality
Water Resources Division
517-284-5480
lehnerl1@michigan.gov

Open records requests for the Michigan Department of Agriculture and Rural Development should go to Brenda Moore at mooreb@michigan.gov.

¹⁷⁶ EGLE, Freedom of Information Act Process for Environmental Quality,
<http://www.michigan.gov/deq/0,4561,7-135--357782--,00.html>.

¹⁷⁷ EGLE, Request for Disclosure of DEQ Records,
http://www.michigan.gov/documents/deq/FOIA_Request_Adobe_form_428345_7.pdf.

¹⁷⁸ EGLE, Disclosure of Public Records: Making a Freedom of Information Act Request,
http://www.michigan.gov/documents/deq/DEQ_Policy_01-006A_527066_7.pdf.

¹⁷⁹ EGLE, Disclosure of Public Records: Responding to a Freedom of Information Act Request,
http://www.michigan.gov/documents/deq/DEQ_Policy_01-006_527064_7.pdf.

U.S. EPA Region 5

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 5 FOIA Officer is as follows:

Region 5 (States: IL, IN, MI, MN, OH, WI)

Regional Freedom of Information Officer

U.S. EPA, Region 5

77 West Jackson Boulevard (MI-9J)

Chicago, IL 60604-3590

(312) 886-6686¹⁸⁰

Refer to the Federal Guide for more information on FOIA. Several EPA websites contain useful summaries of the request process, response time guidance, and other information.¹⁸¹ Note: you're 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."¹⁸² EPA only considers waiver requests that are submitted at the same time as the corresponding FOIA request.¹⁸³

CAFO PROPERTY TAX APPEAL GUIDELINES

Neighbors of CAFOs may also be harmed by government inaction on another front: failure to account for the harmful presence of a CAFO in assessing a property for tax purposes. Without knowledge of how to challenge an uninformed assessment, individuals can find themselves paying too much in property taxes, on top of the other issues they face. However, Michigan does prescribe an avenue of relief for aggrieved property owners through its Tax Tribunal.

Under the procedural rules of the Tax Tribunal, upon reviewing his or her tax assessment, any property owner may apply by petition (form available on the

¹⁸⁰ U.S. Environmental Protection Agency, Regional FOIA Contact Information, <https://www.epa.gov/foia/forms/contact-us-about-freedom-information-act-and-foia-requests#Regional>.

¹⁸¹ See, e.g., U.S. Environmental Protection Agency, The FOIA Request Process, <https://www.epa.gov/foia/foia-request-process>.

¹⁸² U.S. Environmental Protection Agency, Fee Waivers, <https://www.epa.gov/foia/foia-request-process#waivers>.

¹⁸³ See *id.*

Michigan Tax Tribunal website) to the local board of review, after tax assessment notices are mailed in early March, for an adjustment of the board's assessment of his/her property value.¹⁸⁴ After a petition is filed, he or she will need to call the local board to make an appointment for a hearing. After a hearing is scheduled, the owner must submit his/her affirmative evidence to the board and the opposing party at least 21 days before it is held. At the hearing, a property owner (or his/her authorized representative) must state his/her case and present the local board of review with evidence of what he/she believes to be the true value of the property. The board reviews the evidence later, makes a decision at that time, and notifies the owner in writing of its decision within a few weeks after the hearing. The hearing may be conducted in person, by phone, or by video conference.¹⁸⁵

A property owner should be aware that even a lowering of the property's assessed value may not lead to lower property taxes. This is because of a discrepancy between state equalized value (SEV) and taxable property value created by Michigan law. Unless a property changes hands, taxable value increases from the previous year by the lower of 5% or the CPI inflation rate.¹⁸⁶ However, when ownership is transferred, taxable value resets to SEV (computed as 50% of a property's actual cash value).¹⁸⁷ So, an owner who has held a property for many years may have a taxable value substantially below the property's SEV and, unless the SEV falls below the taxable value after a property tax appeal, his or her taxes will not change.

Property owners dissatisfied with the local board's decision may appeal to the Tax Tribunal's Small Claims Division. For residential properties, the owner must first notify the board of review that he/she seeks to appeal the case.¹⁸⁸ Then, a petition for review, which must include a copy of the local board's decision, may be filed with the tribunal by mail.¹⁸⁹ Next, a notice of docket is sent to the petitioner and to the respondent, and a notice of hearing is sent 45 days in advance of the hearing, providing its date, time, and location. The parties then must submit documentary evidence to both the tribunal and to the other party at least 21 days before the

¹⁸⁴ Michigan Department of Licensing and Regulatory Affairs, Tax Tribunal Rules, <http://www.michigan.gov/taxtrib/0,4677,7-187-38254---,00.html>.

¹⁸⁵ *See id.*

¹⁸⁶ City of Lansing, FAQs, <https://www.lansingmi.gov/493/FAQs>.

¹⁸⁷ *Id.*

¹⁸⁸ City of Ionia, The Property Tax Assessment Appeal Process, <http://www.ci.ionia.mi.us/DocumentCenter/View/1225>.

¹⁸⁹ Michigan Department of Licensing and Regulatory Affairs, Small Claims Appeal Process, <http://www.michigan.gov/taxtrib/0,4677,7-187-67144-138224--,00.html>.

scheduled hearing date.¹⁹⁰ A hearing at the Tax Tribunal typically lasts around half an hour with either a hearing officer or a Tribunal member as judge. If the judge is a hearing officer, a “proposed judgment” is issued, and each party has 20 days to file exceptions. If the judge is a Tribunal member, the judgment is final, and any further appeal must be done at Michigan’s State Court of Appeals.¹⁹¹

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](#).¹⁹²

State Organizations

You may want to reach out to local and state organizations engaged in CAFO-related issues. Below are a few active groups.

[Environmentally Concerned Citizens of SC MI](#)
[Environmental Law and Policy Center, Michigan](#)
[For Love of Water \(FLOW\)](#)
[Sierra Club, Michigan Chapter](#)
[Michigan Environmental Council](#)
[Michigan League of Conservation Voters](#)
[Alliance for the Great Lakes](#)
[Tip of the Mitt Watershed Council](#)
[Environment Michigan](#)

State Pro-Bono Clinics

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>.

University of Michigan School of Law hosts an environmental law clinic, which has an established client relationship with the National Wildlife Federation.¹⁹³ Also consider contacting the State Bar of Michigan Environmental Law Section to inquire about pro bono, low-cost, or referral services.¹⁹⁴

LIST OF STATUTES & REGULATIONS

Below is a list of relevant statutes and regulations to serve as a starting reference point for additional research or in-depth analysis of environmental authority in Michigan.

Statutes

The Michigan Legislature published the complete Michigan Compiled Laws at [http://www.legislature.mi.gov/\(S\(s4y43vn54jydpptsbcceb0v4\)\)/mileg.aspx?page=capterindex](http://www.legislature.mi.gov/(S(s4y43vn54jydpptsbcceb0v4))/mileg.aspx?page=capterindex)

- Freedom of Information Act: Mich. Comp. Laws §§ 15.231 – 15.246
- Administrative Procedures Act of 1969 (Mich. Pub. Act 306 of 1969): Mich. Comp. Laws §§ 24.201 – 24.328
- Right to Farm: Mich. Comp. Laws §§ 286.471 – 286.474
- Natural Resources and Environmental Protection: Mich. Comp. Laws § 324 et seq.
 - Groundwater, Natural Resources Environmental Protection Act: §§ 324.32701 – 324.32730.
 - Shorelands Protection and Management: §§ 324.32301 – 324.32315.
 - Wetlands Protection: §§ 324.30301 – 324.30321.
 - Minimum Level of Stream Flow; Industrial Use of Water: §§ 324.3112.
 - Great Lakes Preservation: §§ 324.32713 – 324.32723.

Rules/Regulations

Find EGLE CAFO rules as one document at

<https://www.law.cornell.edu/regulations/michigan>

- Mich. Admin. Code r. § 281:
 - Shorelands Protection and Management: Mich. Admin. Code r. § 281.21 – 281.26 (2000)

¹⁹³ University of Michigan Law School, Environmental Law Clinic, <https://www.law.umich.edu/clinical/environmental/Pages/default.aspx>.

¹⁹⁴ State Bar of Michigan, Environmental Law Section, <http://connect.michbar.org/envlaw/home>.

- Inland Lakes and Streams: Mich. Admin. Code r. § 281.812 (2000)
- Wetlands Protection: Mich. Admin. Code r. § 281.921 – 281.925
- Mich. Admin. Code r. § 323:
 - Part 17. Michigan Environmental Protection Soil Erosion and Sedimentation Control: Mich. Admin. Code r. § 323.1712
 - Part 91. Soil Erosion and Sedimentation Control: Mich. Admin. Code r. § 323.1701–1714
 - Part 21. Wastewater Discharge Permits: Mich. Admin. Code r. §§ 323.2101 – 323.2197
 - Part 22. Groundwater Quality: Mich. Admin. Code r. §§ 323.2201 – 323.2240

APPENDIX: MICHIGAN CAFO DATABASE GUIDE

This appendix provides instructions on how to navigate Michigan CAFO databases, comment on pending CAFO permit applications, find past CAFO violations, create custom aerial maps of CAFOs, and more. If you have any questions or comments, please contact: WaterRangers@sraproject.org

[MiEnviro Portal: State Information Database](#)¹⁹⁵

Use this site to find and submit public comments on pending livestock permit applications

To Gather Information / Submit a Public Comment:

- On the right side menu, click “Public Notice Search” (Note: you don’t need to create a MiEnviro Portal account to view this information)
- Click the blue arrow to the right of the search box at top of the screen
- TYPE “CAFO” under “SITE NAME”
- Click “SEARCH”
- Click “View/Submit Comment” to view information on the permit application
- To download application documents:
 - Click “Documents” on the top menu
 - Click the downward arrow icon on the right of the screen to download a document
- To submit a public comment:
 - Click “Add Comment” on the top menu

¹⁹⁵ <https://mienviro.michigan.gov/ncore/external/home>

- Fill out the form
- Click "Submit."

To receive permit notifications:

- On the right side menu, click "Sign Up For / Manage Alerts"
- Enter your email address and click "Submit"
- Go to your email inbox, open the email sent from *MiEnviro Support* with the subject "Subscription Account Management Confirmation." Click the blue link in the email.
- Fill out the form to select:
 - What kind of alerts you want to receive
 - Public Notices going into effect
 - Permits issued/denied by EGLE
 - Permit applications received by EGLE
 - What program you want notifications for (optional)
 - We suggest signing up for "WRD - Groundwater" and "WRD - NPDES," but there are more options
 - What county or counties you want notifications for (optional)
- Click "Save."

MiEnviro Portal: Site Map Explorer¹⁹⁶

Use this mapping site to find CAFO facilities, past CAFO violations, and spill reports

To Find CAFOs and Violations in Michigan:

- Click "Site Map Explorer" on the right menu
- Type name of facility on the left under "SEARCH by Keyword"
 - To do a general search, type "CAFO"
- Click Facility name in the left column
- Click "Show More Information" in blue at center of the page
- To find violation information:
 - Click "Compliance" on the top menu
 - Use the list to find facility violations
- To find and download documents:
 - Click "Documents" at the top of the page
 - Enforcement documents will have the following language in the description field:

¹⁹⁶ <https://mienviro.michigan.gov/ncore/external/home>

- *Compliance Action*
- *Violation Notice*
- *Consent Order (CO)*
- Click the blue text for the document you want to download (the file will download automatically).

NEPAssist¹⁹⁷

Use this tool to map CAFOs and impaired waterways

- Click “Launch the NEPAssist Tool” on right
- Type the address/city/location you want to view on the top left
- Go to the drop-down menu under “Basemap” on the top menu. Click “Bing Maps Hybrid” to add a satellite image base map
- Use the “Select Map Contents” section on the right to add layers to the map
- To make an impaired waterway map:
 - Click the + sign next to “Water”
 - Click “Impaired Streams”
 - Click “Impaired Waterbodies”
 - Print or save map
- You can also add more layers by clicking each + beside other map layer items to make maps with more/different information

Enviromapper¹⁹⁸

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

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

¹⁹⁷ <https://www.epa.gov/nepa/nepassist>

¹⁹⁸ <https://enviro.epa.gov/enviro/em4ef.home>

- This will give you the cause of impairment on the right side of your screen
- Print or save

FWS Wetland Mapper¹⁹⁹

Use this site to identify wetlands near CAFOs

- Click the “Wetlands Mapper” link at the bottom of the page to launch the map
- On the left, there will be two drop-down boxes:
 - Base Maps Includes:
 - Streets
 - Satellite
 - Hybrid
 - Topo
 - Terrain
 - Gray
 - Open Street Map
 - NATGEO
 - USGS Topo
 - NAT’L MAP
 - Map Layers Includes:
 - Wetlands
 - Riparian
 - Riparian Mapping Areas
 - Areas of Interest
 - FWS Managed Lands
 - Historic Wetland Data
- Choose your preferred basemap, then click all boxes under Map Layers
 - The USGS Topo basemap provides a topographic map with waterways; the Satellite basemap shows an aerial view of the land
- Type an address or coordinates
- Zoom in or out to adjust picture
- Wetlands will be shown on the map
- Take your arrow and click on wetland
 - A box will open to give total acreage of wetland and a description

¹⁹⁹ <https://www.fws.gov/wetlands/Data/Mapper.html>

- To measure the distance from a wetland to a CAFO:
 - Click “Measure” in the upper left corner
 - Click the ruler with arrows going left and right above it
 - Click your cursor on the map and drag it to the location to which you want to measure
 - View the distance in the gray box
- To measure the acreage of an area:
 - Click “Measure” in the upper left corner
 - Select the ruler icon with a green shape behind it
 - Select points on the map to measure the acreage of an area
 - De-select the ruler icon to exit the tool
- Click Print on the map to create a physical copy

Water Quality Standards by State²⁰⁰

Use this site to find your state’s water quality standards

- Scroll down to the colorful map of the United States
- Click the state for which you want to find water quality standards
- Use the links under “State Standards in Effect for CWA Purposes” to find water quality standards in the state

²⁰⁰ <https://www.epa.gov/wqs-tech/state-specific-water-quality-standards-effective-under-clean-water-act-cwa>