



**SRAP**  
Socially Responsible  
Agriculture Project

## Guide to Confronting Concentrated Animal Feeding Operations in

# MINNESOTA



# Guide to Confronting Concentrated Animal Feeding Operations in MINNESOTA

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

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](http://www.srapproject.org).

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<sup>1</sup> 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](http://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](https://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.

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## INTRODUCTION: A BRIEF HISTORY OF CAFOs IN MINNESOTA

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Agriculture and animal livestock production plays a significant role in Minnesota's economy and cultural identity. The state is usually among top producers for soybeans, corn, grain, hog, and turkey production. According to 2017 data from the United States Environmental Protection Agency (U.S. EPA), Minnesota had 1,300 Concentrated Animal Feeding Operations (CAFOs) as of year-end of 2015, 1,197 of which had National Pollutant Discharge Elimination System (NPDES) permits.<sup>2</sup> Based on these numbers, Minnesota has the second most CAFOs in the nation (with Iowa having the most) and 99% of those CAFOs have NPDES permits. In addition to having one of the highest NPDES compliance rates for CAFOs in the country, Minnesota also imposes some regulation on air quality issues, requires permitting and public input for smaller operations and feedlots, and allows local governments to enact local ordinances to place additional limitations on CAFOs in their communities. This contributes to the narrative that Minnesota regulates CAFOs more than many other states in the nation. In many ways, this is true. However, just because Minnesota does more than other states and allows an increased level of local government control does not mean that residents across the state don't have concerns about the environmental, economic, and quality of life issues created by these operations in their communities. Water quality remains an especially important concern for drinking as well as recreation.

Minnesota is "The Land of 10,000 Lakes" but the state is struggling to keep those lakes and waterways clean. According to the Minnesota Pollution Control Agency, approximately 40% of the state's lakes and streams are impaired and agriculture is considered one of the primary culprits.<sup>3</sup> Runoff from the state's animal agricultural industry contributes to algae growth, toxic algal blooms, unsafe nitrate levels, and contamination that impacts fishing, swimming, drinking water, and recreation. The impairments are worse in the parts of the state with higher concentration of agricultural operations. The state Department of Agriculture is testing rural wells for nitrates and preliminary data shows that one in ten wells had unsafe nitrate levels.<sup>4</sup>

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<sup>2</sup> U.S. Environmental Protection Agency, NPDES CAFO Permitting Status Report -- National Summary, Endyear 2017, completed 12/31/17, [https://www.epa.gov/sites/production/files/2018-05/documents/tracksum\\_endyear\\_2017.pdf](https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf).

<sup>3</sup> Minnesota's Impaired Waters List, MINNESOTA POLLUTION CONTROL AGENCY, <https://www.pca.state.mn.us/water/minnesotas-impaired-waters-list>.

<sup>4</sup> Mark Zdechlik, *Trouble in the Water: Can Minnesota Stop Polluting it's Lakes, Rivers?*, MPR News, May 16, 2016, available at <https://www.mprnews.org/story/2016/05/16/water-can-minnesota-stop-polluting-lakes-rivers>.

So despite its relatively robust regulations, Minnesota still struggles to protect surface and ground water quality.

This guide provides a legal and policy framework for understanding the landscape of Minnesota large-scale livestock industry.

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## **CAFOs: State Definitions & Regulatory Agencies**

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### **What is a CAFO?**

The Minnesota Legislature has created Animal Feedlot Regulations to meet CAFO requirements. An Animal Feedlot is a lot, building, or combination of the two that intended for the “confined feeding, breeding, raising, or holding of animals...in which manure may accumulate” and vegetative cover cannot be maintained. The Legislature further includes open lots and poultry ranges as animal feedlots but does not include pastures.

In Minnesota, a CAFO is an animal feedlot that meets a threshold for animal units as either a “Small,” “Medium,” or “Large” CAFO as outlined in the chart below. If a feedlot confines the requisite number of animals for 45 days or more in any 12-month period and does not sustain crops or vegetation in the normal growing season over any portion of the facility, then it is a CAFO.<sup>5</sup>

Large CAFOs are subject to regulation by the Minnesota Pollution Control Agency (MPCA). Further, “Large” CAFOs that discharge to the waters of the state must obtain a National Pollutant Discharge Elimination System (NPDES) permit. Discharge means adding a pollutant to the water; common pollutants for CAFOs include: animal manure; manure contaminated runoff; and process wastewater from an open lot.<sup>6</sup>

In Minnesota, “Waters of the State” means:

all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are

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<sup>5</sup> See 40 C.F.R. 122.23(b)(1) (2012).

<sup>6</sup> See 40 C.F.R. 122.23(c) (2012).

contained within, flow through, or border upon this state or any portions of this state.<sup>7</sup>

Under this definition, no CAFO can contribute to pollution of surface water, groundwater, or wetlands. If MPCA determines that an AFO is polluting waters of the state, that facility will be considered a small CAFO.

Feedlots that are under common ownership and either: 1) adjoin each other or 2) use a common area or system for waste disposal are considered a single facility by MPCA.<sup>8</sup> In addition, MPCA will consider facilities as a single unit if they combine or mix manure from multiple facilities. By considering multiple feedlots as a single facility, MPCA can also determine whether the combined facilities are a “significant contributor of pollutants to surface water” and deem the commonly owned facilities as a single “Small” CAFO if necessary.

Thresholds in the table below apply only to non-liquid waste management systems. All Minnesota CAFOs using liquid animal waste disposal systems must obtain NPDES permit.<sup>9</sup>

	Large CAFOs	Medium CAFOs	Small CAFOs
Sheep or Lambs	10,000 or more	3,000–9,999	< 3,000
Horses	500 or more	150–499	< 150
Ducks	30,000 or more	10,000–29,999	< 10,000
Cattle or cow/calf pairs	1,000 or more	300–999	< 300
Mature dairy cattle	700 or more	200–699	< 200
Veal calves	1,000 or more	300–999	< 300
Swine (>55 lbs.)	2,500 or more	750–2,499	< 750
Swine (<55 lbs.)	10,000 or more	3,000–9,999	< 3,000
Laying hens or broilers	82,000 or more	25,000–81,999	< 25,000
Chickens other than laying hens	125,000 or more	37,500–124,999	< 37,500

This guide references both CAFOs and feedlots. These terms are not interchangeable, rather, a CAFO is a specific type of feedlot meeting statutory

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<sup>7</sup> See Minn. Stat. § 7020.0300(26) available at <https://www.revisor.mn.gov/rules/?id=7020.0300>.

<sup>8</sup> See Minnesota Pollution Control Agency, Policy 2004-01 Multiple Site Determination, Apr. 2, 2004.

<sup>9</sup> See Minn. Rule 7020.2110



requirements. CAFOs may have restrictions or requirements placed on them in addition to restrictions or requirements present for all feedlots. Therefore, it's important to determine the size of the operation and whether it falls under a Large CAFO category, or simply a feedlot.

## **Responsible Regulatory Agencies**

### **State Pollution Control Agency**

- MPCA issues CAFOs State Disposal System and general and individual permits to discharge pollutants into waterbodies.
- MPCA also provides Environmental Assistance grants which “provides financial assistance for the development of environmentally sustainable practices in Minnesota through voluntary partnerships and outcome-oriented, economically driven approaches to pollution prevention, waste reduction, toxicity reduction, water quality protection, and resource conservation.”<sup>10</sup>
- The Minnesota Environmental Quality Board (EQB) is a board made up of nine agency heads and five citizens that is intended to help guide environmental policymaking by “responding to key issues, providing appropriate review and coordination, serving as a public forum and developing long-range strategies to enhance Minnesota’s environmental quality.”<sup>11</sup>

### **State Agricultural Agency**

- The Minnesota Department of Agriculture is dedicated to “enhanc[ing] Minnesotans’ quality of life by ensuring the integrity of our food supply, the health of our environment, and the strength of our agricultural economy.”<sup>12</sup>
  - The Minnesota Department of Agriculture provides resources and technical assistance to new or expanding feedlots. Staff can assist in locating potential new feedlots, provide feedlot funding opportunities, and navigate new or existing feedlots through local and state permitting processes.<sup>13</sup>

### **State Department of Natural Resources**

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<sup>10</sup> Minnesota Pollution Control Agency, Financial Assistance: Grants and Loans, <https://www.pca.state.mn.us/about-mpca/financial-assistance-grants-and-loans>.

<sup>11</sup> Minnesota Environmental Quality Board, About the Environmental Quality Board, <https://www.eqb.state.mn.us/content/about-environmental-quality-board>.

<sup>12</sup> Minnesota Department of Agriculture, <http://www.mda.state.mn.us/about.aspx>.

<sup>13</sup> See Minnesota Department of Agriculture, Livestock Resources, <http://www.mda.state.mn.us/animals/livestock.aspx>.



- The Minnesota Department of Natural Resources (MNDNR) issues permits for water use and appropriation. MNDNR has issued a general permit for feedlots withdrawing 5,000,000 gallons of water or less per year.<sup>14</sup>

### State Department of Health

- The Minnesota Department of Health may limit or regulate feedlots only through the protection of public water supplies, wellheads, and surface water intakes.
  - Additionally, feedlot operators are instructed to consult with the Minnesota Department of Health when a spill or release occurs. The Department will then ensure that the public health is protected.<sup>15</sup>

### Local Conservation Districts

- Each of the 87 counties in Minnesota has a local Soil and Water Conservation District.<sup>16</sup> SWCDs are further grouped into eight “areas” based on their geographic locations.
- Districts are created by Minnesota Statute<sup>17</sup> to maintain and improve the soil and water of Minnesota for the environmental and economic benefit of state residents.<sup>18</sup>
- The Minnesota Association of Soil and Water Conservation Districts provides assistance to each county district.<sup>19</sup>
- While conservation districts don’t have much of a role in CAFO regulation, you may consider reaching out to conservation district employees for their expertise on local environmental issues.

### U.S. EPA Region 5 Contacts

- See the Region 5: Chicago section of the U.S. EPAs [Regional Animal Feeding Operation Contact List](#).<sup>20</sup>

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<sup>14</sup> See Minnesota Department of Natural Resources,

<sup>15</sup> Minnesota Pollution Control Agency, Feedlot Issues, <https://www.pca.state.mn.us/sites/default/files/feedlot-rpt.pdf>.

<sup>16</sup> Minneapolis Association of Soil and Water Conservation Districts, SWCDs on the Web, [http://www.maswcd.org/SWCDs\\_On\\_The\\_Web/swcds\\_on\\_the\\_web.htm](http://www.maswcd.org/SWCDs_On_The_Web/swcds_on_the_web.htm).

<sup>17</sup> Minnesota Statute Chapter 103C.

<sup>18</sup> See Minn. Stat. 103C.005

<sup>19</sup> See Minnesota Association of Soil and Water Conservation Districts, <http://www.maswcd.org/index.htm>.

<sup>20</sup> U.S. Environmental Protection Agency, Contact Us: Animal Feeding Operations (AFOs), <https://www.epa.gov/npdes/contact-us-animal-feeding-operations-afos#afosRegional>.

- You may also want to consult the [U.S. EPA Region 5 Experts List](#) for additional resources regarding CAFOs.<sup>21</sup>
- The majority of states, including Minnesota, have authority to issue water pollution permits to regulated industries in their respective states;<sup>22</sup> however, the U.S. EPA retains oversight authority to take enforcement and related action when states fail to meet federal requirements like those outlined in the Clean Water Act.<sup>23</sup> For this reason, EPA CAFO contacts are useful if you're tracking specific large-scale livestock operations or have questions about a state CAFO program's compliance with federal laws. See the Federal Guide for more information on the interplay between states and the U.S. EPA.

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## WATER

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### Minnesota Feedlot Water Discharge Program

One of the first steps to consider taking if a livestock operation is entering your community is to find out what permits it needs. Minnesota Pollution Control Agency (MPCA) issues State Disposal System (SDS) permits and more traditional National Pollutant Discharge Elimination System (NPDES) permits to CAFOs. Within each permit category, the MPCA issues either an individual or a general permit. A general permit covers multiple facilities as authorized by specific rules, while an individual permit covers one facility and has more facility-specific terms and conditions with a broader opportunity for public review and comment.<sup>24</sup> The Minnesota Feedlot Program is authorized pursuant to the Minnesota Water Pollution Control Act and Minn. Rev. Stat. § 116, Pollution Control Agency.<sup>25</sup>

### State Disposal System Permit

Any CAFO with the capacity or proposed capacity to exceed 1,000 animal units must at the very least apply for an SDS permit.<sup>26</sup> An SDS permit covers state requirements

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<sup>21</sup> U.S. Environmental Protection Agency, Region 5 Experts List, <https://www.epa.gov/aboutepa/region-5-experts-list>.

<sup>22</sup> *See id.*

<sup>23</sup> *See id.*

<sup>24</sup> *See* Minnesota Pollution Control Agency, General Animal Feedlot NPDES Permits, <https://www.pca.state.mn.us/sites/default/files/wq-f3-53.pdf>.

<sup>25</sup> *See* Minnesota Water Pollution Control Act, Minn. Stat. § 115

<sup>26</sup> Minnesota Pollution Control Agency, NPDES and SDS Permits for Feedlots, <https://www.pca.state.mn.us/sites/default/files/wq-f3-48.pdf>.

for construction, operation, and maintenance.<sup>27</sup> Facilities with an SDS permit are not allowed to discharge to waters of the state under any circumstances. SDS permits are issued for 10 years so it's important to be involved in the permitting and public comment process for any SDS permit.<sup>28</sup>

Discharges of any kind are restricted for facilities with SDS permits; this includes discharges from field spreading that may occur after weather events.<sup>29</sup> Because of the restrictive nature of these permits, residents concerned about water pollution should closely monitor and document spreading on fields and production facilities after storms and severe weather events.

A facility may choose to apply for a National Pollutant Discharge Elimination System (NPDES) permit in lieu of an SDS Permit.<sup>30</sup> This decision is primarily based on whether the facility intends to discharge to waters of the state. If a discharge is likely to occur (either intentional or unintentional) the operation is better served by a NPDES permit, which insulates the operation from enforcement actions.

#### National Pollutant Discharge Elimination Permits

CAFOs that intend to discharge to waters of the state must seek a NPDES permit from the MPCA. Minnesota issues permit coverage to these “discharging” CAFOs under either a general NPDES permit, MNG440000, or, less frequently, an individual permit. Public notice requirements for issuing coverage under general permit MN44000 are contained in Minn. R. Chs 7000 and 7001. Water pollution discharge also invokes oversight by U.S. EPA and corresponding federal Clean Water Act requirements that apply to more “traditional” point sources like power plants or wastewater treatment facilities.

Under the general permit, CAFOs that discharge pollutants to waters of Minnesota must:

- Have an MPCA-approved Manure Management Plan (MMP) and submit corresponding annual reports;
- Implement Best Management Practices (BMPs) to minimize pollutant runoff from fields where animal manure is spread;
- Comply with construction specifications for Liquid Manure Storage Areas (LMSA) as required by Minn. R. 7020.2100; and

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<sup>27</sup> Minn. R. Ch. §7020.0220

<sup>28</sup> Minn. R. Ch. §7020.0505 Subp.5(B)

<sup>29</sup> See MPCA, NPDES and SDS Permits for Feedlots

<sup>30</sup> See *id.*

- Prevent runoff from the production area into waters of the state except during extreme precipitation events.<sup>31</sup>

For a more detailed list of permit requirements, see [the current permit](#).

MPCA maintains a database with water pollution permits that are on public notice, and permit documents found using this tool should clearly indicate whether the permit is considered an SDS, general NPDES, or individual NPDES permit.<sup>32</sup>

Minn. R. Ch 7020 covers all state permit requirements for new or expanding CAFOs. Although localities are allowed to further restrict or regulate CAFOs,<sup>33</sup> 7020 provides the minimum standards for all CAFOs with 1,000 or more animal units. Requirements for Large CAFOs applying for permits include:

- Permit applications for a new or major modification or operation of a liquid waste system;
  - These permits are public noticed, with opportunity for public comment and hearing.
- Setback restrictions from vulnerable water, sinkholes, and drinking water sources;<sup>34</sup>
- Limitations on when and where animal waste can be applied to land;
  - For example, permittees cannot apply animal waste on frozen ground or near the time of a “significant precipitation event.”
- Environmental Assessment Worksheet (EAW) for new CAFOs exceeding either 1,000 animal units or 500 animal units in a sensitive area;
  - MPCA maintains a database of Environmental Assessment Worksheets that are available for public comment as well as archived EAWs [here](#).
- CAFOs must submit an annual report to MPCA.<sup>35</sup>

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<sup>31</sup> See Minnesota Pollution Control Agency, General Permit MNG440000

<sup>32</sup> See Minnesota Pollution Control Agency, Public Notices, available at <https://www.pca.state.mn.us/public-notice>.

<sup>33</sup> See Minn. R. Ch. 7020.0505 Subp. 4(C) noting that permit applicants must also comply with local zoning laws; also, Minnesota Pollution Control Agency, NPDES/SDS Permitted Feedlots: Summary of State and Federal Requirements at “Where local ordinances are more restrictive than state laws, the local ordinances must be followed.”

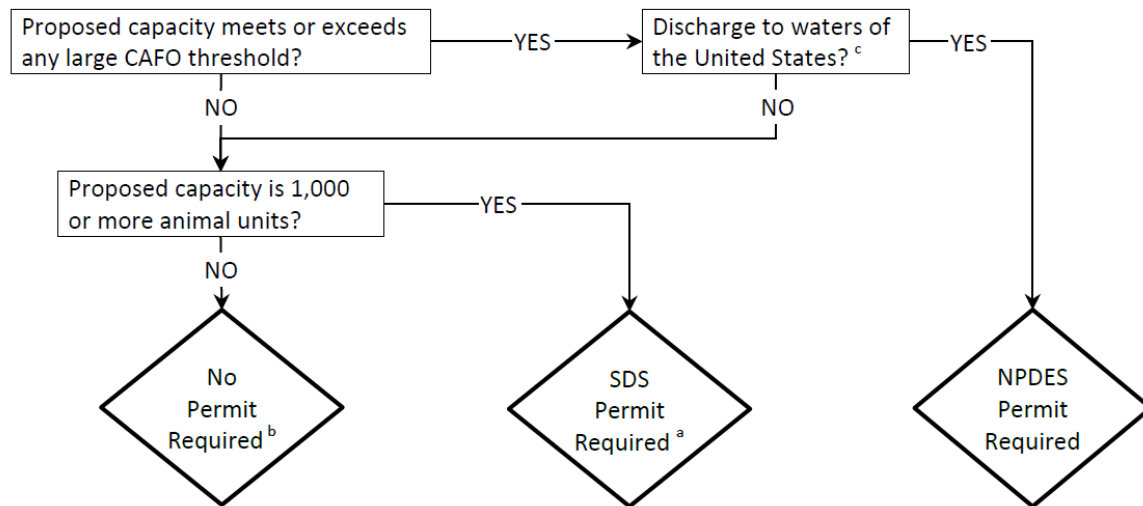
<sup>34</sup> Minn. Stat. 7020.2005 Subp. 1

<sup>35</sup> See General Permit MNG440000 at 8.2 Annual Reporting



### Flow chart to determine if NPDES or SDS permit coverage is required

(Local permits also may be required; check with local zoning authorities.)



### Manure Management Plan

A manure management plan is a written description of how manure generated at the facility is going to be used during the upcoming year. All large CAFOs are required to create an MMP that must be approved by MPCA.<sup>36</sup>

MMPs are written to maximize crop nutrient efficiency while protecting surface and groundwater. MMPs cover a wide variety of requirements; the basic list below was distilled from statutes and MPCA guides:

- Manure storage and application methods
- Field locations and acreage
- Amount of manure to be applied to each field
- Manure-nutrient content
- Soil-nutrient content
- Crop-nutrient needs and/or expected nutrient removal
- Protective measures when applying in environmentally sensitive areas
- Protective measures when applying during winter months.<sup>37</sup>

<sup>36</sup> Minn. R. Ch. 7020.2225 Subp. 4

<sup>37</sup> See *id.*; University of Minnesota–Extension, Manure Management Plans for Minnesota Livestock Producers, available at

[https://www.extension.umn.edu/agriculture/beef/components/docs/manure\\_management\\_plans\\_for\\_mn\\_livestock\\_producers.pdf](https://www.extension.umn.edu/agriculture/beef/components/docs/manure_management_plans_for_mn_livestock_producers.pdf); Minnesota Pollution Control Agency, Land Application of Manure:

Minimum State Requirements, available at <https://www.pca.state.mn.us/sites/default/files/wq-f8-11.pdf>;

MMPs are not designed solely to protect the environment; they also consider economic factors and potential crop yields. Be aware of potential hazards and work with experts to monitor manure application in suspect areas. Nutrient management is a highly technical field; an expert may help you understand how manure spreading is affecting different watersheds in a region.

### County Delegation

Minnesota allows counties to petition for delegation of permitting authority from the state.<sup>38</sup> This is unique, since many other states have removed local control and county delegation in an effort to keep regulation at the state level—effectively limiting a local government’s ability to weigh in or participate in matters that will impact their communities. Minnesota has preserved local control and county delegation. The delegation process consists of:

1. the county board resolution;
2. commissioner authorization;
3. a delegation agreement signed by the county board and commissioner;
4. periodic review of the delegation agreement; and
5. when applicable, withdrawal from the program by the county board or revocation of authorization to administer the program by the commissioner.<sup>39</sup>

The County Feedlot Officer (CFO) manages the program for the county. The duties include:

- Feedlot Registration
- Feedlot Permitting
- Inspections
- Complaint follow-up

County delegation comes from the idea that local officials are most aware of the issues at the local level and can address problems faster. Be aware of whether your county operates a delegated program. If so, refer to the [County Feedlot Contacts list](#) for points of contact.<sup>40</sup>

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Minnesota Pollution Control Agency, Manure Management Plans for NPDES Permitted Feedlots Guidance, available at <https://www.pca.state.mn.us/sites/default/files/wq-f8-47.doc>.

<sup>38</sup> Minn. Stat. § 7020.1500

<sup>39</sup> See *id.*

<sup>40</sup> See Minnesota Pollution Control Agency, County Feedlot Contacts, <https://www.pca.state.mn.us/sites/default/files/wq-f1-13.pdf>.

## Wetlands

Wetlands 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 livestock operations.

The Clean Water Act authorizes states to issue a State Water Quality Certification (401 Certification) for any activity or project that may result in a discharge into waters of the United States.<sup>41</sup> Projects subject to 401 Certification most commonly include irrigation or filling of wetlands. 401 Certification requires the state to determine that a project will not violate surface water quality standards or adversely impact impaired waters, and that a project complies with applicable state regulations including, but not limited to Minnesota Rules, 7050.<sup>42</sup> Many projects are considered low-risk to water quality standards, and as such are pre-certified; however, activities that are likely to have a significant impact on water quality must seek an individual 401 Certification Permit.<sup>43</sup> MPCA agreed to the Governor's Executive Order calling for 90-day turnaround for 401 Certification Individual Permits.<sup>44</sup> For a detailed description of wetland management in Minnesota, view the [MPCA 401 Certification Program Summary](#) and the MPCA [Water Quality Standards Page](#).<sup>45</sup>

## Water Quantity

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

Under Minnesota Statutes § 103, the Minnesota Department of Natural Resources (MDNR) has the authority to limit groundwater withdrawals in critical groundwater areas. MDNR has issued a general permit for CAFOs that allows them to withdraw up to five million gallons of water per year.<sup>46</sup> CAFOs must maintain monthly water

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<sup>41</sup> Clean Water Act, 33 U.S.C. § 1341 (West 2016).

<sup>42</sup> Minnesota Pollution Control Agency, Chapter 7050: Water Quality Standards for Protection of Waters of the State, Oct. 24, 2016, <https://www.revisor.mn.gov/rules/?id=7050&format=pdf>.

<sup>43</sup> See Minnesota Pollution Control Agency, Clean Water Act Section 401 Water Quality Certifications <https://www.pca.state.mn.us/water/clean-water-act-section-401-water-quality-certifications>.

<sup>44</sup> See *id.*

<sup>45</sup> Minnesota Pollution Control Agency 401 Summary, <https://www.pca.state.mn.us/water/clean-water-act-section-401-water-quality-certifications>; Minnesota Pollution Control Agency Water Quality Standards, <https://www.pca.state.mn.us/water/water-quality-standards>.

<sup>46</sup> See Minnesota Department of Natural Resources, Animal Feedlots and Livestock Operations General Permit 2004-0275, <http://files.dnr.state.mn.us/waters/forms/livestockgp.pdf>.

appropriation volumes and submit a yearly report of those volumes to MDNR by February 15 of the following year.<sup>47</sup> The general permit does not allow CAFOs to adversely affect trout streams, calcareous fens, or other significant environmental resources.<sup>48</sup>

## Water Quality

### Impaired Water Bodies

Broadly speaking, the primary intent of the federal Clean Water Act is to keep clean waters clean and to improve the quality of polluted—also known as impaired—waters. In the 2016 Clean Water Act 303(d) and 305(b) review, over half of the reviewed streams and lakes are impaired for one or more pollutants.<sup>49</sup> In 2006, Minnesota released the Minnesota Comprehensive Wetland Assessment, Monitoring, and Mapping Strategy (CWAMMS), a multi-agency project designed to measure wetland loss in the state.<sup>50</sup> CWAMMS is intended to monitor and assess the status and trends of wetland quantity and quality in the state. Residents interested in wetland summaries, data, or monitoring reports from CWAMMS should contact Mike Bourdaghs at [Michael.Bourdaghs@state.mn.us](mailto:Michael.Bourdaghs@state.mn.us).<sup>51</sup> Both U.S. EPA and MPCA have databases that show whether a specific water body is impaired, and if so, the likely source of impairment.<sup>52</sup>

MPCA and EPA programs “determine the extent that all waters are attaining water quality standards (WQS), identify impaired waters and the need to be added to the 303(d) List, and identify waters attaining standards that can be removed from the list.”<sup>53</sup> Find state reports regarding impaired water bodies in Minnesota [here](#), which the EPA must receive every two years pursuant to 303(d) of the Clean Water Act.<sup>54</sup> Note the opportunity for the public to comment and to attend public hearings

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<sup>47</sup> See Minnesota Department of Natural Resources, Water Use Permits, [http://www.dnr.state.mn.us/waters/watermgmt\\_section/appropriations/permits.html](http://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/permits.html).

<sup>48</sup> See General Permit 2004-0275

<sup>49</sup> See Minnesota Pollution Control Agency, 2016 Minnesota Water Quality: Surface Water Section (Abbreviated Narrative Report), Oct. 2016; 15,502 miles of 26,095 assessed miles of Minnesota streams are impaired (59.4%); 3,712,925 acres of 4,068,902 assessed acres of Minnesota lakes are impaired (91.3%)

<sup>50</sup> See *id.*

<sup>51</sup> See *id.* at 6.

<sup>52</sup> See *id.*, see also Minnesota Pollution Control Agency, Impaired Waters Viewer (IWAV), <https://www.pca.state.mn.us/water/impaired-waters-viewer-iwav> (last visited Dec. 10, 2016); U.S. EPA, Impaired Waters and TMDLs Region 5, <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-5>.

<sup>53</sup> See 2016 MPCA Abbreviated Narrative Report

<sup>54</sup> <https://www.pca.state.mn.us/water/minnesotas-impaired-waters-list>



regarding draft reports. Additionally, find information on Total Maximum Daily Loads and current studies underway on waterways throughout the state of Minnesota [here](#).<sup>55</sup> Consult with partner organizations like the Minnesota Center for Environmental Advocacy to understand the strengths and weaknesses of proposed impaired waters lists from MPCA.<sup>56</sup>

### **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.<sup>57</sup> The majority of Minnesota CAFOs and feedlots are covered by general permits, but even these general permits have requirements that facilities must meet in regards to impaired downstream waters. 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. State organizations listed at the end of this guide may also provide information about technical experts and other assistance.

### **Considerations for other livestock operations**

If you're concerned about a new or expanding 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 source pollution such as runoff from agricultural fields.

Minnesota receives federal assistance each year to address nonpoint source pollution to Minnesota's lakes, rivers, and streams. This federal assistance, called 319 funding, encourages states to utilize a watershed-level approach reflecting the reality that the health of a watershed depends upon practices of all local industries. 319 funding is primarily used to "provide financial and technical assistance to study water bodies with pollution problems, develop action plans to address the problems, and plan implementation to fix the problems".<sup>58</sup> For 2017, MPCA anticipates receiving \$2.5 million in federal 319 funding. In addition to 319 funding, MPCA also provides

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<sup>55</sup> <https://www.pca.state.mn.us/water/total-maximum-daily-load-tmdl-projects#studies-underway-36d86054>

<sup>56</sup> See information at Minnesota Center for Environmental Advocacy, TMDLs, available at <http://www.mncenter.org/tmdls.html>.

<sup>57</sup> See 33 U.S.C. §§ 1311(a), 1342(a) (West 2016); see also 40 C.F.R. § 131.10(b) (West 2015).

<sup>58</sup> Minnesota Pollution Control Agency, Financial assistance for nonpoint source water pollution projects: Clean Water Partnership and Section 319 Programs, <https://www.pca.state.mn.us/water/financial-assistance-nonpoint-source-water-pollution-projects-clean-water-partnership-and>.

Clean Water Partnership funds to local governments to develop and implement programs for waters that are currently meeting Minnesota Water Quality Standards. Between these two avenues of funding, MPCA seeks to provide funds that comprehensively allow local governments to improve, protect, or preserve Minnesota's water resources.

The presence of agricultural and other nonpoint source pollution is a significant factor in defining a priority watershed. In a recent TMDL study, the MPCA determined that "runoff from feedlots or manure stockpiles without runoff controls comprises an estimated loading of fecal coliform bacteria to streams of 17% during a wet spring and 37% during a wet summer."<sup>59</sup> MPCA notes that feedlots are significant sources of non-point source pollution throughout the state, and the agency attempts to provide resources for residents and governments to receive funding. MPCA provides an application template online as well as a sample agreement; further, specific questions about 319 funding can be directed to [319.Grant.PCA@state.mn.us](mailto:319.Grant.PCA@state.mn.us). Finally, MPCA must submit annual reports regarding the results of the programs and the status of waterbodies and watersheds throughout the state. These reports serve as important sources of information for Minnesota residents seeking to learn more about the extent and impact of nonpoint source pollution in the state.

### **CAFO Construction**

MPCA mandates that any construction site that disturbs more than one acre must submit a Stormwater Pollution Prevention Plan (SWPPP).<sup>60</sup> If the construction site disturbs more than three acres, the SWPPP must be submitted with the NPDES/SDS permit application. You should therefore review submitted documents to compare application submission requirements with the size of the construction project.

It's highly likely that any feedlot construction project that must submit an SWPPP for a NPDES permit will receive General Stormwater Permit No: MNR10001 for the project. Facilities with a General Stormwater Permit must prevent certain stormwater discharges and provide accurate information in the permit and corresponding plans in order to avoid liability.<sup>61</sup> For example, the General Stormwater Permit requires the

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<sup>59</sup> Minnesota Pollution Control Agency, *Watershed Achievements Report: 2015 Annual Report to the U.S. Environmental Protection Agency*, <https://www.pca.state.mn.us/sites/default/files/wq-cwp8-18.pdf>.

<sup>60</sup> Minnesota Pollution Control Agency, NPDES CAFO Summary

<sup>61</sup> See Minnesota Pollution Control Agency, *General Permit Authorization to Discharge Stormwater Associated with Construction Activity Under the National Pollutant Discharge Elimination System/State Disposal System Program*, August 1, 2013, available at <https://www.pca.state.mn.us/sites/default/files/wq-strm2-68a.pdf>.

permittees to address nearby impaired waters or TMDLs and perform any Best Management Practices that are included in the TMDL.<sup>62</sup> MPCA maintains a searchable database for construction stormwater permits.<sup>63</sup>

Owners of feedlots or CAFOs covered under a NPDES or SDS permit are required to submit a construction or expansion permit application to MPCA at least 180 days prior to the planned date of construction.<sup>64</sup>

### **CAFO Inspections**

In 1998, the Legislative Audit Bureau found that MPCA was not providing enough oversight to operating CAFOs.<sup>65</sup> Although MPCA was inspecting CAFOs prior to construction, the same level of rigor and oversight was not present once the facility was operational. Since that time, MPCA has sought to rectify the issue and visit operational sites to review compliance with permits and land application review, and respond to odor and discharge complaints.

In 2014, MPCA inspected 2,975 facilities out of a total of 18,020 registered facilities in the state (about 16%). The majority of these CAFO inspections (66%) were compliance inspections performed either by MPCA staff or delegated county staff. Counties are required to inspect 7% or more of the CAFOs or feedlots that are required to be registered with the county. Because a substantial portion of the feedlot program is run through delegated counties, there is not a comprehensive list of inspections or complaints on the MPCA website. As such, you should contact your local County Feedlot Officer (CFO) for more information on CAFO inspections. CFOs understand the local geology, geography, and topography of the region as well as the specifics of the feedlots in the county. CFOs' proximity and focus make them a good initial point of contact for learning more about CAFO operations and inspections. Consult the federal supplement to this guide for more information on data and other necessary precursors to Clean Water Act citizen suits.

MPCA or county staff also perform inspections as a result of discharge or odor complaints. Complaints made to MPCA or County Feedlot staff may result in follow-up inspections to determine credibility or start an enforcement action. Further, Minn.

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<sup>62</sup> See *id.*

<sup>63</sup> Minnesota Pollution Control Agency, Construction Stormwater Search, <https://cf.pca.state.mn.us//water/stormwater/csw/search.cfm>.

<sup>64</sup> See Minnesota Pollution Control Agency, NPDES CAFO Summary

<sup>65</sup> Minnesota Office of the Legislative Auditor, Animal Feedlot Regulations, Jan. 8, 1999, available at [www.auditor.leg.state.mn.us/ped/pedrep/9904SUM.PDF](http://www.auditor.leg.state.mn.us/ped/pedrep/9904SUM.PDF).

Rules 7020 require any CAFO with 1,000 animal units or more to prepare an air emissions plan that also covers odors. Odors from large CAFOs may indicate that the facility is not meeting their permit requirements and can result in enforcement actions. See the Air section of this guide for more information.

The interested public should review permit(s) for any facility of concern and understand the obligation that owners are under with respect to government monitoring and site visits. For example, general CAFO permit MNG440000 requires facilities to allow state entry and inspection.<sup>66</sup> Be aware of whether the monitoring or inspection information they seek is held at the state or county level. Understanding which party to request information from can save time, expense, and prevent unnecessary delay for open records requests.

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## AIR

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Minnesota monitors certain air pollutants in order to comply with the Clean Air Act, Emergency Planning and Community Right to Know Act (EPCRA), and Comprehensive Environmental Response Compensation and Liability Act (CERCLA).<sup>67</sup> The state also has its own ambient air quality standards that apply to agricultural operations and feedlots. Further, Minnesota requires that CAFOs with more than 1,000 AUs must create and submit an air emissions plan. An air emissions plan must include:

- methods and practices that will be used to minimize air emissions resulting from animal feedlot or manure storage area operations including manure storage area start-up practices, loading, and manure removal;
- measures to be used to mitigate air emission in the event of exceedance of the state ambient hydrogen sulfide standard; and
- a complaint response protocol describing the procedures the owner will use to respond to complaints directed at the facility including a list of each potential odor source at the facility, a determination of the odor sources most likely to

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<sup>66</sup> See Section 13.4.1.9, Minnesota Pollution Control Agency, MNG440000, <https://www.adeq.state.ar.us/water/permits/npdes/nonstormwater/pdfs/arg590000/draft.pdf>.

<sup>67</sup> See, e.g., University of Minnesota Extension Service, Federal, State, and Local Air Quality Regulations Related to Animal Agriculture, <http://articles.extension.org/pages/15484/federal-state-and-local-air-quality-regulations-related-to-animal-agriculture>.



generate significant amounts of odors, and a list of anticipated odor control strategies for addressing each of the significant odor sources.<sup>68</sup>

The air emission plans cover odor, dust, and some specific gases like hydrogen sulfide. The state ambient hydrogen sulfide standard is 30 parts per billion (ppb) for 30 minutes and detected twice in five days or 50 ppb for 30 minutes twice per year. The standards apply to all feedlots and the air quality is measured at the property line. Some operations and feedlots may seek an air quality easement from their adjacent neighbors which allows the operation to violate air quality standards. However, neighbors must provide consent in writing and the easement cannot be for more than five years at a time. The operation is also exempt from air quality standards during manure removal and for seven days following the manure removal. Feedlots over 300 animal units are allowed a maximum of 21 days per calendar year to violate the standards during and following manure removal. So, despite air quality regulations, animal operations enjoy considerable exemptions, easements, and leeway to continue emitting air pollutants in their communities.

It is important to understand that the presence of air quality standards for compounds like hydrogen sulfide do not result in automatic compliance. Air quality monitoring, investigation, and compliance actions are largely driven by complaints from neighbors. If you suspect the operation is violating air quality standards for hydrogen sulfide, submit a complaint to the MPCA and they will be required to come out and monitor and identify potential violations.<sup>69</sup>

Minnesota joins the many states that exempt farmers from odor-related nuisance lawsuits under the state's right to farm law.<sup>70</sup> The inapplicability of some air pollution and odor laws for many operations is understandably concerning for those who are impacted by air pollution and related nuisances from these agricultural operations. Media and public opinion are also powerful tools to address odor and other air quality impacts from CAFOs. Minnesota has issued several "good neighbor" guides for livestock operations; non-compliance with recommended practices is a sufficient basis on which to ground public complaints and calls for change.<sup>71</sup>

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<sup>68</sup> University of Minnesota Extension, Preparing an Odor Management Plan, <http://www.extension.umn.edu/agriculture/manure-management-and-air-quality/air-quality/preparing-an-odor-management-plan/>.

<sup>69</sup> Minn. Stat. § 116.0713

<sup>70</sup> Minn. Stat. § 561.19

<sup>71</sup> See, e.g., University of Minnesota Extension, *Managing Odors, Neighbor Relations, and Estimating Setbacks for Animal Feeding Operations*, available at

Finally, 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. 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. Find other pollutant thresholds that apply under the federal Clean Air Act, in the federal supplement to this guide.<sup>72</sup> You should also analyze the compliance of industries like manure processing with hazardous substances emissions limits.

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## ZONING

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Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in a particular community. It is crucial to know who your local elected officials are and to establish a working relationship with them. Minnesota Statutes, Special Session 2005, Chapter 1, Article 1, Sections 90 and 91 require any local governments that “adopt new or amended animal-related ordinances” to submit the ordinances to the Commissioner of Agriculture.<sup>73</sup>

Counties may adopt ordinances that specifically address feedlots but must inform the MPCA and commissioner of agriculture prior to the first hearing on the proposed ordinance.<sup>74</sup> Counties seeking to adopt these ordinances must submit the final rule to MPCA for review and comment. Further, at the request of the county board, the county must prepare a report on the economic and social effects of the ordinance. Consult with local officials first to determine whether any local ordinances are in place or whether it would be feasible to begin the process of adopting specific animal agriculture ordinances at the county level.

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<http://articles.extension.org/pages/67056/managing-odors-neighbor-relations-and-estimating-setbacks-for-animal-feeding-operations>.

<sup>72</sup> See also Environmental Integrity, *Raising a Stink: Air Emissions from Factory Farms*, [http://environmentalintegrity.org/pdf/publications/CAFOAirEmissions\\_white\\_paper.pdf](http://environmentalintegrity.org/pdf/publications/CAFOAirEmissions_white_paper.pdf).

<sup>73</sup> Minnesota Department of Agriculture, *Local Ordinances Regulating Livestock in Minnesota – Web Mapping*, available at <http://www.mda.state.mn.us/animals/livestock/local-livestock-ordinances.aspx>.

<sup>74</sup> See Minn. R. Chap. 394.25 Subd. 3c

Counties are a primary source of zoning for unincorporated areas. In addition to county zoning, municipalities may extend their zoning authority up to two miles outside of their boundaries.<sup>75</sup> The interested public should therefore look to county zoning ordinances that directly cover animal agriculture, unincorporated county zoning ordinances, and nearby incorporated governments, such as townships, for the appropriate zoning decisions that may impact the location and operation of CAFOs.

Otherwise, the interested public should look to incorporated governments, such as townships, as the appropriate local authority to make zoning and other decisions that impact the location and operation of CAFOs. Minnesota municipalities have broad authority to regulate in all areas absent explicit prohibition in statute or extensive regulation of a particular issue at the state level. However, townships and counties are required to prepare comprehensive land use plans and subsequent zoning ordinances must be made in accordance with the comprehensive plans.<sup>76</sup>

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

In sum, local government decision-making is crucial, particularly for issues such as protecting local public health and safety, which are “traditional” areas of local control. Learn more about your local government using the following resources:

- **Counties:** <http://mncounties.org>
- **Cities and Towns:** <https://mn.gov/portal/government/local/cities/>

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## PERMITTING & PUBLIC PARTICIPATION

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### Draft Permits

Minn. R. Ch. 7001 governs the public notice and comment process for draft permitting decisions.<sup>77</sup> The Agency must issue public notice of a preliminary determination by either (1) posting the notice in the post office, public library, or other buildings used

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<sup>75</sup> See Minn. R. Chap 462.357

<sup>76</sup> See Minnesota’s Planning and Zoning Enabling Laws

<sup>77</sup> See Minnesota R. Ch. 7001.0110, Public Comments

by the general public in the designated geographical area; (2) posting the notice at or near the entrance of the applicant's premises, if located near the facility or activity that is the subject of the permit application; or (3) publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.<sup>78</sup> The public notice should include the name and telephone number of the relevant division of the Department; the applicant's name and business address; the type of permit; the date of issuance of the draft permitting decision; a statement that the decision is available for copying; a statement that written comments submitted by any person will be accepted during the comment period; and a statement that any interested person may request a public hearing during the public comment period.

Minnesota R. Ch. 7001.0110 presents guidelines for the public comment process for draft permitting decisions. Any interested party may submit written comments regarding specific references to the draft permit that they believe should be changed. The public comment period begins on the day the notice is published and lasts for 30 days, unless otherwise required. The commissioner may extend the written comment period if they find it necessary. The Department will make the draft permitting decision and other relevant material available for inspection and copying, complying with the Minnesota Government Data Practices Act (discussed further below). During the comment period, the Department shall consider the written comments received and determine whether to conduct a public hearing.

For guidance on submitting comments and participating in a public hearing, see the federal and community organizing supplements to this guide.

### **Permit Appeals**

Under Minn. R. Ch. 7000.1800, the Commission's final permitting decision can be challenged through a contested case hearing in which an administrative law judge will hear the factual issues regarding the CAFO and advise the MPCA. No order of the Director is a final agency action until all procedures for hearing and review have been completed or the time periods have expired.<sup>79</sup>

Parties can request a reconsideration of a contested case hearing by submitting a written petition to the commissioner.<sup>80</sup> The commissioner has the option to reconsider the factual questions, and if necessary, remand the case to the

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<sup>78</sup> Minn R. Ch. 7001.0100.5.C.1

<sup>79</sup> *See id.*

<sup>80</sup> *See* Minn. R. Ch. 7000.2100.1



administrative law judge. Requests to reopen a contested case hearing must be made within 10 days of a decision.

### Submitting complaints to MPCA

MPCA accepts complaints via phone or [online complaint form](#).<sup>81</sup> The Agency also houses an after-hours emergency line.<sup>82</sup> The online complaint form allows you to describe the pollution and list the responsible party if you know it.<sup>83</sup> MPCA also provides a [list](#) of Feedlot Program Staff by county.<sup>84</sup> For guidance on what information to include when filing a complaint, see the Federal Guide and Community Organizing Guide. If you're interested in gathering all past complaints about a particular facility, it will likely prove useful to specifically request all formats of complaints, including telephonic, online, and electronic mail.

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## RIGHT TO FARM & NUISANCE LAWS

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Minnesota's Right to Farm Law is intended to protect agricultural activity, but does not fully extend to protect CAFOs in the state. The practical impact of the Law is to make it very difficult to file private nuisance lawsuits against certain 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 against certain large-scale farms.

Minnesota lawmakers have consistently created laws that both defend traditional right to farm while simultaneously limiting protections to factory farms. Minnesota's Right to Farm law does not extend to a swine facility with a capacity of 1,000 or more animal units or a cattle facility with a capacity of 2,500 or more animal units.<sup>85</sup> Minnesota courts have interpreted the Right to Farm law according to its plain meaning, even finding liability for farmers who negligently use accepted agricultural equipment.<sup>86</sup>

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<sup>81</sup> See MPCA Citizen Complaints Page, <https://www.pca.state.mn.us/about-mpca/citizen-complaints>.

<sup>82</sup> See *id.*

<sup>83</sup> Minnesota Pollution Control Agency, Citizen Complaints, <https://www.pca.state.mn.us/about-mpca/citizen-complaints>.

<sup>84</sup> MPCA Feedlot Program, Who to Call, <https://www.pca.state.mn.us/quick-links/feedlot-program>.

<sup>85</sup> See Minn. Stat §516.19 (2)(c)(1)

<sup>86</sup> See *Kuhl v. Halquist Farms, Inc.*, 2006 Minn. App. Unpub. LEXIS 1123 (Minn. Ct. App. 2006); *Wendinger v. Frost Farms, Inc.*, 662 N.W.2d 546 (Minn. Ct. App. 2003)

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. Although the Right to Farm law does create a substantial legal hurdle, Minnesota law is significantly more public friendly than other states. When considering bringing a nuisance claim against a factory farm, consider whether it's protected by the statute or whether there's evidence of negligence by the operation.

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## ENFORCEMENT

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### Where to Find Data

Find quarterly summaries of enforcement actions are available on the [MPCA website](#).<sup>87</sup> These summaries are regularly updated and include all finalized penalties. MPCA will also provide additional information about enforcement actions on request.<sup>88</sup>

In addition to MPCA enforcement actions, U.S. EPA may also pursue enforcement actions on CAFOs in Minnesota.

### Fines/Penalties

While there are roughly 12 types of enforcement actions utilized by MPCA, only three of those actions result in monetary penalties:<sup>89</sup>

#### Administrative Penalty Order

Administrative Penalty Orders or APOs are the most common form of monetary enforcement action utilized by MPCA for permit violators. An APO is an order issued by MPCA that is intended to resolve noncompliance with environmental laws while simultaneously imposing a monetary penalty for the action (or inaction) of the permittee.<sup>90</sup>

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<sup>87</sup> Minnesota Pollution Control Agency, Quarterly Summaries of Enforcement Actions, <https://www.pca.state.mn.us/regulations/quarterly-summary-enforcement-actions>.

<sup>88</sup> See *id.*

<sup>89</sup> See Minnesota Pollution Control Agency, Enforcement, available at <https://www.pca.state.mn.us/regulations/enforcement>.

<sup>90</sup> Minnesota Pollution Control Agency, Administrative Penalty Orders: Compliance is the Goal, February 2015.

MPCA considers possible enforcement actions, and if an APO is deemed appropriate, the agency will first send an “Alleged Violation Letter.” This letter informs the party of MPCA’s findings and creates an opportunity for the party to offer a response, either showing that the violation didn’t occur, or providing evidence that the violation is less severe than was determined by MPCA.

To calculate an appropriate monetary amount, MPCA staff first calculates the “base penalty,” which should reflect the severity of the violations and their impact on either the environment or public health.<sup>91</sup> Once the base penalty is established, MPCA may adjust based on the following factors:

- The affected party’s knowledge and willfulness;
- The party’s compliance history;
- Other unique factors, such as environmental audits, uncontrollable circumstances, etc.

Monetary penalties in APO’s may be forgiven if the violator resolves the issue within 30 days. Not all APO’s are forgivable, and some are only partially forgivable.

The monetary penalty is intended to be severe enough to prevent continued behavior while simultaneously avoiding financially crippling a facility. You can review Quarterly Enforcement Summaries to better understand how monetary penalties are normally set and when those monetary penalties are unforgivable.<sup>92</sup>

### **Stipulation Agreement**

Stipulation Agreements are negotiated settlements that are used for more serious violations.<sup>93</sup> MPCA Enforcement Staff use “Stips” when the violation warrants a civil penalty of more than \$20,000 or the violation will take more than 30 days to remedy.<sup>94</sup> Because these are negotiated settlements as a result of serious violations, there is not an opportunity to forgive the monetary penalty if actions are done.

### **Field Citation**

Field citations are most akin to traffic tickets. Field citations are used for violations of “statutes or rules governing solid waste, spills, tanks, and septic systems.”<sup>95</sup> In some

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<sup>91</sup> See *id.*

<sup>92</sup> Minnesota Pollution Control Agency, Quarterly Summary of Enforcement Actions, available at <https://www.pca.state.mn.us/regulations/quarterly-summary-enforcement-actions>.

<sup>93</sup> Minnesota Pollution Control Agency, Enforcement

<sup>94</sup> See *id.*

<sup>95</sup> See *id.*

cases, the government entity will perform the remediation, and a field citation offers reimbursement to the agency that performs the corrections. Field citations may be appealed by the party receiving the ticket. Field citations are often considered an initial enforcement action for more minor violations or first-time violations. Consistent violations may result in an upgrade from field citation to APO.<sup>96</sup>

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## PUBLIC INFORMATION LAWS

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The Minnesota Freedom of Information laws are known as the Minnesota Data Practices Act and the Minnesota Open Meetings Law. They are codified at Minn.Stat. § 13.01, et seq. and § 13D et seq. (2016). The Minnesota Attorney General's office offers a few [publications](#) that outline the Data Practices Act and Open Meetings laws.<sup>97</sup> Further, the Minnesota Department of Administration Information Policy Analysis Division (IPAD) offers an overview of the Data Practices Act as well as a [step-by-step guide](#) for requesting information from government entities.<sup>98</sup> These publications thoroughly explain the Minnesota Freedom of Information laws and how to make a freedom of information request.

The National Freedom of Information Coalition has state-specific [resources for Minnesota](#), including a sample records request and useful publications.<sup>99</sup>

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.

The League of Minnesota Cities also has a publication called "[Data Practices: Analyze, Classify, Respond](#)" that can help answer questions about whether local government is following open records and meetings laws.<sup>100</sup>

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<sup>96</sup> See Minnesota Pollution Control Agency, Regulatory Efficiency Package, February 2014, available at <https://www.pca.state.mn.us/sites/default/files/leg-syl4-06.pdf>.

<sup>97</sup> See e.g., Minnesota Attorney General, Public Information and the Internet, available at <http://www.ag.state.mn.us/consumer/Publications/PublicInfoInternet.asp>; Minnesota Attorney General, Government Data, available at [www.ag.state.mn.us/office/opinions/852-20060714.pdf](http://www.ag.state.mn.us/office/opinions/852-20060714.pdf).

<sup>98</sup> See e.g., Minnesota Department of Administration Information Policy Analysis Division, The Minnesota Government Data Practices Act, available at [www.ipad.state.mn.us/docs/IPAD\\_datapractices.pdf](http://www.ipad.state.mn.us/docs/IPAD_datapractices.pdf).

<sup>99</sup> National Freedom of Information Coalition, Minnesota FOI Resources, available at <http://www.nfoic.org/minnesota-foi-resources>.

<sup>100</sup> See League of Minnesota Cities, Data Practices: Analyze, Classify, Respond, [www.lmc.org/media/document/1/datapractices.pdf](http://www.lmc.org/media/document/1/datapractices.pdf).

Note that although public entities like municipalities must comply with FOIA, each local government may have a unique way of accepting and providing public records. Contact your 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.

## **MPCA**

The [MPCA Information Requests website](#) also provides a guide for requesting information and instruction on recovering costs from an information request.<sup>101</sup> The website provides an online information request form, cost-charge breakdown, and contact information for records requests.<sup>102</sup> Consult the [Guide for Members of the Public Requesting Information](#) when considering reviewing permit documents, enforcement actions, or general information about new, potential, or currently operating CAFOs.<sup>103</sup>

## **EPA Region 6**

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for FOIA Requests.<sup>104</sup> 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) 886-6686<sup>105</sup>

See the Federal Guide for more about on FOIA. Several [EPA websites](#) have useful summaries of the FOIA process, response times, and other information.<sup>106</sup> Note: you're

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<sup>101</sup> Minnesota Pollution Control Agency, Information Requests, <https://www.pca.state.mn.us/about-mpca/information-requests>.

<sup>102</sup> See *id.*

<sup>103</sup> <https://www.pca.state.mn.us/sites/default/files/e-admin11-20.pdf>

<sup>104</sup> U.S. Environmental Protection Agency, Organization Chart for EPA's Region 6 Office, <https://www.epa.gov/aboutepa/organization-chart-epas-region-5-office>.

<sup>105</sup> 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>.

<sup>106</sup> See, e.g., U.S. Environmental Protection Agency, The FOIA Request Process, <https://www.epa.gov/foia/foia-request-process>.



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.”<sup>107</sup> EPA only considers waiver requests that are submitted at the same time as the corresponding FOIA request.<sup>108</sup>

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### **CAFO PROPERTY TAX APPEAL GUIDELINES**

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Neighbors of CAFOs may also be harmed if government fails to account for the harmful presence of a CAFO in assessing the property for tax purposes. Without knowing how to challenge an uninformed assessment, individuals can find themselves paying too much in property taxes, on top of the other issues they face. If you live near a CAFO and believe that the CAFO has negatively impacted your property’s value, you can challenge your property tax assessment.

In Minnesota, each county auditor reappraises real property in the county at a maximum interval of every five years.<sup>109</sup> If you have evidence, that your property has been appraised too high, you can appeal the valuation of the property to the county Local Board of Appeal and Equalization or go directly to Minnesota Tax Court. If a property owner chooses to challenge the assessment in a Board of Appeal and Equalization, they must first appeal to the Local Board of Appeal and Equalization before appealing to the County board. It’s not generally worthwhile to file an appeal unless you’ve obtained an appraisal of your property from an independent real estate appraiser, and that appraisal differs from the county’s assessment.

At the hearing, the appraiser would testify as to their appraisal. After the hearing, the Board of Appeal and Equalization will issue a written decision. If you’re unsatisfied with the Board’s decision, you have the right to appeal the decision to the County Board of Appeal and Equalization.

If you’re not satisfied with the result of the County Board of Appeal and Equalization or bypassed the boards entirely, you may bring the tax complaint in front of the Minnesota Tax Court. Appeals to the Minnesota Tax Court must be filed before April

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<sup>107</sup> U.S. Environmental Protection Agency, Fee Waivers, <https://www.epa.gov/foia/foia-request-process#wivers>.

<sup>108</sup> See *id.*

<sup>109</sup> Minn. R. Ch. 273.01

30 of the year the tax is payable. For more about the Minnesota Tax Court, see [www.taxcourt.state.mn.us](http://www.taxcourt.state.mn.us).

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## OTHER RESOURCES

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*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](http://www.sraproject.org), and contact SRAP for support at 503-632-8303 or through our [website](#).<sup>110</sup>

### **State Organizations**

Conservation Minnesota: [conservationminnesota.org](http://conservationminnesota.org)

Environmental Law and Policy Center, Minnesota: [elpc.org/states/minnesota/](http://elpc.org/states/minnesota/)

Minnesota Center for Environmental Advocacy: [mncenter.org](http://mncenter.org)

Minnesota Environmental Partnership: [mepartnership.org](http://mepartnership.org)

Minnesota Waters: [minnesotawaters.org](http://minnesotawaters.org)

Sierra Club, Minnesota Chapter: [sierraclub.org/minnesota](http://sierraclub.org/minnesota)

### **State Pro-Bono Clinics**

The University of Minnesota-Twin Cities has an Environmental Law Clinic, which traditionally focuses on assisting “nonprofits or other nongovernmental entities seeking legal advice on advocacy in the legislative or regulatory arenas.”<sup>111</sup> Although the clinic may not be a good point of contact for direct legal representation, they may be able to suggest other contacts or avenues. The Minnesota Center for Environmental Advocacy also offers pro-bono environmental representation.<sup>112</sup>

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<sup>110</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

<sup>111</sup> University of Minnesota-Twin Cities Law School, Environmental Law Clinic, <https://www.law.umn.edu/course/7012/environmental-law-clinic>.

<sup>112</sup> See e.g., Pro Bono Net, MCEA, available at [https://www.probono.net/oppsguide/organization.58802-Minnesota\\_Center\\_for\\_Environmental\\_Advocacy\\_MCEA](https://www.probono.net/oppsguide/organization.58802-Minnesota_Center_for_Environmental_Advocacy_MCEA); and Minnesota Center for Environmental Advocacy, Contact Us, <http://www.mncenter.org/contact-us.html>.

## CAFO Resources

[Contact Socially Responsible Agriculture Project](#), which provides free assistance to communities facing factory farms, for specific information about their Regional Representative who works in North Dakota.<sup>113</sup>

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## LIST OF STATUTES & REGULATIONS

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

### Statutes

The complete Minnesota State Code is publicly available at <https://www.revisor.mn.gov/pubs/>.

- Minn. Stat. § 13.01, et seq. and § 13D
- Minn. Stat. Special Session 2005, Ch. 1, Art. 1, §90
- Minn. Stat. Special Session 2005, Ch. 1, Art. 1, §91
- Minn. Stat. §103C.005
- Minn. Stat. § 116
- Minn. Stat. § 365
- Minn. Stat. § 373(a)
- Minn. Stat. § 471
- Minn. Stat. § 516.19 (2)(c)(1)
- Minn. Stat. § 561.19

### Rules/Regulations

- Minn. R. Ch. 7000.1800
- Minn. R. Ch. 7050
- Minn. R. Ch 7020
  - 7020.0200
  - 7020.0405
  - 7020.1500
  - 7020.1600
  - 7020.1700
  - 7020.2002

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<sup>113</sup> Socially Responsible Agriculture Project, Contact, <http://www.sraproject.org/contact/>.