

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

MISSISSIPPI



Guide to Confronting Concentrated Animal Feeding Operations in MISSISSIPPI

A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT

For more than 20 years, Socially Responsible Agriculture Project (SRAP) has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations and to advocate for a food system built on regenerative practices, justice, democracy, and resilience. Our team includes technical experts, independent family farmers, and rural residents who have faced the threats of factory farms in their communities. When asked for help, SRAP offers free support, providing communities with the knowledge and skills to protect their right to clean water, air, and soil and to a healthy, just, and vibrant future. For more information, visit www.sraproject.org.

SRAP HELP HOTLINE

Facing a factory farm? Contact SRAP for support.

www.sraproject.org/help

(503) 362-8303

Information in the following Guide is current to the best of the authors' knowledge as of publication. This document is presented with the understanding that SRAP hereby renders no legal or other professional service. Due to the rapidly changing nature of the law, information contained in this Guide may become outdated. In no event will funders or authors be liable for direct, indirect, or consequential damages resulting from use of this material. Readers of this publication should seek legal advice from an attorney with any case-specific questions or concerns.

Date of publication: May 2019



CAFO Guide Overview

This guide outlines CAFO laws, regulatory processes, and useful resources for advocates. Below is an overview of actions communities can take if a CAFO is being built, expanding, or violating regulations.

EDUCATE YOURSELF

Learn how CAFOs harm communities at sraproject.org. Use this guide to find state agencies that regulate CAFOs; state permitting requirements for zoning, construction, etc.; and public open meetings and records laws. Use SRAP's Federal Guide to learn relevant federal laws like the Clean Water Act, Clean Air Act, and Endangered Species Act.

LOOK FOR PUBLIC NOTICES

Look for public notices of CAFOs in newspapers, state agency websites, and at government buildings. The window for public participation is often brief. Find rules and deadlines for public comment, hearing requests, and appeals. Respond before deadlines.

REQUEST AND REVIEW PUBLIC RECORDS

Search for public records related to the CAFO; if necessary, make a public records request.

NEW OR EXPANDING CAFOS

REVIEW ZONING ORDINANCES

Review municipal or county codes and zoning ordinances to determine if any requirements must be met at the local level.

REVIEW PERMIT APPLICATIONS

Determine if any local, state, or federal permit applications are required; review application materials to make sure all requirements are met.

COLLECT DATA

Test water before the CAFO siting or expansion to establish a baseline. This may show that new pollution came from the CAFO.

EXISTING CAFOS

REVIEW CAFO DOCUMENTS

Review permits, applications, manure management plans, nutrient management plans, monitoring reports, etc. Familiarize yourself with permit and plan provisions so you can spot violations.

COLLECT DATA

Conduct well, soil, water, and/or air testing to establish a connection between the facility and harmful pollution. Keep a log of odor and other impacts.

MONITOR CAFOS AND BUILD A RECORD

Submit complaints to regulators if you observe violations. Take photos and keep a log. Don't trespass!

FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

Did the agency take action? If a state agency isn't complying with state or federal environmental laws, contact your U.S. EPA Regional Office.

ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

Consider forming a nonprofit if you plan long-term advocacy.

SEEK LEGAL ADVICE

Consider contacting law firms or pro-bono clinics for help with legal matters related to CAFOs.

IDENTIFY IMPAIRED WATER BODIES

Determine if impaired waters may be impacted by discharge from the existing or proposed CAFO.

CONTACT STATE OR LOCAL HEALTH DEPARTMENT

The Health Department may monitor or oppose the CAFO due to public health impacts.

CHECK FOR PUBLIC FINANCING

If the CAFO received government-backed loans, see if an Environmental Assessment was conducted.

TRACK PUBLIC NOTICES

CAFO permits come up for renewal, so look for public notices and comment opportunities.

REVIEW STATE RIGHT-TO-FARM LAW

Find exceptions to the law's nuisance liability shield (e.g., compliance with laws and permits is often a prerequisite to nuisance claim protection).

AGENCIES & STATE DEFINITIONS

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

SEEK PROPERTY TAX ADJUSTMENT

Neighbors may be able to reduce their property taxes due to CAFOs' negative impact on property values.

ENGAGE IN RULEMAKING PROCESSES

Attend regulatory meetings and share your concerns. If your state allows it, develop local ordinances to protect communities.

INTRODUCTION: CAFOs IN MISSISSIPPI

Animal agriculture in Mississippi is dominated by poultry operations; the state ranks 5th out of all 50 states for broiler production,¹ and poultry and egg sales account for approximately 39 percent of all agricultural sales in the state.² According to the Mississippi Department of Agriculture, the state has 17,952 farms with livestock and poultry operations.³ While Mississippi prides itself on the fact that 96 percent of the farms in the state are family-owned, the state still has its share of large scale industrial animal agriculture.⁴ According to the U.S. Environmental Protection Agency (U.S. EPA), Mississippi has 54 concentrated animal feeding operations (CAFOs) that require discharge permits and approximately 379 unpermitted large CAFOs that have Nutrient Management Plans.⁵ Authority over these operations rests with the Mississippi Department of Environmental Quality (MDEQ), which oversees implementation of the MS/NPDES permits and implementation of the Nutrient Management Program.

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.)

Agencies

Mississippi Department of Environmental Quality (MDEQ)

MDEQ is the primary state agency that develops, implements, and enforces state and federally authorized environmental laws and regulations that may apply to livestock operations. MDEQ's Office of Pollution Control Environmental Permits Division

¹ State Agriculture Overview, U.S Department of Agriculture National Agricultural Statistics Service, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=MISSISSIPPI

² Poultry, Mississippi Department of Agriculture, <https://www.mdac.ms.gov/agency-info/mississippi-agriculture-snapshot/>

³ Id.

⁴ Know Your Agriculture, Farm Flavor, <https://www.farmflavor.com/mississippi/mississippi-family-farms/know-your-agriculture/>.

⁵ NPDES CAFO Permitting Status Report , U.S. Environmental Protection Agency, (2017) https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf.

implements the environmental laws and programs that regulate AFOs in Mississippi. For more information, see [MDEQ's website](#).⁶

Mississippi State University Extension

Mississippi Cooperative Extension service is operated by Mississippi State University and provides research-based information, educational programs, and technology transfer. They facilitate litter and manure sample analysis and encourage best management practices (BMPs) to reduce the adverse impacts of agricultural waste on the state and its watersheds. They also conduct and publish research of importance to contract livestock producers. For more information, see [MSU Cooperative Extension webpage](#).⁷

USDA-Natural Resources Conservation Service (NRCS)

NRCS works with contract livestock growers to effectively manage animal waste. They help growers create and implement Nutrient Management Plans (NMP's), provide agricultural waste management training, and publish research and publications aimed at helping contract livestock producers to understand and follow federal regulations.⁸ NRCS also publishes an [Agricultural Waste Management Field Handbook](#).⁹

Mississippi Soil and Water Conservation Commission (MSWCC)

MSWCC is comprised of 82 districts, whose mission is to "guide, promote and demonstrate conservation, development, protection and proper utilization of the soil, water and related resources of the state."¹⁰ MSWCC does not regulate animal agricultural operations but is involved in several programs that intersect with animal agriculture. MSWCC's 319 Water Quality Program assists landowner/operators with the installation of Best Management Practices on agricultural lands and

⁶ Mississippi Department of Environmental Quality, <https://www.mdeq.ms.gov/>.

⁷ Mississippi State Cooperative Extension Service, <http://extension.msstate.edu/agriculture/livestock/poultry>.

⁸ Agricultural Waste Management, U.S. Department of Agriculture Natural Resource Conservation Service, <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/ecoscience/mnm/?cid=stelprdb1044732>.

⁹ Agricultural Waste Management Field Handbook, U.S. Department of Agriculture Natural Resource Conservation Service, <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/ecoscience/mnm/?cid=stelprdb1045935>.

¹⁰ MSWCC Mission, Mississippi Soil and Water Conservation Commission, <https://www.mswcc.ms.gov/SitePages/Administration%20Staff.aspx>.

informs/educates individuals about nonpoint source pollution in selected watersheds across Mississippi that are considered impaired. However, Mississippi Department of Environmental Quality (MDEQ) is the lead agency for development and implementation of the 319 Program. MSWCC has been designated as the lead agency for agricultural non-point source pollution. Through agreements with MDEQ, MSWCC implements information/education projects and land treatment cost-share projects across the State.

So, while they may not help stop a developing AFO, district employees can be valuable sources for local environmental information. Find a map for the 82 districts and field staff assignments [here](#).¹¹

For more information, see [MSWCC's website](#).¹²

U.S. EPA Region 4

Mississippi is part of the U.S. EPA Region 4, the Southeast, which also includes Alabama, Georgia, Florida, Kentucky, North Carolina, South Carolina, and Tennessee. While most AFO regulation—if there is any—happens at the state level, the EPA has some oversight authority regarding the state's implementation of federal laws.

For more information about EPA Region 4 and its involvement in Mississippi, see its [website](#).¹³

Definitions

Animal Feeding Operation (AFO)

MS Code § 49-17-29

An AFO is a facility where animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Below are the size distinctions between small, medium, and large AFOs.

¹¹ Districts Map, Mississippi Soil and Water Conservation Commission, <https://www.mswcc.ms.gov/SiteAssets/SitePages/Administration%20Staff/Field%20Staff%20Map.pdf>.

¹² Mississippi Soil and Water Conservation Commission, <https://www.mswcc.ms.gov/SitePages/Home.aspx>.

¹³ EPA Region 4 (Southeast), U.S. Environmental Protection Agency, <https://www.epa.gov/aboutepa/about-epa-region-4-southeast>.

AFO/CAFO Size Chart

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

Concentrated Feeding Operation (CAFO)

MS Code § 49-17-29

A CAFO is a Large AFO or a Medium AFO where pollutants are discharged into waters of Mississippi—either through a ditch, flushing system, or device, or from waters that pass over or through the facility and come into contact with the confined animals.

Note: two or more AFOs under common ownership are considered a single AFO if they adjoin each other or use a common system or area for waste disposal. A small AFO may be designated as a small CAFO by MDEQ if they determine that it's a significant contributor of pollutants to the waters of the state.

WATER

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

Mississippi National Pollutant Discharge Elimination System (MS/NPDES)

11 MS Administrative Code Part 6 Chapter 1

A CAFO must apply for a MS NPDES water pollution control permit if the CAFO discharges or proposes to discharge into waters of the state.¹⁴ They must also include a Nutrient Management Plan (NMP) with their NPDES permit application. Unsurprisingly, most operations assert that they do not discharge and therefore do not need a permit. Be sure to point out if that's not actually the case if you observe an operation discharging. As of 2017, 54 CAFOs in Mississippi had NPDES permits.

For more information about the MS NPDES program and permit requirements, see [MDEQ's NPDES Application and Forms page](#)¹⁵ and the applicable regulations.¹⁶

Any NPDES permit application is subject to state public notice requirements. The NOI must be published on [MDEQ's website](#)¹⁷ for at least 10 days and the most recent version of the NMP will be available for review. There is a requirement to notify contiguous landowners of the proposed facility and provide 25 days for the contiguous landowner to respond. Find regulations [here](#).¹⁸ From the date of the notice, interested residents have 30 days to submit written comments on the permit application and request a public hearing. A hearing is not automatic—**request one**. MDEQ will only hold a hearing if “significant interest” is received.

Nutrient Management Plans

All permitted CAFOs are required to develop and implement an NMP. MDEQ is the permitting authority in Mississippi but MDEQ does not help develop the NMP for the CAFO. The NMP is developed by a certified nutrient management planner and should include the [following](#).¹⁹

¹⁴ <http://www.sos.ms.gov/ACProposed/00019635b.pdf>

¹⁵ National Pollutant Discharge Elimination System (NPDES) Individual Permits, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.mdeq.ms.gov/permits/environmental-permits-division/applications-forms/>.

¹⁶ MS Code § 49-17-29, Title 11 MS Admin Code Part 6, Rule 1.1.4(C) & (H)

¹⁷ http://opc.deq.state.ms.us/report_gnp_notice.aspx

¹⁸ https://www.mdeq.ms.gov/wp-content/uploads/2017/06/FINAL_MULTIMEDIA_CAFO_GP.pdf (Act 2) (Act 3)

¹⁹ Nutrient Management Plan Content, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, https://www.mdeq.ms.gov/wp-content/uploads/2017/06/FINAL_MULTIMEDIA_CAFO_GP.pdf.

- The number of animals, amounts of manure or litter applied or transferred, an aerial or topographic map, and crop details
- Adequate storage of manure, litter, and process wastewater
- Procedures to ensure proper operation and maintenance of storage facilities
- Proper management of mortalities
- Diversion of clean water
- Preventing contact between animals and waters of the state
- Protocol to manage chemicals
- Identification of site-specific conservation practices that should be implemented
- Protocol for testing of manure, litter, process wastewater, and soil
- Records that must be maintained
- New soil and manure analyses every three years
- Annual reporting requirements

Note: Land application of dry poultry litter waste in Mississippi must be at least 25 feet from the nearest adjoining property line and at least 150 feet from the nearest non-owned occupied dwelling.²⁰

For more information on NMPs, see [MDEQ's Multimedia General Pollution Control Permit](#)²¹ and the applicable regulations.

Wetlands

MS Code § 49-27-5,49-17-1 et seq.

Wetlands are a critically important resource that require strong governmental protections. Wetlands occupy 13% of Mississippi's total land area and are therefore considered a scarce resource.²² The Mississippi Department of Environmental Quality is the primary state management agency for freshwater wetlands. The Department monitors and enforces many water-quality standards and regulations that directly affect wetlands.

Mississippi State Code states:

²⁰ Setback Distances for Poultry, Mississippi State Extension Service, <http://extension.msstate.edu/publications/publications/setback-distances-for-poultry-houses>.

²¹ Nutrient Management Plan Content, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, https://www.mdeq.ms.gov/wp-content/uploads/2017/06/FINAL_MULTIMEDIA_CAFO_GP.pdf.

²² Mississippi Wetland Resources, U.S. FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Water-Summary-Reports/National-Water-Summary-Wetland-Resources-Mississippi.pdf>.

It is hereby declared to be the public policy of this state to conserve the air and waters of the state and to protect, maintain and improve the quality thereof for public use, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses and to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing air or water pollution; and to cooperate with other agencies of the state, agencies of other states, and the federal government in carrying out these objectives.²³

In order to carry out the purposes of the Mississippi Air and Water Pollution Law (Sections 49-17-1 through 49-17-43 of the Mississippi State Code):

...the commission may set ambient standards of air and water quality for the state or portions thereof. Such ambient standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such air and of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial and other legitimate uses.²⁴

Many activities affecting wetlands in the state are regulated under the Corps' nationwide permits. Local building codes may contain certain soil erosion and sedimentation management controls that protect wetland areas. The state also has specific regulations regarding the construction of various structures that impact wetlands.²⁵

Generally, modification to wetlands, including depositing fill, excavating, or draining, will require a federal 404 permit from the U.S. Army Corps of Engineers (US ACoE). However, Section 401 of the CWA prevents a federal agency from issuing a permit for any activity that may result in a discharge to water (including wetlands) until the state where the discharge would occur has granted or waived Section 401 certification. The Mississippi Department of Environmental Quality is the primary State management agency for freshwater wetlands. The Department monitors and enforces many water-quality standards and regulations that directly affect wetlands. The Department's Office of Pollution Control requires section 401 water-

²³MS Code § 49-17-3

²⁴ MS Code § 49-17-19

²⁵ Mississippi Wetlands: What you need to know, BLR, <https://www.blr.com/Environmental/Water/Wetlands-in-Mississippi>.

quality certification of applicants seeking dredge and fill (section 404) permits from the Corps. During project review, the Office of Pollution Control attempts to prevent wetland losses by requesting that alternatives be considered. For unavoidable losses, the agency requests mitigation.²⁶ Denial of 401 certification by MDEQ prevents the federal permit or license from being issued. This process ensures that the issuance of federal permits will not violate state water quality standards.²⁷

If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they haven't, submit a complaint to the appropriate agency.

For more information about the U.S. ACoE role in 404 wetland permitting, see [USACE's Regulatory website](#).²⁸

Find more information about Mississippi's state 401 certification in Mississippi Administrative Procedures Acts and Rules, Title 11, Part 6, Chapter 1, Subchapter 3.²⁹

To locate wetlands in your area, see U.S. Fish & Wildlife Service's [Wetlands Mapper](#).³⁰

Water Quality

Water Quality Standards³¹

MS Code § 49-17-19

Impaired Water Bodies

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments³² and identify waters not meeting the state's water quality

²⁶ Mississippi Wetland Resources, U.S. FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Water-Summary-Reports/National-Water-Summary-Wetland-Resources-Mississippi.pdf>, p. 247.

²⁷ 401 Certification, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://www.mdeq.ms.gov/wp-content/uploads/2017/06/11-Miss.-Admin.-Code-Pt.-6-Ch.-1..pdf>.

²⁸ Regulatory, U.S. ARMY CORPS OF ENGINEERS MISSISSIPPI VALLEY DIVISION, <https://www.mvd.usace.army.mil/Missions/Regulatory/>

²⁹ 401 Certification, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://www.mdeq.ms.gov/wp-content/uploads/2017/06/11-Miss.-Admin.-Code-Pt.-6-Ch.-1..pdf>.

³⁰ Wetland Mapper, US FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Mapper.html>

³¹ *MS Code § 49-17-29*

³² CWA § 305(b).

standards.³³ Since states are supposed to protect waters from further degradation, it may be important to note if a CAFO or large AFO is seeking to discharge into or near an already impaired water of the state. You can find this information in [Mississippi's Statewide Water Quality Assessment Report](#)³⁴ or [EPA's Mississippi Water Quality Assessment Report](#).³⁵

Groundwater

MS Code § 51-3-1

The Clean Water Act regulates discharges to surface waters, but states have varying degrees of protection for groundwater. In 2009, Mississippi implemented [EPA's Groundwater Rule \(GWR\)](#).³⁶ The state acknowledges that groundwater is a precious natural resource and provides 75 percent of Mississippi's water needs and thus should be protected.

Groundwater Remediation Program: *MS Code § 49-17-405*

Groundwater Protection Plans: *11 MS Administrative Code, Part 7, Chapter 1*

Groundwater Variances: *MS Code § 51-3-25*

Underground Injection Control: *MS Code § 53-3-29*

Construction & Stormwater

While an AFO may not need an NPDES permit to operate, its construction may require an NPDES permit. The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.³⁷ MDEQ administers stormwater construction permits for the state and anyone planning a construction project that will disturb between 1 and 5 acres of earth must obtain a Small Construction General Permit. The owner or operator must complete the Small Construction Notice of Intent (**SCNOI**) and keep the form on the project site or locally available. In addition, the owner or operator must develop and implement a Storm Water Pollution Prevention Plan (**SWPPP**), which must also be kept at the project site or locally available. For

³³ CWA § 303(d).

³⁴ Mississippi 2018 Statewide 305(b) Water Quality Report, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, https://www.mdeq.ms.gov/wp-content/uploads/2019/01/2018_305bReport_Final-002.pdf.

³⁵ Mississippi Water Quality Assessment Report, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, https://ofmpub.epa.gov/waters10/attains_state_control?p_state=MS.

³⁶ Drinking Water Requirements for States and Public Water Systems, United States Environmental Protection Agency, <https://www.epa.gov/dwreginfo/ground-water-rule>.

³⁷ CWA § 402; 40 C.F.R. §§ 122.26, 450.

projects that are considered large construction activities (greater than 5 acres), the owner or operator must submit a Large Construction Notice of Intent (**LCNOI**) to the Office of Pollution Control (**OPC**) along with the **SWPPP** and the **USGS Quad Map** (or copy).³⁸

For more information, see [MDEQ's Construction Stormwater website](#)³⁹ or the [2017 Construction Stormwater Permit for Small Construction](#)⁴⁰ and the [2017 Construction Stormwater Permit for Large Construction](#).⁴¹

Karst

Karst is a geological formation where soluble carbonate rocks such as limestone or dolomite occur at or near the surface and dissolve to create sinkholes, sinking streams, depression, caves, and subterranean drainage. Karst terrain is particularly susceptible to groundwater contamination because it provides a fast and easy route for unfiltered contaminants from the land surface to reach the aquifer. As a result, some states take karst into account when making land use decisions. They may impose additional construction or waste application setbacks from known sinkholes.

Mississippi is not known for Karst terrain, but there are three distinct limestone outcrops. Though 10 counties fall within these limestone regions (Tishomingo, Benton, Tippah, Union, Calhoun, Winston, Wayne, Jones, Jasper, Smith, Rankin, and Warren), the state does not have any laws or regulations on the subject.⁴²

AIR

Some states regulate AFO air pollution or odor more than others. Unfortunately, Mississippi is not one of them.

³⁸ Mississippi Stormwater Pollution Prevention Plan (SWPPP) Guidance Manual for Construction Activities (2016), MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.mdeq.ms.gov/wp-content/uploads/2017/06/ConstructionGM.pdf>.

³⁹ Construction Stormwater, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL PROTECTION <https://www.mdeq.ms.gov/permits/environmental-permits-division/types-of-general-permits/>

⁴⁰ Construction Stormwater Permit for Small Construction Sites (2017), MDEQ, https://www.mdeq.ms.gov/wp-content/uploads/2013/04/Small_cnstr_prmt.pdf.

⁴¹ Construction Stormwater Permit for Large Construction Sites (2017), MDEQ, <https://www.mdeq.ms.gov/wp-content/uploads/2017/06/05General.pdf>

⁴² Progress Report on the Digital Karst Map of Mississippi, GEOLOGICAL SOCIETY OF AMERICA, https://gsa.confex.com/gsa/2005SE/finalprogram/abstract_82696.htm

Air Quality & Odors

MS Code § 49-17-29(1)

Industrial livestock operations are a significant source of odors and air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, animal agriculture may be regulated, but the industry has largely evaded meaningful regulation. While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions. Unfortunately, Mississippi does little to regulate air pollution or odors from AFOs.

CAFOs are exempted from being required to have an air quality permit. “However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county’s board of supervisors and which are in force on June 1, 1998.”⁴³

There are a few minor AFO-related air regulations in Mississippi pertaining to incinerators. Livestock operations that use incinerators must obtain permit to construct coverage before beginning construction. Learn more about the regulations to construct and operate an incinerator at [MDEQ’s Incinerator Requirements \(ACT 10\)](#).

44

ZONING & LAND USE

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.

Zoning

MS Code § 17-1-1 et seq.

A municipality or county may regulate land use in its jurisdiction and enact zoning ordinances for the purpose of promoting health, safety, morals, or the general welfare of the community, subject to the restrictions with respect to agricultural

⁴³ MS Code § 49-17-29(1)

⁴⁴ Incinerator Requirements (ACT 10), MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, https://www.mdeq.ms.gov/wp-content/uploads/2017/06/FINAL_MULTIMEDIA_CAFO_GP.pdf.

lands and farm buildings or structures as set out in Section 17-1-3.⁴⁵ Mississippi has broad authority to regulate land use absent an explicit prohibition. While some states have used similar authority to pass ordinances such as increased setbacks or moratoriums to protect communities from the impacts of CAFOs, Mississippi limits the enactment of zoning ordinances that could impact agricultural operations. MS Code § 17-1-3 states:

No permits shall be required with reference to land used for agricultural purposes, including forestry activities as defined in Section 95-3-29(2)(b), or for the erection, maintenance, repair or extension of farm buildings or farm structures, including forestry buildings and structures, outside the corporate limits of municipalities.

Therefore, local control to enact zoning ordinances relating to agriculture is limited in Mississippi.

Setbacks

It is *recommended* that poultry houses, litter sheds, or compost locations be at least:

- 1,000 feet from a school, public well, public spring, public water intake, or town
- 400 feet from a residential dwelling, retail business, church, or public building
- 150 feet from any property line
- 75 feet from the edge of any public road.

MDEQ setback requirements for dry litter poultry CAFOs are:

- 150 feet from property line
- 600 feet from non-owned occupied residence

PUBLIC PARTICIPATION

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

Public Notice

⁴⁵ MS Code § 17-1-1 – 17-1-27

Depending on the type of permit, MDEQ may be required to issue public notice. In this case, public notice will be published in the community where the proposed permit will take effect, generally in a local newspaper. You can review MDEQ's EPD permits at public notice [here](#).⁴⁶

For more information on public participation in the permitting process see [MDEQ's Office of Community Engagement \(OCE\) webpage](#).⁴⁷

Note: Nutrient Management Plans are not subject to public notice.

Comments and Requesting a Public Hearing⁴⁸

Concerned community members have limited time to submit comments after publication of notice. This process moves very quickly, so it's important to submit written comments on time and to the correct contact person. Deadlines and contact information will be included in the public notice. When submitting written comments, residents should review the draft permit as well as the permit rationale sheet in order to provide an informed comment. Instructions for obtaining copies of these documents will be included in the public notice. During the public comment period, residents should also request a public hearing. These requests should be directed to the Permit Board or the Chief of the Environmental Permits Division as soon as possible to demonstrate "significant interest" in the permit decision.

Permit Appeals

The Environmental Quality Board hears appeals regarding permits issued or denied by MDEQ. Appeals must be filed within 20 days of the issuance of the permit or order.⁴⁹ For more information, see MS Department of Environmental Quality Board's webpage for [The Appeal Process](#).⁵⁰

⁴⁶ OPC Environmental Permits Division Draft Permit Public Notice, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.mdeq.ms.gov/ensearch/epd-permits-at-public-notice/>.

⁴⁷ Office of Community Engagement (OCE), MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.mdeq.ms.gov/about-mdeq/office-of-community-engagement/>.

⁴⁸ Rules For Formal Evidentiary Hearings, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.mdeq.ms.gov/wp-content/uploads/2017/06/11-Miss.-Admin.-Code-Pt.1.-Ch.6.pdf>.

⁴⁹ Id.

⁵⁰ Id.

NUISANCE & RIGHT TO FARM LAW

When state and federal regulations fail to protect residents from the harmful impacts of industrial livestock facilities, they may consider filing a nuisance lawsuit. Unfortunately, Mississippi's Right to Farm Law makes this strategy ineffective unless the nuisance claim has been filed within the first year of operation.

Nuisance Claims

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

State Right-to-Farm Laws

MS Code § 95-3-29

Right-to-farm laws exist in all states and seek to protect farmers from nuisance suits brought by neighbors and communities experiencing unpleasant effects of agricultural production. Mississippi's right to farm law states:

1. In any nuisance action, public or private, against an agricultural operation, including forestry activity, proof that said agricultural operation, including forestry activity, has existed for one (1) year or more is an absolute defense to such action, if the conditions or circumstances alleged to constitute a nuisance have existed substantially unchanged since the established date of operation.
2. The following words and phrases as used in this section shall have the meanings given them in this section:
 - a. "Agricultural operation" includes, without limitation, any facility for the production and processing of crops, or products thereof, livestock, or products thereof, farm-raised fish and fish products, livestock products, wood, timber or forest products, fowl or plants for breeding or sales and poultry or poultry products for commercial or industrial purposes.

"Agricultural operation" also includes the use of farm machinery, equipment, devices, chemicals, products for agricultural use, materials and structures designed for agricultural use and used in accordance with traditional farm practices.

- b. "Established date of operation" means the date on which the agricultural operation, including forestry activity, commenced operation. If the physical facilities of the agricultural operation, including forestry activity, are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of the date of commencement of the expanded operation and the commencement of expanded operation shall not divest the agricultural operation of a previously established date of operation.
- c. "Forestry activity" means any activity associated with the reforestation, growing, managing, protecting and harvesting of timber, wood and forest products including nongame species.
- d. "Traditional farm practices" means those accepted customs and standards established and followed by similar agricultural operations under similar circumstances.⁵¹

ENFORCEMENT

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

Submitting Complaints & Reporting Violations

If an AFO is violating its permit, NMP, or any other regulation, you can submit a complaint to MDEQ by calling (601) 961-5171 and telling the operator that you wish to

⁵¹ MS Code § 95-3-29.

report an environmental problem. If an operation is discharging waste, the agency's spill hotline is 1-800-222-6362.⁵²

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

MDEQ will investigate complaints and exercise civil, criminal, and administrative laws to compel enforcement when necessary.

Inspections

The NPDES program is administered within the Mississippi Department of Environmental Quality (MDEQ). MDEQ's Office of Pollution Control has four divisions that fulfill different aspects and responsibilities within the NPDES program: the Environmental Compliance and Enforcement Division (ECED), the Environmental Permits Division (EPD), the Field Services Division (FSD), and the Surface Water Division (SWD). The Environmental Compliance and Enforcement Division (ECED) is responsible for enforcing MS/NPDES permits.⁵³ MDEQ's policy is to inspect registered CAFOs once per year.⁵⁴ The only facilities in the state currently permitted as CAFOs are the swine facilities. Given the infrequent inspection of those facilities and no inspection of other CAFOs, it's especially important to understand AFO regulations and submit complaints whenever an operation is not in compliance.

See [Environmental Compliance Enforcement Division Contacts](#).⁵⁵

PUBLIC INFORMATION LAWS

One of the first steps when dealing with a new, expanding, or problematic industrial livestock operation is gathering information. It can entail finding information online, submitting record requests, and attending public meetings. Fortunately, there are

⁵² Report a Spill or Accidental Discharge, MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.mdeq.ms.gov/about-mdeq/contact-mdeq/>

⁵³ Permitting for Environmental Results, NPDES Profile: Mississippi, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://www3.epa.gov/npdes/pubs/mississippi_final_profile.pdf

⁵⁴ Id.

⁵⁵ <https://www.mdeq.ms.gov/about-mdeq/contact-mdeq/staff-directory/?office=OPC%20-%20ECED%20-%20Water%20I%20Branch> .

state laws that are intended to increase government transparency and provide public access to certain types of information.

Freedom of Information Act (FOIA)

5 U.S.C. § 552

The Freedom of Information Act (FOIA) is federal law that allows individuals to access and request information from government agencies. See the Federal Guide for more information.

Mississippi Public Records Act of 1983

MS Code § 25-61-1 through 25-61-19

The MS Public Records Act is Mississippi's law covering access to state records according to the federal Freedom of Information Act. The MS Public Records Act is intended to provide access to information about the workings of the government, and applies to all state, county, and municipal officers, governing bodies, agencies, departments, boards, commissions, and any other entities created or funded by state or local authority.

For more information, see the state Attorney General's MS FOIA webpage.⁵⁶ [The National Freedom of Information Coalition](#) also provides Mississippi FOIA resources, including governmental contacts and sample letters.⁵⁷

FOIA requests can be submitted by mail or electronically. Although no specific form is required to make a FOIA request, a sample Mississippi FOIA request is available [here](#).⁵⁸ Mississippi's State Attorney General's Office also created a FOIA request form, available [here](#).⁵⁹ Agencies are required to respond to records requests within seven business days.⁶⁰ The MS FOIA does include an explicit fee waiver provision.

⁵⁶ The Freedom of Information Act, STATE OF MISSISSIPPI OFFICE OF THE ATTORNEY GENERAL, <http://www.ago.state.ms.us/foi-forms-and-requests/>.

⁵⁷ Mississippi FOI Resources, NATIONAL FREEDOM OF INFORMATION COALITION, <https://www.nfoic.org/mississippi-foi-resources#lett>.

⁵⁸ Mississippi Sample FOIA Request, NATIONAL FREEDOM OF INFORMATION COALITION, <https://www.nfoic.org/mississippi-sample-foia-request>.

⁵⁹ Mississippi's State Attorney General's Office FOIA Request, <http://www.ago.state.ms.us/wp-content/uploads/2018/12/8.0.1-Open-Records-Request-Form-rev-11-2018.pdf>.

⁶⁰ MS Code § 25-61-5-1(a-b)

FOIA regulations and procedures can change frequently, so you should consult the most current laws and regulations before filing MS FOIA requests.

Mississippi Open Meetings Act

MS Code § 25-41-1

The Mississippi Open Meetings Act legislates how public meetings are conducted. It declares:

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.⁶¹

It states that all meetings of all groups who manage or spend public funds shall be open to the public—with a few exceptions—and outlines adequate notice of the meetings. For more information about exemptions, notice, meeting minute requirements, and enforcement of the act, see MS Code § 25-41-(1-17).

PROPERTY TAX APPEAL

Industrial livestock operations have been shown to reduce nearby property values by as much as 80 percent. Unfortunately, local governments often fail to adjust property value assessments accordingly, causing owners of nearby properties to pay more than their fair share of property taxes, in addition to enduring the other harmful impacts of industrial livestock production. In these cases, property owners may be able to seek a property tax reduction. This may also help convince local government officials that CAFOs aren't as economically beneficial to communities as their proponents claim.

⁶¹ MS Code § 25-41-1.

Property Tax Appeal

MS Administrative Title 35, Miss. Code Ann. § 27-4-3, MS Constitution Art. IV, Section 112

Mississippi property owners may file an appeal when they believe that their property assessment does not reflect the market value of the property. Every Mississippi county has a tax assessor who determines the fair market value of all real estate property on an annual basis.⁶² Residents wishing to appeal their assessment must appear before their county's Board of Supervisors. Appeals must be submitted to the county's Chancery Clerk by the first Monday in August preceding the due date of the taxes. Be sure to review your county's specific procedures and policies; if you fail to accurately apply for relief, you waive your right to relief for that year.

For more information about assessment processes and Mississippi's property taxes, see the [Guide for County Assessors](#).⁶³

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](#).⁶⁴

State and Nonprofit Organizations

The Center for Progressive Reform

<http://www.progressivereform.org/>

Phone: (202) 747-0698

⁶² <http://www.sos.ms.gov/adminsearch/ACCCode/00000182c.pdf>

⁶³ Guide for County Assessors, Mississippi, DEPARTMENT OF REVENUE, https://www.dor.ms.gov/Documents/Chpt11_PersonalProperty.pdf

⁶⁴ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

Pearl Riverkeeper

<https://www.pearlriverkeeper.com>

Phone: (540) 419-7567

Mississippi River Collaborative

<http://www.msrivercollab.org/focus-areas/agriculture/>

Phone: (865) 522-7007 Ext 104

Sierra Club – Mississippi Chapter

<https://mississippi.sierraclub.org/content/sierra-club-mississippi-chapter>

Phone: 662-338-5426

Tulane Environmental Law Clinic

<http://www.tulane.edu/~bfleury/envirobio/enviroweb/LawClinic/LawClinic.html>

Phone: (504)865-5789

Note: see the Federal Guide for national organizations.