



**SRAP**  
Socially Responsible  
Agriculture Project

# Guide to Confronting Concentrated Animal Feeding Operations in

# MONTANA



# Guide to Confronting Concentrated Animal Feeding Operations in MONTANA

## **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](http://www.sraproject.org).

### **SRAP HELP HOTLINE**

Facing a factory farm? Contact SRAP for support.

[www.sraproject.org/help](http://www.sraproject.org/help)

(503) 362-8303

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# 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](http://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

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Animal agriculture in Montana is dominated by cattle operations, but is also home to a number of sheep, hog, and poultry operations. According to 2012 census data, the state ranks 10<sup>th</sup> for cattle, 7<sup>th</sup> for sheep, 22<sup>nd</sup> for hogs, and around 40<sup>th</sup> for poultry out of all 50 states.<sup>1</sup> There are approximately 27,000 farming operations and over half of the land in the state is used for agricultural production.<sup>2</sup> Agriculture is far and away Montana's leading industry.<sup>3</sup>

As of 2017, there were 124 CAFOs, 103 of which have Pollutant Discharge Elimination System permits.<sup>4</sup> For the most part, Montana echoes and implements the minimum requirements of federal environmental protection laws, though the state does impose additional requirements in a few key areas to protect natural resources. For example, although Montana restricts local regulation that could impact industrial agriculture, doesn't regulate odors, and silences whistleblowers via ag gag laws, it also regulates discharges to groundwater, protects sage grouse habitat, provides opportunities for public notice for almost all agency permit actions, and requires permits for animal feeding operations with over 1,000 animal units, regardless of whether the operation discharges pollutants. The Montana Department of Environmental Quality is the primary agency that handles CAFO regulation in the state.

### **CAFO Guides Quick Overview**

Because communities are often the primary defenders against CAFOs, this guide outlines CAFO laws, regulations, and resources for advocates to better understand what's required of CAFOs and what communities can do about them. This guide should be consulted along with SRAP's Community Organizing Guide and Federal Guide.

While every situation will require a slightly different approach, the following overview provides basic guidance for communities facing a new, expanding, or noncompliant CAFO.

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<sup>1</sup> [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=MONTANA](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=MONTANA)

<sup>2</sup> 58 million of the 94 million acres in the state of Montana are farming operations.

<sup>3</sup> <https://agr.mt.gov/AgFacts>

<sup>4</sup> [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)

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## AGENCIES & STATE DEFINITIONS

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*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**

#### **Montana Department of Environmental Quality (MDEQ)**

MDEQ is the primary state agency that develops, implements, and enforces state and federally authorized environmental laws and regulation that may apply to livestock operations. MDEQ is composed of several divisions or departments that help implement environmental laws and programs that regulate animal agriculture and CAFOs in Montana. The Water Protection Bureau of MDEQ administers the Montana Pollutant Discharge Elimination System (MPDES) permit, which is the primary mechanism for regulating CAFOs in Montana. For more information, see [MDEQ's website](#).<sup>5</sup>

#### **Montana Board of Environmental Review (MBER)**

Montana law authorizes MBER to adopt and implement rules relating to water quality, air quality, and public water supply. They are also authorized to hear appeals of MDEQ permit decisions or approvals of local pollution control programs. For more information, see [MBER's website](#).<sup>6</sup>

#### **Montana Departments of Agriculture (MDA)**

MDA has several voluntary and mandatory programs that impact agriculture in the state, but few of them directly regulate CAFOs in Montana. MDA develops General Management Plans to protect groundwater from degradation and impairment by agriculture. The agency conducts groundwater monitoring for pesticides and nitrates. It also handles the state's fertilizer program/licensing, food safety, and provide loans and grants to assist agriculture in the state. For more information, see [MDA's website](#).<sup>7</sup>

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<sup>5</sup> <http://deq.mt.gov/>

<sup>6</sup> <http://deq.mt.gov/DEQAdmin/ber/boardauthority>.

<sup>7</sup> <https://agr.mt.gov/>

## Montana Conservation Districts

Montana is comprised of 58 conservation districts. These districts are units of local government intended to help Residents conserve soil, water, and other renewable natural resources.<sup>8</sup> Montana’s conservation districts do not regulate animal agricultural operations, but they are involved in programs and activities that intersect with the industry and local government. Conservation districts are involved in stream permitting, controlling of nonpoint source pollution, developing local Total Maximum Daily Loads, assisting with riparian and wetland management, reserving water for future beneficial use, appointing rangeland leaders, and other projects and educational efforts. So, while they may not help stop a developing CAFO, conservation district employees can be valuable sources for local environmental information. Find a map and contacts for all 58 conservation districts [here](#).<sup>9</sup> For more information, see [Montana’s Association of Conservation Districts webpage](#).<sup>10</sup>

## U.S. EPA Region 8

Montana is part of the U.S. EPA Region 8, the Mountains and Plains, which also includes Wyoming, Utah, Colorado, North Dakota, and South Dakota. While most CAFO 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 8 and its involvement in Montana, see their [website](#).<sup>11</sup>

## Definitions

### Animal Feeding Operation (AFO)

*Montana Code Annotated 75-5-801*

An AFO is a lot or 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.<sup>12</sup>

### Concentrated Animal Feeding Operation (CAFO)

*Montana Code Annotated 75-5-801; Administrative Rules of Montana 17.30.1330*

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<sup>8</sup> <https://macdnet.org/about-us/district-info/>

<sup>9</sup> <https://macdnet.org/wp-content/uploads/2013/12/2017MTCDDirectoryWeb.pdf>

<sup>10</sup> <https://macdnet.org/about-us/district-info/>

<sup>11</sup> <https://www.epa.gov/aboutepa/epa-region-8-mountains-and-plains>; <https://www.epa.gov/mt>

<sup>12</sup> MCA 75-5-801(1).

A CAFO is an animal feeding operation that is defined as a large or medium CAFO or designated a CAFO in accordance with federal regulation 40 CFR, part 122. Note that two or more AFOs under common ownership are considered a single AFO for determining number of animals if they adjoin each other or use a common area for waste disposal.<sup>13</sup>

**Large CAFO:** An AFO that stables or confines the number of animals at or above the threshold presented in the Large CAFO column in the chart below.<sup>14</sup>

**Medium CAFO:** An AFO that stables or confines the number of animals within the threshold presented in the Medium CAFO column in the chart below, **AND** the operation discharges pollutants into waters of the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the state that originate outside of and passes over, across, or through the facility or otherwise comes into direct contact with the animals confined in the operation.<sup>15</sup>

**Designated CAFO:** An AFO of any size that MDEQ has determined to be a significant contributor of pollutants to waters of the state.<sup>16</sup>

- Factors MDEQ considers for designating an AFO to a CAFO:
- Size of the AFO
- Quantity and nature of pollutants reaching waters
- Location relative to receiving waters
- Means of conveyance of animal wastes and process waste waters into state waters
- Slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge
- Other relevant factors

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<sup>13</sup> MCA 75-5-801(2).

<sup>14</sup> MCA 75-5-801(3).

<sup>15</sup> MCA 75-5-801(4).

<sup>16</sup> ARM 17.30.1330(5).



### CAFO Size Chart

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

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## WATER

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*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.*

### [Montana Water Quality Act \(MWQA\)](#)

*MCA 75-5-101 et seq.*

Montana’s Water Quality Act (MWQA) governs the discharges of pollutants into waters of the state. Part 8 of the MWQA addresses CAFOs specifically but mostly adopts the federal regulations by reference.<sup>17</sup> It also sets out the level of environmental assessments required for permitting actions.<sup>18</sup> The details for implementing the MWQA are found in the regulations—the Administrative Rules of Montana.

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<sup>17</sup> MCA 75-5-801 et seq.; 40 CFR 122.22 & 412.

<sup>18</sup> MCA 75-5-803(2).

## Water Quality Standards

*ARM 17.30.601 et seq.*

Montana has developed both numeric and narrative criteria for water quality standards.

## Impaired Water Bodies

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments<sup>19</sup> and identify waters not meeting the state's water quality standards.<sup>20</sup> 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 [MDEQ's Water Quality Reports and List of Impaired Surface Waters website](#).<sup>21</sup>

## Groundwater

*ARM 17.30.1001 et seq.*

The Clean Water Act regulates discharges to surface waters, but states have varying degrees of protection for groundwater. Montana acknowledges that it relies heavily on groundwater as the primary source of drinking water, public water systems, irrigation, and livestock. Accordingly, Montana is one of the states that regulates discharges to its groundwater. Montana's primary regulation of groundwater is the Montana Ground Water Pollution Control System (MGWPCS). MGWPCS issues discharge permits to owners of potential sources of pollution to state groundwater.

For more information, see MDEQ's Groundwater Discharge Permits [website](#).<sup>22</sup>

MDEQ may also require AFOs to monitor groundwater near the facility—regardless of whether they discharge—if the production area could be a potential source of pollution to state ground water.

## Montana Pollutant Discharge Elimination System (MPDES) Permits

*ARM 17.30.13 et seq.*

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<sup>19</sup> CWA § 305(b).

<sup>20</sup> CWA § 303(d).

<sup>21</sup> <http://deq.mt.gov/Water/Resources/Report>.

<sup>22</sup> <http://deq.mt.gov/Water/drinkingwater/groundwater>.

A large CAFO, medium CAFO, or designated CAFO as defined above must apply for an MPDES permit. The state is authorized to issue general or individual MPDES permits. Most operations apply for a general permit but MDEQ may determine that an individual MPDES permit is necessary<sup>23</sup>—although that has not happened to date. The MPDES CAFO permit application must also include the following:<sup>24</sup>

- Notice of Intent
- Name of owner/operator
- Facility location
- Topographic map
- Number and type of animals confined
- Waste containment and storage details
- The number of acres under control of the applicant available for application of waste/wastewater
- Estimated amount of manure, litter, and process wastewater generated per year
- A Nutrient Management Plan
- Application fee.

For more details about the [General MPDES CAFO permit](#), see the most recent version of the permit.<sup>25</sup> The permit should be updated every five years.

### **Sage Grouse Protections**

If the operation is within or near sage grouse habitat, the operation must obtain verification from the Montana Sage Grouse Habitat Conservation program and consultation may be required.

### **Public Notice**

When a CAFO files an application for coverage under an MPDES permit, Montana’s public notice requirements call for a notice period. If MDEQ determines that the application is complete, the application and NMP are made available to the public for a period of 30 days for review and comment. MDEQ publishes notice of MPDES applications on its [website](#).<sup>26</sup> The operator is not required to publish notice in newspapers or contact neighbors about the MPDES permit application. The MPDES application materials are all public record and should be made available to the

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<sup>23</sup> Individual permit required if facility is unable to comply with the terms and conditions of permit or MDEQ determines that the discharge will cause or contribute to a violation of water quality standards.

<sup>24</sup> ARM 17.30.1322(9)(a).

<sup>25</sup> [http://deq.mt.gov/Portals/112/Water/WQInfo/Documents/MT-18-13/2018\\_MTG010000\\_FPER.pdf](http://deq.mt.gov/Portals/112/Water/WQInfo/Documents/MT-18-13/2018_MTG010000_FPER.pdf).

<sup>26</sup> <http://deq.mt.gov/Public/notices>.

public. If there is significant public interest in the matter, a public hearing may be held.

### **Nutrient Management Plan**

*ARM 17.30.1334 & 1343*

Montana requires that any permit issued to a CAFO must include best management practices necessary to meet the requirements specified in 40 CFR 122.42(e)(1) and any applicable effluent limitations in 40 CFR Part 412.<sup>27</sup> The terms of the NMP become conditions of the permit. The NMP should do the following:

- Ensure adequate storage of manure, litter, and process wastewater
- Ensure proper management of mortalities
- Ensure that clean water is diverted from the production area
- Prevent direct contact between animals and waters of the state
- Identify site-specific conservation practices to be implemented to control runoff
- Identify protocols for testing manure, litter, process wastewater, and soil
- Establish protocols for the land application of manure, litter, or wastewater to ensure the appropriate utilization of nutrients
- Provide nutrient analysis when transferring manure to other persons.

See ARM 17.30.1334 for the technical standards for CAFOs they use to develop the NMP. Note: nutrient management can get very technical and confusing so consider consulting a specialist if you have questions about an operation's nutrient management.

### **Reporting Requirements**

CAFOs with MPDES permits are required to maintain records relating to their NMP, sampling results, manure transfers, lagoon depth, animal mortalities, overflows, and actions taken to correct deficiencies. They must maintain these records for five years.

Any discharges must be reported to MDEQ within 24 hours of the discharge. A detailed report of the discharge, reasons for the discharge, and steps taken to remedy the discharge must then be submitted within five days of the discharge.

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<sup>27</sup> ARM 17.30.1343(1)(c)(i).

Montana also requires CAFOs with MPDES permits to submit an annual report by January of each year that includes the number of animals, waste calculations, land application summary, crops planted and actual yields, soil testing results, and discharge summary.

### **Stormwater/Construction Permits**

*ARM 17.30.1101 et seq.*

The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.<sup>28</sup> In addition to obtaining an MPDES CAFO permit, operations may also need to obtain a stormwater permit if construction activities will impact an acre or more of land. For more details about the [General MPDES Stormwater Discharges Associated with Construction Activity permit](#), see the most recent version of the permit.<sup>29</sup>

### **Wetlands & Streams**

Wetlands are a critically important resource that require strong governmental protections. “Wetlands are valuable for providing flood and erosion control, enhancing water quality, and providing wildlife and fish habitat.”<sup>30</sup> MDEQ is involved in wetland protection and restoration efforts; see [MDEQ’s Wetland Program Plan](#) for more details.<sup>31</sup>

Generally, any 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. Denying 401 certification 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 and allows Montana to have input on projects that could impact its waters.

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<sup>28</sup> CWA § 402; 40 C.F.R. §§ 122.26, 450.

<sup>29</sup> [http://deq.mt.gov/Portals/112/Water/WPB/MPDES/swPermits/pdf/2018\\_FPER\\_MTRI00000.pdf](http://deq.mt.gov/Portals/112/Water/WPB/MPDES/swPermits/pdf/2018_FPER_MTRI00000.pdf)

<sup>30</sup> <http://deq.mt.gov/Water/SurfaceWater/Wetlands>.

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<http://deq.mt.gov/Portals/112/Water/WPB/Wetlands/StrategicFrameworkGroups/DEQ%20Wetland%20Program%20Plan%20-Final%201.19.16.pdf>.

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 it hasn'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](#).<sup>32</sup>

For more information about state water quality certification, see [MDEQ's 401 Water Quality Certification website](#).<sup>33</sup>

Find wetlands in your area using [U.S. Fish & Wildlife Service's Wetlands Mapper](#).<sup>34</sup>

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## AIR

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### **Air Quality & Odors**

*MCA, Title 75, Chapter 2*

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, Montana does little to regulate air pollution or odors from AFOs; there are no requirements or permitting programs related to air quality that apply to CAFOs, and there are no laws that address odors from livestock operations. There is literally nothing that MDEQ can do about livestock air quality impacts or odors. Residents can continue to submit odor complaints and bring the need for regulation to the state's attention but, for now, that's all they can do.

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<sup>32</sup> Montana Regulatory Office, U.S. ARMY CORPS OF ENGINEERS OHAMAH DISTRICT, <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Montana/>

<sup>33</sup> <http://deq.mt.gov/Water/permits/401and318#menu2>.

<sup>34</sup> Wetland Mapper, US FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Mapper.html>

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## ZONING & LAND USE

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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 community. It's a good idea to get to know local zoning and land use officials and procedures to better understand opportunities for involvement.*

### Zoning

*MCA, Title 76, Chapter 2*

In Montana, a county or municipality may regulate land uses in its jurisdiction for the purpose of promoting the public health, safety, morals, and general welfare.<sup>35</sup>

Counties are authorized to adopt a growth policy, master plan, and zoning regulations in accordance with those plans. For details about county zoning, see MCA 76-2-201 et seq.

Municipalities are authorized to regulate the following: height, number of stories, size of buildings, percentage of lot that may be occupied, size of yards, size of open spaces, density of population, and location and use of buildings or land for trade, industry, residence, or other purposes. For details about municipal zoning, see MCA 76-2-301 et seq.

Zoning is often a powerful tool for local regulation of activities that impact residents within its jurisdiction. Some states have enacted ordinances that impose moratoriums on CAFO construction, increase setbacks from CAFOs or their waste application sites, or require local approval for construction or discharge permits. However, Montana explicitly forbids local governments from passing such ordinances or land use regulations. Montana's code states, "It is the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances."<sup>36</sup> This protects not only the smaller family farmer but also industrial agricultural operations. The code goes on to state:

A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any

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<sup>35</sup> MCA 76-2-201

<sup>36</sup> MCA 76-2-901.

existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.<sup>37</sup>

Therefore, local control to enact zoning ordinances relating to agriculture is limited in Montana. Unless Montana's code changes, residents will rely primarily on state regulation of agriculture in their communities.

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## PUBLIC PARTICIPATION

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

### **[Montana Public Participation in Governmental Operations Act](#)**

*MCA 2-3-101 et seq.*

Montana requires that "legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency."<sup>38</sup>

For more details about agency action, public notice provisions, proof of publication, public hearings, exceptions, and enforcement, see the full text of MCA 2-3-101 et seq.

Since MDEQ is the primary agency for CAFO regulation, consult MDEQ's website for information about [Open Public Comment Periods](#),<sup>39</sup> [Public Meetings](#),<sup>40</sup> and [Public Notices](#).<sup>41</sup>

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<sup>37</sup> MCA 76-2-903.

<sup>38</sup> MCA 2-3-101.

<sup>39</sup> <http://deq.mt.gov/Public/publiccomment>

<sup>40</sup> <http://deq.mt.gov/Public/publicmeetings>

<sup>41</sup> <http://deq.mt.gov/Public/notices>.



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## NUISANCE & RIGHT TO FARM LAW

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*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, Montana's Right to Farm Law makes this strategy ineffective in most cases.*

### **Nuisance Claims**

*MCA 27-30-101(1); MCA 45-8-111*

A nuisance is defined as "anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance."<sup>42</sup>

A public nuisance is "a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons."<sup>43</sup>

In short, 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 Montana—have enacted laws to shield livestock operations from nuisance liability.

### **State Right-to-Farm Laws**

*MCA 27-30-101(3); MCA 45-8-111(4)*

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

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<sup>42</sup> MCA 27-30-101(1).

<sup>43</sup> MCA 45-8-111(1).

An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a public or private nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.<sup>44</sup>

The state code echoes the same provision in MCA 45-8-111 (4).

The protections against nuisance lawsuits in Montana are therefore strong but not impenetrable if the operation isn't operating in accordance with "normal operations" and/or if the operation is new to the complaining resident. For questions about nuisance suits and Montana's right to farm law, consider consulting a legal professional.

### [Ag-Gag Law](#)

*MCA 81-30-101 et seq.*

Over the last few decades, a number of states across the U.S. have introduced bills for laws colloquially known as "ag-gag laws." These ag-gag laws are designed to silence whistleblowers from revealing conditions on industrial farms. Montana is one of seven states with ag-gag laws on the books.<sup>45</sup> Ag-gag bills have been introduced and failed in seventeen states, and three states passed ag-gag laws that have been ruled unconstitutional.<sup>46</sup>

Montana's ag-gag law is codified at MCA 81-30-101 et seq and is called the Farm Animal and Research Facility Protection Act. The act states that "a person who does not have the effective consent of the owner and who intends to damage the enterprise conducted at an animal facility may not" damage, destroy, enter, or remain on the facility, and they may not "enter an animal facility to take pictures by photograph, video camera, or other means with the intent to commit criminal

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<sup>44</sup> MCA 27-30-101(3).

<sup>45</sup> States with ag-gag: Montana, North Dakota, Iowa, Missouri, Arkansas, Alabama, and North Carolina.

<sup>46</sup> States where ag-gag ruled unconstitutional: Idaho, Utah, Wyoming.

defamation.”<sup>47</sup> Individuals can face criminal penalties for violating the act and can face fines, actions for damages, and prison time.<sup>48</sup>

Therefore, you should be very careful to avoid trespassing when documenting violations occurring at a CAFO. For more details, read the full text of the law.

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## ENFORCEMENT

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*Since industrial livestock operations rarely self-report violations of local, state, or federal law, it's 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 CAFO is violating its permit, NMP, or any other applicable regulation, you can submit a complaint to MDEQ via the agency's electronic [Spills/Complaint Reporting Form](#).<sup>49</sup>

For urgent complaints, you can also call MDEQ Enforcement Staff at (406)444-0378.<sup>50</sup>

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

**Note:** Any complaints are public records but complainants may choose to remain anonymous.

### Inspections

MDEQ is authorized to conduct inspections to verify compliance with state and federal environmental laws. Inspections usually entail a meeting, records review, site evaluation, reporting preliminary findings, and submitting an inspection report. These

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<sup>47</sup> MCA 81-30-103(2).

<sup>48</sup> MCA 81-30-104, 105.

<sup>49</sup> <http://deq.mt.gov/reporting/rss/40508>.

<sup>50</sup> Id.

inspections may be regularly scheduled, or in response to a discharge reported by the CAFO or a public complaint.

For more information, see [MDEQ's Compliance Inspections and Discharge Permit Noncompliance Reporting website](#).<sup>51</sup>

### **Penalties**

*MCA 75-5-631 & 632*

A person found to have violated a permit condition of the state's Water Quality Act may be subject to a civil penalty not to exceed \$25,000 per day; each day of violation may constitute a separate violation.<sup>52</sup>

Furthermore, any person who willingly or negligently violates a prohibition or permit condition is subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than one year, or both.<sup>53</sup>

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## **PUBLIC INFORMATION LAWS**

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*One of the first steps when dealing with a new, expanding, or problematic industrial livestock operation is gathering information through research online, submitting record requests, and/or attending public meetings. Fortunately, state laws increase government transparency and provide public access to certain types of information.*

### **Freedom of Information Act**

*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, subject to some restrictions. See the Federal Guide for more information.

### **Montana Public Records Act**

*MCA 2-6-1001 et seq.; Montana Constitution Article II, Section 9*

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<sup>51</sup> <http://deq.mt.gov/Water/subdivisions/compliance#collapseTwo>.

<sup>52</sup> MCA 75-5-631.

<sup>53</sup> MCA 75-5-632.

Montana’s Constitution states:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of the state government and its subdivisions, except in cases where the demand of individual privacy clearly exceeds the merits of public disclosure.<sup>54</sup>

Montana’s Public Records Act provides that every person has the right to examine and obtain a copy of any public information of the state—subject to the exemptions contained in the act. Unlike many other states and federal open record laws, the act does not specify time limits for responding to record requests. See the full text of Montana’s Public Records Act for more details about records, exemptions, fees, and restrictions.

For public record requests to MDEQ, see their online [Public Record Request Form](#).<sup>55</sup>

Public record regulations and procedures can change frequently, so consult the most current laws and regulations before filing Montana public record requests.

### **Online Resources**

Before submitting a record request, check if the information you’re looking for can be found online. MDEQ maintains a [Data Search Tool](#) for “information on facilities or locations that DEQ monitors, permits, regulates, or remediates.”<sup>56</sup> It also maintains an [interactive map](#) with DEQ data where the public can find information about locations throughout the state.<sup>57</sup> The public can access [Environmental Assessments](#) online.<sup>58</sup>

### **[Montana Open Meeting Law](#)**

*MCA 2-3-201 et seq.: Montana Constitution Article II, Section 8*

Montana’s Open Meetings Law legislates how public meetings should be conducted. It states:

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<sup>54</sup> Montana Constitution, Article II, Section 9.

<sup>55</sup> <https://deqmt.justfoia.com/Forms/Launch/d705cbd6-1396-49b7-939e-8d86c5a87deb>.

<sup>56</sup> <https://svc.mt.gov/deq/dst/#/home>.

<sup>57</sup> <http://svc.mt.gov/deq/wmadst/>.

<sup>58</sup> <http://deq.mt.gov/Public/ea>.

[P]ublic boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the people’s business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them.<sup>59</sup>

The Law states that all meetings of any governing body shall be open to the public—with a few exceptions—and outlines adequate notice of the meetings. If the public body violated the Open Meetings Law, residents have 30 days to file a suit for the violation. Actions taken at the meeting in violation of the law may be voided.

For details about definitions, exceptions, notice, recordings, meeting minutes, and enforcement, see MCA 2-3-201 et seq.

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## PROPERTY TAX APPEAL

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*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.*

### **[Property Tax Appeal](#)**

*MCA 15-2-301 et seq.*

Montana property owners may file an appeal when they believe that their property assessment does not reflect the market value of the property. Residents wishing to appeal their assessment must file an appeal with their local tax appeal board within 30 days of the date on the appraisal.

For more information about the appeal process, see MCA 15-2-301 et seq. and the [Montana Tax Appeal Board website](#).<sup>60</sup>

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<sup>59</sup> MCA 2-3-201.

<sup>60</sup> <https://mtab.mt.gov/Aboutmtab>.

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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>61</sup>

### **State and Nonprofit Organizations**

- **Alternative Energy Resources Organization:** <https://aeromt.org/>
- **Wild Earth Guardians:** <https://wildearthguardians.org/>
- **Sierra Club-Montana Chapter:** <https://montana.sierraclub.org/>
- **Montana Environmental Information Center:** <https://meic.org/>
- **Montana Conservation Voters:** <https://mtvoters.org/>
- **Grow Montana:** <http://growmontana.ncat.org/>
- **Bitter Root Land Trust:** <http://www.bitterrootlandtrust.org/>
- **The Nature Conservancy in Montana:** <https://www.nature.org/en-us/about-us/where-we-work/united-states/montana/>
- **Montana Sustainable Grower's Union:** <http://www.homegrownmontana.org/>

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<sup>61</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>