



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

NEW JERSEY



Guide to Confronting Concentrated Animal Feeding Operations in NEW JERSEY

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 Due to the rapidly changing nature of the law, information contained in this Guide may become outdated.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: August 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

New Jersey is fortunate to have very few industrial livestock operations compared to other U.S. states. While our experience working in New Jersey is therefore limited, we created this guide to serve as a starting point for advocates. The guide outlines the most important CAFO laws and regulations, and describes what individuals and communities can do to protect themselves. Use this guide along with SRAP's Community Organizing Guide and Federal Guide.

AGENCIES & STATE DEFINITIONS

Agencies

The following agencies may either regulate CAFOs or be able to provide useful information. Learn more on the websites below or by contacting the agencies directly.

New Jersey Department of Environmental Protection (NJDEP)

NJDEP is the primary state agency that develops, implements, and enforces state and federally authorized environmental laws and regulations that may apply to livestock operations. See [NJDEP's website](#).¹

New Jersey Departments of Agriculture (NJDA)

NJDA is the primary agency for development and oversight of NMPs, and is involved in annual reporting, recordkeeping, and inspections. See [NJDA's website](#).²

USDA—Natural Resource Conservation Service (NRCS)

NRCS works with contract livestock growers to effectively manage animal waste. They help the grower to create and implement Nutrient Management Plans (NMPs), provide agricultural waste management training, and publish research and publications to help contract livestock producers understand and follow federal regulations. Visit [New Jersey's NRCS website](#) to learn more.³

¹ <https://www.nj.gov/dep/>

² <https://www.state.nj.us/agriculture/>

³ <https://www.nrcs.usda.gov/wps/portal/nrcs/site/nj/home/>

U.S. EPA Region 2

New Jersey is part of U.S. EPA Region 2. While most CAFO regulation happens at the state level, the EPA has oversight authority regarding the state's implementation of federal laws. See the [EPA Region 2 website](#).⁴

Definitions

Animal Feeding Operation (AFO)

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.⁵

WATER

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

New Jersey National Pollutant Discharge Elimination System (NPDES)

Most states are delegated the responsibility to administer the federal Clean Water Act by the U.S. EPA, while the U.S. EPA maintains oversight authority over its implementation. A state with Clean Water Act authority must have a program that is at least as stringent as federal law. Under federal law, if a CAFO discharges into waters of the state, the CAFO must apply for a National Pollutant Discharge Elimination System (NPDES) water pollution control permit and must include a Nutrient Management Plan (NMP) with the application. See the Federal Guide for more information on NPDES permits.

⁴ <https://www.epa.gov/aboutepa/epa-region-2>

⁵ <https://advance.lexis.com/documentpage/teaserdocument/?pdmfid=1000516&crd=4287b509-5961-4364-b433-deccdc9fc033&config=00JAAIYTg5OGJIYi04MTI4LTRINjQtYtC4Yi03NTQxN2E5NmE0ZjQKAFBvZENhdGFsb2ftaXPxZTR7bRPTx1Jok9kz&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A5WP2-TPD0-00BY-K312-00008-00&pddocid=urn%3AcontentItem%3A5WP2-TPD0-00BY-K312-00008-00&pdcontentcomponentid=234122&pdteaserkey=h4&pditab=allpods&ecomp=gss8kkk&earg=srl&prid=e27063ad-dacb-49af-af03-6b542dad1fe9>

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.

Some states have enacted additional water protection permitting programs that regulate CAFOs beyond what is minimally required by federal law. Research [permitting programs](#) in New Jersey.⁶

Nutrient Management Plan

Permitted CAFOs are required to develop and implement a Nutrient Management Plan (NMP), known in New Jersey as a Comprehensive Waste Management Plan (CWMP), to prevent surface water pollution under the federal NPDES program. Some states require NMPs from CAFOs even if they are not required to have federal NPDES permits. Learn about New Jersey's [waste management planning requirements](#) here.⁷ NJDEP also provides a [guidance document](#) on its website developed by USDA on [Comprehensive Nutrient Management Planning](#).⁸

Wetlands

Wetlands are a critically important resource, and are given certain protections under the federal Clean Water Act (CWA). (Note that states can provide protections beyond the CWA—research New Jersey's [wetlands regulations](#) for more information.)⁹

In all states, any modification to wetlands, including depositing fill, excavating, or draining, generally requires 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. This may also apply to waters like perennial streams and other types of surface waters that are connected to navigable waters. Denying 401 certification prevents the federal permit or license from being issued.

If a new or existing CAFO is engaging in or will engage in activities that impact wetlands or other types of waterways, raise the issue. Check if the operation has

⁶ <https://www.state.nj.us/dep/dwq/cafo.htm>

⁷ <https://www.nj.gov/dep/dwq/pdf/cafofs.pdf>

⁸ <https://www.nj.gov/dep/dwq/pdf/cnmp.pdf>

⁹ https://www.state.nj.us/dep/landuse/lu_epa.html

sought appropriate permits—if it hasn't, submit a complaint to the appropriate agency.

Learn more about U.S. ACoE's role in 404 wetland permitting on [USACE's Regulatory website](#).¹⁰

Locate wetlands in your area using U.S. Fish & Wildlife Service's [Wetlands Mapper](#).¹¹

Water Quality

Impaired Water Bodies

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments¹² and to identify waters not meeting the state's water quality standards.¹³ Since states are supposed to protect waters from further degradation, it's important to note if a CAFO or AFO seeks to discharge into or near an impaired water of the state. Find [impaired waters](#) in New Jersey.¹⁴

Groundwater

The CWA only regulates discharges to surface waters, but states can enact additional protections for groundwater, and many do so through their individual state permitting programs. These programs may include permit requirements for groundwater usage, and/or for protections against pollution. Research [groundwater regulations](#) in New Jersey.¹⁵

Construction & Stormwater

Since the CWA regulates pollution generated by runoff from construction activity,¹⁶ construction of an AFO will require an NPDES permit to construct if more than an acre of dirt will be disturbed during the construction process. (In this case, even if the facility won't ultimately need a CAFO NPDES discharge permit to operate, it will likely need one during construction.)

¹⁰ Obtain a Permit, U.S. ARMY CORPS OF ENGINEERS, <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>.

¹¹ Wetland Mapper, US FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Mapper.html>

¹² CWA § 305(b).

¹³ CWA § 303(d).

¹⁴ <https://www.nj.gov/dep/wms/bears/assessment.htm#/>

¹⁵ <https://www.nj.gov/dep/dwq/rules.htm>

¹⁶ CWA § 402; 40 C.F.R. §§ 122.26, 450.

Stormwater construction permits must be applied for, typically by filing an application or Notice of Intent (NOI) for coverage under a state’s general permit before beginning construction. NOIs for these types of permits generally include a stormwater pollution prevention plan that must be followed during construction. Research New Jersey’s [stormwater construction NPDES program](#) for more details.¹⁷

AIR QUALITY & ODOR

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 in practice, the industry has largely evaded meaningful regulation. While federal air-related laws and regulations don’t require much from CAFOs unless those CAFOs are considered “major sources” of air pollution, states are able to develop their own regulations for CAFO emissions—research New Jersey’s [air quality regulations](#) (though note that odors and other emissions from agricultural operations may be exempt).¹⁸

ZONING & LAND USE

In some states, counties or municipalities can regulate local land use and enact zoning ordinances to promote objectives like protecting public health and safety. However, many states have eliminated local control, which means that this type of regulation can only exist at the state level. Check to see if your state allows local regulatory control over livestock operations; it’s possible that additional setback requirements have been established to prevent CAFOs from operating within a set distance of certain structures, along with other protections over natural resources and public areas (e.g., schools, churches, retail businesses, residential dwellings, public buildings, property lines, public roads, public wells, waterways, etc.)

Do research to determine if there are any CAFO-related zoning requirements or land use prohibitions at the county or local level. Since New Jersey allows local control, consider working with other residents to push local lawmakers to enact ordinances or other zoning restrictions for CAFOs if none already exist.

¹⁷ <https://www.nj.gov/dep/dwq/5g3.htm>

¹⁸ <https://www.nj.gov/dep/daq/>

PUBLIC PARTICIPATION

Take every opportunity to make your voice heard about CAFOs in your community. CAFO operators and regulators won't take steps to check the industry unless the public demands it.

Public Notice

When a CAFO is constructed or expanded, the operator or regulatory agencies will generally be required to give public notice at certain points (e.g., before an NPDES permit is issued, or when a state operating permit is up for renewal). Public notice may be required in local newspapers, state websites, letters mailed to residents, posts at public buildings, or through email alerts you can sign up to receive from government agencies. Note that public notice requirements differ by state; do research to find out which CAFO-related activities require public notice, and where notice will be published.

Comments and Requesting a Public Hearing

Public notice typically gives members of the public a certain amount of time to submit comments on a CAFO-related decision and/or to request a hearing with regulators to share their concerns. Again, processes and requirements vary by state and agency—do research to find the proper deadline, the correct contact person, and any other requirements for comment submissions or hearing requests. Note that once public notice is given, the window for public input is often short, so act quickly.

NUISANCE & RIGHT-TO-FARM LAW

When state and federal regulations fail to protect community members from the harmful impacts of industrial livestock facilities, they may consider filing a nuisance lawsuit. Unfortunately, right-to-farm laws often make this strategy ineffective.

A nuisance is something that interferes with the right to use and enjoy real property (e.g., noise, odors, dust, pollution, pests, or light could be considered nuisances). Many people describe CAFOs as nuisances since they can decrease local property values, prevent people from using and enjoying their homes or yards, and threaten human health.

However, all 50 states have right-to-farm laws, which seek to protect farmers from nuisance suits brought by neighbors and communities experiencing unpleasant effects of agricultural production. While details vary, in most states, right-to-farm laws give CAFOs extensive protection against nuisance liability.

Note: in some cases, CAFOs are not protected if they fail to comply with existing regulations or if they pose significant threats to public health and safety.

Visit the [National Agricultural Law Center's](#) website to find right-to-farm laws for each state.

ENFORCEMENT

Since regulatory agencies inspect CAFOs infrequently and CAFO operators 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 noncompliance demonstrates that penalties or enforcement actions are necessary.

Submitting Complaints & Reporting Violations

If an operation violates any applicable permit or regulation (e.g., NPDES permit, construction permit, NMP, etc.), you should submit a complaint to the appropriate regulatory agency.

Be sure to thoroughly describe and document the compliance issue; record dates and times, include detailed notes, and take photos whenever possible—**but never trespass** to do so.

Note: In many cases, complaints become public record (so the CAFO operator and others in your community will be able to see your complaint). If you're concerned about this, check with the regulatory agency before filing your complaint; many states offer options for filing complaints anonymously.

Inspections

In most states, regulatory agencies rarely inspect CAFOs, except in response to violations. As a result, it's especially important to understand applicable regulations, track violations, and submit complaints if a CAFO is not in compliance.

PUBLIC INFORMATION LAWS

One of the first steps in facing a CAFO is gathering information. Do so through research online, submitting record requests, attending public meetings, etc. State and federal laws increase government transparency and provide public access to certain information.

Freedom of Information Act (FOIA)

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.

State-Level Freedom of Information Laws

See the [National Freedom of Information Coalition's](#) website for state-level freedom of information laws, along with sample FOIA request letters for each state.

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 nearby property owners to pay more than their fair share of property taxes. In these cases, property owners may be able to seek a property tax reduction. (This can also help convince local government officials that CAFOs aren't as economically beneficial to communities as their proponents claim.)

Property tax appeal processes vary by state; learn about tax appeals in New Jersey [here](#).¹⁹

OTHER RESOURCES

¹⁹ <https://www.state.nj.us/treasury/taxation/lpt/lpt-appeal.shtml>

Fighting AFOs is difficult. Avoid working alone by building relationships in your community, consulting with experts, and collaborating with groups working on similar issues.

State and Nonprofit Organizations

Great Swamp Watershed Association – Waterkeeper Alliance Affiliate

<https://www.greatswamp.org/>

(973) 538-3500

Sierra Club – New Jersey

<https://www.sierraclub.org/new-jersey>

(609) 656-7612

New Jersey Water Environment Association

<https://www.njwea.org/>

New Jersey Environmental Lobby (includes many good local resources)

<http://www.njenvironment.org/index.html>

Environment New Jersey

<https://environmentnewjersey.org/>

(609) 392-5151

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](#).²⁰

²⁰ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>