



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

NEW MEXICO



Guide to Confronting Concentrated Animal Feeding Operations in NEW MEXICO

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

For more than 20 years, Socially Responsible Agriculture Project (SRAP) has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations and to advocate for a food system built on regenerative practices, justice, democracy, and resilience. Our team includes technical experts, independent family farmers, and rural residents who have faced the threats of factory farms in their communities. When asked for help, SRAP offers free support, providing communities with the knowledge and skills to protect their right to clean water, air, and soil and to a healthy, just, and vibrant future. For more information, visit www.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 Due to the rapidly changing nature of the law, information contained in this Guide may become outdated.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: October 2018

¹ Midwest Environmental Advocates is a nonprofit environmental law center that works for healthy water, air, land, and government for this generation and the next. For more information, visit midwestadvocates.org.



CAFO Guide Overview

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

EDUCATE YOURSELF

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

LOOK FOR PUBLIC NOTICES

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

REQUEST AND REVIEW PUBLIC RECORDS

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

NEW OR EXPANDING CAFOS

REVIEW ZONING ORDINANCES

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

REVIEW PERMIT APPLICATIONS

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

COLLECT DATA

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

EXISTING CAFOS

REVIEW CAFO DOCUMENTS

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

COLLECT DATA

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

MONITOR CAFOS AND BUILD A RECORD

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

FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

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

ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

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

SEEK LEGAL ADVICE

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

IDENTIFY IMPAIRED WATER BODIES

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

CONTACT STATE OR LOCAL HEALTH DEPARTMENT

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

CHECK FOR PUBLIC FINANCING

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

TRACK PUBLIC NOTICES

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

REVIEW STATE RIGHT-TO-FARM LAW

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

AGENCIES & STATE DEFINITIONS

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

SEEK PROPERTY TAX ADJUSTMENT

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

ENGAGE IN RULEMAKING PROCESSES

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

INTRODUCTION: CAFOs IN NEW MEXICO

Agriculture in New Mexico is largely dominated by dairy and beef cattle operations, and to a lesser extent, sheep and goats. Based on 2012 census data, New Mexico ranks 9th in the nation for dairy and 26th in the nation for cattle based on value of sales.² According USDA's National Agricultural Statistical Service, there are approximately 24,700 farming operations operated across 43 million acres, primarily in the middle and southern parts of the state.³ New Mexico's considerable animal agriculture industry is especially concerning since most of the state is an arid, high-desert ecosystem with a limited supply of water. Animal agriculture—particularly cattle and dairy operations—are incredibly water- and resource-intensive, posing a significant challenge in a state where water is becoming increasingly scarce in the face of climate change and prolonged droughts.

Despite diminishing water supplies, water-intensive animal operations have recently expanded in New Mexico. In 1990, there were approximately 80,000 dairy cows in the state;⁴ today, New Mexico is home to approximately 315,000 dairy cows, which produce approximately 7.8 billion gallons of milk per year. That's nearly a 400 percent increase in the number of animals in fewer than 30 years, and the individual operations are housing more animals. According to New Mexico State University, the state is ranks first in the U.S. for number of cows per dairy and for milk produced per cow.⁵ The average dairy operation has approximately 2,500 cows, roughly 3.6 times the number of cows for a facility to be considered a large CAFO under federal regulations. Note that a single 2,500 dairy operation can produce as much waste as 411,000 humans,⁶ equivalent to the human population of Minneapolis, Minnesota. In total, dairy cows in New Mexico produce as much waste as 58 million people, equivalent to the human populations of California and Texas, combined. Since animal waste doesn't undergo the same waste treatment as human waste, it's no

² 2017 State Agriculture Overview: New Mexico, USDA National Agricultural Statistics Service, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=new%20mexico.

³ *Id.*

⁴ Dale Doremus, Environmental Regulation of New Mexico's Dairy Industry, Decision-Makers Field Guide at 76 (2003), https://www.env.nm.gov/gwb/New_Pages/docs_policy/DoremusDecisionMakers.pdf.

⁵ Importance of the New Mexico Dairy Industry, NMSU Dairy Extension, <http://aces.nmsu.edu/ces/dairy/index.html>.

⁶ Waste Management, Grace Communications Foundation: Food Program, <http://www.sustainabletable.org/906/waste-management>.

surprise that New Mexico struggles with surface and groundwater quality, particularly in regions that are dominated by animal agriculture.

Animal agriculture in New Mexico is regulated by both state and federal agencies. While the state has a comprehensive ground water quality program and permitting requirements for dairies under the Dairy Rule, New Mexico is one of the few states in the U.S. that does not implement the National Pollutant Discharge Elimination System (NPDES). The U.S. Environmental Protection Agency (EPA) administers NPDES permits applicable to CAFOs in New Mexico pursuant to the federal Clean Water Act. There is some coordination between the New Mexico Environmental Department (NMED), but EPA is the primary authority and administrator for surface water quality in the state. Upon the expiration of the New Mexico General NPDES permit, the EPA published a draft general permit for review and comment in December of 2015. Despite considerable opposition from individuals and environmental organizations arguing that the permit does not go far enough to regulate CAFOs, EPA finalized the most recent NPDES CAFO permit in July 2016. As of 2017, it's estimated that there are 171 CAFOs in New Mexico, 19 of which have NPDES permits.⁷ While most CAFOs do not have NPDES permits, the dairies are subject to state permitting requirements, which also regulate things like discharges, setbacks, water monitoring, construction specifications, and nutrient management.

This arrangement of both state and federal permitting in New Mexico complicates enforcement. The Clean Water Act requires a discharge or proposal to discharge in order to regulate the CAFO under the NPDES program, but discharges often go unreported and these facilities harm groundwater quality in many other ways unrelated to direct discharges of waste into surface waters. This disconnect contributes to the poor groundwater quality in the state since the EPA does not exercise authority over groundwater. In New Mexico, approximately 60% of dairies have groundwater monitoring data showing exceedances of groundwater standards. Additionally, the contaminated groundwater often makes its way into surface waters and contributes to poor surface water quality. New Mexico has made efforts to regulate groundwater contamination from CAFOs but implementation remains an issue, and loopholes, like excluding cattle feedlots, limit its efficacy. In addition to the surface and groundwater concerns, many communities around

⁷ NPDES CAFO Permitting Status Report, U.S. ENVIRONMENTAL PROTECTION AGENCY, https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf.

CAFOs experience intense, foul manure odors, swarms of flies in and around their home, and airborne animal waste.

CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

What is a CAFO?

New Mexico laws and regulations do not appear to define or even mention CAFOs, but federal regulations do. The federal regulations distinguish between Animal Feeding Operations (AFOs) and CAFOs based on the number of animals at a particular operation, as well as whether the EPA has identified an operation as a significant contributor of pollutants to surface water. AFOs are facilities that confine animals for 45 days or more in any 12-month period and do not sustain crops or vegetation in the normal growing season over any portion of the facility.⁸



⁸ See 40 C.F.R. 122.23(b)(1) (2012).

Table 1 CAFO SIZE CHART⁹

ANIMALS	LARGE CAFO	MEDIUM CAFO	SMALL CAFO¹⁰
Beef Cattle (includes heifers, calves, steer, and bulls)	1,000 or more	300–999	Less than 300
Dairy Cows (mature)	700 or more	200–699	Less than 200
Swine (≥ 55 lbs.)	2,500 or more	750–2,499	Less than 750
Swine (< 55 lbs.)	10,000 or more	3,000–9,999	Less than 3,000
Horses	500 or more	150–499	Less than 150
Sheep	10,000 or more	3,000–9,999	Less than 3,000
Turkeys	55,000 or more	16,500–54,999	Less than 16,500
Laying Hens or Broilers (uses liquid manure handling system)	30,000 or more	9,000–29,999	Less than 9,000
Chickens (doesn't use liquid manure handling system)	125,000 or more	37,500–124,999	Less than 37,500
Laying Hens (doesn't use liquid manure handling system)	82,000 or more	25,000–81,999	Less than 25,000
Ducks (doesn't use liquid manure handling system)	30,000 or more	10,000–29,999	Less than 10,000
Ducks (uses liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500

New Mexico is one of the few states that does not implement Clean Water Act's NPDES Program, which regulates the discharge of pollutants from CAFOs. Instead, U.S. EPA administers the NPDES Program for discharging CAFOs in the state. As a result,

⁹ *Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs*, ENVIRONMENTAL PROTECTIONS AGENCY, https://www3.epa.gov/npdes/pubs/sector_table.pdf.

¹⁰ Not a generally considered a CAFO but may be designated as a CAFO on a case-by-case basis.

the term CAFO, or any comparable term, appears to be absent from all of New Mexico's statutes and regulations.

While New Mexico does not regulate CAFO discharges to surface waters, the state does attempt to administer a ground water permit program for discharges from dairies and non-dairy agricultural facilities that may impact ground water quality.

Responsible Regulatory Agencies

Natural Resource and Environmental Agencies

New Mexico Environment Department (NMED)

The New Mexico Environment Department (NMED) is the primary environmental agency in the state. While NMED does not implement the NPDES program regarding surface waters, it does administer programs intended to protect ground water, air quality, and waste management.

The Environmental Improvement Act authorizes a department such as NMED to be "responsible for environmental management and consumer protection in this state in order to ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people."¹¹ The Environmental Improvement Act authorizes the department to maintain, develop, and enforce rules and standards for the following areas: food protection, water supply, liquid waste, air quality management, nuisance abatement, vector control, hazardous waste, and solid waste.¹²

NMED has a number of subdivisions or bureaus within the department that are the main point of contact for the state's various programs. These bureaus of NMED are potential resources for communities to address the issues CAFOs can cause in the region.

For more information about NMED, see their [website](#).¹³

¹¹ N.M. STAT. ANN. § 74-1-2.

¹² N.M. STAT. ANN. § 74-1-7.

¹³ New Mexico Environment Department, <https://www.env.nm.gov/>.

Ground Water Quality Bureau

The Ground Water Quality Bureau seeks to “preserve, protect and improve New Mexico’s ground water quality for present and future generations.”¹⁴ The Ground Water Quality Bureau is responsible for several programs that impact environmental regulation of the state’s CAFOs and agricultural facilities.

The Ground Water Quality Bureau’s Agricultural Compliance Section is responsible for issuing discharge permits for dairies and agricultural facilities that have the potential to impact ground water quality.¹⁵

For more information about Agricultural Compliance with ground water quality and a list of permitted facilities, see their [website](#).¹⁶

Surface Water Quality Bureau

The Surface Water Quality Bureau seeks to “preserve, protect, and improve New Mexico’s surface water quality for present and future generations.”¹⁷

While New Mexico does not implement the NPDES program, the Surface Water Quality Bureau does coordinate with EPA to administer the NPDES program by conducting inspections on behalf of EPA and submitting reports to EPA used to determine compliance with Clean Water Act requirements. In addition to coordinating with EPA for CAFO NPDES permits, the Surface Water Quality Bureau is responsible for several other programs that relate to agriculture in the state, including:

- [surface water monitoring and assessment](#),¹⁸
- [watershed protection](#),¹⁹

¹⁴ Ground Water Quality Bureau, New Mexico Environment Department, <https://www.env.nm.gov/gwb/>.

¹⁵ Ground Water Quality Bureau: Agriculture Compliance Section, New Mexico Environment Department, <https://www.env.nm.gov/gwb/NMED-GWQB-AgriculturalCompliance.htm>.

¹⁶ Ground Water Quality Bureau: Agriculture Compliance Section, New Mexico Environment Department, <https://www.env.nm.gov/gwb/NMED-GWQB-AgriculturalCompliance.htm>.

¹⁷ Surface Water Quality Bureau, New Mexico Environment Department, <https://www.env.nm.gov/swqb/>.

¹⁸ Surface Water Quality Bureau: Monitoring, Assessment & Standards Section, New Mexico Environment Department, <https://www.env.nm.gov/swqb/MAS/>.

¹⁹ Surface Water Quality Bureau: Watershed Protection Section, New Mexico Environment Department, <https://www.env.nm.gov/swqb/wps/>.

- [point source regulation](#),²⁰
- [identifying and reporting impaired waters](#),²¹ and
- cooperating with the Army Corps of Engineers for [permitting the dredge and fill of wetlands](#).²²

Air Quality Bureau

The Air Quality Bureau seeks to “protect the inhabitants and natural beauty of New Mexico by preventing the deterioration of air quality.”²³ The Air Quality Bureau develops plans to ensure air quality standards are met, issues air quality construction and operating permits, provides guidance on air quality modeling, and ensures compliance with air quality regulations and permit conditions. The Air Quality Bureau issues the following permits:

- Minor Construction Permits²⁴
- Prevention of Significant Deterioration Construction Permits²⁵
- Nonattainment Construction Permits²⁶
- Title V Operating Permits.²⁷

For more information about the Air Quality Bureau, visit its [website](#).²⁸

While animal agriculture is a significant contributor to air pollution, the Air Quality Bureau does little to regulate the CAFO industry in the state.

U.S. Environmental Protection Agency (EPA)

The U.S. Environmental Protection Agency’s (EPA) mission is to protect human health and the environment. The agency seeks to accomplish this by writing regulations that implement federal environmental laws, setting standards for states to follow, working with states to understand and implement state and federal environmental

²⁰ Surface Water Quality Bureau: Point Source Regulation Section, New Mexico Environment Department, <https://www.env.nm.gov/swqb/PSR/>.

²¹ Surface Water Quality Bureau: State of New Mexico CWA §303(d)/§305(b) Integrated List & Report, New Mexico Environment Department, <https://www.env.nm.gov/swqb/303d-305b/>.

²² Surface Water Quality Bureau: Federal Dredge-And-Fill Permits in New Mexico (CWA § 404), New Mexico Environment Department, <https://www.env.nm.gov/swqb/404/>.

²³ Air Quality Bureau, New Mexico Environment Department, <https://www.env.nm.gov/aqb/>.

²⁴ N.M. ADMIN. CODE 20.2.72

²⁵ N.M. ADMIN. CODE 20.2.74

²⁶ N.M. ADMIN. CODE 20.2.79

²⁷ N.M. ADMIN. CODE 20.2.70

²⁸ Air Quality Bureau, New Mexico Environment Department, <https://www.env.nm.gov/aqb/>.

laws and regulations, and enforcing regulations. The EPA is the ultimate oversight for states that do not, cannot, or will not implement the applicable environmental laws and regulations in their states.

When states are uncooperative or unresponsive to their legal duties and obligations under state or federal law, individuals may contact their Regional EPA Office to explore federal oversight and enforcement options. The U.S. EPA retains oversight authority to take enforcement and related action when states fail to meet federal requirements like those outlined in the Clean Water Act.²⁹

New Mexico is part of U.S. EPA Region 6. A brief description of Region 6 CAFO Program, along with contact information, is available on the EPA [website](#).

The EPA is particularly involved in New Mexico environmental affairs because New Mexico is one of the few states that does not implement the NPDES Program under the Clean Water Act. Additionally, the EPA, and not the state, is the primary administrator of environmental laws and programs on tribal lands.

For more details about the U.S. EPA and its duties, regional offices, and department contacts, see the Federal Guide.

New Mexico Office of the State Engineer

The New Mexico Office of the State Engineer is the primary administrator of appropriation and distribution of water sources in the state. They assess and permit access to the state's limited water quantity, develop state and regional plans to ensure the sustainability of the state's water, and approve or deny permits for various drilling and construction activities that draw upon the state's groundwater resources.

For more information about the Office of the State Engineer, visit its [website](#).³⁰

²⁹ See *id.*

³⁰ Office of the State Engineer, New Mexico Office of the State Engineer/Interstate Stream Commission, <http://www.ose.state.nm.us/OSE/index.php>.

Agricultural Agencies

New Mexico Department of Agriculture

The New Mexico Department of Agriculture is authorized by state law and controlled by the board of regents of New Mexico State University.³¹ It is responsible for administering several programs and regulations dealing with pesticides, organic certification, weed control, hazardous agricultural waste, food safety, labeling, agricultural marketing, and disease control.

Learn more about the New Mexico Department of Agriculture on its [website](#).³²

Department of Health

New Mexico Department of Health

The New Mexico Department of health seeks to “promote health and wellness, improve health outcomes, and assure safety net services for all people in New Mexico.”³³ The Department coordinates with divisions and facilities throughout the state to assess, monitor, and improve health of residents.

The New Mexico Department of Health Environmental [Public Health Tracking](#) is an excellent resource for information about air quality, water quality, and health issues linked to various environmental factors. Use it to educate yourself about health issues in their region. For example, you can search for incidence of asthma by county or see which regions have high levels of particulate matter, which can cause a variety of adverse health conditions.

Explore the Public Health Tracking [website](#).³⁴

The Department of Health also provides services to test drinking water and understand the testing data. For example, EPA does not test and regulate private wells despite that approximately 20% of the state population relies on private wells.³⁵ Since rural residents often rely heavily on private wells for drinking water, the

³¹ N.M. STAT. ANN. 76-1-1.

³² New Mexico Department of Agriculture, <http://www.nmda.nmsu.edu/>.

³³ New Mexico Department of Health, <https://nmhealth.org/>.

³⁴ New Mexico Environmental Public Health Tracking, New Mexico Department of Health, <https://nmtracking.org/>.

³⁵ Well Water and Drinking Water Quality, New Mexico Department of Health, https://nmtracking.org/en/enviro_n_exposure/water-qual/private-wells/.

department provides no-cost or low-cost field testing services a few times a year at Well Water Fairs. Residents can bring water samples from their well to test for parameters like pH, nitrates, sulfates, arsenic, uranium, lead, and fluoride. Residents with wells near CAFOs should also test for contaminants like E. coli.

For more about private well testing, see this [website](#).³⁶

While the Department of Health does little to regulate CAFOs, they collect data, facilitate testing, and are a potential informational resource about public health in regions where CAFOs are prevalent. The regional county offices may have input on the adverse human health impacts that a CAFO may have on residents. Find regional public health offices and contact information [here](#).³⁷

Local Conservation Districts

Soil and Water Conservation District

Soil and Water Conservation Districts are governmental subdivisions of the state of New Mexico authorized under state law (The Soil and Water Conservation District Act),³⁸ which seek to achieve the following:³⁹

- Preserve land, waters, and other natural resources to protect and promote health and general welfare of the state
- Address the improper use of land and the deterioration of the state's natural resources
- Develop conservation practices and programs to conserve the soil, water, and natural resources in the state
- Control and prevent soil erosion
- Further the conservation, development, and beneficial application and proper disposal of water
- Preserve wildlife and protect the tax base
- Promote the health, safety, and general welfare of the people

³⁶ NM EPHT Drinking Water Quality: Private Wells Testing, New Mexico Department of Health, https://nmtracking.org/en/enviro_n_exposure/water-qual/private-wells/private-wells-testing/.

³⁷ Public Health Regions, New Mexico Department of Health, <https://nmhealth.org/about/phd/region/>.

³⁸ N.M. STAT. ANN. § 73-20-25-49.

³⁹ N.M. STAT. ANN. § 73-20-26.

There are 48 Soil and Water Conservation Districts in New Mexico and they are an excellent resource for communities facing many soil, water, and natural resource concerns associated with industrial animal operations. The districts are governed by boards of supervisors and coordinate with all levels of government to develop locally-driven solutions. See N.M. STAT. ANN. § 73-20-44-45 for a thorough statutory description of the general and specific powers of the districts.

Find a map of the state's Soil and Water Conservation Districts [here](#) and contact information for each district [here](#).⁴⁰

WATER

Water in Laws and Regulations in New Mexico

New Mexico is an arid state where water is a scarce natural resource. There is little rainfall, considerable evaporation of available surface waters, and high demand for this precious resource—particularly from the state's agricultural sector. CAFOs can adversely impact both water quality and water quantity of ground water as well as surface water. This section of the guide will discuss the state and federal programs and permits that regulate the discharge of pollutants into surface and ground waters, access to surface and ground water resources, and the destruction or modification of wetlands. Understanding what is required of these facilities can help communities hold these facilities accountable and promote compliance.

Water Quality

Water quality laws and regulations in New Mexico are governed by the Federal Water Pollution Control Act, also known as the Clean Water Act, and the state Water Quality Control Act.⁴¹ The Water Quality Control Act authorizes a commission to adopt regulations and establish procedures for agencies to meet federal water quality standards. The Water Quality Control Commission is composed of representatives from each state agencies as well as some citizen representatives who meet regularly

⁴⁰ New Mexico Soil and Water Conservation Districts, New Mexico Department of Agriculture, <http://www.nmda.nmsu.edu/wp-content/uploads/2012/01/DistrictMapWithRegions2013-1.pdf>; Districts, New Mexico Association of Conservation Districts, <http://www.nmacd.org/swcds>.

⁴¹ N.M. STAT. ANN. § 76-6-1 et seq.

to discuss and engage in rulemaking.⁴² The act also specifies public notice requirements and compliance and enforcement actions that affected persons and agencies may take.⁴³ NMED is the primary agency responsible for implementing and enforcing the regulations created by the commission under the Water Quality Control Act. More information can also be found on NMED's [website](#).⁴⁴

New Mexico's water quality standards are determined by achieving or maintaining designated uses of waters throughout the state. The state sets criteria needed to protect those uses and preserve water quality. The state's water quality standards, codified at N.M. ADMIN. CODE § 20.6.4, "define water quality goals by designating uses for rivers, streams, lakes and other surface waters, setting criteria to protect those uses, and establishing antidegradation provisions to preserve water quality."⁴⁵ See N.M. ADMIN. CODE § 20.6.4 for extensive detail regarding the state water quality standards.

Impaired Waters and Total Maximum Daily Loads

The Clean Water Act requires each state to develop and maintain a list of waters that do not comply with current water quality standards and to establish total maximum daily loads (TMDLs).⁴⁶

See [NMED's Surface Water Quality Bureau website](#) for New Mexico's report of impaired waters⁴⁷ and a list of TMDLs for waters throughout the state.⁴⁸

Water Quantity

⁴² Water Quality Control Commission, NEW MEXICO ENVIRONMENT DEPARTMENT, <https://www.env.nm.gov/water-quality-control-commission/wqcc/>

⁴³ For more detailed rules and regulations explaining administration of the Water Quality Control Act and Clean Water Act, see N.M. Admin. Code § 20.6.2.

⁴⁴ Water Quality Control Commission, NEW MEXICO ENVIRONMENT DEPARTMENT, <https://www.env.nm.gov/water-quality-control-commission/wqcc/>

⁴⁵ Water Quality Standards, New Mexico Environment Department, <https://www.env.nm.gov/swqb/Standards/>.

⁴⁶ CWA § 303(d)(1).

⁴⁷ State of New Mexico CWA § 303(d)/§305(b) Integrated List & Report, New Mexico Environment Department, <https://www.env.nm.gov/swqb/303d-305b/index.html>.

⁴⁸ List of Approved TMDLs in New Mexico, New Mexico Environment Department, https://www.env.nm.gov/swqb/Planning/WQMP-CPP/WQMPAppB_January2017.pdf; see also List of TMDLs, New Mexico Environment Department, <https://www.env.nm.gov/swqb/TMDL/List/>.

It's no secret that water quantity is a serious issue in New Mexico, where the average annual precipitation is around 14 inches.⁴⁹ New Mexico is an arid state with a growing population, suffers from prolonged drought conditions, is home to water-intensive industries such as cattle and dairy production, is subject to federal stream flow requirements for endangered species, and already struggles to honor existing agreements with other states regarding water allocation of shared water resources. For example, the New Mexico legislature has declared that "there exists a potential water shortage crisis in the Pecos River basin" and New Mexico is obligated to "repay Texas in water for any shortages owed to Texas by the State of New Mexico."⁵⁰ In addition to its obligation to Texas, the legislature has found that the state's obligation extends to "the citizens of New Mexico and their future generations to ensure adequate water supply."⁵¹ When it comes to the appropriation and distribution of the state's water resources, the Office of the State Engineer is the primary administrator and contact.⁵²

Discharges

Discharging to Surface Waters: National Pollutant Discharge Elimination System (NPDES) Program

The Clean Water Act (CWA) prohibits the discharge of pollutants into waters of the United States unless there is an authorizing permit that allows for the discharge, subject to certain conditions.⁵³ The Clean Water Act authorizes states to develop and implement their own NPDES program at the state level as long as it is as protective as the federal requirements. Unlike most states, New Mexico does not implement the NPDES program required under the Clean Water Act. As a result, the U.S. EPA administers the NPDES program for CAFOs in New Mexico. See the Federal Guide for a detailed discussion of federal implementation of the NPDES program.

Facilities that meet the federal definition of a large CAFO per 40 C.F.R. 122.23(b) must seek permit coverage and are subject to effluent limitation guidelines. However, the general discharge permit for New Mexico is limited; for instance, since it only applies to large CAFOs, many medium or small CAFOs avoid regulation. Furthermore, the

⁴⁹ New Mexico, U.S. Climate Data, <http://www.usclimatedata.com/climate/new-mexico/united-states/3201>.

⁵⁰ N.M. STAT. ANN. 72-1-2.2.

⁵¹ *Id.*

⁵² Office of the State Engineer, New Mexico Office of the State Engineer/Interstate Stream Commission, <http://www.ose.state.nm.us/OSE/index.php>.

⁵³ CWA § 301(a); 33 U.S.C. § 1311(a)

general CAFO discharge permit does not apply for duck, veal, poultry, and swine CAFOs—these facilities must obtain an individual discharge permit from the U.S. EPA.

See [here](#) for a copy of the most recent NPDES General Permit for Discharges from CAFOs in New Mexico.⁵⁴ This five-year general permit replaced the general permit that expired in September of 2014.

See [here](#) for a U.S. EPA guidance document that explains the most recent CAFO general discharge permit and CAFO regulation under NPDES.⁵⁵

CAFOs seeking permit coverage under the General Discharge Permit must submit a Notice of Intent (NOI) and a Nutrient Management Plan (NMP).

Nutrient Management Plans

The CAFO General Discharge Permit requires permit applicants to develop and submit an NMP. Nutrient Management Plans must address the following elements: adequate waste storage, mortality management, clean water diversion, chemical handling, controlling contact of animals with waters of the U.S., sampling protocol, and recordkeeping, gauging rainfall, land application protocols, conservation practices, and equipment inspection. These NMP protocols and conditions are incorporated into the general permit as enforceable permit terms. The approval of NMPs or any substantial changes to the NMP trigger an opportunity for public comment. Non-substantial changes to a facility's NMP are still subject to public notification requirements.

Permit Process and Public Participation

The procedures for certifying NPDES permits in New Mexico are found in N.M. ADMIN. CODE § 20.6.2.2001. EPA's comment and public hearing procedures are found at 40 C.F.R. § 124.10–12. The basic outline of the NPDES General CAFO Permit process is as follows:

⁵⁴ National Pollutant Discharge Elimination System General Permit for Discharges from Concentrated Animal Feeding Operations in New Mexico (NMG010000), U.S. Environmental Protection Agency Region 6, <https://www.env.nm.gov/wp-content/uploads/2017/07/NMG010000-CAFO-NM-20160901.pdf>.

⁵⁵ Concentrated Animal Feeding Operation General Permit Fact Sheet, U.S. Environmental Protection Agency Region 6, https://www.epa.gov/sites/production/files/2016-07/documents/nmg010000_final_fact_sheet_nm_cafo.pdf.

1. The CAFO must submit a Notice of Intent (NOI/[NPDES Form 2B](#))⁵⁶ and a Nutrient Management Plan (NMP) to the Region 6 EPA office and NMED in electronic format.
2. EPA will review the NOI and NMP to ensure the permit requirements are fulfilled and may request additional information from the applicant.
Note: New source CAFOs are not eligible for the general NPDES permit. To determine what qualifies as a new source, see 40 C.F.R. 122.29. If it's not a cattle/dairy CAFO or is a new source CAFO, the EPA may determine that the applicant must obtain an individual permit because general permit coverage is not appropriate.
3. The NOI and NMP will be incorporated into the general permit and made available for public review and comment for 30 days.
4. EPA will respond to comments during the comment period and may require the applicant to revise the NMP.
5. During the comment period, an interested person may request a public hearing. The request must be in writing and must state the issues to be raised in the public hearing. The EPA will hold a public hearing if there is a significant degree of public interest.
6. The EPA informs the applicant and each person who submitted comments of the final permit decision (issue, deny, modify, revoke, reissue, or terminate).
Note: Only individuals who submitted comments or requested a public hearing may appeal the agency's final permit decision and requests for an appeal must be submitted within 30 days of the final permit decision.

See [here](#) for New Mexico NPDES draft public notices.⁵⁷

See [here](#) for individual and general NPDES Permits in New Mexico.⁵⁸

We highly recommend reading the [New Mexico NPDES CAFO General Permit](#) and [factsheet](#) for details about what's required of a permitted facility so you can

⁵⁶ NPDES Application Forms, U.S. Environmental Protection Agency, <https://www.epa.gov/npdes/npdes-application-forms>.

⁵⁷ New Mexico NPDES Draft Public Notices, U.S. Environmental Protection Agency Region 6, <https://www3.epa.gov/region6/water/npdes/publicnotices/nm/nmdraft.htm>.

⁵⁸ NPDES Permits in New Mexico, New Mexico Environment Department, <https://www.env.nm.gov/swqb/Permits/>.

effectively comment on permits during public comment periods, and also assist with monitoring these facilities, reporting violations, and holding them accountable.⁵⁹

Inspection, Compliance, Reporting Violations, and Enforcement

While the U.S. EPA administers NPDES in New Mexico, New Mexico Environmental Department's Point Source Regulation Section conducts NPDES compliance inspections for EPA and sends reports to EPA for their review. NMED keeps a partial list of such inspections on their [website](#).⁶⁰

Individuals can and should report CAFO permit violations and any resulting environmental issues to NMED on their [website](#).⁶¹ If the state fails to inspect and respond to complaints and violation reports, individuals should contact their Region 6 CAFO Program contacts to bring the compliance issues to their attention and pressure for enforcement actions.

U.S. EPA also maintains a database of compliance and enforcement actions that individuals can search to see how nearby facilities are complying with environmental laws. It is called the Enforcement and Compliance History Online (ECHO) database and is available [here](#).⁶²

Violation of a NPDES permit is a violation of the CWA; penalties for such violations are detailed in Section 309 of the CWA. For more information about EPA's enforcement standards, programs, and initiatives, see the EPA's [enforcement websites](#).⁶³

⁵⁹ National Pollutant Discharge Elimination System General Permit for Discharges from Concentrated Animal Feeding Operations in New Mexico (NMG010000), U.S. Environmental Protection Agency Region 6, https://www.epa.gov/sites/production/files/2016-07/documents/nmg010000_final_permit_nm_cafo-signed.pdf;

Concentrated Animal Feeding Operation General Permit Fact Sheet, U.S. Environmental Protection Agency Region 6, https://www.epa.gov/sites/production/files/2016-07/documents/nmg010000_final_fact_sheet_nm_cafo.pdf.

⁶⁰ NPDES Compliance Inspection Reports in New Mexico, New Mexico Environment Department, <https://www.env.nm.gov/swqb/NPDES/Inspections/>.

⁶¹ Environmental Notification Reporting, New Mexico Environment Department, https://ents.web.env.nm.gov/public/INCIDENT_HDR_add.php.

⁶² Enforcement and Compliance History Online: Search Community, U.S. Environmental Protection Agency, <https://echo.epa.gov/>.

⁶³ Enforcement Basics, U.S. Environmental Protection Agency, <https://www.epa.gov/enforcement/enforcement-basic-information>.

Discharging to Ground Water

While U.S. EPA administers the NPDES program for discharges to surface waters, New Mexico continues to regulate discharges into ground waters of the state. The Ground Water Pollution Prevention section of the Ground Water Quality Bureau reviews and approves discharge permits for discharges that have the potential to impact ground water quality,⁶⁴ but there are separate permits and regulations that apply to agricultural facilities. So while not all CAFOs are required to get NPDES permits, most CAFOs in the state have to get a discharge permit from the states.

Agricultural Discharges and The Dairy Rule

The Ground Water Agricultural Compliance Section of the Ground Water Quality Bureau reviews and approves Ground Water Discharge Permits for discharges from dairies and non-dairy agricultural facilities. Discharges from agricultural operations are addressed in NMAC 20.6.2 and supplemental requirements for dairies can be found at NMAC 20.6.6.

See NMED's website for more information about the Ground Water Quality Bureau and the contact information for the Agricultural Compliance Staff.⁶⁵

New Mexico Administrative Code § [20.6.6](#) imposes supplemental requirements for permitting dairy facilities under the state Water Quality Control Act. See the code for a comprehensive list, but a number of the important supplemental requirements include:

- Liner requirements
- Solid separation
- Flow metering
- Groundwater monitoring
- Quarterly monitoring reports
- Increased liner requirements if groundwater is contaminated
- Closure requirements
- Abatement standards
- Variances and modifications

⁶⁴ Pollution Prevention Section, New Mexico Environment Department, <https://www.env.nm.gov/gwb/NMED-GWQB-PollutionPrevention.htm>

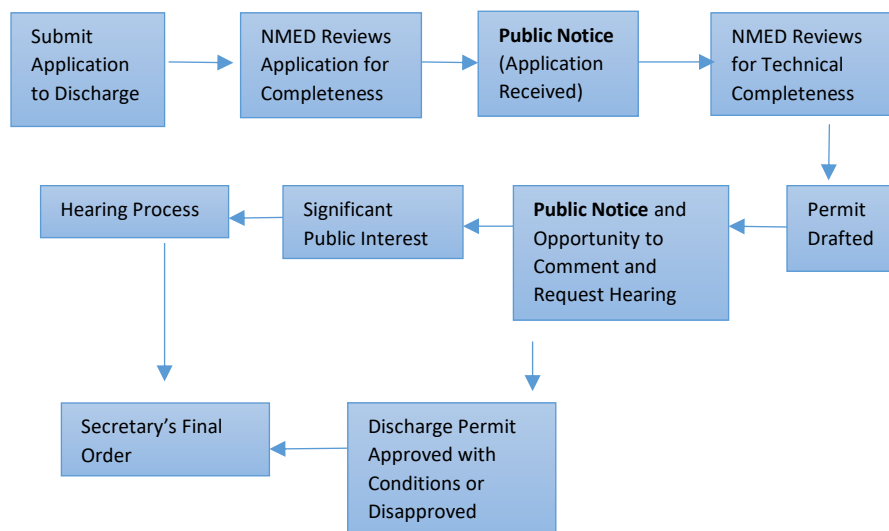
⁶⁵ Agriculture Compliance Section, New Mexico Environment Department, <https://www.env.nm.gov/gwqb/acs/>.

Permit Process and Public Participation

1. The permit process for groundwater discharge permits is as follows:
2. Submit Notice of Intent to discharge and ground water discharge permit application to the Ground Water Quality Bureau.
3. The Ground Water Quality Bureau reviews the permit application for completeness within 15 days of receipt.
4. After the permit is deemed complete, the permit applicant has 30 days to provide public notice indicating that they are applying for a discharge permit. This public notice requirement and details are located at N.M. ADMIN. CODE § 20.6.2.3108 and an overview of these requirements can be found [here](#).⁶⁶
 - a. The applicant must post one 2 x 3 feet sign for each 640 acres of the discharge site for at least 30 days.
 - b. The applicant must mail a public notice flyer to all property owners within a 1/3-mile radius of the discharging property boundary. If there are no property owners within 1/3 mile, the applicant must mail the public notice flyer to the nearest adjacent properties.
 - c. The applicant must publish a notice ad of at least 3 x 4 inches in a newspaper of general circulation in the area.
5. The Ground Water Quality Bureau will review the application for technical completeness and draft the permit.
6. Once the permit is drafted, the Ground Water Quality Bureau will provide public notice that there is a draft permit available for review and public comment.
7. If there is significant public interest, NMED will schedule a public hearing.
8. After a public hearing, the NMED secretary issues a final order about the approval or denial of the permit.
9. If there was no significant interest during the public comment period, or if the secretary issued their order following a hearing, the discharge permit is then approved, approved with conditions, or disapproved by NMED.

⁶⁶ Public Notice Requirements for Ground Water Discharge Permits, New Mexico Environment Department, <https://www.env.nm.gov/gwb/NMED-GWQB-PublicNoticeSummary.htm>.

Discharge Permit Process⁶⁷



Get Notified

One of the best ways to stay ahead of groundwater permits is to make sure you're notified in the process. NMED has two public notice email lists that anyone from the public can sign up to receive. The first is PN-1, which gives notice when a permit application is received. The second list is PN-2, which gives notice that a permit is ready to be issued. Individuals can subscribe to receive email notifications from NMED's [website](https://www.env.nm.gov/gwqb/public-notice/).⁶⁸

Discharge Permit Fees

The agricultural discharge permit fees differ based on quantity of discharge:

- < 10,000 gallons per day → \$1,150 permit fee
- 10,000 to 49,999 gallons per day → \$2,300 permit fee
- 50,000 to 99,999 gallons per day → \$3,450
- >100,000 gallons per day → \$4,600

⁶⁷ Permitting Process FAQ, New Mexico Environment Department, <https://www.env.nm.gov/gwb/NMED-GWQB-PermittingProcessFAQ.htm>.

⁶⁸ Public Notices, New Mexico Environment Department, <https://www.env.nm.gov/gwqb/public-notice/>.

Enforcement and Compliance

New Mexico law specifies the penalties for enforcement and compliance in N.M. STAT. ANN. § 74-6-10. If an individual or facility is violating a requirement, regulation, or water quality standard of the state Water Quality Act, the agency may: ⁶⁹

- Issue a compliance order
 - The penalty shall not exceed \$15,000 per day of noncompliance, or \$10,000 per day for each violation
 - But if the person fails to take corrective action specified in the compliance order, NMED may assess a penalty of up to \$25,000 for each day of continued noncompliance with the compliance order
- Commence a civil action for appropriate relief
- Seek injunctive relief
- Suspend or terminate the permit
- Assess penalties.

Access to Water Sources

Access to Surface Water

New Mexico requires that any person who seeks to acquire the right to the beneficial use of any water shall apply to the state engineer for a permit, and is subject to whatever rules and regulations the state engineer requires of the applicant.⁷⁰ The state engineer may require all sorts of information from the applicant. However, it appears that the engineer's permit granting access to beneficial use of water does not provide much of an opportunity for public participation and comment. Additionally, the term "beneficial use" is not rigidly defined and seems to consistently accept any agricultural use as a beneficial use of the arid state's precious water resource.

Animal agriculture is one of the most water-intensive industries, yet it enjoys a remarkable degree of access to the state's limited water resources. In addition to animal agriculture's inclusion in the concept of "beneficial use," there are also laws that limit a municipality's ability to restrict agriculture's access to water. For example, counties and municipalities are encouraged to develop ordinances that limit water usage; New Mexico Statutes asserts that to preserve and protect water resources and assure a water supply for the community, counties or municipalities may

⁶⁹ N.M. STAT. ANN. § 74-6-10.

⁷⁰ N.M. STAT. ANN. § 72-5-1.

impose site development standards, water harvesting and storage, low water use landscaping, *nonagricultural* residential and commercial water use limitations, and the recycling and reuse of water.⁷¹ The statutes then specify that agricultural water users are excluded from any of these county or municipal water saving requirements.⁷²

Access to Groundwater

New Mexico law deems all groundwater as belonging to the public and subject to appropriation depending on beneficial use.⁷³ This includes the water of underground streams, channels, artesian basins, reservoirs, and lakes with ascertainable boundaries. New Mexico's ground water pollution prevention program requires that a person discharging onto or below the ground surface demonstrate that the discharge will not cause ground water to exceed ground water quality standards at any place of withdrawal for present or future use. It must also not result in the violation of any surface water quality standards as a result of groundwater pollution.

NMED's Ground Water Quality Bureau is the primary department responsible for administering the ground water permits and regulations.

Livestock Well Permit

New Mexico requires that any "person, firm or corporation desiring to use public underground waters for watering livestock shall make an application to the state engineer on a form prescribed by the state engineer for a livestock well permit."⁷⁴ Issuance of this permit does not go through public comment and approval is dependent upon whether the person is "legally entitled to place livestock on the state or federal land where the water is to be used" and has "access to the drilling site and

⁷¹ N.M. STAT. ANN. § 3-53-2.1.

⁷² *Id.*

⁷³ N.M. STAT. ANN. § 72-12-1. ("The water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, is declared to belong to the public and is subject to appropriation for beneficial use. By reason of the varying amounts and time such water is used and the relatively small amounts of water consumed in the watering of livestock; in irrigation of not to exceed one acre of noncommercial trees, lawn or garden; in household or other domestic use; and in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural resources of the state, application for any such use shall be governed by the provisions of Sections 72-12-1.1 through 72-12-1.3 N.M. STAT. ANN. 1978.")

⁷⁴ N.M. STAT. ANN. § 72-12-1.2.

has permission to occupy the portion of the state or federal land as is necessary to drill and operate the well.”⁷⁵

Artesian Well Permit

Individuals seeking to drill an artesian well must obtain a permit from the New Mexico State Engineer. Additionally, using water from artesian wells is subject to restrictions intended to prevent waste.⁷⁶

Well Construction

The drilling of water wells must be licensed by the New Mexico State Engineer.⁷⁷ Anyone violating this statute may be subject to equitable, civil, or criminal penalties.⁷⁸

Wetlands

Wetlands impacts, depending on the project details of a new or expanding CAFO, may provide another opportunity to review, comment on, and potentially decrease the environmental impacts of large-scale agriculture operations.

The Clean Water Act regulates the discharge or placement of dredged or fill material into waters of the United States, which includes wetlands.⁷⁹ Therefore, any dredge or fill activities will require a Section 404 Permit, unless they are exempt. Note that many agricultural activities are exempt—e.g., established farming, ranching, and silviculture activities; construction or maintenance of irrigation ditches, farm or stock ponds; and maintenance of drainage ditches, dams, dikes, and levees.⁸⁰ Regardless of these exceptions, some CAFO activities which impact wetlands may require a 404 permit from the EPA and U.S. Army Corps of Engineers, so see the supplemental Federal Guide for federal regulation of wetlands in New Mexico.

Although the U.S. Army Corps of Engineers administers the Section 404 Permits, a Section 401 Water Quality Certification is required for a Section 404 Permit. For non-tribal lands, NMED’s Surface Water Quality Bureau is the Section 401 certifying authority. Section 401 certification requires that the federal permit is consistent with the state’s water quality standards, antidegradation policy, and water quality management plan, and is subject to state public notice requirements.

⁷⁵ *Id.*

⁷⁶ N.M. STAT. ANN. § 72-13-1 et seq.

⁷⁷ N.M. STAT. ANN. § 72-12-12 et seq.

⁷⁸ N.M. STAT. ANN. §§ 72-12-15-16.

⁷⁹ Clean Water Act, § 404.

⁸⁰ Clean Water Act, § 404(f)(1).

See [NMED's website](#) for a list of permits under consideration for 401 Certification, including Section 404 dredge and fill wetlands permits.⁸¹

In addition to the CWA's federal requirements regarding the destruction or modification of wetlands, New Mexico has a wetlands program to "protect and restore New Mexico's remaining wetlands and riparian areas and to increase self-sustaining, naturally functioning wetlands and riparian areas so they continue to benefit New Mexico's future."⁸² The Wetlands Program facilitates the development of Wetlands Action Plans for the various watersheds throughout the state, and engages watershed groups to propose how to protect, restore, and create wetlands.⁸³ If a CAFO activity or permit is going to impact wetlands in the region, the Wetlands Program and watershed groups could be valuable resources and allies in CAFO opposition efforts. For questions about New Mexico's wetlands, contact NMED's Wetlands Program Coordinator.

AIR

[Air Quality](#)

Air quality in New Mexico is regulated by state and federal laws. The Clean Air Act Air regulates air pollution on a national level but also calls for state monitoring and regulation to meet the national emissions and air quality standards set by the Clean Air Act. For a more detailed discussion federal laws, regulations, agreements, and programs relating to air quality, see the Federal Guide.

The Air Quality Bureau of the New Mexico Environmental Department handles permitting, monitoring, inspection, and enforcement for the state's air quality program. Unfortunately, most air quality regulations do not apply to agricultural facilities—particularly open feedlots.

⁸¹ Public Notice of Federal CWA Permits Being Considered for State Certification, New Mexico Environment Department, <https://www.env.nm.gov/swqb/WQA/Notice/>.

⁸² New Mexico Wetlands Program, New Mexico Environmental Department, <https://www.env.nm.gov/swqb/Wetlands/>.

⁸³ Wetland Action Plans, New Mexico Environment Department, <https://www.env.nm.gov/swqb/Wetlands/WAP/index.html>.

Ambient Air Quality Standards

Federal and state air quality standards are intended to prevent air pollution from reaching levels that are harmful for people, plants, or animals. There can be both federal and state standards, as long as the state standards are at least as protective as the federal standards. See the Federal Guide for a discussion of National Ambient Air Quality Standards (NAAQS) for 6 criteria pollutants. New Mexico's ambient air quality standards are located at N.M. ADMIN. CODE § 20.2.3.108–111, which sets standards for total suspended particulates, sulfur compounds, carbon monoxide, and nitrogen dioxide.

State Implementation Program

The EPA delegates authority to states to administer air quality programs and issue permits as part of a State Implementation Plan (SIP). New Mexico's SIP, approved by the EPA, is a collection of programs, plans, regulations, and policies to achieve federal standards. New Mexico's SIP is integrated into the state's regulations in Title 20, Chapter 2 of the New Mexico Administrative Code.

While the current SIP does little to address or regulate air pollution from animal agricultural facilities, the state is required to involve the public in any SIP revisions or changes. States may demand more from industries than what is required by federal law and the public must get involved in hearings and public comment opportunities to pressure the state to regulate agriculture as it does with other industries that emit considerable air pollutants.

The Air Quality Control Act⁸⁴

New Mexico Air Quality Control Act defines "air contaminant" to mean particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, microorganism, or radioactive material,⁸⁵ and defines "air pollution" to mean "emission...of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with public welfare, visibility or the reasonable use of property."⁸⁶ The Act authorizes the regulation and enforcement of air pollution.

⁸⁴ N.M. STAT. ANN. § 74-2-1 et seq.

⁸⁵ N.M. STAT. ANN. § 74-2-2(A).

⁸⁶ N.M. STAT. ANN. § 74-2-2(B).

Air Toxics Program⁸⁷

The Air Toxics Program processes permits for various industries that emit air pollutants in certain quantities, handles compliance and enforcement, and works on initiatives to address air quality and climate issues. Unfortunately, agriculture is either unregulated or specifically exempted from air quality permits and programs in the state. However, residents can comment and participate in any changes or revisions to state regulations and permit language so, with enough pressure from residents, New Mexico could one day regulate air emissions from CAFOs in the state. Learn more about public participation in developing air quality regulations [here](#).⁸⁸

Construction Permits

The Air Quality Bureau requires a permit for any person constructing or modifying a stationary source that emits certain types and quantities of air pollutants.⁸⁹

Minor Construction Permit

This permit is required for facilities with the potential to emit ≥ 10 lbs. per hour or ≥ 25 tons per year of regulated air pollutants. While it is possible that CAFOs in the state may surpass the type and quantity of air pollutants that would trigger this permit requirement, state code specifically exempts agriculture from this permit requirement. New Mexico Administrative Code § 20.2.72.402 states:

The following classes of sources are exempt from the permitting requirements for toxic air pollutants:...(6) Agricultural Production – Crops, SIC No. 01, (7) Agricultural Production – Livestock, SIC No. 02, (8) Agricultural Services – SIC No. 07.

Prevention of Significant Deterioration Construction Permit

This permit applies to major stationary sources if the facility has the potential to emit ≥ 100 tons per year of a regulated air pollutant.⁹⁰ Applicants must apply for PDS permits long before the facility is constructed or modified since it may require pre-construction monitoring.

⁸⁷ N.M. ADMIN. CODE §§ 20.2.72.400–405.

⁸⁸ Have Your Voice Heard by Participating in the Development of Air Quality Regulations, New Mexico Environment Department, https://www.env.nm.gov/aqb/Control_Strat/Pub_Involve/Pub_Involve-7-03.html.

⁸⁹ N.M. ADMIN. CODE § 20.2.72.200.

⁹⁰ N.M. ADMIN. CODE § 20.2.74.

Nonattainment Construction Permit

This permit is required prior to construction or modification of facilities that emit regulated air pollutants in an area where at least one national or state ambient air quality standard is not being met.⁹¹

Title V Permits

The Air Quality Bureau requires a Title V Operating Permit for major stationary sources 12 months prior to operation if they emit the following:

- ≥ 100 tons per year of any regulated air pollutant
- ≥ 10 tons per year of a single hazardous air pollutant
- ≥ 25 tons per year of a combination of hazardous air pollutants
- ≥ 100,000 tons per year CO₂. (However, while animal agriculture may meet or exceed this quantity, the state does not require permits for agriculture and CO₂ calculations do not include CO₂ emissions resulting from agriculture.⁹²)

WASTE

Waste in New Mexico

State and federal law regulate the storage, treatment, disposal, and transportation of waste. However, agricultural waste is generally exempt from most solid and hazardous waste regulations.

Solid Waste

New Mexico's Solid Waste Management Act regulates the storage, collection, transportation, separation, processing, recycling, and disposal of solid waste to "enhance the beauty and quality of the environment" and "protect the public health, safety and welfare."⁹³ While some waste produced at a CAFO may qualify as solid waste,⁹⁴ the majority of harmful waste produced at CAFOs—i.e., animal waste—

⁹¹ N.M. ADMIN. CODE 20.2.79.

⁹² N.M. ADMIN. CODE § 20.2.70.7(AL)(2).

⁹³ N.M. STAT. ANN. § 74-9-2.

⁹⁴ N.M. STAT. ANN. § 74-9-3(N) ("solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities.)

appears to be exempt from solid waste management because the statute states that “solid waste” does not include “agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner.”⁹⁵

Hazardous Waste

New Mexico’s Hazardous Waste Act seeks to “help ensure the maintenance of the quality of the state’s environment; to confer optimum health, safety, comfort and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands.”⁹⁶ The Act defines hazardous waste as:

[A]ny solid waste or combination of solid wastes that because of their quantity, concentration or physical, chemical or infectious characteristics may:

1. cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
2. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.⁹⁷

This language seems like it might encompass CAFO waste, but that is not the case. While this law would regulate hazardous waste such as certain pesticides or “hazardous waste designated as hazardous agricultural waste by the [Environmental Improvement Board],” it specifically excludes “animal excrement in connection with farm, ranch, or feedlot operations.”⁹⁸ For the types of CAFO waste that might be considered hazardous agricultural waste, the state department of agriculture is primarily responsible for enforcing regulations pertaining to the transport, treatment, storage, and disposal of agricultural waste.⁹⁹

⁹⁵ N.M. STAT. ANN. § 74-9-3(N)(4).

⁹⁶ N.M. STAT. ANN. § 74-4-2.

⁹⁷ N.M. STAT. ANN. § 74-4-3(K).

⁹⁸ N.M. STAT. ANN. § 74-4-3(I).

⁹⁹ N.M. STAT. ANN. § 74-4-4.1.

Zoning and Land Use in New Mexico

Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in a particular community. It is crucial to know your local elected officials and to establish a working relationship. Additionally, many local governments across the country are starting to develop local ordinances that place additional restrictions or approval requirements on industrial agriculture—particularly when they feel that state and federal requirements have proven insufficient to protect their interests. Some counties are passing moratoriums, increased setbacks, or health ordinances to have more control over when large operations are sited in their communities. Unlike other states in which local control has been removed or limited, local governments in New Mexico retain the ability to pass local laws and ordinances to protect their residents.

In New Mexico, zoning authority and the authority to manage land use is vested in local governments such as counties and municipalities.¹⁰⁰ Counties are responsible for zoning ordinances in “unincorporated areas” of their respective counties. Otherwise, the interested public should look to incorporated governments, such as cities and townships, as the local authority to make zoning and other decisions that impact the location and operation of CAFOs. Municipalities have broad authority to regulate in all areas absent explicit prohibition in statute or extensive regulation of a particular issue at the state level.

Local action from government and/or advocacy organizations can also influence state regulation of industrial agricultural operations.

In sum, local government decision-making is crucial, particularly for issues such as protecting local public health and safety, which are “traditional” areas of local control. Consult your local zoning ordinances and keep an eye out for public participation opportunities in the zoning process. Use this list to find the various city and county zoning ordinances in your region:

¹⁰⁰ N.M. STAT. ANN. § 3-21-1.

City & County Ordinances¹⁰¹

<ul style="list-style-type: none"> • Alamogordo Code of Ordinances • Albuquerque Code of Ordinances • Angel Fire Village Code • Artesia City Code • Aztec City Code Book • Bayard Code of Ordinances • Belen Municipal Code • Bernalillo County Code of Ordinances • Bloomfield Code of Ordinances • Bosque Farms Ordinances • Capitan Code of Ordinances • Carlsbad Code of Ordinances • Chama Zoning Ordinance • Clovis Code of Ordinances • Corrales Village Code • Deming City Code 	<ul style="list-style-type: none"> • Edgewood Ordinances • Elephant Butte City Ordinances • Estancia Zoning Ordinance • Eunice Code of Ordinances • Farmington Code of Ordinances • Gallup City Code • Hatch Village Code • Hobbs Municipal Code • Las Cruces Code of Ordinances • Las Cruces Land Development Code • Las Cruces Municipal Code • Los Alamos County Code of Ordinances • Los Ranchos de Albuquerque Village Ordinances • Mesilla Town Code 	<ul style="list-style-type: none"> • Moriarty Zoning Ordinance • Otero County Ordinances • Portales Code of Ordinances • Raton Code of Ordinances • Rio Rancho Code of Ordinances • Roswell Ordinances • Ruidoso Code of Ordinances • San Juan County Ordinances • Santa Fe City Code • Santa Fe County Code of Ordinances • Silver City Code of Ordinances • Taos Town Code • Taos Ski Valley Ordinances • Truth or Consequences Municipal Code • Tucumcari Municipal Code • Tularosa Village Code of Ordinances • Valencia County Code of Ordinances
---	--	---

¹⁰¹ Ordinances, University of New Mexico School of Law Library, <http://lawlibrary.unm.edu/legal-webs/new-mexico/ordinances/>.

State Zoning Authority

While zoning and land use planning are primarily done at the local level, there are state laws that authorize, guide, and limit what local governments can do. For instance, state law requires that no changes to zoning can occur without notice and a public hearing.¹⁰² State law guarantees an aggrieved person's right to appeal zoning decisions.¹⁰³ State law authorizes what counties or municipalities may regulate or restrict—height, number of stories, and size of buildings or structures; percentage of a lot that may be occupied, size of yards, courts, and open space; population density; and location and use of buildings and land for trade, industry, residence, or other purposes.¹⁰⁴ Additionally, state laws requires counties and municipalities to create and conform to comprehensive plans.¹⁰⁵

Comprehensive Plans

Comprehensive plans are useful resources to consult when local zoning authorities are proposing changes to zoning ordinances or are failing to pass ordinances that residents would like to see in their locality. Zoning authorities are supposed to make ordinances and decisions in accordance with their region's comprehensive plan. See the following statute regarding comprehensive plans in New Mexico:

- A. *The regulations and restrictions of the county or municipal zoning authority are to be in accordance with a comprehensive plan and be designed to:*
 - 1) *lessen congestion in the streets and public ways;*
 - 2) *secure safety from fire, flood waters, panic and other dangers;*
 - 3) *promote health and the general welfare;*
 - 4) *provide adequate light and air;*
 - 5) *prevent the overcrowding of land;*
 - 6) *avoid undue concentration of population;*
 - 7) *facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements; and*
 - 8) *control and abate the unsightly use of buildings or land.*
- B. *The zoning authority in adopting regulations and restrictions shall give reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and to conserving the value of*

¹⁰² N.M. STAT. ANN. § 3-21-6.

¹⁰³ N.M. STAT. ANN. §§ 3-21-8-9.

¹⁰⁴ N.M. STAT. ANN. § 31-21-1.

¹⁰⁵ N.M. STAT. ANN. § 31-21-5.

*buildings and land and encouraging the most appropriate use of land throughout its jurisdiction.*¹⁰⁶

Residents may point to the region's comprehensive plan to contest changes to zoning ordinances that are inconsistent with the comprehensive plan's goals.

RIGHT TO FARM & NUISANCE LAWS

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. Courts may look to the extent of harm, the frequency of the nuisance, if plaintiffs came to the nuisance, or if the nuisance complies with applicable zoning ordinances. Many individuals and communities describe CAFOs as nuisances. CAFOs can decrease local property values, prevent people from using and enjoying their homes or yards, and can contribute to health issues. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield such facilities from nuisance liability—New Mexico included. New Mexico has enacted legislation to protect farmers from nuisance lawsuits.¹⁰⁷

New Mexico Right to Farm Act

Right-to-farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities who experience some of the more unpleasant effects of agricultural production. New Mexico's Right to Farm Law provides protection for agricultural facilities by "limiting the circumstances under which agricultural operations may be deemed a nuisance."¹⁰⁸ While this provides considerable protection to farms, it is not without limits. It's important to understand CAFOs are not invulnerable to nuisance suits. For example, facilities may not be operating illegally or negligently in order to receive protection from this statute. Therefore, a history of complaints and a record of non-compliance opens these facilities up to potentially successful nuisance claims. Below are the state's right to farm-related statutes.

¹⁰⁶ N.M. STAT. ANN. § 31-21-5.

¹⁰⁷ N.M. STAT. ANN. §§ 47-9-2-7.

¹⁰⁸ N.M. STAT. ANN. § 47-9-2.

New Mexico’s right to farm act protection against nuisance claims is codified in N.M. STAT. ANN. §47-9-3 which states, “[A]ny agricultural operation or agricultural facility is not, nor shall it become, a private or public nuisance by any changed condition in or about the locality of the agricultural operation or agricultural facility if the operation was not a nuisance at the time the operation began and has been in existence for more than one year....”¹⁰⁹ However, this nuisance protection does not apply “whenever an agricultural operation or agricultural facility is operated negligently or illegally such that the operation or facility is a nuisance.”¹¹⁰ Therefore, claims of nuisance should be made early—within the first year of the operation’s existence—and concerned neighbors should pay close attention to the CAFOs and report any violations that could help establish that the facility is operating negligently or illegally.

While the right to farm act nuisance exemptions limit the availability of successful nuisance claims, some remedies are available and individuals may still seek damages from “pollution of, or change in condition of, waters of a stream or because of an overflow on his lands.”¹¹¹

Individuals considering bringing nuisance lawsuits against CAFOs should consult with counsel and make sure that there is a basis for their claim because New Mexico has enacted legislation that is designed to deter such nuisance lawsuits. New Mexico law states that “If a court determines that any action alleging that an agricultural operation is a nuisance is frivolous, the court may award reasonable costs and attorneys’ fees to the defendant.”¹¹²

HEALTH

CAFOs create serious health risks for animals, employees, owners, and nearby residents. These risks result from poor air quality, odor, flies/insects, contamination of surface and groundwater, and the sub therapeutic use of antibiotics in most CAFOs, which contributes to increased occurrence of antibiotic-resistant bacteria. Despite the adverse health concerns CAFOs pose to those in close contact with them, federal and state health departments do little to regulate CAFOs to minimize these harmful

¹⁰⁹ N.M. STAT. ANN. § 47-9-3(A).

¹¹⁰ N.M. STAT. ANN. § 47-9-3(A).

¹¹¹ N.M. STAT. ANN. § 47-9-6.

¹¹² N.M. STAT. ANN. § 47-9-7.

effects. However, they are authorized to engage in a number of activities that could impact CAFOs. The state health department is authorized to do the following (which could feasibly relate to CAFOs): ¹¹³

- Supervise the health and hygiene of the people.
- Investigate, control, and abate the causes of diseases, epidemics, or other public health conditions.
- Establish programs to prevent infant mortality, birth defects, and morbidity.
- Provide educational programs on public health.
- Bring action in court to enforce health laws and rules.
- Enter into contracts to carry out the duties of the department.
- Maintain and enforce rules for control of communicable diseases deemed to be dangerous to public health.
- Maintain and enforce rules to carry out the Public Health Act.
- Sue and be sued.
- Inspect premises to ascertain the existence of conditions dangerous to public health or safety.

Based on these statutory duties and powers, individuals may be able to pressure the state or regional health department to inspect CAFO premises to determine if the facility is dangerous to public health. While such a finding may not result in the closing of a facility, health department investigations and findings may pressure the CAFO to adjust operations, may support CAFO opposition efforts, or may help establish a nuisance claim.

PUBLIC INFORMATION LAWS

Digging up the Dirt: Public Information Generally

Accessing information and documents about CAFOs in your communities and the agencies that interact with them is important for understanding the issues, building a record, putting pressure on agencies, and fact-finding to assess litigation possibilities or publicly challenge facilities that are coming into or expanding in the region. Records requests are often an early step in the CAFO fight. While there are state and federal laws ensuring public access to information, there are also limits on the types of documents available, and agencies are sometimes known to be difficult

¹¹³ N.M. STAT. ANN. § 24-1-3.

in fulfilling records requests. Requests have to be specific enough for the agency to narrow their search but broad enough to ensure that important records are not left out. For a discussion of the Freedom of Information Act, see the Federal Guide. The following sections will address state public information laws.

New Mexico Inspection of Public Records Act

The New Mexico Inspection of Public Records Act is codified in N.M. STAT. ANN. § 14-2-1 et seq., which allows the public to inspect public records, subject to some exceptions. The state acknowledges that “representative government is dependent upon an informed electorate” and “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.”¹¹⁴ The statute states:

Every person has a right to inspect public records of this state except:

- (1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
- (2) letters of reference concerning employment, licensing or permits;
- (3) letters or memoranda that are matters of opinion in personnel files or students' cumulative files;
- (4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;
- (5) as provided by the Confidential Materials Act;
- (6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;
- (7) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and

¹¹⁴ N.M. STAT. ANN. § 14-2-5.

(8) as otherwise provided by law.¹¹⁵

Barring these exceptions, individuals may request public records, which are defined to include the following: “documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.”¹¹⁶ For individuals or groups seeking records regarding CAFO operations and agency records, the majority of these statutory exceptions will not apply. However, some state agencies, such as NMED, have developed policies that limit the types of records they will provide.

According to state law, requests for public records may be oral or in writing, but we strongly advise submitting the request in writing since records custodians may fail to respond to oral requests without any penalty. There are statutory procedures in place for written records requests.¹¹⁷

While we advise consulting state law and state public records resources, here are the basics:

- Submit a written request (letter, email, or fax)
- Your request should not require the creation of documents that do not already exist
- The written request should include the name, address, and phone number of the requester, and the request should describe the records sought with “reasonable particularity”
- You do not need to say why you are requesting the records
- The records custodian must allow inspection of records within 15 days of receiving the request
- If it takes the custodian more than three days to permit an inspection, he or she must provide the requester with the reason for the delay in writing
- If the request goes to the wrong records custodian (i.e., the request recipient does not have possession of or responsibility for the type of records requested), he or she should forward the request to the correct custodian or notify the requester that he or she does not have access to the requested records.

¹¹⁵ N.M. STAT. ANN. § 14-2-1.

¹¹⁶ N.M. STAT. ANN. § 14-2-6(G).

¹¹⁷ N.M. STAT. ANN. § 14-2-8.

Requesting Records from NMED

NMED treats any record request under the state Inspection of Public Records Act. While the act provides for some exceptions, NMED has internal policies that restrict the types of records they will allow the public to access. For example, NMED claims that the following are not public records are exempt:¹¹⁸

- Notes, field notes, or materials prepared by public employees for their preliminary use and not intended to communicate on behalf of the public agency
- Records that do not relate to a public body's business and are voluntarily kept by employees for their personal use
- Publicly available publications by non-department resources
- Records maintained under a promise of confidentiality
- Legal opinions, advice, or work-product
- The names of complainants or reports of occupational injuries filed by employers
- Records for which there is a countervailing policy to justify denying access (such as executive privilege, settlement discussions, and business information)

Send written records requests to:

Melissa Y. Mascareñas
Inspection of Public Records Officer
New Mexico Environment Department
1190 St. Francis Drive, Ste. N-4050
PO Box 5469
Santa Fe, New Mexico 87502
tel. (505) 827-2855
fax. (505) 827-1628
email: melissa.mascareñas@state.nm.us

NMED may charge fees for copies, time spent by the agency, digital recording reproduction, and electronic conversion of paper records. There is considerable

¹¹⁸ Policy and Procedure 01-06: Inspection of Public Records Policy, New Mexico Environment Department,
https://www.env.nm.gov/OOTS/documents/public_information_request_policy.pdf.

information about the fee structure for NMED public records requests but the basics are that copies of a public record will run around \$0.25 per page (varies based on size and quantity) and the cost of searching, manipulating, and retrieving electronic information is the staff employee salary multiplied by the time taken to complete the request. However, federal freedom of information law allows for a waiver of fees for public records if the information sought is in the public interest so be sure to include something to that effect in your request.

Find a NMED inspection of public records request form [here](#).¹¹⁹

Find a breakdown of NMED's inspection of public records policies and fees [here](#).¹²⁰

Requesting Records from NMDA

Written public records requests to NMDA should be sent to:

Records Custodian
New Mexico Department of Agriculture
MSC 3189, PO Box 30005
Las Cruces, NM 88003
Telephone: 575-646-3007
Fax: 575-646-8120
Email: publicrecords@nmda.nmsu.edu¹²¹

Requesting Records from EPA Region 6

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for FOIA requests.¹²² New Mexico residents should submit FOIA requests related to NM CAFOs to the regional EPA office since the EPA is responsible for administering the NPDES program in the state and the state NMED will have little to no information about this part of CAFO regulation. Contact information for the EPA Region 6 FOIA Officer is:

¹¹⁹ Inspection of Public Records Request Form, New Mexico Environment Department, https://www.env.nm.gov/Common/documents/public_information_request.pdf.

¹²⁰ Policy and Procedure 01-06: Inspection of Public Records Policy, New Mexico Environment Department, https://www.env.nm.gov/OOTS/documents/public_information_request_policy.pdf.

¹²¹ Public Records Request, New Mexico Department of Agriculture, <http://www.nmda.nmsu.edu/new-mexico-inspection-of-public-records-act/>.

¹²² U.S. Environmental Protection Agency, Organization Chart for EPA's Region 6 Office, <https://www.epa.gov/aboutepa/organization-chart-epas-region-6-office>.

Regional Freedom of Information Officer
U.S. EPA, Region 6
1445 Ross Avenue (6MD-OE)
Dallas, TX 75202-2733
(214) 665-7202¹²³

See the Federal Supplement for more information on FOIA. Several EPA websites contain useful summaries of the FOIA request process, response time guidance, and other information.¹²⁴ Note that you're entitled to a waiver of fees if requesting information that is "likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester."¹²⁵ EPA only considers waiver requests that are submitted at the same time as the corresponding FOIA request.¹²⁶

CHANGING THE RULES

Understanding the current rules and regulations is invaluable in the fight against CAFOs. But rules can change. Individuals can weigh in on proposed changes and pressure the state to change the rules to better serve all residents, regions, and industries in the state.

The Environmental Improvement Board (EIB) is responsible for the development and promulgation of rules and standards for a wide variety of areas such as food production, water supply, waste systems, air quality, radiation control, noise control, nuisance abatement, occupational health and safety, sanitation, hazardous waste, and solid waste. The Water Quality Control Council (WQCC) is the primary authority for water-related rulemaking and permit hearings for dairy operations in the state.

¹²³ U.S. Environmental Protection Agency, Regional FOIA Contact Information, <https://www.epa.gov/foia/forms/contact-us-about-freedom-information-act-and-foia-requests#Regional>.

¹²⁴ See, e.g., U.S. Environmental Protection Agency, The FOIA Request Process, <https://www.epa.gov/foia/foia-request-process>.

¹²⁵ U.S. Environmental Protection Agency, Fee Waivers, <https://www.epa.gov/foia/foia-request-process#waivers>.

¹²⁶ See *id.*

The WQCC usually meets once a month and their meetings are open to the public.¹²⁷ NMED usually proposes changes to EIB or WQCC, but any person may petition EIB or WQCC to adopt, change, or repeal a regulation. Individuals may also work with NMED to develop and submit a proposal to change the rules.

Before the EIB can change the regulation, there must be a public hearing in front of the board. If it is a change that affects the entire state, the hearing is usually held in Santa Fe or Albuquerque. If the change impacts a particular region, the hearing is held within the affected region. Notice of the hearing is given at least 30 days before the hearing date and hearing notices are published in a newspaper of general circulation.

Anyone can participate in these hearings—individuals, groups, NMED, etc. They can provide technical or non-technical testimony and comment on proposed changes. If they plan to present technical testimony, they must provide notice at least 14 days before the hearing. The board considers a variety of factors when adopting or changing regulations such as public interest, interference with health or the environment, social and economic impacts, necessity, or practicability.

Individuals may request notifications of rule changes from the WQCC, NMED Boards and Commissions, or they may monitor EIBs website.¹²⁸

CAFO PROPERTY TAX APPEAL GUIDELINES

Neighbors of CAFOs may also be harmed when government fails to account for the often noxious and harmful presence of a CAFO when assessing a property for tax purposes. Without knowing how to challenge an uninformed assessment, individuals can find themselves paying too much in property taxes on top of other issues they face. However, New Mexico code does prescribe an avenue of relief for aggrieved property owners under N.M. STAT. ANN. Chapter 7, Article 38.

¹²⁷ Water Quality Control Commission, New Mexico Environmental Department, <https://www.env.nm.gov/water-quality-control-commission/wqcc-meetings/>

¹²⁸ Public Notices, New Mexico Environmental Department, <https://www.env.nm.gov/environmental-improvement-board/public-notices/>.

State law requires that property value, or market value, is determined by sales of comparable property.¹²⁹ A Notice of Value is mailed to property owners by April 1st of each year. Property owners may protest the information in the Notice of Value within 30 days by filing a protest form with the Assessor.¹³⁰ Alternatively, property owners may pay the tax and then file a claim for a refund.

The protest should include why the owner believes the value, classification, or allocation of value is incorrect. A hearing will be scheduled and property owners are given the opportunity to provide evidence to support their claims. Protests are heard by the County Valuation Protest Board, consisting of two county residents and a property appraisal officer from the state Property Tax Division.¹³¹ Be aware that:

- The assessor only has to provide 15 days' notice for the scheduled hearing.
- The assessor has 30 days to respond to discover requests, so get these requests in early in order to have them for the hearing.
- Bring five copies of materials the board should consider.
- All protests shall be decided within 120 days of the date that the protest is filed.¹³²
- The hearing will be on record.

Property owners should be aware that there is a presumption that the value of property for property tax purposes is correct.¹³³ But this presumption may be overcome. The burden is on the property owner "to come forward with evidence showing that values for property taxation purposes determined by the division or the county assessor...are incorrect."¹³⁴ Once the property owner overcomes this burden, the burden then shifts to the division or county assessor. Following the County Valuation Protest Board's decision, property owners may appeal the order by filing an appeal within 30 days of the decision and pursuant to N.M. STAT. ANN. § 39-3-1.

While this process does little to impact nearby CAFO operations, it may save property owners some lost money and sends a message to counties that they may stand to lose tax revenue as a result of property depreciation near CAFOs in their communities.

¹²⁹ N.M. STAT. ANN. 7-38-15.

¹³⁰ N.M. STAT. ANN. § 7-38-22.

¹³¹ N.M. STAT. ANN. § 7-38-25.

¹³² N.M. STAT. ANN. 7-38-23.

¹³³ N.M. STAT. ANN. § 7-38-6.

¹³⁴ N.M. ADMIN. CODE § 3.6.7.13

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](#).¹³⁵

State Organizations

[Amigos Bravos](#)¹³⁶

[New Mexico Environmental Law Center](#)¹³⁷

[Sierra Club](#)¹³⁸

[Western Environmental Law Center](#)¹³⁹ (Based in OR, office in NM)

State Pro-Bono Clinics

The **University of New Mexico School of Law** does not have an environmental law clinic but it does have a **Community Lawyering Clinic** that may be able to provide some assistance.¹⁴⁰ The school is also home to the **Uttom Transboundary Resource Center**, which addresses natural resource issues in the region.

CAFO Research Resources

¹³⁵ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

¹³⁶ Amigos Bravos, <http://amigosbravos.org/>.

¹³⁷ New Mexico Environmental Law Center, <http://nmelc.org/about>.

¹³⁸ New Mexico and El Paso, Rio Grande Chapter of the Sierra Club, <http://www.riograndesierraclub.org/>.

¹³⁹ Western Environmental Law Center, <http://www.westernlaw.org/our-work>.

¹⁴⁰ Community Lawyering Clinic, University of New Mexico School of Law, <http://lawschool.unm.edu/clinic/clinic-sections/community/index.php>.

New Mexico Environmental Law Center is a nonprofit public interest law firm that is involved in environmental matters throughout the state.¹⁴¹

LIST OF STATUTES & REGULATIONS

Below is a list of relevant statutes and regulations, most of which are discussed in this guide. The list serves as a starting point for additional research or in-depth analysis of environmental authority in New Mexico.

N.M. Stat. Ann.	Topic
7-38-6	Property Tax, Presumption of Correctness
7-38-15-25	Property Tax, Valuation, Protest, Hearing, and Appeal
14-2-1 et seq	Inspection of Public Records Act
24-1-3	Health Department, Authority and Scope
31-21-1	Zoning, Scope
31-21-5	Zoning, Comprehensive Plans
3-21-6	Zoning, Public Notice and Hearing Requirements
3-21-8-9	Zoning, Appealing Zoning Decisions
3-53-2.1	Municipal Regulation of Water Usage, Agricultural Exemption
47-9-2-7	Right to Farm, Nuisance Claims
72-1-2.2	Water Quantity, Water Shortage in Pecos River Basin
72-5-1	Water Quantity, Role of State Engineer for Access to Water for Beneficial Use
72-12-1	Ground Water Belongs to the Public
72-12-1.2	Livestock Well Permit
72-12-12	Drilling Well Requirements
72-13-1	Artesian Well Permit
73-20-25-26	Soil and Water Conservation District Act
73-20-44-45	Conservation Districts
74-1-2	Environmental Improvement Act, NMED Authority
74-1-7	Environmental Improvement Act, NMED Authority
74-2-1 et seq.	Air Quality Control Act
74-2-2	Air Quality Control Act, Definitions
74-4-2	Hazardous Waste Act
74-4-3	Hazardous Waste, Animal Waste Exemption

¹⁴¹ <https://nmelc.org>

74-6-10	Water Quality, Enforcement and Penalties
74-7-2	Environmental Compliance Act
74-9-2	Solid Waste Management Act
74-9-3	Solid Waste, Agricultural Exemption
76-1-1	New Mexico Department of Agriculture, Authority and Duties
76-6-1 et seq	Water Quality Control Act
N.M. Admin. Code	Topic
20.2.3.108-III	Ambient Air Quality Standards
20.2.70.7	Title V Operating Permit
20.2.72-79	Air Quality Bureau Permits
20.2.72.400-405	Air Toxics Program
20.6.2	Water Quality Control Act, Administration
20.6.2.2001	Certifying NPDES Permits
20.6.2.3108	Ground Water Permit
20.6.4	Water Quality Standards
20.6.6	Water Quality Control, Supplemental Permit Requirements for Dairies