Guide to Confronting Concentrated Animal Feeding Operations in

NORTH DAKOTA
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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.

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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 NORTH DAKOTA

Agriculture and animal livestock production plays a significant role in North Dakota’s economy and cultural identity. The state is among top producers for crops like wheat, soybeans, and corn and its livestock industry is mainly composed of cattle, hog, sheep, and turkey operations. According to the USDA, there are 1,860,000 cattle, 420,000 turkeys, 147,000 hogs, and 70,000 sheep in the state.\(^2\) In the past, the state’s livestock industry mainly involved cow-calf operations, rather than large-scale feeding operations, and most of the animal feeding operations (AFOs) were in the turkey sector.\(^3\) North Dakota has a state permitting program for small and medium AFOs, and as of 2015, there were around 600 AFOs with state permits. However, in the past two decades, large-scale animal production has become more common in the state, bringing with it water quality concerns and legal issues. Though North Dakota has authority to grant discharge permits to CAFOs within the state, current data suggests that the state is not exercising this authority. According to the United States Environmental Protection Agency (US EPA), North Dakota has 76 large concentrated animal feeding operations (CAFOs) and none have National Pollutant Discharge Elimination System (NPDES) permits.

Despite the lack of permitted facilities and growing groundwater pollution concerns, the state has a few measures that help address CAFO impacts. North Dakota is one of the states that tries to address air quality and odor concerns from agricultural operations. The state does not require that CAFOs obtain any kind of air quality permit, but the state does establish setback distances to limit or mitigate CAFO odors. North Dakota also has local control, so local governments and counties may establish zoning ordinances or restrictions on CAFOs that may be more stringent than the state requirements. (Though note that when this guide was written in January 2019, a bill was moving through the state legislature to restrict zoning regulations for livestock and strip away local authority to protect rural residents from CAFO development.)

North Dakota is also one of the few U.S. states that has an anti-corporate farming law that restricts corporate agriculture and seeks to keep the state’s farming operations in the hands of North Dakota’s family farmers.\(^4\) This is part of why there aren’t more

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\(^4\) N.D. Cent. Code §10-06.1.
CAFOs in the state. Despite recent legal challenges, North Dakota’s anti-corporate farming law was upheld in courts and remains in place for now.\(^5\)

North Dakota’s AFO and CAFO regulations are currently under revision, so check the status of the regulations and permit for up-to-date information. For the moment, the primary agency in charge of AFO and CAFO permits in the state is the North Dakota Department of Health. The agency is in the process of shifting its Environmental Health Section to the North Dakota Department of Environmental Quality, so check on the status of the transition.

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**CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES**

**What is a CAFO?**

North Dakota distinguishes between animal feeding operations (AFO) and concentrated animal feeding operations (CAFOs) in its state regulations.

An AFO is a lot or facility that meets the following criteria: 1) Animals have been stabled or confined and fed or maintained for 45 days or more in a 12-month period, and 2) Crops, vegetation, or post-harvest residues are not sustained during the normal growing season over any part of the lot or facility.\(^6\)

A CAFO is an AFO that falls into any of the following designations:

1. A large CAFO (see table 1 below);
2. A medium AFO in which either:
   a. Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device, or
   b. Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
3. A medium or small AFO that the North Dakota Department of Health has designated as a CAFO because it is a significant contributor of pollutants to

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\(^6\) North Dakota Administrative Code (NDAC) § 33-16-03.1-03(1).
waters of the state. In making this determination, the department considers the following factors:

a. the size of the AFO and the amount of wastes reaching waters of the state;
b. the location of the AFO in relation to waters of the state;
c. the means of conveyance of animal wastes, manure, and wastewater into waters of the state; and
d. the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge into waters of the state.

To determine which facilities are classified as large CAFOs, medium AFOs, and small AFOs, North Dakota follows the federal register. Facilities are designated by the number of animals they stable or confine, according to the following categories:

<table>
<thead>
<tr>
<th>Animal</th>
<th>Large CAFO</th>
<th>Medium AFO</th>
<th>Small AFO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mature Dairy Cows</td>
<td>700 +</td>
<td>200–699</td>
<td>199 or less</td>
</tr>
<tr>
<td>Veal calves</td>
<td>1,000 +</td>
<td>300–999</td>
<td>299 or less</td>
</tr>
<tr>
<td>Cattle</td>
<td>1,000 +</td>
<td>300–999</td>
<td>299 or less</td>
</tr>
<tr>
<td>Swine under 55 lbs.</td>
<td>10,000 +</td>
<td>3,000–9,000</td>
<td>2,999 or less</td>
</tr>
<tr>
<td>Swine 55 lbs. or more</td>
<td>2,500 +</td>
<td>750–2,499</td>
<td>749 or less</td>
</tr>
<tr>
<td>Horses</td>
<td>500</td>
<td>150–499</td>
<td>149 or less</td>
</tr>
<tr>
<td>Sheep or lambs</td>
<td>10,000 +</td>
<td>3,000–9,000</td>
<td>2,999 or less</td>
</tr>
<tr>
<td>Turkeys</td>
<td>55,000 +</td>
<td>16,500–54,999</td>
<td>16,499 or less</td>
</tr>
</tbody>
</table>

When determining animal numbers at an operation, note that two or more operations under common ownership should be considered a single animal feeding operation if they adjoin each other or if they use a common area or system for waste disposal. It is not uncommon for AFOs to try to keep the animal numbers under what is required for a large CAFO NDPDES permit, when in reality their multiple smaller operations are effectively one large operation.

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8 See 40 CFR 122.23 – concentrated animal feeding operations; see also NDAC § 33-16-03.1-03(11), (17), and (34).
See North Dakota Administrative Code Chapter 33–16.03.1 for more detail on AFO-related definitions and permit requirements.

Who is required to obtain a permit? And which type of permit?

North Dakota’s regulations require operators of some animal feeding operations to apply for one of two types of permits: the North Dakota pollution discharge elimination system (NDPDES) for CAFOs, or the state AFO permits. The operations required to apply for permits, and the types of permits, are listed as follows:9

1. Any animal feeding operation that has been designated as a concentrated animal feeding operation either by definition in the regulation or by the department must apply for a NDPDES permit.
2. Any medium animal feeding operation where manure or process wastewater causes or is likely to cause water pollution, or those that are located within one-quarter mile of a stream or surface water that contains water, must apply for a state animal feeding operation permit or a “no potential to pollute” designation. (Waters that are completely contained on an operator’s property, and that do not combine or create a junction with natural surface or ground water are not included.)
3. A small animal feeding operation for which the department has determined that manure or process wastewater causes or is likely to cause water pollution must apply for a state animal feeding operation permit.
4. An animal feeding operation that stables or confines animals, for which the department has determined that manure or process wastewater causes or is likely to cause water pollution (other than the types of animals specified in the definition of medium animal feeding operation) must apply for a state animal feeding operation permit.

Upon request, the department may determine that a facility does not require a state animal feeding operation permit because the operation has no potential to discharge pollutants to waters of the state.10 A facility’s “no potential to pollute” classification is determined by whether there are discharges of pollutants to ground water or surface water after certain rainfall events and if the facility follows a nutrient management plan for manure and process wastewater.11

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9 NDAC § 33–16–03.1–05.
10 NDAC § 33–16–03.1–06(1).
11 NDAC § 33–16–03.1–06(3).
The department released guidance on the types of facilities that are likely to cause pollution. Below are some of the criteria used to determine if a small or medium AFO is causing or is likely to cause water pollution:

1. The number of livestock and the number of days per year the livestock are on the site;
2. Whether the livestock are confined in or adjacent to surface water with little natural or manmade controls to keep runoff out of the surface water;
3. Whether the AFO has or is currently impacting waters of the state based on samples and water testing;
4. Whether the AFO has discharged into surface water from a rainfall event; and
5. Whether they’re applying manure in a way that will keep it out of surface water.

AFOs must submit applications to the permitting agency and get approval prior to construction. This applies to new operations or existing operations that are increasing their livestock numbers, expanding the production area, or changing the manure handling system.

See the North Dakota Livestock Program Design Manual for more details.\(^{12}\)

**Responsible Regulatory Agencies**

**North Dakota Department of Health (NDDoH)**

- NDDoH has the statutory responsibility to control the pollution of surface waters, groundwaters, and the air of the state. The state received authorization to operate the North Dakota Pollution Discharge Elimination System (NDPDES) program in 1975\(^{13}\).
- Through its Water Quality Division, NDDoH issues water pollution permits to CAFOs, unless an operation can demonstrate that it will not discharge pollutants to North Dakota’s surface waters.

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\(^{12}\) North Dakota Livestock Program Design Manual, North Dakota Department of Health, (Revised Dec 13, 2018)


• NDDoH’s powers with regard to water pollution are enumerated in North Dakota Century Code § 61-28-04.
• Note that NDDoH is a distinct agency from the North Dakota Fish and Game Department, which does not oversee water quality but instead has authority to protect, conserve, and enhance fish and wildlife populations and habitats for sustained public consumptive and non-consumptive use.14
• NDDoH Environmental Health Section is transitioning to the North Dakota Department of Environmental Quality (DEQ) but the transition is not complete at the time of this writing, so be sure to check on the status of the agency’s transition.
  o The new ND DEQ will be overseen by a 13-member Environmental Review Advisory Board. The existing Air Quality Advisory Board and Water Pollution Control Advisory Board will be consolidated into the new Environmental Review Advisory Board.

Counties and Townships

Unlike some states which have prohibited or severely restricted local control, North Dakota has held on to local control, allowing local governments to enact ordinances such as setbacks that could impact AFO siting.15 There are some limits on how far the ordinances can go in restricting agricultural development,16 but local governments have some leeway in developing ordinances and zoning laws that best reflect the interests of the communities they serve. These ordinances often incorporate language and definition of the North Dakota Administrative Code and North Dakota Century Code, but they can also be more restrictive than state laws and regulations.

For example, the Revised McLean County Zoning Ordinance prohibits the construction of an AFO with more than 1,000 units within 1 mile of the Missouri River and several lakes. The ordinance also states that if an operator violates the ordinance or receives a judgment from a civil action filed by the NDDoH, the county may order the cessation of the AFO until the violation is corrected.17

14 Department Information, North Dakota Fish and Game Department, https://gf.nd.gov/about.
15 North Dakota Century Code §11-33-01.
16 For example, the legislation prohibits a township or country from outright banning CAFOs from their jurisdiction.
For a complete list of county- and township-specific information, see the map on NDDoH’s website, though note that it may not be up to date; you may want to conduct a search or call local officials to see if there have been any changes to local ordinances or regulations related to animal feeding operations in the area.

**NOTE:** There is currently a bill moving through North Dakota state legislature that limits local authority. It would change how animal units are calculated and impose short deadlines for township and county governments to make determinations about AFOs, thereby rushing them through a decision-making process and restricting their ability to enact ordinances in response to a proposed AFO.

**North Dakota Department of Agriculture**

The North Dakota Department of Agriculture is not involved in AFO permitting or enforcement but they do play a role in the state’s animal agriculture industry. In general, they regulate aspects of animal health, livestock industries, pesticides, fertilizers, and plant industries. They have a Dairy Program to ensure milk meets state and federal standards. They impose licensing requirements for livestock dealers and auction markets. They also utilize cost share funds to assist producers to build or update containment systems under the Livestock Pollution Prevention Program. In general, they will be more helpful to AFO owners than rural communities dealing with AFO impacts.

**U.S. EPA Region 8**

North Dakota is part of the U.S. EPA Region 8, Mountains and Plains, which also includes South Dakota, Montana, Colorado, Utah, Wyoming, and twenty-seven tribal nations. Note that the majority of states, including North Dakota, have authority to issue water pollution permits to regulated industries in their respective states; however, the U.S. EPA retains oversight authority to take enforcement and related action when states fail to meet federal requirements like those outlined in the Clean Water Act. For this reason, EPA CAFO contacts are useful for residents who are tracking specific large-scale livestock operations or have questions about a state

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18 ND Concentrated Animal Feeding Operation County and Township Zoning Regulations, North Dakota Department of Health, [https://deq.nd.gov/WQ/2_NDPDES_Permits/1_AFO_CAFO/countyzoning/default/](https://deq.nd.gov/WQ/2_NDPDES_Permits/1_AFO_CAFO/countyzoning/default/).

19 Senate Bill 2345.
CAFO program's compliance with federal laws. See the federal supplement to this Guide for more information on the interplay between states and the U.S. EPA.

See U.S. EPA's Regional Animal Feeding Operation Contact List for Region 8's AFO contact person.20

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**WATER**

**North Dakota Pollutant Discharge Elimination System (NDPDES) Permits Program**

The U.S. EPA has authorized North Dakota to implement the National Pollutant Discharge Elimination System (NPDES), a component of the Clean Water Act, at the state level. The NDDH is the primary agency involved in issuing permits for a variety of activities which result in a discharge of pollutants into waters of the state. These permits may be required for existing facilities, new facilities, or construction activities, and allow for discharge to surface or ground waters under specific circumstances.

**Discharge Permits for Animal Feeding Operations**

North Dakota statutes prohibit discharge of waste into waters of the state that will cause those waters to fall below water quality standards. However, state law allows the discharge of waste into waters of the state with a valid permit.21 Therefore, one of the first determinations you should make is whether a particular livestock operation is required to have a permit or permits, and if so, the type of permit(s) with which it must comply.

As noted above, North Dakota requires all state CAFOs to obtain a pollution discharge elimination system permit and many small and medium AFOs must obtain a state AFO permit. Furthermore, the NDAC mandates that all CAFOs must be “located, designed, built, maintained, and operated to limit or prevent pollution of or the discharge of pollutants into waters of the state.”22 The NDAC requires operators to act pursuant to the North Dakota Livestock Program Design Manual (Design Manual), North Dakota Century Code § 61-28, and NDAC §§ 33-16-01 and 33-16-03.1.

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20 [https://www.epa.gov/npdes/contact-us-animal-feeding-operations-afos#afosRegional](https://www.epa.gov/npdes/contact-us-animal-feeding-operations-afos#afosRegional)
21 NDCC § 61-28-06.
22 NDAC § 33-16-03.1-08(2).
The Design Manual states that its contents are “explanatory in nature” and do not carry the force of law. The NDAC refers to the Design Manual in multiple provisions however, going so far as to state: “In preparing an application, the operator shall follow the North Dakota Livestock Program Design Manual.”

Therefore, this guide will include parts of the manual’s content as a reference.

**Permit Application Process**

All CAFO operators must submit a NDPDES application either at least 180 days prior to the day on which operations will commence, or in “sufficient time” beforehand to allow the NDDoH to ensure compliance with water quality standards and Clean Water Act requirements.

The NDAC incorporates several sections of the Code of Federal Regulations into its application requirements. Under the federal register’s general information requirements, CAFO operators must disclose, among other things, whether the facility is located on Indian lands; a listing of all permits received or applied for under various federal programs; and a topographic map extending one mile beyond property boundaries, showing the facility’s structures and location of surface water bodies and drinking water wells. The register’s requirements specific to CAFOs require operators to report, among other things, specific information of the number and type of animals in the facility; the type of containment and storage that will be used, along with its storage capacity; and the number of acres the applicant has available for land application of manure.

The Design Manual states that CAFO operators must submit a facility design plan along with their application if they are operators of new facilities or existing facilities that are expanding their livestock above permit limits or are changing their manure handling system. Design plans for these facilities must show that manure, wastewater, and runoff can be contained and managed to prevent detrimental impacts to surface and groundwater resources and meet air quality standards.

The design plan must address, at minimum, production areas of the livestock facility, earthen storage ponds or runoff ponds, non-earthen storage, diversions and

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23 NDAC § 33-16-03.1-07(4).
24 40 C.F.R. 122.21(f).
25 40 C.F.R. 122.21(1).
embankments, and water pollution control structures. Design plans must also contain a nutrient management plan and best management practices.

**Nutrient Management Plans**

All CAFOs or permitted facilities that land apply manure or wastewater are required to develop a nutrient management plan and submit it to the NDDoH. According to the Design Manual:

> The objective of the Nutrient Management Plan is to ensure livestock manure, including bedding, litter, waste feed and process wastewater, and runoff from livestock areas is land applied to crop or grass land at a rate the nutrients will be utilized by the vegetation grown. The manure shall be handled in a manner so as not to impact waters of the state, exceed air quality standards while it is stored on site, and minimize odors to residences or public areas during land application.

At minimum, a nutrient management plan must contain:

- Description of the land the operator can access to apply manure or process wastewater, or both, and information to show that manure or process wastewater will be applied at agronomic rates;
- The proposed method and timing of land application of manure and process wastewater; and
- The precautions that will be taken to prevent manure and process wastewater from reaching waters of the state, and minimize odors to residences and public areas where people are present during transport and land application of manure.

The Design Manual contains more detailed requirements for nutrient management plans, including:

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29 NDAC § 33–16–03.1–08(3).
• The type of livestock, number of days per year they are on site, and an estimate of the volume of manure generated;
• An aerial photograph/map and a soil map of the site where manure is to be applied;
• Complete nutrient budget for nitrogen and phosphorous for the rotation or crop sequence that considers all potential sources of these nutrients;
• The form of manure (liquid or solid) and the expected frequency of land application;
• Location of sensitive areas or resources such as water ways, drainage ways, wellhead or source water protection areas, high water table areas, residences or public areas and the associated manure-handling or nutrient management restrictions;
• A field-specific assessment of the potential for nitrogen and phosphorous transport from the field to surface waters; and
• BMPs implemented to manage nutrients as efficiently and effectively as possible.

Construction Permit

In accordance with federal requirements, North Dakota regulates stormwater pollution from construction activities. Construction activities that disturb one or more acres of land must obtain a stormwater permit and develop a Stormwater Pollution Prevention Plan (SWPPP) prior to construction. The ND DoH currently administers the program. Operators wishing to obtain coverage should submit an application at least seven days prior to starting any construction activity.

In short, the operation should have a stormwater permit before starting construction, and may be required to implement a SWPPP. While there is almost no opportunity for residents to participate in this permit process, it is one of the hurdles that operations must clear, and it is not unheard of for an operation to begin construction without the required permits. It’s worth keeping an eye on this and reporting any violation as this can establish a pattern of non-compliance very early in the game.

31 40 CFR 122.26, 40 CFR 122.28.
For more details about permit requirements for stormwater discharges from construction activities, see General Permit NDR10-0000 and NDDoH’s Fact Sheet for NPDES Permit NDR10-0000.33

Water Quantity

Community monitors should be aware that depending on their water use, North Dakota AFOs may need to comply with water use regulations in addition to surface water pollution requirements.

Under North Dakota Century Code § 61-04-02, anyone starting or constructing an operation that will appropriate waters of the state must secure a water permit from the state engineer. However, there is an exemption for domestic or livestock purposes, which are considered beneficial use; in these cases all that’s required is that the operation notifies the state engineer of the location and amount of water taken. But if the livestock operation seeks to construct an impoundment that will retain more than 15418.52 cubic meters of water, or drill a well that uses more than 15418.52 cubic meters of water per year, they should seek a permit from the state engineer.

Note that livestock—particularly cattle—is a very water-intensive industry and large enough operations may need state approval. If the operation needs a permit, this triggers a “notice of application” for surrounding property owners, a two-week notice period published by the state engineer, a 30-day comment period, and the option for a hearing/adjudicative proceeding prior to a decision.

For more details, see this factsheet on North Dakota’s Water Permitting Process.34

Water Quality

North Dakota’s water quality standards generally reflect federal surface water quality protection requirements. These protections include discharge rules, nutrient management, setbacks, and groundwater protection. The goal of these requirements is to protect existing and potential beneficial uses of waters of the state.

34 http://www.swc.nd.gov/pdfs/water_permitting_process.pdf
North Dakota’s water quality-based requirements include the following:

- Manure storage structures must be designed to store 270 days of runoff, manure, and wastewater as well as rainfall from a 25-year, 24-hour rainfall event.
  - This does not apply to swine, poultry, or calf operations.
- Storage structures for swine, poultry and veal operations must be designed to contain rainfall from a 100-year, 24-hour rainfall event.
- Any permitted AFO must develop a Nutrient Management Plan
  - This does not apply to operations that do not land apply manure or have obtained a “No Potential to Pollute” determination.
- Permitted AFOs and CAFOs should have a 100-foot setback between the manure application and surface waters.
  - This setback can be reduced down to 35 feet if there is a vegetative buffer that provides pollution reduction equivalent or better than the 100-foot setback.
- Manure storage areas should be at least 100 feet from a public water supply, and 500 feet from a water supply well (not owned by the facility) that is in a downgradient direction.
- NDDoH may require groundwater monitoring if a permitted AFO or CAFO is close to a sensitive aquifer.

North Dakota’s Standards of Water Quality are codified in NDAC § 33.1-16-02.1.

**Wetlands**

Depending on the project details of a new or expanding CAFO, wetlands impacts may provide another way for residents to review, comment on, and potentially decrease the environmental impacts of large-scale livestock operations.

The Clean Water Act authorizes states to issue a State Water Quality Certification (401 Certification) for any activity or project that may result in a discharge into waters of the United States. Projects subject to 401 Certification most commonly include irrigation or filling of wetlands. 401 Certification requires the state to determine that a project will not violate surface water quality standards or adversely impact impaired waters. North Dakota regulates wetlands primarily through this program and the NDDoH’s Division of Water Quality is the state’s primary permitting agency. The Office of the State Engineer may also oversee permitting of wetland

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projects. Based on the scope of the project, it may be required to undergo review by the District Water Board. However, North Dakota does not have a state wetland program; basically, the state does not appear to regulate wetlands beyond what is federally required.

For more on wetlands and wetland-related resources, see the Federal Guide.

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**PUBLIC NOTICE**

**Public Notice and Public Participation**

In general, North Dakota has a good public notice and comment system. If a person is paying attention, they may be notified of various AFO related actions—be it permit or local zoning decisions—through letters, newspapers, websites, and emails. Also, anyone who wants a public hearing can get one. And the agency has to respond to comments. So while an AFO permit decision may not go in your favor, people are able to know what’s going on, and can weigh in, request hearings, and get responses from the agencies making the decisions. In general, this is one of the prime opportunities for residents to get involved and make their voices heard. It is rare, but AFO permits have been denied, stalled, or withdrawn because of vocal community opposition in public hearings. So stay vigilant and do not waste an opportunity to participate in the process.

Upon receipt of a completed application, the NDDoH will create a tentative formulation to issue or deny a NDPDES permit. If NDoDH tentatively proposes to issue a permit, it will also issue:

- Proposed effluent limitations, standards, and prohibitions;
- A proposed schedule of compliance for meeting the proposed effluent limitations, if necessary;
- Proposed permit conditions as outlined in NDAC § 33-16-01-13, which includes water quality standards and total maximum daily loads, in compliance with the Clean Water Act.
- Proposed permit conditions as outlined in 40 C.F.R. part 122.41 and 122.42, which includes monitoring and reporting requirements, a right of entry to inspect by the NDDoH, and an animal report detailing the number and types of animals in
the facility, and the amount of waste the facility generated in a 12-month period;\textsuperscript{36} and

- Proposed monitoring requirements.\textsuperscript{37}

The North Dakota Administrative Code has detailed requirements for notice and participation. At minimum, notice of a major facility permit or general permit must be published in a daily or weekly newspaper within the area that will be affected by the facility.\textsuperscript{38} Notice of all other permits must be circulated in the geographic area of the proposed discharge and can take a variety of forms, including publishing in local newspapers and posting notice in the post office and public areas of the municipality located closest to the proposed discharge.\textsuperscript{39}

The department also publishes notices on its website.\textsuperscript{40} Residents can also subscribe to receive email notifications when new public notices are posted, which can be the best way to stay informed about CAFO permitting in the state.

The ND\textsuperscript{2}D\textsuperscript{H} must allow at least 30 days after the date of public notice for interested persons to submit written views on the department’s determinations regarding the discharge application.\textsuperscript{41} The department will retain all submitted written comments and consider them in its final decision. Any interested person or group of persons\textsuperscript{42} can petition the ND\textsuperscript{2}D\textsuperscript{H} for a public hearing on the permit application.\textsuperscript{43} Any request must be filed in writing within 30 days of the public notice and also must indicate the interest of the person submitting the request and why a hearing is warranted. The ND\textsuperscript{2}D\textsuperscript{H} will hold a public hearing if it determines there is significant public interest. It must hold this hearing in the geographical area of the proposed discharge and circulate public notice of the hearing at least as widely as the original permit notice.

If the ND\textsuperscript{2}D\textsuperscript{H} issues a final permit, it will also issue a response to comments that describes and responds to all significant comments received during the comments

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\textsuperscript{36} For more information, see the Code of Federal Regulations at [https://www.law.cornell.edu/cfr/text/40/122.41] and [https://www.law.cornell.edu/cfr/text/40/122.42].
\textsuperscript{37} ND\textsuperscript{2}AC § 33-16-01-06.
\textsuperscript{38} ND\textsuperscript{2}AC § 33-16-01-07(1)(a).
\textsuperscript{39} ND\textsuperscript{2}AC § 33-16-01-07(1)(b).
\textsuperscript{40} Public Comments & Notices, North Dakota Department of Health, [https://deq.nd.gov/PublicNotice.aspx](https://deq.nd.gov/PublicNotice.aspx).
\textsuperscript{41} ND\textsuperscript{2}AC Section 33-16-01-07(2).
\textsuperscript{42} Along with any affected state, affected interstate agency, affected country, the regional administrator, or any interested agency.
\textsuperscript{43} ND\textsuperscript{2}AC § 33-16-01-11.
period and public hearing. The response will specify which provisions of the permit have been changed and the reason for each change.

REPORTING VIOLATIONS AND ENFORCEMENT

Inspections & Reporting Violations

NDDoH handles AFO inspections and AFO-related complaints. There does not appear to be a regular inspection schedule for AFOs and inspections are either in response to a complaint, or as laid out in the AFO’s permit. The NDDoH may impose conditions on a permit to ensure protection of air and water of the state, such as monitoring, reporting, and compliance schedules for reporting. Once a permit is issued, it will be valid for no more than five years. Most enforcement actions will be prompted by complaints or reported violations from community members.

The department does not have an online complaint form so complaints should be submitted in writing to the agency official responsible for the type of complaint you are trying to report. When submitting a complaint, try to include the following:

- Location of the issue or event
- Date and time of the occurrence(s)
- Duration of the occurrence(s)
- Result of the incident
- Pictures if possible

Enforcement

If a complaint and subsequent inspection or investigation reveal that a facility is not in compliance with its permit or applicable laws, NDDoH will issue a Letter of Apparent Non-Compliance, which gives the violator an opportunity to resolve the issue. In certain situations, NDDoH may issue a Notice of Violation and later, an Administrative Consent Agreement directing how the violator should rectify the non-compliance issue(s). Fines and penalties may be assessed.

44 NDAC § 33–16–01–07.1.
45 NDAC § 33–16–03.1–07(5).
46 33–16–03.1–07(9).
Since NDDoH doesn’t currently have a publicly available database of public records regarding enforcement actions, you’ll have to submit a record request to NDDoH to access these records. Record requests are discussed later in this guide.

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**AIR & ODORS**

North Dakota does not regulate agricultural air emissions under the Clean Air Act, but they do regulate odors from agricultural operations. There are only a handful of states that regulate odors from agricultural operations so this is certainly better than nothing, but it is far from perfect for those dealing with a particularly pungent operation. The state code says:

In areas located within a city or the area over which a city has exercised extraterritorial zoning,... a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring.

...If an agricultural operation...has been in operation for more than one year,... and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one-hundred feet of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation.”

This is often considered “coming to the nuisance” and this is intended to protect farming, which can be a smelly business, from complaints from people who move nearby and dislike the smell.

In rural areas outside the city and city zoning, a person should not cause odors over the seven odor concentration units measured at any of the following locations:

- Within 100 feet of a residence, church, school, business, public building, campground, or public park.
- At any location beyond a half mile from the odor source
  - This does not include property owned by the owner/operator of the odor source
• If the county has a setback distance that is greater than one-half mile, the odor measurements must be taken at the setback distance.

The odor measurement can only be taken with a property maintained scentometer, an odor panel, or any other instrument approved by NDDoH. It must also only be taken by inspectors who have completed an odor certification course. If an operation is in violation, they have 15 days to implement an odor management plan.

However, there are a few important exemptions. Operations are exempt from odor rules while spreading or applying manure and when their waste storage pond melts in the spring. So some of the most odiferous activities are exempt, the odor measurement units are vague, regulations benefit existing operations, and violations are met with relatively lax enforcement.

It is important to note that these odor regulations are only enforced on a complaint basis. There is no system for monitoring or regular odor inspections so it is up to neighbors and nearby residents to submit odor complaints when warranted.

For more detail, see North Dakota Century Code § 23-25-11.

ZONING & SETBACKS

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. If it’s important to you, it’s generally a good idea to participate in that process. You can attend local meetings, weigh in on permits or changes to local code, and get to know local elected officials, establishing a working relationship with them when possible to facilitate a more efficient exchange of information.

North Dakota is one of the states where communities can exercise a degree of control over siting and setbacks for agricultural operations through local control. This feature of local government should not be taken lightly. Some states have stripped this authority from local government and as a result, CAFOs are plentiful and residents have little recourse in dealing with them. In North Dakota, counties and townships can pass local ordinances and zoning ordinances that could increase setbacks and place additional restrictions on agricultural operations in their jurisdiction that are more stringent than state standards. However, this power is not
unlimited. Local governments may not pass an outright ban on agricultural operations.

You may consider trying to work with local officials to pass local ordinances that protect communities before an AFO decides to build in the area. Because North Dakota state laws leave room for some local control of CAFOs, residents must always compare proposed local ordinances or other efforts against any conflicting requirements in state law. As there are numerous counties and branches of local government within North Dakota, this guide does not provide specific zoning regulations for each local governing body. However, you can find information on county or township zoning regulations on NDDoH’s website.47

In a county without AFO zoning requirements, permitted AFOs must follow the following setback distances:

- < 300 AUs: no minimum setback
- 300–1,000 AUs: ½ mile setback
- 1,000–2,000 AUs: ½ mile setback, ¾ mile setback for hog operations
- 2,000–5,000 AUs: ¾ mile setback, 1 mile setback for hog operations
- >5,000 AUs: 1 mile setback, 1½ mile setback for hog operations

Note: AUs are based on weight, not the number of animals.48

Note: At the time of publication, there was a bill in the North Dakota legislature that seeks to limit local control. It reduces notice periods, changes definitions, and seeks to omit piglets from animal counts at AFOs. This is a clear attempt to make it easier for AFOs to site in communities with minimal opportunity for local input. Check on the progress of Senate Bill 2345.

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47 ND Concentrated Animal Feeding Operation County and Township Zoning Regulations, North Dakota Department of Health, [https://deq.nd.gov/WQ/2_NDPDES_Permits/_AFO_CAFO/countyzoning/default/](https://deq.nd.gov/WQ/2_NDPDES_Permits/_AFO_CAFO/countyzoning/default/).
48 (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units; (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit; (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit; (4) One cow-calf pair equals 1.0 animal unit; (5) One swine weighing 55 pounds or more equals 0.4 animal unit; (6) One swine weighing less than 55 pounds equals 0.1 animal unit; (7) One horse equals 2.0 animal units; (8) One sheep or lamb equals 0.1 animal unit; (9) One turkey equals 0.0182 animal unit; (10) One chicken, other than a laying hen, equals 0.008 animal unit; (11) One laying hen equals 0.012 animal unit; (12) One duck equals 0.033 animal unit; and (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds whether single or combined animal weight.
When dealing with a new, expanding, or existing AFO, one of the first steps the public may want to consider is getting as much information about the operation and its affiliates as possible. A public notice provides limited information, and in order to understand the operation and raise your concerns, it helps to have all of the information available. Therefore, it’s important to know what types of records you should have access to and who you need to contact to get them.

**Public Record Law**

North Dakota has “sunshine laws” that make all government records and meetings open to the public unless a specific law or exemption applies that allow them to withhold the record or close the meeting to the public. The state’s open records law is codified in North Dakota Century Code §44-04-18. The North Dakota Attorney General’s office offers a few guidance documents that outlines the state’s open records law.49

- A “record” is all recorded information that has a connection with how public funds are spent or with the public entity’s performance of its government functions or its public business, regardless of format or location. Basically, most records in a government’s possession are public records unless they fall within an exemption.
- Anyone can request to view or copy public records.
- If you request records, you don’t have to give any explanation why you are requesting them.
- It is important to be clear which records you are requesting. If you are too broad or vague, they can ask you to clarify.
- Figure out what type of information you want and then request the records that may contain that information. You are asking for records, not information. See sample record request language here.50
- The public entity must respond to the request—either providing records or a reason for denying the request—within a REASONABLE amount of time.

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This is very vague. Therefore, be specific with your record request, **put everything in writing**, and check in periodically to check the status of the request.

- The public entity may charge up to 25 cents per page as well at the actual cost for any labor, materials, or equipment used to satisfy the request. This can get costly. Generally, the easiest and least expensive way to get records is to determine which agency or building has the records and go in yourself to make copies (a scanning wand is very handy and efficient).
- If the public entity denies any part of the request, they must explain in writing what state or federal law applies for exempting the record from disclosure.
  - Most records about AFOs in a public entity’s possession should not be exempt from disclosure but a few may apply. If only part of the record is exempt, you can request that the exempt material be redacted so that you are able to see the rest of the record, which may be pertinent to your request. Below is a table of reasons the entity may or must withhold records.

<table>
<thead>
<tr>
<th>May be withheld</th>
<th>Must be withheld</th>
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</thead>
<tbody>
<tr>
<td>Home address, home &amp; cell phone numbers, employee ID number, driver’s license number, dependent information and emergency contact of public employees §44-04-18.1(2), or individuals licensed by a state occupational/professional board, association, agency, or commission §44-04-18.1(4)</td>
<td>Public employee medical treatment records §§44-52.1-12, 44-04-18.1(1), Ch. 23-01.3; patient records at university system medical centers or public health authority §44-04-18.16; Employee Assistance program records §44-04-18.1(1)</td>
</tr>
<tr>
<td>Personal financial information of public employees used for payroll purposes and the type of leave taken or accrued (the amount of leave taken and dates taken is open) §44-04-18.1</td>
<td>Address &amp; home phone of an employee of a law enforcement agency; any information that would reveal the identity of an undercover officer §44-04-18.3</td>
</tr>
<tr>
<td>Active criminal intelligence, criminal investigative information, officer training materials, information that may impact officer safety §44-04-18.7, and the work</td>
<td>Social Security number §44-04-28</td>
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51 Id.
<table>
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<tr>
<th>Schedule of employees of a law enforcement agency § 44-04-18.3(3)</th>
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</thead>
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<tr>
<td>Homicide or sex crime scene images or any image of a minor victim of a crime § 44-04-18.7(8)</td>
<td>Criminal history records §§12-60-16.5, 12-60-16.6</td>
</tr>
<tr>
<td>Address, phone number, identifying information that could be used to locate or identify a victim/alleged victim of domestic violence, human trafficking, a sex offense, or a sexual performance by a child § 44-04-18.20</td>
<td>Identifying information of a living child victim or witness of a crime, except in the case of traffic accident or victim of fire §12.1-35-03</td>
</tr>
<tr>
<td>Law enforcement records containing an individual’s personal information, including driver’s license number, day/month of birth (the year of birth is open), home street address (the city, state, zip is open), height, weight, home and personal cell phone numbers, and medical information § 44-04-18.7</td>
<td>Names of persons injured or deceased, but only until law enforcement has notified the next of kin or for 24 hours, whichever occurs first, then the information is open §39-08-10.1</td>
</tr>
<tr>
<td>Address, phone number, place of employment or other information in records of a criminal justice agency, correctional facility or the DOCR that could be used to locate the victim or witness to a crime §12.1-34-02(11)</td>
<td>Autopsy photographs, images, audio/video recordings, working papers, notes, except the final report of death, which becomes an open record 8 days after it is finalized §§44-04-18.18, 23-01-05.5</td>
</tr>
<tr>
<td>Interviews/statements of child victims or witnesses obtained during an investigation of a violent crime or sex offense §12.1-35-03(2)</td>
<td>Income, and sales &amp; use tax returns and information §§57-38-57, 57-39.2-23</td>
</tr>
<tr>
<td>Financial account numbers § 44-04-18.9E-mail address/phone number of an individual provided for purposes of communicating with a public entity, except this exemption cannot be used to shield the person’s identity § 44-04-18.21</td>
<td>Trade secret, proprietary, commercial and financial information, if it is of a privileged nature and has not yet been publicly disclosed; research records of the universities and colleges under the State Board of Higher Education §44-04-18.4</td>
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<tr>
<td>Record Type</td>
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<tr>
<td>Driver’s license number, phone, day/month of birth, and insurance information from a motor vehicle accident report form, except it is open to the parties involved or their insurers § 39-08-13(4)</td>
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<tr>
<td>Law enforcement &amp; correctional facility records of delinquent, unruly, or deprived child § 27-20-52(1)</td>
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<tr>
<td>Records related to the name and medical condition of an individual and treatment provided by a public entity during an emergency medical response § 44-04-18.22</td>
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</tr>
<tr>
<td>Applications for employment with a public entity. Three or more designated finalists records are open. If fewer than three qualifying applications are received, all applications are open. § 44-04-18.27</td>
<td></td>
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<tr>
<td>Recordings of 911 calls and related responses, except a person may listen to, or obtain written transcript of, the recordings § 57-40.6-07(4)</td>
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<tr>
<td>Fire investigations until the investigation is completed, then it is open § 44-04-30(1)</td>
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<tr>
<td>Body camera images taken in a private place by law enforcement or firefighter § 44-04-18.7</td>
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<tr>
<td>Foster care records § 50-11-05</td>
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<tr>
<td>Records relating to the internal investigation of a complaint of misconduct by an entity or employee, but only until the investigation is complete or for 75 days, whichever is first, then it is open § 44-04-18.1</td>
<td></td>
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<tr>
<td>WSI employer files, except a Safety Grant recipient’s name &amp; amount awarded is open § 65-04-15</td>
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<tr>
<td>Attorney work product § 44-04-19.1(1)</td>
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<tr>
<td>Electronic security codes and passwords § 44-04-27</td>
<td></td>
</tr>
<tr>
<td>Security system plans, critical infrastructure information vital to maintaining public safety, security, or health § 44-04-24; public health &amp; security response plans § 44-04-24, § 44-04-25, records relating to cyberthreats § 44-04-18.4</td>
<td></td>
</tr>
<tr>
<td>Bids/proposals in response to an RFP, but only until all proposals opened/presentations heard, after which it is open § 44-04-18.4(6)</td>
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### Table

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<thead>
<tr>
<th>Information Requested</th>
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<tr>
<td>Personal information of applicants/recipients of economic assistance programs administered under division of community services or a community action agency § 44–04–18.19</td>
</tr>
<tr>
<td>Records revealing negotiating strategy and draft agreements subject to negotiations, but only as long as release would have an adverse fiscal effect on the entity § 44–04–19.2;</td>
</tr>
<tr>
<td>Settlement agreements between a public entity and another party, until fully executed and accepted by all parties § 44–04–19.1</td>
</tr>
<tr>
<td>Private donor and prospective donor personal and financial information. § 44–04–18.15</td>
</tr>
<tr>
<td>Title IX complaint and investigation records § 44–04–18.28</td>
</tr>
<tr>
<td>Risk Management records of claims against the state/employee § 32–12.2–11(1) &amp; state agency loss control committee records § 32–12.2–12</td>
</tr>
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</table>

### IMPORTANT:
Residents interested in obtaining information about an AFO in their community may be interested to know that NDCC § 44–04–32 states:

- The state department of health[^52] shall keep a written record of each individual who requests information and the type of information requested regarding an animal feeding operation permit. Within seven business days of receiving the request, the department shall provide written notice to the owner and operator of the [AFO] describing the type of information that has been requested and the name and address of the requester.

This provision effectively outs you to your neighbor in a way that most record requests would not. It’s hard to interpret this provision as anything but protecting the

[^52]: Soon to be “State Department of Environmental Quality.”
AFO owner and contributing to tensions between AFO owners and their neighbors. Keep this in mind when picking who is able/willing to submit the record request.

**Open Meetings Statute**

In addition to accessing public records, anyone has the right to attend meetings of a public entity. Access to public meetings is a cornerstone of open government and interested residents should keep an eye on local matters and opportunities to get involved. Note that the right to attend does not necessarily mean the right to speak but most meetings open for questions or comments toward the end. North Dakota’s public meeting statute is codified in North Dakota Century Code § 44-04-19. See the statutes for more detail, but below are the basics.

- A meeting is any gathering of members of a governing body or public entity regarding public business.
- Meeting schedules must be posted annually on the entity’s website or filed with the state, city, or local secretary/auditor.
- Written notice is required for all public meetings and agendas should be posted or made available to the public.
  - For regular meetings, the agenda can be changed or altered at the time of the hearing.
  - There is no minimum advance notice so be vigilant. They can crop up quickly.
- Notice must be posted at the main office of the public entity, their website, the location of the meeting, and to any person who requested notice of the meeting.
- Portions of the meeting may be closed to the public (e.g., portions regarding confidential records, dismissal of employees, discussions with its attorney, negotiation strategy, confidential economic development, or a few other circumstances outlined in the code.)
- Minutes of the meeting must be taken and made available to the public upon request.
  - Minutes must include the names of members in the meeting, the date and time, a list of topics discussed, any motions made (and whether seconded), the results of every vote, and the vote of each member.

Attending public meetings is one of the best ways to get involved, get to know your local and state officials, and let them know which issues matter to you. These meetings are often where zoning and permit decisions happen, and your involvement can have a significant impact.
RIGHT TO FARM LAW

Right to Farm Law across the country serve to protect farmers and limit the circumstances under which a neighbor can succeed in a nuisance claim against the farming operation. A nuisance is a common law action where the actions of someone else interfere with your use and enjoyment of your own property. In theory, right to farm laws protect farmers from lawsuits filed by new neighbors who move into rural areas and are not accustomed to the noises and the smells of traditional farming practices. However, this protection extends to include large industrialized agriculture, which has far more severe impacts than traditional farming. It protects corporations and CAFOs, which seem more factory than farm.

North Dakota’s Right to Farm Law is codified in North Dakota Century Code § 42-04. Below are the basics.

- An agricultural operation is not a public or private nuisance after it has been in operation for more than one year.
- Any local ordinance that makes an agricultural operation a nuisance is void
  - Unless the nuisance is the result of neglect or improper operation; or
  - Unless the agricultural operation was located in the corporate city limits as of July 1, 1981.

In summary, this law limits residents’ ability to bring nuisance suit against large CAFOs. However, it demonstrates the importance of quickly reporting violations or odor complaints, since after a year of operation, a CAFO will be almost untouchable and local government can’t do much to address it.

CORPORATE FARMING LAW

One of the reasons there are fewer large CAFOs in North Dakota compared to neighboring midwestern states is due to the state’s robust corporate farming law. North Dakota Century Code § 10-06.1-02 states:

All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and engaging in the business of farming or ranching.
This does not prohibit cooperative corporations where 75% or more of the members or shareholders are farmers and ranchers who reside on their farms and ranches, or depend on farming or ranching for their livelihood.\textsuperscript{53} There are also some corporations that are allowed to engage in business farming or ranching but there are a number of conditions that must be met for the corporation to qualify. A few of the conditions are having less than 15 shareholders, shareholders or members must be related to each other, shareholders or members must be citizens or residents of the U.S., and shareholders must be actively engaged in operating the farm or ranch.\textsuperscript{54}

This law serves to keep farming operations in the hands of North Dakota’s farming families instead of outside corporations. It has been a hotly contested topic in recent years as industrial agriculture and large out of state corporations have challenged the state’s commitment to protect family farming in North Dakota. In 2015, legislators passed a bill that would have exempted hog and dairy farms from the law, but 76% of voters voted to reject the exemptions. The people have spoken loud and clear, multiple times on this topic, and overwhelmingly choose to keep this corporate farming law in place. It has also survived multiple legal challenges from groups claiming that the law was unconstitutional. As recently as September 2018, the U.S. District court upheld the law. So, while the law seems safe for now, residents should be vigilant about challenges or changes to this law. The industry is looking for any opportunity to eliminate it; it’s up to North Dakotans to protect it.

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**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)**

\textsuperscript{53} NDCC § 10-06.1-08.

\textsuperscript{54} Degrees of kinship include parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or spouse of a person so related. North Dakota House just passed House Bill 1388 that extends the degree of kinship to include second cousins but it still has to go to the state Senate for approval. Check back to see the status of the bill.
SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at [www.sraproject.org](http://www.sraproject.org), and contact SRAP for support at 503–632–8303 or through our [website](http://www.sraproject.org).\textsuperscript{55}

**State Organizations**

Dakota Rural Action: [https://www.dakotarural.org/](https://www.dakotarural.org/)
Sierra Club, Dacotah Chapter: [https://www.sierraclub.org/north-dakota](https://www.sierraclub.org/north-dakota)

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**LIST OF STATUTES & REGULATIONS**

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

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<th>Topic</th>
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<td>North Dakota Pollutant Discharge Elimination System</td>
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<td>NDAC §33-16-01-02</td>
<td>Acquisition of Data</td>
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<td>NDAC §33-16-01-06</td>
<td>Notice and Public Participation</td>
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<td>NDAC §33-16-01-11</td>
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<td>NDAC §33-16-01-07(1)(a)</td>
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<td>NDAC §33-16-01-26.1</td>
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<td>Control of Pollution from AFOs</td>
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<td>NDAC §33-16-03.1-07</td>
<td>Permit Application Contents</td>
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<td>NDAC §33-16-03.1-08</td>
<td>Facility Requirements</td>
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<tr>
<td>NDAC §33.1-16-02.1</td>
<td>Water Quality Standards</td>
</tr>
</tbody>
</table>

\textsuperscript{55} Contact, **SOCIALLY RESPONSIBLE AGRICULTURE PROJECT**, [http://www.sraproject.org/contact/](http://www.sraproject.org/contact/)
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<td>NDCC §44-04-19</td>
<td>Access to Public Meetings</td>
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<td>NDCC § 44-04-32</td>
<td>Animal Feeding Operation Record Requests</td>
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<td>NDCC §61-04-02</td>
<td>Permit for Beneficial Use of Water Required</td>
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<td>NDCC §61-28-04</td>
<td>Powers and Duties</td>
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<tr>
<td>NDCC §61-28</td>
<td>Control, Prevention, and Abatement of Pollution of Surface Waters</td>
</tr>
<tr>
<td>NDCC §61-28-06</td>
<td>Prohibitions</td>
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