

# Guide to Confronting Concentrated Animal Feeding Operations in

# OHIO

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

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.srapproject.org](http://www.srapproject.org).

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<sup>1</sup> 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](http://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](http://sraproject.org). Use this guide to find state agencies that regulate CAFOs; state permitting requirements for zoning, construction, etc.; and public open meetings and records laws. Use SRAP's Federal Guide to learn relevant federal laws like the Clean Water Act, Clean Air Act, and Endangered Species Act.

## LOOK FOR PUBLIC NOTICES

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

## REQUEST AND REVIEW PUBLIC RECORDS

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

## **NEW OR EXPANDING CAFOS**

### **REVIEW ZONING ORDINANCES**

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

### **REVIEW PERMIT APPLICATIONS**

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

### **COLLECT DATA**

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

## **EXISTING CAFOS**

### **REVIEW CAFO DOCUMENTS**

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

### **COLLECT DATA**

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

### **MONITOR CAFOS AND BUILD A RECORD**

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

### **FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS**

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

### **ORGANIZE A COMMUNITY GROUP**

Organize your group and develop a public presence.

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

### **SEEK LEGAL ADVICE**

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

### **IDENTIFY IMPAIRED WATER BODIES**

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

### **CONTACT STATE OR LOCAL HEALTH DEPARTMENT**

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

### **CHECK FOR PUBLIC FINANCING**

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

### **TRACK PUBLIC NOTICES**

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

### **REVIEW STATE RIGHT-TO-FARM LAW**

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

### **AGENCIES & STATE DEFINITIONS**

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

### **SEEK PROPERTY TAX ADJUSTMENT**

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

### **ENGAGE IN RULEMAKING PROCESSES**

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

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## INTRODUCTION: A BRIEF HISTORY OF CAFOs IN OHIO

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### INTRODUCTION: A Brief History of CAFOs in Ohio

Poultry and dairy operations constitute the majority of Ohio's livestock industry, with swine and cattle running a close third and fourth.<sup>1</sup> Like much of the country, Ohio has experienced a consolidation of small family farms into fewer larger operations. Consolidation and steadily increasing livestock numbers have impacted water quality and quality of life for state residents.

Most regulation of the state's animal agriculture industry is shared between the Ohio Environmental Protection Agency (OEPA) and the Ohio Department of Agriculture (ODA). OEPA administers the federally required National Pollutant Discharge Elimination System (NPDES) program but is in the process of transferring the program to ODA. ODA currently oversees Ohio's CAFOs under the Livestock Environmental Permitted Program—requiring permits to operate and install, and enforcing regulations that apply to livestock operations. The state is still working out the details of which agency handles which aspects of the state's animal agriculture industry.

Lake Erie has struggled with toxic algae blooms caused by nutrient pollution. Agriculture is considered a top contributor of nutrient pollution in the region and state and local authorities are struggling to find solutions. In February 2019, the city of Toledo took a bold approach by passing a law allowing people to act as legal guardians for the lake. The Lake Erie Bill of Rights enables people to sue polluters on behalf of the polluted waters. A few countries have granted personhood status to water bodies and forests, but Lake Erie's personhood status is the first of its kind in the U.S. The people—passing the bill by a 61% to 39% margin—established the lake with the rights a person or corporation would have. They felt that state and federal laws and corporate interests were insufficient protectors of the region's precious water resources. Unsurprisingly, the law was opposed by the Ohio Farm Bureau and a farmer has filed a lawsuit claiming the Lake Erie Bill of Rights is unconstitutional.

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<sup>1</sup> See USDA Census of Agriculture, Rankings of Market Value/Ohio, [https://www.nass.usda.gov/Publications/AgCensus/2017/Online\\_Resources/Rankings\\_of\\_Market\\_Value/Ohio/](https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Rankings_of_Market_Value/Ohio/).

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## CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

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### What is a CAFO?

Ohio and federal law distinguish Animal Feeding Operations (AFOs) from CAFOs based on the number of animals at a particular operation, and whether the operation will discharge pollutants to surface waters. As defined by federal law, which states must follow, 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.<sup>2</sup> Ohio has adopted this definition.<sup>3</sup> Federal regulations and Ohio law categorize CAFOs as large, medium, or small CAFOs. A large CAFO is an AFO that stables or confines as many as or more than the following numbers of animals:

- 700 mature dairy cows, whether milked or dry;
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves ("Cattle" includes, but is not limited to heifers, steers, bulls, and cow/calf pairs);
- 2,500 swine each weighing 55 pounds or more;
- 10,000 swine each weighing less than 55 pounds;
- 500 horses;
- 10,000 sheep or lamb;
- 55,000 turkeys;
- 30,000 laying hens or broilers if the farm uses a liquid manure handling system;
- 125,000 chickens (other than laying hens) if the farm uses a system other than a liquid manure handling system;
- 82,000 laying hens, if the farm uses a system other than a liquid manure handling system;
- 30,000 ducks if the farm uses a system other than a liquid manure handling system;
- 5,000 ducks if the farm uses a liquid manure handling system.<sup>4</sup>

A medium CAFO includes any AFO with the following numbers of animals and which has been defined or designated as a CAFO:

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<sup>2</sup> 40 C.F.R. §122.23(b)(1) (2012).

<sup>3</sup> Ohio Rev. Code Ann. §903.01(B) (2016).

<sup>4</sup> 40 C.F.R. §122.23(b)(4) (2012); Ohio Rev. Code Ann. §903.01(M) (2016).



- 200 to 699 mature dairy cows, whether milked or dry;
  - 300 to 999 veal calves;
  - 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
  - 750 to 2,499 swine each weighing 55 pounds or more;
  - 3,000 to 9,999 swine each weighing less than 55 pounds;
  - 150 to 499 horses;
  - 3,000 to 9,999 sheep or lambs;
  - 16,500 to 54,999 turkeys;
  - 9,000 to 29,999 laying hens or broilers if the AFO uses a liquid manure handling system;
  - 37,500 to 124,999 chickens (other than laying hens) if the AFO uses other than a liquid manure handling system;
  - 25,000 to 81,999 laying hens if the AFO uses other than a liquid manure handling system;
  - 10,000 to 29,999 ducks if the AFO uses other than a liquid manure handling system; or
  - 1,500 to 4,999 ducks if the AFO uses a liquid manure handling system;
- and

Either one of the following conditions are met:

- Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or
- Pollutants are discharged directly into waters of the United States 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.<sup>5</sup>

Finally, a small CAFO is an AFO that is designated a CAFO and is not a large or medium CAFO.<sup>6</sup>

Only large or medium CAFOs require NPDES permits. Large and medium CAFOs must have an NPDES permit if they discharge pollutants.<sup>7</sup>

### **Responsible Regulatory Agencies**

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<sup>5</sup> 40 C.F.R. §122.23(b)(6) (2012); Ohio Rev. Code Ann. §903.01(Q) (2016).

<sup>6</sup> 40 C.F.R. §122.23(b)(9) (2012); Ohio Rev. Code Ann. §903.01(EE) (2016).

<sup>7</sup> 40 C.F.R. §122.23(d)(1) (2015).

## State Environmental Protection Agency

- The Ohio EPA Division of Surface Water issues water pollution permits to CAFOs, unless an operation can show that it won't discharge pollutants to Ohio's surface waters.<sup>8</sup>
- OEPA's CAFO website has general information about CAFOs, a list of all CAFO NPDES permit holders in Ohio, CAFO permit requirements, information on how to apply for a NPDES CAFO permit, CAFO compliance information, and other useful information for those who are tracking the impacts of large-scale agricultural operations.<sup>9</sup>

## State Agricultural Agency

- The State has petitioned the U.S. EPA for transfer of the CAFO NPDES permit program to the Ohio Department of Agriculture (ODA), and that petition is under review.<sup>10</sup>
- The ODA Livestock Environmental Permitting Division has a separate permitting program for certain livestock operations in Ohio. A person or company seeking to build and operate a Concentrated Animal Feeding Facility (CAFF) must obtain a permit to install (PTI) and a permit to operate (PTO) from ODA.<sup>11</sup>
- Large CAFOs are required to have a PTI and PTO, and medium and small CAFOs may be required to have permits if the department determines that the existing AFO requires modifications in order to comply with best management practices.<sup>12</sup>
- A farmer must submit a PTI and a PTO at the same time to ODA before starting any new construction or modification of a CAFF.<sup>13</sup>

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<sup>8</sup> Ohio Environmental Protection Agency, Concentrated Animal Feeding Operations, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/concentrated-animal-feeding-operations>.

<sup>9</sup> *Id.*

<sup>10</sup> Ohio EPA, Division of Surface Water Fact Sheet, CAFO NPDES Permit –General Overview of Federal Regulations, <https://epa.ohio.gov/static/Portals/35/cafo/NPDESPartI.pdf>.

<sup>11</sup> Ohio Department of Agriculture, Permit to Install, <https://agri.ohio.gov/divisions/livestock-environmental-permitting/permits-certificates/permit-to-install>.

<sup>12</sup> Ohio Admin. Code, §901:10-2-01(A)(3) (2016).

<sup>13</sup> Ohio Department of Agriculture, Permit to Install, <https://agri.ohio.gov/divisions/livestock-environmental-permitting/permits-certificates/permit-to-install>



- The PTI and PTO were created under Ohio law, and thus are not components of the federal permitting program discussed below and are not subject to the Clean Water Act’s requirements.<sup>14</sup>

### Local Conservation Districts

- Ohio has 88 Soil and Water Conservation Districts (SWCDs), one for each county.<sup>15</sup> SWCDs are independent political subdivisions of state government that are organized along county boundaries. They provide technical assistance to urban and rural land users. An elected board of local residents provides SWCD leadership.<sup>16</sup>

### U.S. EPA Region 5 Contacts

- See the *Region 5: Chicago* section of the U.S. EPA’s Regional Animal Feeding Operation Contact List.<sup>17</sup>
- The majority of states, including Ohio, 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 action when states do not meet minimal federal requirements such as those outlined in the Clean Water Act. For this reason, EPA CAFO contacts can be helpful if you’re tracking specific CAFOs or have questions about a state CAFO program’s compliance with federal laws. Learn more about the interplay between states and the U.S. EPA in the Federal Guide.

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## WATER

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### Ohio Pollutant Discharge Elimination System Program

The Water Quality Standards created by the Ohio EPA Division of Surface Water (DSW) reflect the Clean Water Act in that their purpose is:

to establish minimum water quality requirements for all surface waters of the state, thereby protecting public health and welfare; and to enhance, improve

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<sup>14</sup> Ohio Rev. Code Ann. §§903.02, 903.03 (2016).

<sup>15</sup> Ohio Rev. Code Ann. §940.03 (2016).

<sup>16</sup> Ohio Department of Agriculture, Division of Soil and Water Conservation, <https://agri.ohio.gov/divisions/soil-and-water-conservation>.

<sup>17</sup> U.S. Environmental Protection Agency, Contact Us: Animal Feeding Operations (AFOs), <https://www.epa.gov/npdes/contact-us-animal-feeding-operations-afos#afosRegional>.

and maintain water quality as provided under the laws of the state of Ohio, ...the federal Clean Water Act, ... and rules adopted thereunder.<sup>18</sup>

DSW's regulations state:

No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this chapter. Any person who holds a federal NPDES permit issued under Section 402(a) of the [Clean Water] act is not required to obtain an Ohio NPDES permit until its expiration date.<sup>19</sup>

Therefore, one of the first determinations you should make is whether a particular livestock operation has a permit or permits, and if so, the type of permit(s) with which the operation must comply. Permits are renewable and transferable.<sup>20</sup>

There are two types of NPDES permits: individual and general. An individual NPDES permit is unique to each facility. The limitations and requirements in an individual permit are based on the facility's operations, type and amount of discharge, and receiving stream, among other factors.

A general permit is one permit that covers facilities that have similar operations and type of discharge. A general NPDES permit is a potential alternative to an individual NPDES permit and gives coverage to new and existing dischargers that meet certain eligibility criteria. General permits are used to cover discharges that will have a minimal effect on the environment.<sup>21</sup>

As noted above, large and medium CAFOs must have a NPDES water pollution permit. Once an AFO is defined as a CAFO, it's considered a "point source" that must abide by a NPDES permits and all the permit requirements outlined in OAC Chapter 3745-33.<sup>22</sup> A "point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit,

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<sup>18</sup> Ohio Admin. Code, §3745-1-01 (2016).

<sup>19</sup> Ohio Admin. Code, §3745-33-02(A) (2016).

<sup>20</sup> Ohio Admin. Code, §3745-33-04(C), (E) (2016).

<sup>21</sup> Ohio EPA Division of Surface Water, NPDES General Permits, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/npdes-general-permits#:~:text=A%20general%20NPDES%20permit%20is,minimal%20effect%20on%20the%20environmen>t; Ohio Admin. Code, §§3745-38-01(J), (K) (2016).

<sup>22</sup> Ohio Admin. Code, §§3745-33-01(AA), 3745-33-02(B) (2016).

well, and CAFO, among other things, from which pollutants are or may be discharged.<sup>23</sup>

A CAFO NPDES permit invokes oversight by U.S. EPA and corresponding federal Clean Water Act requirements that apply to more “traditional” point sources like power plants or wastewater treatment facilities.

A single permit may cover more than one point source, but authorized discharge levels, monitoring requirements, and other requirements must be specified for each point source.<sup>24</sup>

All CAFO NPDES permits must, at minimum, reflect the requirements in OAC §3745-33-05-09. For example, CAFOs that discharge pollutants to surface waters of Ohio must:

- Not discharge pollutants, except under certain circumstances;
- Develop and implement a manure management plan that specifies best management practices for manure and wastewater handling and disposal which complies with the NPDES permit;
- Ensure that all discharges authorized under the permit be consistent with the terms and conditions of the permit;
- Not discharge any pollutants more frequently than or at a level in excess of that identified and authorized by the permit;
- Submit a new NPDES application if facility expansions, production increases, or process modification result in new or increased discharges of pollutants unless such discharge does not violate effluent limitations specified in the NPDES permit;
- Submit monthly reports and an annual report to Ohio EPA;
- Be equipped with instrumentation to monitor and record data and other information about the operation of the point source;
- Develop and implement a manure management plan that includes best management practices to protect water quality;
- Apply manure based on nitrogen and phosphorus restrictions;
- Regulate stormwater discharges from fields where animal waste or waste water is applied; and

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<sup>23</sup> Ohio Admin. Code, §§3745-33-01(AA) (2016).

<sup>24</sup> Ohio Admin. Code, §§3745-33-02(B) (2016).

- Allow the director or the director's authorized representative to enter the permittee's premises. The department shall have access to any records required to be kept under the terms of the permit and may copy any such records.<sup>25</sup>

Ohio EPA has a webpage that shows typical conditions placed on an NPDES CAFO permit.<sup>26</sup>

### Public Access to Permit Documents

When interacting with state or local government regarding CAFO issues, closely review permits and related documentation to ensure that government is providing access to information to the full extent required under the state's open records laws.

NPDES permits are public records, and all permits are publicly available on Ohio EPA's website.<sup>27</sup> You may have to submit record requests for additional information about the operation.

### **Wetlands**

Wetlands impacts, depending on the project details of a new or expanding CAFO, may provide another way for residents to review, comment on, and potentially decrease the environmental impacts of large-scale agriculture operations. Wetland mapping tools may help monitors understand whether an existing or expanding operation has the potential to impact wetlands resources.<sup>28</sup> DSW published a helpful

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<sup>25</sup> Ohio Admin. Code, §§3745-33-08(A) (2016); 40 C.F.R. §122.23(e) (2016); Ohio EPA, Division of Surface Water Fact Sheet, CAFO NPDES Permit –General Overview of Federal Regulations, <https://epa.ohio.gov/static/Portals/35/cafo/NPDESPartI.pdf>; Ohio Environmental Protection Agency Division of Surface Water, Concentrated Animal Feeding Operations, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/concentrated-animal-feeding-operations>.

<sup>26</sup> Ohio EPA Division of Surface Water, Concentrated Animal Feeding Operations, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/concentrated-animal-feeding-operations>.

<sup>27</sup> Ohio EPA Division of Surface Water, Individual Wastewater Discharge Permit Information, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting>.

<sup>28</sup> U.S. Fish & Wildlife Service National Wetlands Inventory, Wetlands Mapper, <http://www.fws.gov/wetlands/Data/Mapper.html>.

factsheet on Ohio's wetlands.<sup>29</sup> Additionally, the Environmental Law Institute published a useful state wetlands profile for Ohio,<sup>30</sup> cited below.

DSW stated that, according to the federal Clean Water Act, anyone who wishes to discharge dredged or fill material into waters of the State, including wetlands, must obtain a permit from the Ohio Environmental Protection Agency and, if the wetland is determined to be jurisdictional, the U.S. Army Corps of Engineers (Corps).<sup>31</sup>

The most pertinent state legal authorities for wetlands regulation in Ohio are Ohio Rev. Code Ann. Chapter 6111 and Ohio Admin. Code §§3745-1-50 through -54.<sup>32</sup>

Anyone who wishes to discharge dredged or fill material into waters of the U.S., regardless of whether on private or public property, must obtain a Section 404 permit from the U.S. Army Corps of Engineers (Corps) and a Section 401 Water Quality Certification (WQC) from the state. Anyone who wishes to discharge dredged or fill material into isolated wetlands in Ohio must obtain an Isolated Wetland Permit from Ohio EPA.<sup>33</sup>

"Wetlands" in Ohio means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. "Wetlands" includes swamps, marshes, bogs, and similar areas that are delineated in accordance with the 1987 United States Army Corps of Engineers wetland delineation manual and any other procedures and requirements adopted by the United States Army Corps of Engineers for delineating wetlands.<sup>34</sup>

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<sup>29</sup> Ohio EPA Division of Surface Water, Ohio Wetlands, [https://epa.ohio.gov/static/Portals/47/facts/ohio\\_wetlands.pdf](https://epa.ohio.gov/static/Portals/47/facts/ohio_wetlands.pdf).

<sup>30</sup> Environmental Law Institute, State Wetland Protection, Ohio Appendix, [https://www.eli.org/sites/default/files/eli-pubs/d18\\_\\_05.pdf](https://www.eli.org/sites/default/files/eli-pubs/d18__05.pdf).

<sup>31</sup> Ohio EPA Division of Surface Water, Ohio Wetlands, [https://epa.ohio.gov/static/Portals/47/facts/ohio\\_wetlands.pdf](https://epa.ohio.gov/static/Portals/47/facts/ohio_wetlands.pdf).

<sup>32</sup> Ohio EPA Division of Surface Water, Wetlands and Regulations, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/water-quality-certification-and-isolated-wetland-permits>.

<sup>33</sup> Ohio EPA Division of Surface Water, Water Quality Certification and Isolated Wetland Permits, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/water-quality-certification-and-isolated-wetland-permits>.

<sup>34</sup> Ohio Admin. Code §3745-1-02(B)(90) (2016).

If you believe that an Ohio CAFO has potential wetlands impacts, thoroughly review these laws and regulations, noting that federal and state wetlands laws continue to evolve based on legal challenges.

Learn more about Ohio's approach to wetland protection on DSW's website.<sup>35</sup>

### Groundwater Quality

Ohio has several groundwater protection programs, but unlike some other states, it has no groundwater permit program.<sup>36</sup> In evaluating major sources of groundwater contamination, Ohio EPA stated in 2012, with respect to CAFOs:

It is difficult to identify ground water impacts associated with CAFOs. Nevertheless, the growth of these operations in numbers and size makes them a significant potential source if the waste is not properly managed. The ground water threats associated with CAFOs are captured in other categories as well, such as manure and fertilizer application and surface impoundments, so they are not considered one of the ten highest priority sources.<sup>37</sup>

### Water Quantity

Depending on its water use, an Ohio CAFO may need to comply with water use regulations in addition to surface water pollution requirements discussed above. Water quantity reporting and permitting offer another way to direct questions and violations to state authorities. Relevant water withdrawal statutes are the following:

- Any person who owns a facility that has the capacity to withdraw waters of the state in an amount greater than one hundred thousand gallons per day from all sources and whose construction is completed before January 1, 1990, shall register the facility by January 1, 1991, with the chief of the division of water resources, and any person who owns a facility that has the capacity to withdraw waters of the state in such an amount and whose construction is

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<sup>35</sup> Ohio EPA Division of Surface Water, Wetland and Stream Mitigation, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/wetland-and-stream-mitigation>.

<sup>36</sup> Ohio EPA Division of Surface Water, Ohio 2012 Integrated Water Quality Monitoring and Assessment Report, Section M, An Overview of Ground Water Quality in Ohio, <https://epa.ohio.gov/divisions-and-offices/surface-water/reports-data/ohio-integrated-water-quality-monitoring-and-assessment-report>.

<sup>37</sup> *Id.* at M-14.

completed on or after January 1, 1990, shall register the facility with the chief within three months after the facility is completed.<sup>38</sup>

- Any person who owns a facility registered with DWS shall file a report annually with DWS listing the amount of water withdrawn per day by the facility, the return flow per day, and any other information that DWS may require by rule.<sup>39</sup>
- No person shall divert more than one hundred thousand gallons per day of any waters of the state out of the Ohio river watershed to another basin without having a permit to do so issued by the director of natural resources.<sup>40</sup>
- No facility may withdraw waters of the state in an amount that would result in a new or increased consumptive use of more than an average of two million gallons of water per day in any thirty-day period without first obtaining a permit from the director of natural resources.<sup>41</sup>

Violators of these statutes or the terms or conditions of a water withdrawal permit may be fined up to 10,000 dollars for each day of violation and/or be convicted of a misdemeanor.<sup>42</sup>

No clear civil lawsuit remedy exists for violation of the state water withdrawal laws and/or permits, but residents may have a right to file a citizen suit under the federal Clean Water Act.<sup>43</sup>

## Water Quality

### Impaired Water Bodies

Broadly speaking, one intended purpose of the federal Clean Water Act is to keep clean waters clean and to improve the quality of polluted—also known as impaired—waters. Both U.S. EPA and Ohio EPA have databases that enable you to find water quality for specific water bodies.<sup>44</sup>

### **Considerations for CAFOs with discharge permits**

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<sup>38</sup> Ohio Rev. Code Ann., §1521.16(A) (2016).

<sup>39</sup> Ohio Rev. Code Ann., §1521.16(C) (2016).

<sup>40</sup> Ohio Rev. Code Ann. §1501.32(A) (2016).

<sup>41</sup> Ohio Rev. Code Ann. §1501.33(A) (2016).

<sup>42</sup> Ohio Rev. Code Ann. §1501.99 (2016).

<sup>43</sup> Ohio Environmental Council, A Citizen's Guide to Clean Water Act Enforcement, [https://www.environmental-lawyer.com/A\\_Citizens\\_Guide\\_to\\_CWA\\_Enforcement.pdf](https://www.environmental-lawyer.com/A_Citizens_Guide_to_CWA_Enforcement.pdf).

<sup>44</sup> See, e.g., Ohio EPA, Surface Water Quality Data, <http://wwwapp.epa.ohio.gov/dsw/gis/wq/index.php>.



The quality of the water into which a CAFO, or any permitted facility, discharges is important because the Clean Water Act requires water pollution permits to include limits that incorporate and protect water quality standards.<sup>45</sup> These considerations are complex; if you're reviewing a water pollution permit and have concerns about water quality standards, consider asking scientific experts for assistance. State organizations listed at the end of this guide may also be helpful.

### **Considerations for other livestock operations**

If you're tracking a new or expanding CAFO, determine if it is or would be in a watershed with projects funded by U.S. EPA to address nonpoint pollution like runoff from agricultural fields.

Like most states, Ohio receives federal funding to restore waters impaired by nonpoint source pollution." This is called a 319 grant. According to DSW, "In 1987 the federal Clean Water Act amendments created a national program to control nonpoint source pollution, established under Section 319 of the Clean Water Act (33 U.S.C 1329). Ohio EPA is the designated water quality agency responsible for administering the Ohio 319 program. Since 1990, Ohio EPA has annually applied for, received and distributed Section 319 grant funds to correct NPS caused water quality impairment to Ohio's surface water resources. Section 319(h) implementation grant funding is targeted to Ohio waters where NPS pollution is a significant cause of aquatic life use impairments. The cornerstone of Ohio's 319 program is working with watershed groups and others who are implementing locally developed watershed management plans and restoring surface waters impaired by NPS pollution."<sup>46</sup>

The presence of agricultural and other nonpoint source pollution is a significant factor in defining funded projects and watersheds. As such, you can argue that it's an inefficient use of taxpayer dollars to allow unregulated water pollution from CAFOs, particularly in these priority areas of Ohio. An important component of the 319 program is the requirement to report project results and related information to the state, which DSW makes available to the public.<sup>47</sup> This can help you learn about the extent and impact of nonpoint source pollution in Ohio.

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<sup>45</sup> See 33 U.S.C. §§ 1311(a), 1342(a) (West 2016); see also 40 C.F.R. § 131.10(b) (West 2015).

<sup>46</sup> Ohio EPA Division of Surface Water, Ohio Nonpoint Source Pollution Control Program, <https://epa.ohio.gov/divisions-and-offices/surface-water/about/ohio-nonpoint-source-pollution-control-program>.

<sup>47</sup> See, e.g., Ohio EPA Division of Surface Water, Nonpoint Source Program FY2015 Annual Report, [https://epa.ohio.gov/static/Portals/35/nps/319DOCS/FFY15\\_Annual\\_Report.pdf](https://epa.ohio.gov/static/Portals/35/nps/319DOCS/FFY15_Annual_Report.pdf).

## CAFO Construction

Land disturbance and runoff from significant construction can cause environmental impacts. There are several types of permits that may be required for a person or company that wishes to build a CAFO. In addition to the permits already discussed (i.e., NPDES discharge permit, permit to install, permit to operate, wetlands permit, water withdrawal permit), CAFO construction of might require one or more of the following permits:

- An indirect wastewater discharge permit from DSW;
- An underground injection control permit from Ohio EPA's Division of Drinking and Ground Waters;
- A NPDES stormwater permit from DSW;
- A Section 404 permit from the U.S. Army Corps of Engineers and a Section 401 Water Quality Certification from the state if construction will discharge dredged or fill material into U.S. waters, regardless of whether on private or public property;
- A solid waste permit from Ohio EPA's Division of Materials and Waste Management;
- A well construction permit from Ohio EPA's Division of Drinking and Ground Waters or the local health department, depending on the number of people served by the system;
- A registration, license and/or permit for a composting facility (based on the classification of the facility) from Ohio EPA's Division of Materials and Waste Management.<sup>48</sup>

Ohio EPA's Permit Assistance website has more details about permitting along with a staff contact information.<sup>49</sup>

You should also obtain and review the permit for a CAFO of concern for any construction-related provisions, including those relating to waste storage structures.

Proper CAFO construction practices are important when an operation is initially proposed, but as these permit provisions indicate, you should also monitor new structure construction and other operation updates.

## CAFO Inspections

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<sup>48</sup> Ohio EPA Office of Compliance Assistance and Pollution Prevention, Guide to Environmental Permitting in Ohio, <https://epa.ohio.gov/static/Portals/41/sb/publications/permitguide.pdf>.

<sup>49</sup> Ohio EPA, Permit Assistance, <https://epa.ohio.gov/stay-compliant/get-help/permit-assistance>.

Each Ohio NPDES permit must contain a provision that the permittee must allow a DSW inspector to enter upon the permittee's premises. The inspector must have access to any records required to be kept under the terms of the permit and may copy any such records. The inspector must have access to any monitoring equipment or wastewater treatment facilities operated by the permittee in order to inspect such equipment or method required in the permit and must have access to point sources in order to sample the discharge.<sup>50</sup>

Thus, any CAFO that has a NPDES permit must allow for public inspection. DSW published a factsheet describing the main issues that an inspection can be expected to cover. This includes the following:

- Is any manure being discharged to surface water or is there any sign of a recent discharge?
- How is manure handled? Is there too much manure in the feedlots, fields, or along flush alleys? Is a discharge likely because of the way the manure is being handled?
- Are adequate records maintained?
- How is silage handled? Is runoff controlled?
- How are mortalities handled?
- Is manure being land applied? If so, to what kind of crops? How often is it applied and when? Is a discharge to surface waters likely because of the way manure is applied?
- Is there a lagoon? If so, is it made to comply with applicable requirements? How much freeboard (distance between the contents of the lagoon and top of the berm) is there? Is the lagoon in good condition and properly maintained? When was it last dredged?
- Are there any pipelines or other routes that allow manure to be discharged to ditches, streams or other waterways?
- How is stormwater handled? Are roof drains and gutters well maintained? Is clean storm water diverted around animal containment areas and manure piles?
- How is iron filtration backwash water handled? Is a discharge likely?
- How many days of storage are available in the manure and wastewater containment structures?<sup>51</sup>

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<sup>50</sup> Ohio Admin. Code, §3745-33-08(A)(7) (2016); see also Ohio Rev. Code Ann., §6111.05 (2016).

<sup>51</sup> Ohio EPA Division of Surface Water, Ohio EPA Livestock Operation Inspections – What to Expect, <https://epa.ohio.gov/static/Portals/35/cafo/Inspection.pdf>.

The inspector will customarily review the following records and documents:

- Permits and certifications;
- Inspection logs;
- Equipment and operating records; and
- Sampling or monitoring data.<sup>52</sup>

The inspector will walk through the operation to observe activities such as how manure is collected and stored, and will walk around the outside of buildings to look for contaminated discharges or to inspect manure storage structures. During the walk-through, the inspector is entitled to speak with the operation's employees and ask them questions about the operation's practices. The inspector may also take photographs and/or water quality samples.<sup>53</sup>

These inspection reports are public documents available through Ohio's Freedom of Information laws discussed below.<sup>54</sup>

Searching the DSW website for publicly available state monitoring and inspection information can often save you the time and expense of submitting an open records request.

Learn more about the inspection records and related information that a CAFO permit file should contain on DSW's CAFO website.<sup>55</sup>

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## AIR

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As is the case in many states, air pollution statutes and regulations in Ohio are not structured to address air quality impacts from large-scale livestock operations. The inapplicability of air pollution laws and regulations to CAFOs is understandably concerning for those who are impacted by odors, air pollution, and related nuisance from these operations.

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Ohio Rev. Code Ann., §6111.05 (2016).

<sup>55</sup> Ohio EPA Division of Surface Water, Concentrated Animal Feeding Operations, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/concentrated-animal-feeding-operations>.

Nevertheless, as the Ohio Environmental Council noted, “Because of the intensive livestock populations on CAFOs, polluted air must be constantly exhausted from the facility. The exhaust may contain ammonia, hydrogen sulfide, and pathogens and other compounds. These emissions can be a threat to public health in the communities surrounding livestock facilities.”<sup>56</sup> Other pollutants from the exhaust include methane and particulate matter.<sup>57</sup> The NALBOH paper cited below has a table summarizing the typical pollutants found in air surrounding CAFOs and their health risks.<sup>58</sup>

To help address the limited air quality oversight of livestock operations, consider analyzing whether a particular operation relies on a manure processing plant or similar facility that accepts waste from a CAFO and may be subject to Ohio’s air pollution statutes and regulations. Media and public opinion also serve as powerful tools to address odor and other air quality impacts from CAFOs.

The Ohio EPA Division of Air Pollution Control has a useful website with contact information as and a user-friendly summary of reporting requirements and the community’s right to know laws, although it does not specifically address CAFOs.<sup>59</sup>

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## ZONING

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Since local governments are often the first to learn about CAFO construction or expansion proposals, it’s crucial to know who your local elected officials are and to establish a working relationship with them.

While local governments in Ohio are authorized to enact zoning laws, there’s a strict agricultural exemption from local zoning laws in the state. State law says clearly:

Except as otherwise provided in divisions (B) and (D) of this section, [the Ohio State zoning law] confer[s] no power on any township zoning commission,

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<sup>56</sup> Ohio Environmental Council, Confined Animal Feeding Operations, <http://www.theoec.org/campaign/confined-animal-feeding-operations>.

<sup>57</sup> National Association of Local Boards of Health (NALBOH), Understanding Concentrated Animal Feeding Operations and Their Impact on Communities, p. 5, [https://www.cdc.gov/nceh/ehs/docs/understanding\\_cafos\\_nalboh.pdf](https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf).

<sup>58</sup> *Id.* at 6.

<sup>59</sup> Ohio EPA Division of Air Pollution Control, <https://epa.ohio.gov/divisions-and-offices/air-pollution-control/air-pollution-control>.

board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.<sup>60</sup>

The statute gives a very broad definition of “agriculture,” including:

Farming; ranching; algaculture meaning the farming of algae; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; and the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production”<sup>61</sup>

However, counties and township can regulate certain types of agricultural activities. One exception is that, in an approved platted subdivision or in certain areas of 15 or more lots that have a specified degree of contiguousness, county or township zoning laws can regulate:

- Agriculture on lots of one acre or less;
- Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;
- Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least 35 percent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to taxes on manufactured and mobile homes. After 35 percent of the lots are so

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<sup>60</sup> Ohio Rev. Code Ann. §519.21(A) (2016) (township zoning); Ohio Rev. Code Ann. §303.21(A) (2016) (county rural zoning).

<sup>61</sup> Ohio Rev. Code Ann. §§303.01, 519.01 (2016).

developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures.<sup>62</sup>

Thus, counties and townships have no authority to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.<sup>63</sup>

Even if the land is not in an agricultural district, local government has no authority to regulate an agricultural use of more than five acres by zoning laws.<sup>64</sup>

Because Ohio laws leave room for some local control of CAFOs, you should always compare proposed local ordinances or other efforts against any conflicting requirements in state law. Since there are many counties and branches of local government in Ohio, this guide doesn't provide specific zoning regulations for each local governing body.

Learn more about Ohio zoning law as it applies to agricultural operations on Ohio State University Extension Agricultural Law program's zoning law website.<sup>65</sup>

In sum, local government decision making is crucial, particularly for issues concerning the protection of local public health and safety, which are traditional areas of local control. Learn more about local governments in Ohio on these websites:

- **Counties:**  
[County Commissioners Association of Ohio](#)
- **Townships:**  
[Ohio Township Association](#)
- **State listing of Ohio Cities, Townships, and Counties:**  
[Local Government from Ohio.gov](#)

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<sup>62</sup> Ohio Rev. Code Ann. §§303.21(B), 519.21(B) (2016).

<sup>63</sup> *Id.*

<sup>64</sup> *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Township*, 168 Ohio St. 113, 151 N.E.2d 533 (1958).

<sup>65</sup> The Ohio State University Extension Agricultural Law & Taxation Zoning Law Library, <http://aglaw.osu.edu/our-library/zoning-law>.



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## PERMITTING & PUBLIC PARTICIPATION

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The sections below explain the procedure for obtaining a NPDES permit and how you can get involved. Note that DSW maintains a permit inventory database for all CAFO NPDES permittees.<sup>66</sup>

### Public Notice of Draft Permits and Public Hearings

DSW published a helpful summary of the permitting process for CAFOs.<sup>67</sup>

The first opportunity that the public will have to become involved in a CAFO NPDES permit application is often after the application is submitted to Ohio EPA. After submission, a notice of the receipt of the application will be placed in the local newspaper.<sup>68</sup>

After a DSW inspector inspects the proposed CAFO, DSW will draft an NPDES permit. Upon completion, public notice of the draft permit will be published in a newspaper of general circulation in the county where the permit is sought. Notice must be placed in the paper within 15 days and at least 30 days before a hearing or public meeting on the permit application.<sup>69</sup>

Ohio has a very helpful procedure for those interested in tracking NPDES permit applications (or any other NPDES permit actions). Ohio EPA must maintain a current mailing list of persons who, annually, subscribe for notification of all proposed actions, issuances, denials, modifications, revocations, and renewals of permits, licenses, and variances, verified complaints received, and all hearings and public meetings to be conducted on water pollution issues.<sup>70</sup>

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<sup>66</sup> Ohio EPA Division of Surface Water, Concentrated Animal Feeding Operations, <https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/concentrated-animal-feeding-operations>.

<sup>67</sup> Ohio EPA Division of Surface Water, CAFO NPDES Permit – What is it and How to Get One, <https://epa.ohio.gov/static/Portals/35/cafo/NPDESPartII.pdf>.

<sup>68</sup> *Id.*; Ohio Admin. Code §3745-1-05(C)(3) (2016). It should be noted that the Ohio Admin. Code does not have its own regulations for public notice and public hearings of NPDES permit applications. Rather, it states that the OAC chapter on NPDES permit applications “shall be administered in a manner no less stringent than” the corresponding federal regulations at “40 C.F.R. Parts 122 to 40 C.F.R. 125, 40 C.F.R. 129 to 40 C.F.R. 133, 40 C.F.R. 136, 40 C.F.R. 400 to 40 C.F.R. 471, 40 C.F.R. 501 and 40 C.F.R. 503.” Ohio Admin. Code §3745-33-02(B) (2016).

<sup>69</sup> Ohio Rev. Code Ann. §3745.07 (2016); 40 C.F.R. §124.10(a), (b) (2016).

<sup>70</sup> Ohio Rev. Code Ann. §3745.07 (2016).

Ohio EPA must send notice by mail to each subscriber of a proposed action or an issuance, denial, modification, revocation, or renewal of a permit, license, or variance within one week after issuance, and of a hearing or public meeting at least two weeks before the hearing or public meeting.<sup>71</sup>

After public notice of the draft permit is given, at least 30 days will be allowed for public comment.<sup>72</sup> The public may request a public hearing during this time.<sup>73</sup> A public hearing will be held if DSW finds, on the basis of the requests for a public hearing, that there's significant public interest in a draft permit.<sup>74</sup> A public hearing may be held, at DSW's discretion, if it finds that a public hearing might clarify one or more issues involved in the permit decision.<sup>75</sup>

After evaluating all comments on the draft permit, Ohio EPA will make a final decision about whether or not to issue the permit. If it's issued, public notice of the final NPDES permit will be published.<sup>76</sup>

Any public notice must contain the following minimum information:

- Name and address of the office processing the permit action for which notice is being given;
- Name and address of the permit applicant;
- A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
- Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, statement of basis or factsheet, and the application;
- A brief description of the public comment procedures and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

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<sup>71</sup> *Id.*

<sup>72</sup> 40 C.F.R. §124.10(b)(1) (2016).

<sup>73</sup> 40 C.F.R. §124.11 (2016).

<sup>74</sup> 40 C.F.R. §124.12(a)(1) (2016).

<sup>75</sup> 40 C.F.R. §124.12(a)(2) (2016); Ohio EPA Division of Surface Water, CAFO NPDES Permit – What is it and How to Get One, <https://epa.ohio.gov/static/Portals/35/cafo/NPDESPartII.pdf>.

<sup>76</sup> Ohio EPA Division of Surface Water, CAFO NPDES Permit – What is it and How to Get One, <https://epa.ohio.gov/static/Portals/35/cafo/NPDESPartII.pdf>.

- A general description of the location of each existing or proposed discharge point and the name of the receiving water; and
- If the discharge is from a new source, a statement as to whether an environmental impact statement will be or has been prepared.<sup>77</sup>

At a public hearing on a NPDES permit application, any person may submit oral or written statements and data about the draft permit. Reasonable time limits may be set for oral statements, and submission of statements in writing may be required. Further, the public comment period will automatically be extended to the close of any public hearing under this section.<sup>78</sup> The hearing will be recorded, and the recording or a written transcript of the hearing will be made available to the public.<sup>79</sup>

An application for a NPDES permit for a new discharge for the installation or modification of a disposal system must be granted or denied within 180 days of the date when DSW received the complete application with all plans, specifications, construction schedules, and other required information.<sup>80</sup>

For guidance on submitting comments and participating in a public hearing, see the Federal and Community Organizing Guides.

### Permit Appeals

After the public hearing and comment period, the application will either be granted or denied. The applicant and each person who has submitted written comments or requested notice of the final permit decision will be given notice of the decision along with notice of the procedures for appealing the decision.<sup>81</sup> The decision will become effective 30 days after the service of notice of the decision unless the decision is appealed.<sup>82</sup>

When the final permit decision is issued, the state must also issue a response to the public comments. The response must specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change, and briefly describe and respond to all significant comments on the draft

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<sup>77</sup> 40 C.F.R. §124.10(d)(1) (2016).

<sup>78</sup> 40 C.F.R. §124.12(c) (2016).

<sup>79</sup> 40 C.F.R. §124.12(d) (2016).

<sup>80</sup> Ohio Admin. Code §3745-33-04(B) (2016).

<sup>81</sup> 40 C.F.R. §124.15(a) (2016).

<sup>82</sup> 40 C.F.R. §124.15(b) (2016).

permit or the permit application raised during the public comment period or during any hearing.<sup>83</sup>

Any party who wishes to appeal the decision may file an appeal with the Ohio Environmental Reviews Appeals Commission (ERAC) within 30 days after notice of the decision was served.<sup>84</sup> The party appealing the decision must also give notice of the filing of the appeal to the appellee (the party defending the appeal) within three days after the appeal is filed with ERAC.<sup>85</sup> Find general procedural rules for an appeal to ERAC in the Ohio Admin. Code Chapter 3746 and on ERAC's website.<sup>86</sup> ERAC's decision can then be appealed to the Ohio Court of Appeals.<sup>87</sup>

### Submitting complaints to Ohio EPA

- 24-hour emergency hotline: 1-800-282-9378 or (614) 224-0946
- Find District Office phone numbers on Ohio EPA's Contacts page<sup>88</sup>

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## RIGHT TO FARM & NUISANCE LAWS

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Ohio, like every state, has a nuisance law.<sup>89</sup> A nuisance is generally considered an unreasonable interference with the use and enjoyment of one's land or property. Nuisance has a broad definition and includes, among other things, excessive odor from the feeding of animals.<sup>90</sup> However, Ohio, like every state, also has a Right to Farm Act. The language of Right to Farm acts vary from state to state. Ohio's act was designed to limit nuisance lawsuits against farmers who are conducting agricultural operations in designed agricultural districts. The law states:

In a civil action for nuisances involving agricultural activities, it is a complete defense if:

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<sup>83</sup> 40 C.F.R. §124.17(a) (2016).

<sup>84</sup> 40 C.F.R. §124.19(a) (2016); Ohio Rev. Code Ann., §3745.04(B) (2016); Ohio EPA Office of Compliance Assistance and Pollution Prevention, Guide to Environmental Permitting in Ohio, p. 33, <https://epa.ohio.gov/static/Portals/41/sb/publications/permitguide.pdf>.

<sup>85</sup> Ohio Rev. Code Ann., §3745.04(D) (2016).

<sup>86</sup> Environmental Review Appeals Commission, <http://erac.ohio.gov/>.

<sup>87</sup> Ohio Rev. Code Ann., §3745.06 (2016).

<sup>88</sup> Ohio EPA Contact Us, [https://epa.ohio.gov/about/districts/district-offices#:~:text=To%20submit%20a%20complaint%20or,within%20Ohio\)%20during%20business%20hours.&text=Contact%20the%20Public%20Interest%20Center,644%2D2160%20or%20by%20email](https://epa.ohio.gov/about/districts/district-offices#:~:text=To%20submit%20a%20complaint%20or,within%20Ohio)%20during%20business%20hours.&text=Contact%20the%20Public%20Interest%20Center,644%2D2160%20or%20by%20email).

<sup>89</sup> Ohio Rev. Code Ann. Chapter 3767.

<sup>90</sup> Ohio Rev. Code Ann., §3767.13(A) (2016).

- A. The agricultural activities were conducted within an agricultural district;
- B. Agricultural activities were established within the agricultural district prior to the plaintiff's activities or interest on which the action is based;
- C. The plaintiff was not involved in agricultural production; and
- D. The agricultural activities were not in conflict with federal, state, and local laws and rules relating to the alleged nuisance or were conducted in accordance with generally accepted agriculture practices.

The plaintiff may offer proof of a violation independently of proof of a violation or conviction by any public official.<sup>91</sup>

The National Agricultural Law Center website has a summary of all states' Right to Farm Acts.<sup>92</sup>

In a private civil action for an agricultural pollution nuisance, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or an AFO is operating under and in substantial compliance with an approved operation and management plan.<sup>93</sup> Therefore, it's important to report incidents when operations are not complying with state rules and regulations. This helps build a record of non-compliance and lowers the nuisance liability shield that the state's Right to Farm law provides.

The practical impact of the Right to Farm law is to make it more difficult for people to file private nuisance lawsuits against agricultural operations. For example, a resident may be able to file a private nuisance lawsuit for unpleasant odors from a facility that burns garbage, but the same sort of lawsuit is not legally feasible as against a CAFO.

The legal result of the Right to Farm law is to stymie residents who might otherwise work with a private attorney to bring a nuisance claim against a neighboring farm for a threat to use and enjoyment of property, such as air pollution. Until the Right to Farm law is successfully legally challenged or changed by the Ohio Legislature, alternatives to a nuisance claim against an agricultural operation are more likely to be successful.

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<sup>91</sup> Ohio Rev. Code Ann., §929.04 (2016).

<sup>92</sup> National Agricultural Law Center, States' Right-to-Farm Statutes, <http://nationalaglawcenter.org/state-compilations/right-to-farm/>.

<sup>93</sup> Ohio Rev. Code Ann., §939.03(C) (2016).

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## ENFORCEMENT

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### Where to Find Data

Ohio EPA has certain permit and enforcement related documents on its website through its eDocument program.<sup>94</sup> It also published a factsheet listing what documents are available for which years.<sup>95</sup> In a nutshell, many enforcement documents issued since January 1, 2007, are available online, while permits have only been available online since September 30, 2014.

In-person review of CAFO files with enforcement and other information is also an option. Ohio Rev. Code Ann. §149.43 (2016) affords a public right to review CAFO NPDES files at the appropriate Ohio EPA district office.

Finally, note that several existing groups are tracking and publishing CAFO violations.<sup>96</sup> Coordinating with these groups can help you save time and avoid open records processing fees.

### Fines/Penalties

A CAFO operator who violates their NPDES permit is subject to a fine or imprisonment, depending on the violation. Negligent violation of the Ohio CAFO law or the terms of the NPDES permit may result in a fine of up to \$10,000, 90 days imprisonment, or both. Each day of violation constitutes a separate offense.<sup>97</sup>

Reckless violation of the Ohio CAFO law or the terms of the NPDES permit may result in a fine of up to \$10,000, one year imprisonment, or both. Each day of violation constitutes a separate offense.<sup>98</sup> Finally, knowing violation of the Ohio CAFO law or the terms of the NPDES permit constitutes a felony and may result in a fine of up to

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<sup>94</sup> See Ohio EPA, Public Records Requests, File Reviews and eDocument Search, <https://edocpub.epa.ohio.gov/publicportal/edochome.aspx>.

<sup>95</sup> Ohio EPA, Newest Addition to the eDocument System, [http://www.epa.state.oh.us/Portals/33/documents/edoc\\_document%20types.pdf](http://www.epa.state.oh.us/Portals/33/documents/edoc_document%20types.pdf).

<sup>96</sup> See NoCAFOs.org, Confirmed Violations/Discharges from CAFOs and Liquid-System Livestock Operations to Bean/Tiffin Watershed and River Raisin Watershed, <http://nocafos.org/violations; see also Socially Responsible Agriculture Project, www.sraproject.org>.

<sup>97</sup> Ohio Rev. Code Ann., §903.99(A) (2016).

<sup>98</sup> Ohio Rev. Code Ann., §903.99(B) (2016).

\$25,000, three years imprisonment, or both. Each day of violation constitutes a separate offense.<sup>99</sup>

Compliance information, including fines and penalties, is also searchable via Ohio EPA's eDocument system.

See the Federal Guide for information about initiating enforcement against permit violators pursuant to the citizen suit provision of the federal Clean Water Act.

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## PUBLIC INFORMATION LAWS

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### Generally

The Ohio Freedom of Information laws are known as the Ohio Open Meetings Law and the Ohio Open Records Law. They are codified at Ohio Rev. Code Ann. §121.22 *et seq.* and §149.43 *et seq.* (2016). The Ohio Attorney General's office publishes a helpful Open Government Resource Manual called the Ohio Sunshine Laws,<sup>100</sup> which thoroughly explains Ohio's Freedom of Information laws and how to make a freedom of information request.

The National Freedom of Information Coalition also has state-specific resources for Ohio, including a sample records request.<sup>101</sup>

Contact your government officers for more information, keeping in mind that, absent a specific exception, the presumption of almost all open records laws is to provide information and provide reasonable accommodations when doing so.

### Ohio EPA

Ohio's Freedom of Information Act, the Ohio Open Records Law, provides that certain persons can receive copies or inspect most public records of public bodies upon written request. The person must sufficiently describe the records he or she seeks. The public body may charge a fee to cover the cost of complying with the request.

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<sup>99</sup> Ohio Rev. Code Ann., §903.99(C) (2016).

<sup>100</sup> Ohio Attorney General, Ohio Sunshine Laws, <http://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws>.

<sup>101</sup> National Freedom of Information Coalition, Ohio FOIA Laws, <http://www.nfoic.org/ohio-foia-laws>.



Ohio EPA has a website explaining the process for making an Open Records request to the agency,<sup>102</sup> and has a helpful factsheet that explains and summarizes the process.<sup>103</sup> There are several addresses and contacts depending on which district office you direct your request to.

## **EPA Region 5**

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for FOIA Requests. Contact information for the EPA Region 5 FOIA Officer is:

### **Region 5 (States: IL, IN, MI, MN, OH, WI)**

Regional Freedom of Information Officer  
U.S. EPA, Region 5  
77 West Jackson Boulevard (MI-9J)  
Chicago, IL 60604-3590  
(312) 886-6686<sup>104</sup>

See the Federal Guide for more information on FOIA. Several EPA websites summarize the FOIA request process, response time guidance, and other information.<sup>105</sup> 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."<sup>106</sup> EPA will only consider waiver requests that are submitted at the same time as the corresponding FOIA request.<sup>107</sup>

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<sup>102</sup> Ohio EPA, Public Records Requests, File Reviews and eDocument Search, <https://edocpub.epa.ohio.gov/publicportal/edochome.aspx>.

<sup>103</sup> Ohio EPA Public Records Request and File Reviews, [https://ohioepa.custhelp.com/app/answers/detail/a\\_id/835/~/public-record-requests-and-file-reviews](https://ohioepa.custhelp.com/app/answers/detail/a_id/835/~/public-record-requests-and-file-reviews).

<sup>104</sup> 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>.

<sup>105</sup> See, e.g., U.S. Environmental Protection Agency, The FOIA Request Process, <https://www.epa.gov/foia/foia-request-process>.

<sup>106</sup> U.S. Environmental Protection Agency, Fee Waivers, <https://www.epa.gov/foia/foia-request-process#wavers>.

<sup>107</sup> See *id.*

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## PROPERTY TAX APPEAL

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### CAFO Property Tax Appeal Guidelines

Neighbors of CAFOs may also be harmed if government fails to account for the harmful presence of a CAFO when assessing a property for tax purposes. Without knowledge of how to challenge an uninformed assessment, individuals can find themselves overpaying property taxes, on top of the other issues they face.

If you live near a CAFO and believe that the CAFO has negatively impacted your property's value, you can challenge your property tax assessment. In Ohio, each county auditor reappraises real property in the county every three years. If you have evidence that your property has been appraised too high, you can appeal the valuation of the property to the county Board of Revision. An appeal for any given tax year must be filed by March 30 of the following year.<sup>108</sup> It would not generally be worthwhile to file an appeal unless you have obtained an appraisal of your property from an independent real estate appraiser, and that appraisal differs from the county's assessment.

At the hearing, the appraiser would testify as to their appraisal. After the hearing, the Board of Revision will issue a written decision. If you're unsatisfied with the Board's decision, you can appeal the decision to the Ohio Board of Tax Appeals or the Court of Common Pleas.<sup>109</sup>

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## OTHER RESOURCES

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*Protecting your community from factory farms is difficult. Avoid working alone by building relationships in your community, consulting with experts, and collaborating with groups working on similar issues.*

### **Socially Responsible Agriculture Project (SRAP)**

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at [www.sraproject.org](http://www.sraproject.org), and contact SRAP for support at 503-632-8303 or through our [website](http://www.sraproject.org/contact/).<sup>110</sup>

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<sup>108</sup> Ohio Rev. Code Ann., §5715.19(A)(1) (2016).

<sup>109</sup> Ohio Rev. Code Ann., §§5717.01, 5717.011(B) (2016).

<sup>110</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>.

## State Organizations

[Environmental Law and Policy Center, Ohio](#)

[For Love of Water \(FLOW\)](#)

[Sierra Club, Ohio Chapter](#)

See the Federal Guide for national groups and organizations.

## State Pro-Bono Clinics

Ask the Ohio State Bar Association Environmental Law Section about pro bono, low-cost, or referral services.<sup>111</sup>

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## LIST OF STATUTES & REGULATIONS

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This list of relevant statutes and regulations serves as a starting point for additional research or in-depth analysis of environmental authority in Ohio.

### Statutes

The Ohio Legislature published the complete Ohio Revised Code at <http://codes.ohio.gov/orc/>. The sections discussed in this guide are:

- Ohio Rev. Code Ann. §121.22 (2016).
- Ohio Rev. Code Ann. §149.43 (2016).
- Ohio Rev. Code Ann. §303.01 (2016).
- Ohio Rev. Code Ann. §303.21(A) (2016)
- Ohio Rev. Code Ann. §303.21(B) (2016).
- Ohio Rev. Code Ann. §519.01 (2016).
- Ohio Rev. Code Ann. §519.21(A) (2016)
- Ohio Rev. Code Ann. §519.21(B) (2016).
- Ohio Rev. Code Ann. §903.01(B) (2016).
- Ohio Rev. Code Ann. §903.01(C) (2016).
- Ohio Rev. Code Ann. §903.01(M) (2016).
- Ohio Rev. Code Ann. §903.01(Q) (2016).
- Ohio Rev. Code Ann. §903.01(EE) (2016).
- Ohio Rev. Code Ann. §903.02 (2016).

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<sup>111</sup> Ohio State Bar Association, Environmental Law Section, <https://connect.ohioabar.org/communities/community-home?CommunityKey=2f875ca1-f1d4-469d-8448-ea8547775204> (last visited September 17, 2016).

- Ohio Rev. Code Ann. §903.03 (2016).
- Ohio Rev. Code Ann. §903.99(A) (2016).
- Ohio Rev. Code Ann. §903.99(B) (2016).
- Ohio Rev. Code Ann. §903.99(C) (2016).
- Ohio Rev. Code Ann. §929.04 (2016).
- Ohio Rev. Code Ann. §939.03 (2016).
- Ohio Rev. Code Ann. §939.01(H) (2016).
- Ohio Rev. Code Ann. §939.03(B) (2016).
- Ohio Rev. Code Ann. §939.03(C) (2016).
- Ohio Rev. Code Ann. §940.03 (2016).
- Ohio Rev. Code Ann. §940.06(N) (2016).
- Ohio Rev. Code Ann. §1501.32(A) (2016).
- Ohio Rev. Code Ann. §1501.33(A) (2016).
- Ohio Rev. Code Ann. §1501.99 (2016).
- Ohio Rev. Code Ann. Chaps. 1511 and 1515 (2016).
- Ohio Rev. Code Ann. §1521.16(A) (2016).
- Ohio Rev. Code Ann. §1521.16(C) (2016).
- Ohio Rev. Code Ann. §3745.04(B) (2016)
- Ohio Rev. Code Ann. §3745.04(D) (2016).
- Ohio Rev. Code Ann. §3745.06 (2016).
- Ohio Rev. Code Ann. §3745.07 (2016)
- Ohio Rev. Code Ann. Chapter 3767 (2016).
- Ohio Rev. Code Ann. §3767.13(A) (2016).
- Ohio Rev. Code Ann. §5717.01 (2016).
- Ohio Rev. Code Ann. §5717.011(B) (2016).
- Ohio Rev. Code Ann. §5715.19(A)(1) (2016).
- Ohio Rev. Code Ann. Chapter 6111 (2016).
- Ohio Rev. Code Ann. §6111.05 (2016).

## Rules/Regulations

Find the Ohio Administrative Code at <http://codes.ohio.gov/oac/>. The sections discussed in this guide are:

- Ohio Admin. Code §901:10-2-01(A)(3) (2016).
- Ohio Admin. Code §1501:15-5-01 through 18.
- Ohio Admin. Code §3745-1-01 (2016).
- Ohio Admin. Code §3745-1-05(C)(3) (2016)
- Ohio Admin. Code §3745-33-01(AA) (2016).
- Ohio Admin. Code §3745-33-02(A) (2016).

- Ohio Admin. Code §3745-33-02(B) (2016).
- Ohio Admin. Code §3745-33-08(A) (2016)
- Ohio Admin. Code §3745-33-08(A)(7) (2016)
- Ohio Admin. Code §3745-33-04(B) (2016).
- Ohio Admin. Code §3745-33-04(C) (2016).
- Ohio Admin. Code §3745-33-04(E) (2016).
- Ohio Admin. Code §3745-38-01(J) (2016).
- Ohio Admin. Code §3745-38-01(K) (2016).
- Ohio Admin. Code Chapter 3746

Find the Code of Federal Regulations at

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>. The sections discussed in this guide are:

- 40 C.F.R. §122.23(b)(4) (2012)
- 40 C.F.R. §122.23(b)(6) (2012)
- 40 C.F.R. §122.23(b)(9) (2012)
- 40 C.F.R. §122.23(d)(1) (2015).
- 40 C.F.R. §122.23(b)(1) (2012).
- 40 C.F.R. §122.23(e) (2016)
- 40 C.F.R. §124.10(a) (2016).
- 40 C.F.R. §124.10(b) (2016).
- 40 C.F.R. §124.10(b)(1) (2016).
- 40 C.F.R. §124.10(d)(1) (2016).
- 40 C.F.R. §124.11 (2016).
- 40 C.F.R. §124.12(a)(1) (2016).
- 40 C.F.R. §124.12(a)(2) (2016)
- 40 C.F.R. §124.12(c) (2016).
- 40 C.F.R. §124.12(d) (2016).
- 40 C.F.R. §124.15(a) (2016).
- 40 C.F.R. §124.15(b) (2016).
- 40 C.F.R. §124.17(a) (2016).
- 40 C.F.R. §124.19(a) (2016).
- 40 C.F.R. § 131.10(b) (2015).

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## APPENDIX: OHIO CAFO DATABASE AND MAPPING GUIDE

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This appendix provides instructions on how to navigate Ohio CAFO databases, comment on pending CAFO permit applications, find past CAFO violations, create custom aerial maps of CAFOs, and more. If you have any questions or comments, please contact: [WaterRangers@sraproject.org](mailto:WaterRangers@sraproject.org)

### [Ohio CAFO Map](#)<sup>112</sup>

Use this site to identify CAFOs that hold National Pollutant Discharge Elimination System (NPDES) Permits.

#### To search for CAFOs that hold NPDES permits:\*

- Click “Ok” if the disclaimer message appears
- Zoom in to the area you want to search or use the address search bar to search for a specific area
- Click the orange tags to get information for a specific CAFO
  - Note: the blue permit number link does not go to the permit information; it takes you to the general Ohio EPA website.

**\*Note: This map is limited to CAFOs that have NPDES permits, which are a small minority of CAFOs in the state. Most CAFOs have Permits to Install/Operate from the Ohio Department of Agriculture (see below).**

### [Ohio CAFO Permit to Operate \(PTO\)](#)<sup>113</sup> and [Permit to Install \(PTI\)](#)<sup>114</sup>

Use these sites to understand the permits required for CAFOs (\*CAFFs) to be built and operated.

#### To find information on:

- Permit to Operate (PTO)

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<sup>112</sup>

<https://oepa.maps.arcgis.com/apps/webappviewer/index.html?id=a3f7dbe293ed4c9a8218ed8c013dfb68>

<sup>113</sup> <https://agri.ohio.gov/divisions/livestock-environmental-permitting/permits-certificates/permit-to-operate>

<sup>114</sup> <https://agri.ohio.gov/divisions/livestock-environmental-permitting/permits-certificates/permit-to-install>

- Use [this site](#) to find information for the PTO permit required for CAFOs (CAFFs) to operate in Ohio
- Permit to Install (PTI)
  - Use [this site](#) to find information about the PTI permit required to develop a new CAFO (CAFF) or modify an existing facility

### **How to request specific PTO or PTI permit documents**

- Go to [Ohio DOA Public Records Site](#)
- Click “Launch” in the upper right corner of the webpage to start a Public Records Act request
- Fill out the form and click “Submit.”

**\*Note: Ohio differentiates between CAFOs and CAFFs. CAFOs are livestock operations that discharge waste into waters of the state and therefore need an NPDES permit regulated by Ohio EPA (Environmental Protection Agency). CAFFs (Concentrated Animal Feeding Facilities) are livestock operations that say they don’t discharge waste into waters of the state and therefore need a Permit to Operate (PTO) regulated by Ohio DOA (Department of Agriculture).**

### **[How to Submit a Public Comment](#)<sup>115</sup>**

Use this information to submit a public comment on pending CAFO (CAFF) Permit to Operate (PTO) and Permit to Install (PTI) applications.

### **To receive email notification of each public notice of new CAFO permit applications:**

- Send an email request to [lepp@agri.ohio.gov](mailto:lepp@agri.ohio.gov) or call (614) 387-0470
  - In your email, indicate if you’d like to be added to a statewide notification list, a specific county notification list, or both
  - You’ll be notified via email when a CAFO permit application goes on public notice.

### **To submit a public comment or request a public meeting:**

- Comment:
  - Email your comments to [lepp@agri.ohio.gov](mailto:lepp@agri.ohio.gov)

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<sup>115</sup> <https://agri.ohio.gov/divisions/livestock-environmental-permitting/resources/Submitting+Public+Comments>



- Fax or mail your comments to the addresses listed on the website
- The public comment period ends 30 days after the permit application was put on public notice
- Public Meeting
  - Anyone can request a public meeting about a permit application
  - The public meeting request must be in writing, state the nature of the issues to be raised at the public meeting, and be sent to the same email, fax, or mail addresses listed on the website
  - The public may request a public hearing during the 30-day public comment period that follows public notice of an application. A public hearing will be held if the Department of Surface Water (DSW) finds, based on public hearing requests, that there's significant public interest in a draft permit and/or that a public hearing might clarify one or more issues involved in the permit decision.

### **NEPAssist<sup>116</sup>**

Use this tool to map CAFOs and impaired waterways

- Click "Launch the NEPAssist Tool" on right
- Type the address/city/location you want to view on the top left
- Go to the drop-down menu under "Basemap" on the top menu. Click "Bing Maps Hybrid" to add a satellite image base map
- Use the "Select Map Contents" section on the right to add layers to the map
- To make an impaired waterway map:
  - Click the + sign next to "Water"
  - Click "Impaired Streams"
  - Click "Impaired Waterbodies"
  - Print or save map
- You can add more layers by clicking each + beside other map layer items to make maps with more/different information.

### **Enviromapper<sup>117</sup>**

Use this tool to map impaired waterways and find impaired waterway reports indicating the reason for impairment.

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<sup>116</sup> <https://www.epa.gov/nepa/nepassist>

<sup>117</sup> <https://enviro.epa.gov/enviro/em4ef.home>

- Enter a location such as address, zip, city, county, waterbody, park name, etc. (e.g., 22207; Arlington, VA; Jones Creek; etc.)
- Click “More Data” at top
- Click “Additional Data Layers”
- Click “Water Features”
- Click “Impaired Streams”
- Click “Impaired Waterbodies”
- If you click the red impairment line you’ll get a text box
- Click “MORE INFO” next to the “WaterbodyReportLink”
- This will give you the cause of impairment on the right side of your screen
- Print or save.

### **[FWS Wetland Mapper](#)**<sup>118</sup>

Use this site to identify wetlands near CAFOs.

- Click the “Wetlands Mapper” link at the bottom of the page to launch the map
- On the left, there will be two drop-down boxes:
  - Base Maps Includes:
    - Streets
    - Satellite
    - Hybrid
    - Topo
    - Terrain
    - Gray
    - Open Street Map
    - NATGEO
    - USGS Topo
    - NAT’L MAP
  - Map Layers Includes:
    - Wetlands
    - Riparian
    - Riparian Mapping Areas
    - Areas of Interest
    - FWS Managed Lands

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<sup>118</sup> <https://www.fws.gov/wetlands/Data/Mapper.html>

- Historic Wetland Data
- Choose your preferred basemap, then click all boxes under Map Layers
  - The USGS Topo basemap provides a topographic map with waterways; the Satellite basemap shows an aerial view of the land
- Type an address or coordinates
- Zoom in or out to adjust picture
- Wetlands will be shown on the map
- Take your arrow and click on wetland
  - A box will open to give total acreage of wetland and a description
- To measure the distance from a wetland to a CAFO:
  - Click “Measure” in the upper left corner
  - Click the ruler with arrows going left and right above it
  - Click your cursor on the map and drag it to the location to which you want to measure
  - View the distance in the gray box
- To measure the acreage of an area:
  - Click “Measure” in the upper left corner
  - Select the ruler icon with a green shape behind it
  - Select points on the map to measure the acreage of an area
  - De-select the ruler icon to exit the tool
- Click Print on the map to create a physical copy.

### [Water Quality Standards by State](#)<sup>119</sup>

Use this site to find your state’s water quality standards.

- Scroll down to the colorful map of the United States
- Select a state
- Use the links under “State Standards in Effect for CWA Purposes” to find the state’s water quality standards.

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<sup>119</sup> <https://www.epa.gov/wqs-tech/state-specific-water-quality-standards-effective-under-clean-water-act-cwa>