



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

OREGON



Guide to Confronting Concentrated Animal Feeding Operations in OREGON

A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT

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

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CAFO Guide Overview

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

EDUCATE YOURSELF

Learn how CAFOs harm communities at sraproject.org. 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

Animal agriculture in Oregon is largely dominated by dairy and cattle operations.¹ As of December 2016, the Oregon Department of Agriculture (ODA) reported 510 CAFO permits in the state.² According to the USDA 2012 census, there are 35,439 farms in Oregon, 21,736 of which are animal agriculture farms.³ In 2012, over 6.3 million animals (cattle, dairy, hogs, broilers, layers) were being used in animal agriculture in Oregon.⁴ In 2015, over \$1.8 billion was made in Oregon animal agriculture, where cattle and dairy products were among the top three agricultural commodities in the state.⁵

Oregon ranks 14th nationwide for dairy CAFOs alone, with 90,356 animals.⁶ Marion County ranks second statewide for the number of dairy animals, behind Morrow County, home of Threemile Canyon Farms, one of the nation's largest dairy operations.⁷ Oregon dairy farmers brought in \$598.9 million in 2012.⁸ Furthermore, Oregon ranks 16th for cattle, 23rd for broiler chickens and 24th for layer chickens.⁹

Animal feeding operations, such as CAFOs, can create undesirable environmental and public health impacts. The intensive production methods of dairy CAFOs produce millions of gallons of manure that can spill into waterways from leaking storage lagoons or from applying too much manure to soil. Manure generates hazardous pollutants and contains contaminants that can compromise human

¹ *Factory Farm Map*, Food&Water Watch (2012),

<http://www.factoryfarmmap.org/#animal:all;location:US;year:2012> (accessed Mar. 24, 2017).

² Phone interview with Wym Matthews, Program Manager of ODA CAFO Program; Tracy Loew, *Database: Oregon Concentrated Animal Feeding Operations*, Statesman Journal (Aug. 25, 2015),

<http://www.statesmanjournal.com/story/tech/science/environment/2015/08/25/concentrated-animal-feeding-operation-oregon-marion-polk/32273213/?appSession=84767747342810221529557587795089798207225531799892909957822900423720085783627909955610693133720788086649016811039316236160742831> (accessed Mar. 24, 2017).

³ *Oregon State Fact Sheets*, US Department of Agriculture Economic Research Service (Feb. 7, 2017) <https://data.ers.usda.gov/reports.aspx?StateFIPS=41&StateName=Oregon&ID=10633> (accessed Mar. 24, 2017)

⁴ *Id.*

⁵ *Id.*

⁶ *Factory Farm Map*, *supra* note 1, Charts tab

⁷ *Id.* (Ranking tab)

⁸ Tracy Loew, *Oregon approves five controversial dairy expansions*, Statesman Journal (Jan. 7, 2016) <http://www.statesmanjournal.com/story/tech/science/environment/2016/01/07/oregon-approves-five-controversial-dairy-expansions/78379000/> (accessed Mar. 24, 2017).

⁹ *Factory Farm Map*, *supra* note 1

health.¹⁰ Neighbors and workers of these intensive operations can suffer from short-term and long-term health effects.¹¹

Oregon's CAFO program is run by the Oregon Department of Agriculture, and while some of the Oregon requirements are more stringent than federal law, many decisions, such as routine inspection frequency, protocol for complaints, and compliance warnings are made on a case-by-case basis and are not published to the public. The ODA's reasoning for a non-standardized approach is because of Oregon's diverse topography and weather. However, this means that while some information is publicly available, it is the public's responsibility to request specific information regarding the program.

HISTORY

The Oregon CAFO program is currently a combination of efforts from the Department of Agriculture (ODA) and the Oregon Department of Environmental Quality (DEQ) in order to streamline regulatory authority over intensive confinement operations.¹² It also operates the federal permit system authorized by the Clean Water Act (CWA).¹³

The federal National Pollutant Discharge Elimination System (NPDES)¹⁴ permit authorized by the CWA has been available to CAFOs that meet the federal definition since the mid-1970s. In 1973, the EPA granted Oregon the authorization to administer the federal NPDES program under the control of the DEQ.¹⁵ Beginning in the late 1980s, Oregon (through the DEQ) decided to issue state Water Pollution Control Facilities (WPCF) permits to CAFOs.¹⁶ This permit is authorized by state law and is more stringent than the federal NPDES permit because it prohibits all discharges to surface waters. However, Oregon CAFO inspection and enforcement authority was less stringent than the federal requirements.

¹⁰ *Factory Farm Nation*, Food&Water Watch (May 2015), <http://www.foodandwaterwatch.org/sites/default/files/factory-farm-nation-report-may-2015.pdf> 28-31 (accessed Mar. 24, 2017).

¹¹ *Id.*

¹² OR. REV. STAT. § 468B.035(2)(2015).

¹³ 33 U.S.C. § 1251 *et seq.*

¹⁴ 33 U.S.C. § 1342 (National Pollutant Discharge Elimination System)

¹⁵ *US EPA Permitting for Environmental Results NPDES Profile: Oregon and Indian Country* (Sept. 27, 2005) https://www3.epa.gov/npdes/pubs/oregon_final_profile.pdf (accessed Mar. 17, 2017)

¹⁶ OR. ADMIN. R. 340-045-0075 (2016).

In the late 1990s, the United States Environmental Protection Agency (EPA) decided to focus some attention on the intensive animal confinement industry. Also, at the end of 2000, EPA announced that the Oregon program was not in compliance with the CWA because of the lack of sufficient inspection and enforcement authority. In April 2003, EPA made several changes to the federal CAFO program.

In 2001, the Oregon legislature gave the ODA and DEQ the authority to run the CAFO program in compliance with the CWA, including authority for ODA (rather than DEQ), to issue NPDES permits. This process was authorized by the state, but lacked required federal authorization for such a change to the program.

CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

Defining CAFOs

OR. ADMIN. R. 340-045-033, 340-051-0010

Oregon defines an AFO as a lot or facility where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, in an area where little or no vegetation is sustained in the normal growing season.¹⁷ Oregon defines a CAFO as a “concentrated confined feeding or holding of animals or poultry . . . in buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather or which have waste water treatment works.”¹⁸ The state definition does not require a specified number of animals; all animal feeding operations that meet this definition are considered potential point sources and are required to obtain a NPDES permit. Individual facilities do not need to get permits designed for their particular operation, unless specifically covered by an individual NPDES or WPCF permit.¹⁹ Instead, facilities usually obtain authorization under the general permit and have responsibilities to prevent, or to report, the discharges that occur.²⁰

The number of animals by species that determines whether an operation is defined as a federal CAFO is specified below. When the criteria below are met, an animal feeding operation is classified as a federal CAFO, which requires registration for an

¹⁷ OR DEP’T OF AGRIC., QUICK GUIDE: OREGON’S CAFO PROGRAM 2 (2004), <http://library.state.or.us/repository/2011/201104061406123/index.pdf>.

¹⁸ OR. ADMIN. R. 340-051-0010(2) (2016).

¹⁹ OR. ADMIN. R. 340-045-033(6) (2016).

²⁰ See OR. ADMIN. R. 340-045-033 (2016).

Oregon CAFO General Permit:

1. Equal to or greater than the number of animals specified in any of the following categories are confined:

CAFO Size Chart

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

2. Plus one of the following conditions:
 - a. A man-made ditch or pipe carrying manure or wastewater from the facility, OR
 - b. The animals come into contact with surface water running through the area where they are confined.
3. A facility with less than the number of animals in prong 1 above, but with more than one animal, confined for more than four months, with a prepared surface upon which the animals are confined and wastewater treatment works is a state CAFO that requires registration to the Oregon CAFO General Permit.²¹

²¹ QUICK GUIDE: OREGON'S CAFO PROGRAM, *supra* note 18, at 3.

RESPONSIBLE REGULATORY AGENCIES

Oregon's Department of Environmental Quality (DEQ)

While the DEQ is the delegated NPDES Permit authority for Oregon, including for the CAFO program, the DEQ and the ODA reached a Memorandum of Understanding regarding the functions of the CWA that the ODA may perform to operate a program for the prevention and control of water pollution from CAFOs. This arrangement is authorized by state law, but not by federal law. Some of these shared functions include permitting, enforcement, investigation, and the issuing of penalties.²²

The agreement named the ODA as the DEQ's "agent" for purposes of performing several duties that fall under the NPDES permit program²³: receiving and reviewing applications for coverage under the general CAFO permit, negotiating with violators regarding the terms of their consent order, reviewing "plans and specifications for CAFO waste collection and disposal systems," responding to and resolving all complaints and violations, and conducting at least one inspection per year of previous violators.²⁴ Violations of the permit can be enforced under ODA's state authority, and it also claims it has the authority delegated to DEQ to enforce violations of the NPDES permit under federal CWA authority.²⁵

While there is no evidence that Oregon sought approval—or ever received permission—from the EPA to amend the NPDES program so as to be jointly headed by the ODA and DEQ, the Oregon agencies continually operate so as to give ODA the primary authority on CAFO NPDES matters.²⁶ While the EPA has taken no action on this matter, it could withdraw Oregon's program approval to administer the NPDES program per 40 C.F.R. §123.63.²⁷ It is highly unlikely that this will occur as no petition for withdrawal has been filed with the EPA.

²² ENVTL QUALITY COMM'N & OR DEP'T OF AGRIC., MEMORANDUM OF UNDERSTANDING RELATED TO THE CONFINED ANIMAL FEEDING OPERATIONS PROGRAM 1 (2015),

<https://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/CAFOMOU.pdf>.

²³ Kathy Hessler, Denise Luk, Suzanne McMillan, REPORT ON THE OREGON DEPARTMENT OF AGRICULTURE'S ENFORCEMENT OF THE CLEAN WATER ACT'S NPDES PROGRAM RELATED TO CAFOs, ANIMAL LAW CLINIC, LEWIS & CLARK LAW SCHOOL 3(2012), <http://law.lclark.edu/live/files/10807-2012-oda-clinic-report>.

²⁴ MEMORANDUM OF UNDERSTANDING RELATED TO THE CONFINED ANIMAL FEEDING OPERATIONS PROGRAM, *supra* note 23, at 2-3

²⁵ *Id.*

²⁶ Hessler, *supra* note 24, at 4-5.

²⁷ *Id.* at 72.

Oregon's Department of Agriculture

Since the Memorandum of Understanding was reached, the ODA has taken responsibility for protecting water from agricultural pollution. It issues a Confined Animal Feeding Operation Permit, in consultation with DEQ, to owners of livestock facilities with the goal of preventing manure and other waste from polluting ground and surface water.²⁸

The permit must regulate CAFO operations so that manure and processed wastewater do not enter groundwater or reach surface water. The ODA's draft permit requires the following:

- an Animal Waste Management Plan, which describes how the manure, mortalities, and other waste products will be stored, transferred and utilized;
- that any wastewater lagoon be lined;
- limits on land application of wastewater and solids;
- zero runoff to surface waters; and
- groundwater and soil monitoring to demonstrate the protection groundwater.²⁹

The [ODA website](#) contains permit information, resources (including the ability to sign up for public participation opportunities), relevant rules and regulations, and contact information.³⁰

Oregon Public Health Division

The Oregon Public Health Division focuses on maintaining a clean, healthy environment for its residents. It does not regulate CAFOs but it does track health information. Oregon's [Environmental Public Health Tracking program](#) gathers information relating to environmental hazards, exposures, and health effects. One can view an environmental quality report, or search for community system contaminants in a particular area.³¹

²⁸ U.S. ENVTL PROTECTION AGENCY, STATE COMPENDIUM – REGION 10: PROGRAMS AND REGULATORY ACTIVITIES RELATING TO ANIMAL FEEDING OPERATIONS 85(2002), <https://www3.epa.gov/npdes/pubs/region10.pdf>.

²⁹ MEMORANDUM OF UNDERSTANDING RELATED TO THE CONFINED ANIMAL FEEDING OPERATIONS PROGRAM, *supra* note 23, at 4-5.

³⁰ *Confined Animal Feeding Operations*, OR DEP'T OF AGRIC., <http://www.oregon.gov/ODA/programs/NaturalResources/Pages/CAFO.aspx>.

³¹ *Oregon Environmental Public Health Tracking*, EPHT, <http://epht.oregon.gov/index.aspx>.

Natural Resource Program Area (NRPA)

Within the ODA is the NRPA, which has various responsibilities regarding the management of natural resource programs in Oregon, including a Confined Animal Feeding Operations program. Also included in these responsibilities is administrative oversight of the 46 soil and water conservation districts.³² This includes, but is not limited to: coordinating and disseminating information to the conservation districts, reviewing conservation districts' projects, practices, and budgets, and "assisting in the development of agricultural management procedures and practices relating to natural resources for the prevention of soil erosion and water contamination or enhancement of water quality and quantity."³³

In 1993, the Oregon Legislature passed the Agricultural Water Quality Management Act directing the ODA to develop plans to prevent and control water pollution from agricultural activities and soil erosion and achieve water quality standards. Conservation districts have a lead role in plan development and implementation and work with farmers directly to achieve Oregon's water quality goals.³⁴ For more discussion on the Agricultural Water Quality Management Act, please refer to the Water Quality section.

United States Environmental Protection Agency (EPA) - Region 10

Oregon is part of the U.S. EPA's Region 10 (Pacific Northwest). While a considerable amount of CAFO regulation happens at the state level, and Oregon's DEQ is authorized to administer the NPDES program, including NPDES permitting, inspection, and follow-up enforcement at CAFOs, EPA is the source of the authority to inspect facilities and issue follow-up compliance orders. The [Region 10 office](#) in Seattle may be contacted for further inquiries.³⁵

³² OR DEP'T OF AGRIC. SOIL AND WATER CONSERVATION DISTRICT PROGRAM, OREGON SOIL AND WATER CONSERVATION GUIDEBOOK: A GUIDE TO OPERATIONS AND MANAGEMENT 1 (2016)

<https://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDGuidebook.pdf>.

³³ *Id.* at 167.

³⁴ *Id.* at 4.

³⁵ Contact EPA's Region 10 Office in Seattle, U.S. EPA, <https://www.epa.gov/aboutepa/forms/contact-epas-region-10-office-seattle>.

Oregon Pollutant Discharge Elimination System Program

OR. ADMIN. R. 340-045-0010, OR. REV. STAT. § 468

As discussed above, the U.S. EPA has authorized the DEQ to implement the National Pollutant Discharge Elimination System (NPDES), a component of the Clean Water Act (CWA), at the state level. NPDES permits are required for facilities that discharge pollutants to surface waters via a point source. Discharge is defined as the “placement of wastes into public waters, on land, or otherwise into the environment in a manner that affects or may tend to affect the quality of public waters.”³⁶ In Oregon, point source is specifically defined to include CAFOs³⁷ for both Water Pollution Control Facilities and NPDES permits, and pollutants are specifically listed as an agricultural waste.³⁸ WPCF permits are issued for systems that do not directly discharge to surface water.³⁹ As discussed previously, the ODA and the DEQ reached an understanding that the ODA is to administer the NPDES program for confined animal feeding operations—but since this is a federal program, state authorization is insufficient. This is a contested point for Oregon.⁴⁰

General Discharge Permits for Animal Feeding Operations

Oregon law prohibits the “[d]ischarge [of] any wastes into the waters of the state” without a permit from the DEQ.⁴¹ Discharges from point sources into waters of the United States also require a NPDES permit under the CWA. The DEQ’s rules provide that an NPDES permit satisfies the state permit requirement.⁴² However, state discharge permits, known as WPCF permits, are most often issued for discharges to land that affect or threaten only groundwater, which is not within the “waters of the United States” protected by the NPDES permit program. The state permit requirement applies not only to discharges of waste, but also to the “[c]onstruct[ion], install[ation], operat[ion], or conduct [of] any industrial, commercial, confined animal feeding operation or other establishment or activity . . . , the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological

³⁶ OR. ADMIN. R. 340-045-0010(5) (2015).

³⁷ OR. ADMIN. R. 340-045-0010(16) (2015).

³⁸ OR. ADMIN. R. 340-045-0010(17) (2015).

³⁹ OR. ADMIN. R. 340-045-0010(31) (2015).

⁴⁰ OR. REV. STAT. § 468B.035(2) (2016).

⁴¹ OR. REV. STAT. § 468.050(1)(a) (2016).

⁴² OR. ADMIN. R. 340-045-0015(3) (2016).

properties of any waters of the state in any manner not lawfully authorized.”⁴³

As of January 2014, 524 animal operations in Oregon are registered to the CAFO NPDES General Permit #01. They include 316 dairy and dairy heifer, 38 poultry, 112 beef, and 58 other operations.⁴⁴ The state General Discharge Permit is good for five years, after which it must be renewed or reissued.

Federal NPDES General Permit

Clean Water Act

The federal NPDES general permit regulates management of manure, litter, and process wastewater from CAFO activities. The federal NPDES general permit in Oregon requires applications to be submitted at least 180 days before permit coverage is needed or as specified by ODA in writing. Existing permit registrants wishing to renew permit coverage must submit an application to ODA by the date specified by ODA but no later than the expiration date of the current version of the general permit.⁴⁵

Application to Register (ATR)

40 CFR § 122.23

The ODA provides an Application to Register (ATR) form to applicants seeking a NPDES General Permit or WPCF permit. An application to register for permit coverage must include an animal waste management plan, land use compatibility statement, and fees.⁴⁶

Below is a simplified breakdown of the CAFO General Discharge Permit application process:

1. The Operator or Director, upon site visit, determines that the AFO is a CAFO given the size of the operation, if waste reaches surface waters of the United States, the means of conveyance of wastes into the surface waters, the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, manure, and process wastewaters into waters of

⁴³ OR. REV. STAT. § 468B.050(1)(d) (2016).

⁴⁴ WYM MATTHEWS ET AL, OREGON DEPARTMENT OF AGRICULTURE AND OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, STATE OF OREGON CAFO NPDES GENERAL PERMIT #01 EVALUATION REPORT AND FACT SHEET 6 (2016).

⁴⁵ *Id.* at 11.

⁴⁶ *Id.* at 9.

the United States, and other relevant factors.⁴⁷ Any CAFO that is not required to obtain NPDES permit coverage may also elect to be voluntarily covered.

2. The Operator must submit an application to register for permit coverage. This must include an animal waste management plan, land use compatibility statement, and fees.⁴⁸ The ODA will review the Animal Waste Management Plan prior to assigning the permit.
3. The ODA reviews the application. All new and renewal applications are subject to public notice requirements and public notice of substantial Animal Waste Management Plan updates or changes.
4. ODA sends the permit approval letter.

Individual Permits

OR. ADMIN. R. 340-045-0033

The majority of CAFOs in Oregon receive either a NPDES General Permit or a WPCF General Permit. The ODA or DEQ director, however, may decide that a particular operation must obtain an individual permit. Any CAFO owner or operator with coverage under this NPDES General Permit may also request issuance of an individual permit. Situations when an individual permit may be required include:

- The discharge or activity is a significant contributor of pollution or creates other environmental problems.
- The operator is not in compliance with the terms and conditions of the general permit, submitted false information, or is in violation of any applicable law.
- A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged.
- New effluent limitation guidelines are promulgated for point sources covered by this general permit and the guidelines are not already in the permit.
- Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.
- Any other relevant factors.⁴⁹

Lost Valley Farm: CAFO Individual Permit Approval and Water Rights Authorization

On March 31, 2017, Lost Valley Farm, a proposed 30,000 mega-dairy located in Boardman, Oregon, obtained an Oregon CAFO Individual NPDES Permit. In opposition

⁴⁷ 40 CFR § 122.23(c) (2016).

⁴⁸ MATTHEWS ET AL., *supra* note 45, at 9.

⁴⁹ OR. ADMIN. R. 340-045-0033(10) (2016).

to Oregon's approval of the permit, a coalition of water protection, public health, and animal welfare organizations came together to make a statement: "The approval comes in spite of unprecedented public opposition . . .with more than 4,200 public comments filed calling for officials to deny this reckless water pollution permit. Lost Valley Farm will produce approximately 187 million gallons of animal waste each year and use over 320 million gallons of water annually, posing significant risks of hazardous pollution and long-term impacts to the Umatilla Basin and Columbia River. . . ." ⁵⁰ The dairy was the second largest CAFO in the state, after Threemile Canyon Farms (which has 70,000 cows). A Director from the Oregon DEQ stated that the permit is the most protective of surface and groundwater of any CAFO permitted facility to date, with several additional requirements in the permit. ⁵¹

In addition to obtaining the NPDES permit, Lost Valley Farm needed to secure water rights to operate the dairy. While the farm secured water rights from the Columbia River in the Umatilla Basin, it was originally a tree farm—it is now proposing a "water rights transfer" to swap the Columbia River water rights for groundwater rights. ⁵² On April 10, 2017, the Oregon Water Resources Department approved this request for groundwater usage, and issued a water rights authorization, noting, despite findings from several public interest groups to the contrary, that the groundwater usage proposed would not impair or be detrimental to the public interest. ⁵³

Despite Oregon DEQ's assurances, the Lost Valley Farm immediately began violating its permits and continually failed to come into compliance. In February of 2018, the Oregon Department of Agriculture sued to shut down the dairy because it was endangering nearby drinking water wells. The state allowed the dairy to continue operating at a limited capacity until it could come into compliance but the courts later declared the owner of the operation in contempt for violating that agreement and failing to stop the environmental violations. The Department of Agriculture revoked the dairy's wastewater permit and the Department of Justice will take over the farm following the owner's bankruptcy filing. ⁵⁴ The state is working with the dairy's appointed trustee to clean up the operation but the process is proving difficult given

⁵⁰ *Coalition Opposes State Approval of Mega-Dairy Permit*, COLUMBIA RIVER KEEPER (Mar 31, 2017), <http://columbiariverkeeper.org/top-stories/coalition-opposes-megadairy-permit/>.

⁵¹ Tracy Loew, *Proposed Oregon Mega-Dairy Wins Key Permit*, STATESMAN JOURNAL (Mar. 31, 2017 8:21 AM).

⁵² *Controversial Proposal to Build One of the Nation's Largest Factory Farms near Boardman Faces New Hurdle: Securing Water for 30,000 Cows*, COLUMBIA RIVER KEEPER (Mar. 30, 2017), <http://columbiariverkeeper.org/top-stories/groups-challenge-mega-dairy/>.

⁵³ FINAL ORDER: LIMITED LICENSE APPLICATION LL-1690, OR. WATER RESOURCES DEP'T, Apr. 10, 2017.

⁵⁴ Tracy Loew, *Feds Will Take Over Oregon's Troubled Lost Valley Farm Megadairy, Judge Decides*, STATESMAN JOURNAL, (Sept. 13, 2018 2:43 PM).

the scope of violations and continued issues—lagoons are fuller than anticipated, pipes are carrying manure to unapproved areas, and discharges weren't being reported.⁵⁵

The Lost Valley Farm is a lesson that public outcry, increased inspections, and pushing for environmental compliance can have an impact on CAFOs in the state. When the permits were granted despite thousands of comments in opposition, it seemed like a loss for public health and water quality in the area. While the region is still dealing with cleaning up the mess it caused, it will serve as an example moving forward for future CAFO permit applications that operations of this size don't belong in Oregon. This saga is far from over and it is possible someone will buy the operation so stay tuned and check for updates.

Permit Fees

There is a \$50 application fee when applying for a permit and an annual permit fee. Depending on the size of the operation, the annual permit fee is: \$100 for a small CAFO, \$200 for a medium CAFO, and \$300 for a large CAFO.⁵⁶

Public Notice

All new and renewal applications for the NPDES and WPCF General Permit, as well as individual permits, are subject to public notice requirements. ATR and permit documents, such as the Animal Waste Management Plan, are available for public review at ODA headquarters and field offices. Public hearings are scheduled if written requests for public hearing are received during the comment period from at least ten persons or from an organization or organizations representing at least ten persons. The ODA provides a minimum of 30 days' notice of scheduled hearings and the public notice period is open for additional comments for at least seven days after the public hearing.⁵⁷

To subscribe to a listserv for public announcements regarding the Confined Animal Feeding Operations (CAFO) Program of the Oregon Department of Agriculture, visit: http://listsmart.osl.state.or.us/mailman/listinfo/cafo_statewide.

⁵⁵ ⁵⁵ Tracy Loew, *Cleanup Delayed at Oregon's Lost Valley Farm Megadairy*, STATESMAN JOURNAL, (Oct. 5, 2018 4:46 PM).

⁵⁶ *Confined Animal Feeding Operations*, *supra* note 31.

⁵⁷ WYM MATTHEWS ET AL, *supra* note 45, at 12-13.

Submitting Complaints

For complaints related to livestock, manure, mud, erosion, and riparian vegetation destruction, fill out the Agricultural Water Quality Program Complaint Form.⁵⁸ Note that ODA is a complaint driven agency—operators, residents, or neighbors must submit complaints or report violations in order for ODA to get involved.

If the complaint is related to livestock or manure, fill out the [Confined Animal Feeding Operations \(CAFO\) Complaint Form](#).⁵⁹

For complaints regarding water quality related to the CAFO Program use [this document](#).⁶⁰

For a complaint related to large animal mortality improper disposal or handling, call the local County Sheriff's office to report improper animal disposal in reference to Oregon Revised Statute 601. Each county may also have its own ordinance.⁶¹

Oregon Nutrient Management Program

The Oregon DEQ published a memo regarding the Oregon Nutrient Management Program in 2014, addressing the reason for creating the program, and how it addresses the nutrient runoff problem: "In March 2011, the U.S. Environmental Protection Agency published a memo describing seven steps that states should take to address excess nutrients that cause reduced oxygen levels (eutrophication) in fresh, estuarine, and coastal waters; impairment of drinking water sources; and hazardous algal blooms. Oregon thereafter enacted its Nutrient Management Program. Nutrient-related water quality issues in Oregon generally occur in slower-moving valley bottom streams and lakes—often located nearby CAFO operations. In agricultural areas, the ODA addresses excessive nutrient runoff through implementation of its 38 Agricultural Water Quality Management Area Plans and Rules as part of the Nutrient Management Program. Numerous financial incentives are available to encourage agricultural landowners to reduce nutrient runoff,

⁵⁸<http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/AgWQComplaintForm.pdf>

⁵⁹<http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/CAFOComplaintForm2014.pdf>

⁶⁰

<https://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/CAFOComplaintForm.pdf>

⁶¹ OREGON DEPARTMENT OF AGRICULTURE, *Large Animal Mortality: Safe and Legal Disposal of Animal Carcasses*, <http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/Animalcarcassdisposalbrochure.pdf>

including programs through the state Soil and Water Conservation Districts, Oregon Watershed Enhancement Board, DEQ's Section 319 nonpoint grants, and federal grant programs."⁶²

In agricultural areas, the ODA is the primary designated management agency in charge of implementing and monitoring nutrient load allocations for surface waters and Groundwater Management Area (GWMA) action plans through its Agricultural Water Quality Management Area Plans and Rules. The CAFO permits discussed earlier in this section include requirements for collecting, storing, and using or disposing of animal waste, and for managing the application of animal waste so that excess loads will not runoff into surface waters or leach into groundwater.⁶³

Animal Waste Management Plans

The federal CAFO NPDES (federal) General Permits and the state WPCF (state) permits require that any land application of manure, litter, or process wastewater to lands be done at agronomic rates in accordance with an ODA-approved animal waste management plan (AWMP). A table from the Oregon DEQ Memo on the Oregon Nutrient Management Program indicates that large CAFOs are required to analyze their manure, litter, and process waste water, as well as soil from land application areas for nitrogen and phosphorus annually; smaller operations are required to test soil from land application areas at least once every five years. The permit also requires a number of reporting and recordkeeping requirements. Surface and groundwater monitoring is not required unless an operation discharges to waters twice in a 24-month period. Other nutrient-related provisions include:

- prohibition of any confined animal contact with state waters;
- requirements for waste storage facilities;
- requirements for sufficient storage capacity for the number of animals
- handling of animal mortalities;
- setback requirements for manure, litter, and process wastewater land applications; and
- waste transfer requirements.⁶⁴

Wetlands

Oregon currently has approximately 1.4 million acres of wetlands, over 100,000 miles of rivers and streams, 1,400 named lakes, 360 miles of coastline, and an additional

⁶² ARON BOROK, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, OREGON NUTRIENT MANAGEMENT PROGRAM 1 (June 2014).

⁶³ *Id.* at 11.

⁶⁴ *Id.* at 13–14.

3,800 ponds and reservoirs.⁶⁵ Wetlands are a critically important resource that require strong protections from federal and state government. Wetlands influence groundwater discharge rates, assist with stormwater and flood control, filter pollutants and nutrients from the water, reduce erosion, and provide critical habitat for numerous plant and animal species. Various federal and state laws protect wetlands from degradation and destruction. See the Federal Guide for a discussion of federal regulation of wetlands. In addition to federal protection, Oregon has enacted further laws and programs designed to protect wetlands.

If a new or existing facility is engaging in or will engage in activities which will impact wetlands, it is important to raise the issue. See if the operation has sought the appropriate permits. If they have not, submit a complaint to the Department of State Lands. If the operation applied for a permit, submit public comments and request a public hearing. Emphasize the importance of Oregon's wetlands to protect groundwater and biodiversity.

Oregon's Removal-Fill Law

The primary state law that authorizes the regulation of activities within the waters of the state is the Oregon Removal-Fill Law. This statute recognizes the important functions of wetlands in the state of Oregon. Oregon has a no net loss of wetland goal and is required to "maintain a stable resource base of wetlands" to "encourage wetland restoration and creation" and to require compensation for "functions and values for the waters of the state." The Removal-Fill Law is administered by the Wetlands & Waterways Conservation Division at Oregon Department of State Lands.⁶⁶

The Removal-Fill Law requires any person who plans to "remove or fill" material within "waters of the state" to obtain a permit from the Department of State Lands.⁶⁷ However, the Removal-Fill Law provides several exemptions for specific agricultural activities in wetlands and other waters of the state. The exemptions are specific to the type of land (e.g., zoned exclusive farm use) and the type of activity (e.g., grazing and raising of livestock). If the specific requirements regarding the type of land and type of activity are met, no permit is required. These are activities, including

⁶⁵ OREGON DEPARTMENT OF STATE LANDS, Waterways & Wetlands Planning, <http://www.oregon.gov/DSL/WW/Pages/WetlandConservation.aspx>

⁶⁶ OREGON DEP'T OF STATE LANDS, WETLANDS & WATERWAYS CONSERVATION DIVISION, OREGON WETLAND PROGRAM PLAN 2 (December 2011).

⁶⁷ OREGON DEPARTMENT OF STATE LANDS, Waterways & Wetlands: Permits & Authorizations, <http://www.oregon.gov/DSL/WW/Pages/Permits.aspx>.

maintenance activities (e.g., farm roads, hardened structures for cattle stream access and crossing or culvert maintenance), that are commonly associated with the raising of livestock or the growing of crops in Oregon. Removal-fill covered by this exemption shall not exceed 50 cubic yards of material.⁶⁸ This exemption, while broad, certainly does not cover all possible CAFO activities and contains limitations. Therefore, it is important to thoroughly review the exemptions before assuming an activity is exempt. Contact an Aquatic Resource Coordinator for help in understanding these exemptions.

WATER QUALITY⁶⁹

Oregon's Agricultural Water Quality Management Act

The federal Clean Water Act helps to protect and improve water quality, and clean up water pollution from human activities. Oregon's Agricultural Water Quality Management Act was passed to help farmers and ranchers address water pollution. This legislation is the foundation of the Oregon Department of Agriculture's (ODA) Agricultural Water Quality Management Program. The Agricultural Water Quality Management Act directed the ODA to assist the industry in preventing and controlling pollution from agricultural sources.

The Agricultural Water Quality Management Act (ORS 568.900 to 568.933) authorizes the Oregon Department of Agriculture (ODA) to develop Agricultural Water Quality Management Area Plans (area plans) throughout the state.⁷⁰ The statute also authorizes the development of Agricultural Water Quality Management Area Rules, for 38 regions covering all of Oregon.⁷¹ The ODA develops and implements any program or rules that directly regulate farming practices to protect water quality.⁷²

Area plans and regulations are required to be reviewed and updated every two years. Agricultural water quality management area plans and regulations must be sufficient to prevent and control water pollution and meet water quality standards and total maximum daily load (TMDL) load allocations. If DEQ determines that the

⁶⁸ OREGON DEP't of STATE LANDS, A GUIDE TO THE REMOVAL-FILL PERMIT PROCESS 4-14, 4-18 (December 2016).

⁶⁹

<http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/WaterQualityandAgriculture.pdf>

⁷⁰ OR. REV. STAT. § 568.909 (2015).

⁷¹ *Id.*

⁷² OR. REV. STAT. § 561.191 (2015).

plan and rules are not adequate to implement the load allocation, DEQ provides ODA with comments on what would be sufficient to meet TMDL load allocations. If a resolution cannot be achieved, DEQ can request the Environmental Quality Commission to petition ODA for a review of part or all of water quality management area plan and regulations implementing the TMDL. Local advisory committees prepare progress reports every two years that discuss area plans and regulations, activities of each soil and water conservation district, and priorities for water quality.⁷³

Requirements & Enforcement

State law requires compliance with the agricultural water quality regulations. The 38 Management Areas manage water pollution and activities that pollute or can lead to polluted water. However, the regulations don't specify how each agricultural landowner must do this. The Area Plans recommend options that are specific to each Management Area's unique agricultural water quality issues. It's left to each landowner to determine solutions that best fit their own operation.

ODA investigates complaints⁷⁴ or ODA can identify concerns associated with water pollution. If violations are found, corrective actions must be taken. ODA first tries to work with the landowner and operators to solve issues through education and technical assistance. If the landowners and operators refuse to comply, they could be subject to enforcement action, including fines.

Assessment

The DEQ is required to assess and report the condition of Oregon's water quality to the U.S.

EPA every two years. The DEQ is required to prepare an Integrated Report that meets the requirements of the federal Clean Water Act.⁷⁵ The Integrated Report provides an assessment of water quality in Oregon for all water bodies where data is available, and lists identified Oregon waters under Section 303(d) that do not meet water quality standards and where Total Maximum Daily Loads are needed in order to

⁷³ OR. ADMIN. R. 340-042-0080 (2016).

⁷⁴ *Agricultural Water Quality Program Complaint Form*, Oregon Department of Agriculture, <http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/AgWQComplaintForm.pdf> (accessed Mar. 24, 2017).

⁷⁵ CWA § 305(b), 33 U.S.C. § 1315 (Requiring reporting on the overall condition of Oregon's waters); CWA § 303(d), 33 U.S.C. § 1313(a) (Requiring identifying waters that do not meet water quality standards and where a Total Maximum Daily Load (TMDL) pollutant load limits needs to be developed).

reduce pollutants.⁷⁶

Oregon's Coastal Nonpoint Pollution Control Program (CNPCP)

Oregon's Coastal Nonpoint Pollution Control Program (CNPCP) is designed to meet the requirements of Section 6217 of the Coastal Zone Management Act Reauthorization Amendments of 1990 (CZARA). CZARA is administered at the federal level by the U.S. EPA and the National Oceanic and Atmospheric Administration (NOAA):

The federal requirements are designed to restore and protect coastal waters from nonpoint source pollution and require coastal states to implement a set of management measures based on guidance published by EPA. The guidance contains measures for the following areas: agricultural activities, forestry activities, urban areas, marinas, hydro-modification activities, and protecting riparian areas and wetlands. In Oregon, the geographical boundaries for the CNPCP are the same as the Coastal Program boundary except in the Rogue and Umpqua basins where the CNPCP boundary includes these basins in their entirety.⁷⁷

Since there are a number of CAFOs in coastal regions, the CNPCP is important to consider.

Nonpoint Source Pollution Defined

Nonpoint source (NPS) pollution is the combined effect of all human land uses and development that:

- Deposit pollutants such as sediments, nutrients, pesticides, and metals onto the ground or into the air such that they are ultimately carried by rain or stormwater to surface or groundwater,
- Affect water quality by increasing temperature, changing pH, or reducing dissolved oxygen, or
- Diminish the resilience of natural systems by removing vegetation, channelizing streams, or increasing impervious areas in a watershed.

NPS pollution comes from many places and activities, including commercial timber

⁷⁶ CWA § 303(d), 33 U.S.C. § 1313(a).

⁷⁷ *Coastal Water Quality*, Oregon State Government, https://www.oregon.gov/LCD/OCMP/Pages/WatQual_Intro.aspx (accessed Mar. 24, 2017).

lands, farms, construction sites, lawns and gardens, outdoor industrial and commercial activity, roads, streets, and highways. This is in contrast to point source pollution, which can be traced to a specific point of discharge, such as a wastewater treatment plant or a factory. One of the unique problems of NPS pollution is that it results from the accumulation of many seemingly inconsequential actions. Each action has a small individual impact, but the combined effects can be large.

CAFO CONSTRUCTION

OR. ADMIN. R. 340-051-0020, 340-051-0050

Construction & Stormwater

"All confinement areas, manure handling and accumulation areas and disposal areas and facilities must be located, constructed, and operated such that manure, contaminated drainage waters or other wastes do not enter the waters of the state at any time,"⁷⁸ unless there is a specific waste discharge permit that states otherwise. Additionally, the CAFO should comply with "Guidelines for the Design and Operation of Animal Waste Water Control Facilities."⁷⁹ The Guidelines are included in the Oregon Administrative Rules as recommendations for design and operation of animal waste water control facilities.⁸⁰

General Permit for Stormwater Associated with Construction Activities

Construction for CAFOs that disturb one or more acres of land through clearing, grading, excavating, or stockpiling of fill material, and that have the possibility that stormwater could run off its site during construction and into surface waters or conveyance systems leading to surface waters of the state must obtain a permit.⁸¹ Additionally, construction of any building, areas around the building, and access roads to those buildings that disturbs one acre or more of agricultural or agriculture-related operations must obtain coverage under a construction permit for stormwater discharges.⁸² The following requirements are listed in the Construction Stormwater Application and Forms Manual for the 1200-C NPDES General Permit:

- "The 1200-C Permit requires permittees to prepare an Erosion and Sediment Control Plan (ESCP) and incorporate Best Management Practices (BMPs) into

⁷⁸ OR. ADMIN. R. 340-051-0020 (2016).

⁷⁹ *Id.*

⁸⁰ OR. ADMIN. R. 340-051-0050 (2016).

⁸¹ OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, CONSTRUCTION STORMWATER APPLICATION AND FORMS MANUAL 1200-C NPDES GENERAL PERMIT 2-3 (December 2015)

⁸² *Id.* at 3.

their land disturbing construction work. BMPs are used on the project site to prevent or minimize erosion and control sediment runoff from the site. The permit focuses on preventing pollution from erosion and runoff. In addition, the permit requires permittees to inspect and maintain their controls to ensure they are working properly to prevent erosion and sediment runoff from leaving the site.”⁸³

- “Once the application materials are submitted (application form, Land Use Compatibility Statement, Erosion and Sediment Control Plan, and fees), the DEQ or its Agent or the local government entity will review the forms to make sure the application is complete.”⁸⁴

Construction Permit Public Notice

Public notice is required for General Permits for Stormwater Associated with Construction Activity for projects disturbing more than five acres of land. A public review period of 14 calendar days will begin after DEQ or its Agent has determined that the application is complete.

The DEQ will post a notification on its website that the application and Erosion and Sediment Control Plan (ESCP) are available for public review at a DEQ regional office depending on the project location. Some Agents may also make these materials available for public review at their office. The public will have 14 calendar days to submit comments to the DEQ about the application and plan. After the public comment period, DEQ will review the comments and determine whether or not the NPDES 1200-C Permit should cover the project.⁸⁵

Land Use Compatibility Statement

The Land Use Compatibility Statement (LUCS) is the process the ODA uses to determine that ODA permits and other approvals that affect land use are consistent with the local government comprehensive plan. The Oregon land use planning program requires that state agencies act in accordance with state land use planning goals and approved city and county comprehensive land use plans, therefore a LUCS is required for nearly all ODA permits, some General Permits, and certain approvals for plans or related activities that affect land use. A permit modification requires a LUCS when there is

⁸³ *Id.* at 6.

⁸⁴ *Id.* at 10.

⁸⁵ *Public Notice of NPDES Construction Stormwater General Permit 1200-C Applications*, OR. DEP’T OF ENV’T L. QUALITY, <http://www.deq.state.or.us/wq/stormwater/swppubnotice1200c.asp>

- a physical expansion on the property or the use of additional land is proposed,
- a significant increase in discharges to water,
- a relocation of an outfall outside of the source property, or
- an emission rate increase.

The applicant must fill out the LUCS and submit it to the city or county planning office. The local planning office will then determine if the business or facility meets all local planning requirements.⁸⁶

CAFO MONITORING, INSPECTIONS, AND ENFORCEMENT

Monitoring of Prohibited Discharges

The monitoring requirements in the NPDES general permit include the following:

- Any discharge or runoff that is not allowed by the permit must be recorded and reported to the ODA.
- The record must contain a description and cause of the discharge; the period of discharge, including exact dates, times, and duration of discharge; an estimate of the volume of the discharge; name or location of receiving water, and corrective steps taken to reduce, eliminate or prevent recurrence.
- If a discharge occurs, the ODA must be notified within 24 hours.
- A written report must be submitted to the ODA within five days.
- In the event of equipment failure, the ODA must be notified within 24 hours.⁸⁷

Note that CAFO regulations depend on self-reporting by CAFO owners, operators, and public complaints, and are not always enforced by state agencies due to the lack of personnel. For a discussion of what happens when the above process is not followed, see the Enforcement section below.

The minimum frequency of analytical monitoring for large CAFO is once every five years and includes sampling annually of no less than 20% of all fields or management units where manure, litter, or process wastewater is applied. The requirements are designed to provide the CAFO with information to assist in the

⁸⁶OREGON DEPARTMENT of AGRICULTURE, *Land Use Compatibility Statement*, <http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/LandUseCompatibilityStatement.pdf> (March 2014).

⁸⁷ WYM MATTHEWS ET AL, *supra* note 45, at 19

development and evaluation of application rates required in the AWMP.⁸⁸

Inspections

ODA's policy is to periodically inspect all CAFO operations. Periodic, generally, has the meaning of six months. Any deficiencies found as a result of these inspections must be corrected as soon as possible. The permit registrant with a large CAFO must also record the actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.⁸⁹

Record Keeping

All required records must be kept and maintained at the facility for a period of five years and must be available to ODA upon request. While large CAFOs must keep more detailed records, all CAFOs are required to keep records of: date, amount, and nutrient loading of manure, litter, or process wastewater applied to each field; total amount of nitrogen and phosphorus actually applied annually to each field; and the total amount of manure or wastewater transferred or exported to other persons.⁹⁰

Enforcement

ODA assesses civil penalties for permit violations and levies fines for failure to obtain appropriate permits. The DEQ also assesses certain penalties against violators. For information on past enforcement actions in Oregon, see "Where to Find Data on Enforcement" below. There are three kinds of enforcement actions (in order of severity): Notice of Noncompliance, Plan of Correction, and Notice of Civil Penalty Assessment. The Director of the ODA issues these documents and they must be both in writing and served to violators personally or through mail.

- **Notice of Noncompliance:** Notifies the CAFO owner or operator that a permit violation has occurred. It must reference the particular statute, administrative rules, or order involved, as well as when the violation occurred. The notice also includes the steps that the owner or operator may take to correct the problem and suggests a reasonable time frame for doing so.
- **Plan of Correction:** States that the owner or operator must take action to eliminate a violation, and includes a schedule for accomplishing the requirements.
- **Notice of Civil Penalty:** A person receiving this notice may request a hearing.

⁸⁸ *Id.*

⁸⁹ *Id.* at 20-21.

⁹⁰ *Id.* at 21-22.

Producers have the opportunity to negotiate remedial actions with ODA and Oregon DEQ for permit violations.

The ODA inspects CAFOs for compliance. Violators are identified through complaints, aerial surveys, and periodic inspections. Routine onsite inspections are not required, and inspections are announced.⁹¹

Where to Find Enforcement Data

The DEQ website includes [downloadable files](#) containing environmental cleanup site information including investigative, remedial, and administrative actions.⁹² The DEQ also maintains a [searchable enforcement database](#), allowing you to search for enforcement actions.⁹³ Additionally, the DEQ makes public records available upon request by filling out a [form online](#).⁹⁴

You can also access Oregon CAFO compliance information (which includes both the DEQ and ODA enforcement action history) using EPA's [Enforcement and Compliance History Online \(ECHO\)](#) search tools.⁹⁵ One can search by city, zip code, or state for applicable permits and compliance information for a number of facilities.

AIR

OR. REV. STAT. §§ 468A.020, 30.930; OR. ADMIN. R. 340-208-0300

Air Quality

Animal agriculture can affect air quality by emitting gases, particulate matter, hazardous air pollutants, and/or odor. Emissions vary by weather, location, how facilities manage manure, and animal species, among other factors. Livestock emission sources include barns, feedlot surfaces, manure storage and treatment units, silage piles, and animal composting structures, but air emissions for cow and

⁹¹ U.S. ENVTL. PROT. AGENCY, OFFICE OF WASTEWATER MGMT., STATE COMPENDIUM – REGION 10: PROGRAMS AND REGULATORY ACTIVITIES RELATED TO ANIMAL FEEDING OPERATIONS 229-230 (2002), <https://www3.epa.gov/npdes/pubs/region10.pdf>

⁹² *Environmental Cleanup Site Information Downloadable Files*, OR. DEP'T OF ENVTL. QUALITY, <https://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ECSI-Download.aspx>

⁹³ *Enforcement Database Search*, OR. DEP'T OF ENVTL. QUALITY, <http://www.deq.state.or.us/programs/enforcement/EnfQuery.asp>.

⁹⁴ *Requesting Public Records*, OR. DEP'T OF ENVTL. QUALITY, <https://www.oregon.gov/deq/about-us/Pages/Request-Public-Record.aspx>

⁹⁵ *Enforcement and Compliance History Online*, U.S. ENVTL. PROT. AGENCY, <https://echo.epa.gov/>.

pig facilities come mostly from the microbial breakdown of manure stored in pits or lagoons and spread on fields.⁹⁶ Poultry facility emissions in particular implicate particulate matter, such as dust, dry manure (often called litter in this context), and feathers. Health risks from these types of emissions include chronic bronchitis, chronic respiratory symptoms, declines in lung function, and organic dust toxic syndrome.⁹⁷ Emissions of the gases ammonia and methane are particularly notable from the dairy industry in Oregon.⁹⁸ The primary health risks associated with a high concentration of ammonia, include respiratory irritation; chemical burns to the respiratory tract, skin, and eyes; severe cough; and chronic lung disease.⁹⁹ The non-health-related effects of emissions from other types of gases are seen in relation to haze and decreased visibility in Oregon, particularly the Columbia River Gorge National Scenic Area.¹⁰⁰

Despite the impacts of air pollution, there really isn't any air-related regulation of CAFOs in Oregon. While Oregon DEQ's Air Program implements the National Ambient Air Quality Standards, the Hazardous Air Pollutants, and Regional Haze programs from the Clean Air Act, Oregon's air pollution laws expressly exempt agriculture from regulation.¹⁰¹ Additionally, the DEQ has the authority to identify and reduce certain nuisance odors.¹⁰² However, this state authority does not include nuisances from animal agricultural operations.¹⁰³

In response to ammonia pollution concerns around the Columbia River Gorge area from the Threemile Canyon Dairy CAFO in particular, several environmental and public interest groups petitioned the U.S. EPA in 2015. They asserted that Oregon's air quality program was deficient because the state statute exempted agriculture from regulation, when air pollution from these sources would ordinarily be required to comply with the federal Clean Air Act. Unfortunately, no meaningful regulation resulted from these efforts.

⁹⁶ CLAUDIA COPELAND, CONG. RESEARCH SERV., LIBRARY OF CONG., AIR QUALITY ISSUES AND ANIMAL AGRICULTURE: A PRIMER 2 (2014).

⁹⁷ CARRIE HIBRAR, UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES, NATIONAL ASSOC. OF LOCAL BOARDS OF HEALTH 6 (2010), https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf.

⁹⁸ OR. DAIRY AIR QUALITY TASK FORCE, FINAL REPORT TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY & DEPARTMENT OF AGRICULTURE 8 (2008).

⁹⁹ HIBRAR, *supra* note 91, at 6.

¹⁰⁰ OR. DAIRY AIR QUALITY TASK FORCE, *supra* note 92, at 6–7.

¹⁰¹ OR. REV. STAT. § 468A.020 (2015).

¹⁰² OR. ADMIN. R. 340–208–0300(1) (2016).

¹⁰³ OR. REV. STAT. § 30.930(1) (2015).

Senate Bill 197, introduced in 2017, considered the issue of dairy air contaminant emissions at the request of the Senate Interim Committee on Environment and Natural Resources. The Bill would require the “Environmental Quality Commission to adopt by rule [a] program for regulating air contaminant emissions from dairy confined animal feeding operations.”¹⁰⁴ It would also authorize the Commission and the ODA “to enter [a] memorandum of understanding for [the] department to operate program.”¹⁰⁵ However, the bill died in the legislature and there have been no recent efforts to regulate air pollution from agriculture in Oregon.

HAZARDOUS SUBSTANCES¹⁰⁶

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

CERCLA is a federal law that establishes reporting requirements for releases and management of hazardous substances to ensure that the hazardous substances are properly cleaned up.¹⁰⁷ Multiple CAFO emissions are considered hazardous substances under CERCLA.¹⁰⁸ For more information, see the Federal Guide.

Emergency Planning and Community Right to Know Act (EPCRA)

EPCRA is a federal law that establishes reporting and notification requirements for hazardous and toxic substances. It is intended to increase public knowledge about hazardous substances kept at facilities and to require notification of the public and proper authorities if reportable quantities of hazardous substances are released into the environment.¹⁰⁹ Employers are required to maintain a material safety data sheet for every hazardous chemical stored or used at the facility. The facility must submit the data sheets to the Local Emergency Planning Committees, State Emergency

¹⁰⁴ OR SENATE BILL 197, 2017 REG. SESS.

¹⁰⁵ OR SENATE BILL 197, 2017 REG. SESS.

¹⁰⁶ Please note that in an April 2017 decision, the U.S. Court of Appeals D.C. Circuit vacated a 2008 Final Rule issued by the EPA that generally exempts farms from CERCLA and EPCRA reporting requirements for air releases from animal waste. *Waterkeeper Alliance et al. v. EPA*, No. 09-1017 (2017). Since both CERCLA and EPCRA require parties to notify the government when a reportable quantity of a hazardous substance is released, CAFOs will now be required to report releases, such as ammonia and hydrogen sulfide, when they occur.

¹⁰⁷ CERCLA § 103(a); 42 U.S.C. § 9602.

¹⁰⁸ 40 C.F.R. § 302.4 (designating hazardous substances, which includes primary CAFO emissions such as ammonia, methane, and hydrogen sulfide).

¹⁰⁹ EPCRA § 304.

Response Commissions, or Tribal Emergency Response Commission and the local fire department.¹¹⁰ For more information see the Federal Guide and the “Community Right to Know” section in this Guide.

Resource Conservation & Recovery Act (RCRA)

RCRA is a federal law that regulates control of hazardous and non-hazardous wastes. Included within the statute is a citizen suit provision, which must prove “past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.”¹¹¹

A recent Washington state case in which the statute was invoked concerned drinking water contaminated by dairy CAFOs—*Community Association for Restoration of the Environment, Inc. et al. (CARE) v. Cow Palace, LLC et al.* The judge held that the manure management of the dairy may present an imminent and substantial endangerment to the public in violation of RCRA.¹¹² Plaintiffs claimed that the excessive land application of animal waste led to unusually high levels of nitrogen in drinking water. Although animal waste is not considered a hazardous waste under the statute, the judge held that improper over-application of manure on an already sufficiently fertilized field was a substantial endangerment to the public under RCRA.¹¹³ This case adds an additional analysis when assessing whether CAFOs are operating in violation of any laws or regulations.

WILDLIFE

Endangered Species Act (ESA)

The Endangered Species Act (ESA) is a federal law designed to protect endangered or threatened species in the U.S. and to preserve their critical habitat.¹¹⁴ Section 7 of the ESA requires that agencies consult with Fish and Wildlife Services to determine if any action authorized or implemented by the agency will harm a listed species, jeopardize continued existence, or destroy or adversely modify critical habitat of endangered or threatened species.¹¹⁵

¹¹⁰ EPCRA § 311; 40 C.F.R. § 370 *et seq.*

¹¹¹ See RCRA 42 U.S.C. § 107.

¹¹² *Cow Palace*, 80 F. Supp 3d. at 1180.

¹¹³ *Id.*

¹¹⁴ 16 U.S.C. § 1531 *et seq.*

¹¹⁵ 50 C.F.R. § 402 *et seq.*

If a CAFO may adversely affect endangered species or their critical habitat, consultation with the EPA may be necessary and could impede CAFO development and NPDES permit issuance. For more information, consult the Federal Guide.

Wildlife Services

Residents, industries, organizations, and agencies utilize Oregon Wildlife Services (WS) for expertise in protecting agriculture, property, natural resources, and human health and safety from damage or threats posed by wildlife. WS resolves wildlife conflicts in sometimes controversial ways.

WS mainly targets animals deemed to be invasive and nuisance animals. This includes killing native predators to protect livestock, for example. Recently, WS has made more effort to use non-lethal methods to handle carnivorous predators, and Oregon has held workshops at which ranchers, conservationists, and scientists recommend nonlethal tools, from fencing off chicken coops to safely discarding cow carcasses.¹¹⁶ In 2005, county commissioners in Lane County decided not to re-sign its contract with WS lethal predator control program, which supports trappers who kill predators at the request of ranchers.¹¹⁷

For more information about WS in Oregon, contact:

David E. Williams, Oregon Wildlife Services State Director

6135 NE 80th, Suite A-8, Portland, OR 97218

Phone: (503) 326-2346 FAX: (503) 326-2367

Toll-Free Number: 1-866-4USDAWS

E-mail: david.e.williams@aphis.usda.gov

Website: www.aphis.usda.gov/wildlife_damage¹¹⁸

¹¹⁶ Ben Goldfarb, *Wildlife Services and Its Eternal War on Predators*, HIGH COUNTRY NEWS, <http://www.hcn.org/issues/48.1/wildlife-services-forever-war-on-predators>

¹¹⁷ See *About Us*, PREDATOR DEFENSE, <http://www.predatordefense.org/about.htm> (discussing the organization's successes with state Wildlife Service programs across the country).

¹¹⁸ *Wildlife Services: Oregon*, UNITED STATES DEP'T OF AG., ANIMAL & PLANT HEALTH INSPECTION SERV., https://www.aphis.usda.gov/wildlife_damage/state_report_pdfs/FY_2006_State_Reports/050-Oregon.pdf (2006).

NATIONAL ENVIRONMENTAL PROTECTION ACT (NEPA)

The National Environmental Policy Act (NEPA) process is intended to help public officials make informed decisions that include an understanding of environmental consequence and pursuing solutions that meet the project need while protecting, restoring, and enhancing the environment. NEPA applies to major federal actions (new and continuing activities that are entirely or partially financed, assisted, conducted, regulated, or approved by one or more federal agencies).¹¹⁹

NEPA may come into play during a CAFO fight when the operation has received federal funds. The grant of federal funds to the operation can be the federal action that triggers the need for an Environmental Assessment or Environmental Impact Statement by the agency under NEPA. While this may not change the outcome of CAFO construction, it provides an opportunity for communities to push the agencies to consider the impacts, creates a record of what the agency decided (which may be challenged later), and may pose enough of a delay and expense that the CAFO operator decides the construction is not worth the hassle. See the Federal Guide for more information.

ZONING, LAND USE, AND COUNTY CONTROL

OR. ADMIN. R. 660-015-0000, OR. REV. STAT. § 215

Statewide Planning Program

Oregon developed a statewide program for land use planning through its passage of the Nineteen Statewide Planning Goals in 1973. The goals express the state's policies on land use, and are accompanied by non-mandatory guidelines that suggest how a goal might be applied. The statewide goals are achieved through local comprehensive planning in which each city and county adopts a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The Land Conservation and Development Commission (LCDC) reviews these plans to make sure they comply with the Statewide Planning Goals.¹²⁰

Goal Three of the Statewide Planning Goals includes a strong policy to protect farmland; zoning applied to agricultural land must limit uses that can have

¹¹⁹ Overview: National Environmental Policy Act, OREGON DEP'T OF TRANSPORTATION, <https://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/Pages/nepa.aspx>.

¹²⁰ Goals, OR. DEP'T OF LAND CONSERVATION & DEV., <https://www.oregon.gov/LCD/Pages/goals.aspx>.

significant adverse effects on agricultural land and its uses. Non-farm uses under farm use designations should be minimized to allow for greater agricultural productivity.¹²¹ The Farmland Protection Program aims for the “preservation of a maximum amount of the limited supply of agricultural land.”¹²² All counties in Oregon have adopted planning and zoning measures to protect agricultural land.¹²³ This reflects Oregon’s goal to protect its agricultural industry.

Zoning & Land Use Compatibility Statements

Zoning ordinances can be adopted to designate areas of land within a particular county for certain approved purposes. Some states pass local zoning restrictions that place limitations on agricultural operations,¹²⁴ but Oregon’s zoning laws are very protective of agriculture. Oregon considers agriculture critical to the economic welfare of the state and seeks to protect the industry from any legal actions that could limit farming practices.¹²⁵ Therefore, Oregon does not allow for zoning ordinances that could impact CAFO siting and operation in the state.

The only hurdle CAFOs have to clear for Oregon zoning purposes is to send a Land Use Compatibility Statement to the county. The local government must review and approve the proposed land use, assuring that it is compatible with the local land use plan, before the DEQ, the ODA, and the LCDC can process and issue a permit or approval necessary for any animal agricultural operation. Land Use Compatibility Statements, documents signed by a local planner either approving or disapproving a new project or modification to a source, are reviewed by the land use planner. The planner bases the decision on the project’s general impact and compatibility with other types of land use in the area, and on whether it is allowable within its given zoning designation.¹²⁶

¹²¹ OR. ADMIN. R. 660-015-0000(3) (2016).

¹²² OR. REV. STAT. § 215.243 (2) (2015).

¹²³ *DLCD Farmland Protection Program*, OR. DEP’T OF LAND CONSERVATION & DEV., <http://www.oregon.gov/lcd/pages/farmprotprog.aspx>.

¹²⁴ Some zoning restrictions include enhanced setbacks from residences, public spaces, city limits, wells, and water bodies.

¹²⁵ OR. REV. STAT. § 30.933 (2017).

¹²⁶ *Land Use Compatibility Statement*, OR. DEP’T OF ENV’T. QUALITY, <http://www.deq.state.or.us/pubs/permithandbook/lucs.htm>

RIGHT TO FARM

OR. REV. STAT. §§ 30.930–30.947

General¹²⁷

Oregon's Right to Farm law was adopted in 1993 and updated in 1995 and 2001. This law declares that farm and forest practices are critical to Oregon's economy, and establishes a right to farm. Growers are protected from lawsuits based on customary noises, smells, dust, or other nuisances associated with farming. It also limits local governments and special districts from administratively declaring certain farm and forest products to be nuisances or trespasses against another owner's property.

Complaints

The following agencies are not required to investigate complaints if the agency has reason to believe the complaint is based on the protected practices from Oregon's Right to Farm law.¹²⁸

- Department of Environmental Quality
- State Department of Agriculture
- Department of State Lands
- State Forestry Department

Protected Land

There is no private right of action, suit, or claim for relief based upon nuisance or trespass against farming or forestry practiced on a farm located on lands zoned for farm or forest use. "Farm" is defined to include any facility, including the land, buildings, watercourses, and appurtenances thereto, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, vermiculture products, or the propagation and raising of nursery stock.

Pre-existing nonconforming uses are also afforded this protection. This means growers are protected from certain lawsuits even if their farming or forestry has become impermissible because of subsequent zoning modifications. The protection arises if the farming or forest use existed before the conflicting non-farm or non-forest use of the real property that gave rise to the claim, and provided that the pre-existing nonconforming farming or forest practice has not significantly increased in

¹²⁷ OR. REV. STAT. § 30.943 (2015);

<http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/RightToFarm.pdf>

OR. REV. STAT. § 30.930–30.947 (2015).

¹²⁸ OR. REV. STAT. § 30.943 (2015).

size or intensity from November 4, 1993.¹²⁹

Protected Practices

Protected practices include farming or forest practices that are characterized by one or more of the following:

- Are or may be used on a farm or forestland of similar nature
- Are generally accepted, reasonable, and prudent methods for the operation to obtain profit in money (commercial)
- Comply with applicable law
- Are performed in a reasonable manner

The lawful and proper use of pesticides is considered a protected farming or forest practice,¹³⁰ and in some specific instances the Right to Farm Act does not prevent pesticide ordinances.¹³¹ The law also protects the movement of farm vehicles and livestock on public roads.¹³²

Local government and special district ordinances and regulations that are contrary to this law are invalid. In any legal action that claims nuisance or trespass arising from a farm or forest practice, the prevailing party is awarded attorney fees and costs at the trial and on appeal.¹³³ Currently, nuisance and trespass cases regarding farming practices are adjudicated by local Oregon Circuit Courts.

Participating in the Oregon Department of Agriculture's Farm Mediation Program¹³⁴ to alternatively resolve disputes is also an option before taking legal action.

¹²⁹ OR. REV. STAT. § 30.937 (2015).

¹³⁰ OR. REV. STAT. § 30.939 (2015).

¹³¹ http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/05/oregons_right_to_farm_law_ques.html;
<http://www.aglaw.umd.edu/blog/right-to-farm-claim-does-not-hold-up-for-oregon-farmers-growing-gmo-alfalfa>

¹³² OR. REV. STAT. § 30.931 (2015).

¹³³ OR. REV. STAT. § 30.934 (2015).

¹³⁴ Call 503-986-4558 or 800-347-7028

Exceptions

There is no right to farm protection if claims are based on an action of a producer that results in any of the following:¹³⁵

- Damage to commercial agricultural products of another grower or neighboring property
- Death or serious injury

PUBLIC INFORMATION LAWS

5 U.S.C. § 552

Freedom of Information Act

The Freedom of Information Act (FOIA) is federal law that allows for individuals to access full or partial disclosure of unreleased information and documents controlled by the U.S. government, subject to some restrictions.¹³⁶ See the Federal Guide for more information.

Information can be accessed through [EPA's online records](#)¹³⁷ or by submitting a FOIA request, which can be as simple as writing an e-mail request. A FOIA request can be submitted to the National FOIA Office in Headquarters¹³⁸ or a Regional FOIA Officer.¹³⁹ A request must be made to the agency that obtains the records because there is no central office that handles FOIA requests for all federal agencies.¹⁴⁰

Federal agencies are required to respond to a FOIA request within twenty working days, unless expedited upon request. There is no fee to file a FOIA request, and in most cases, there is no fee for processing the request. Depending on the type of processing required, the EPA can charge up to \$25, however fee waivers can be requested.¹⁴¹

¹³⁵ <https://www.oregonlaws.org/ors/2011/30.936>

¹³⁶ 5 U.S.C. § 552 (2016).

¹³⁷ EPA National Libraries Network, U.S. EPA, <https://www.epa.gov/libraries> (accessed Mar. 24, 2017).

¹³⁸ National FOIA Program Contact Information, U.S. EPA, <https://www.epa.gov/foia/forms/contact-us-about-freedom-information-act-and-foia-requests#101> (accessed Mar. 24, 2017).

¹³⁹ Oregon is part of Region 10

¹⁴⁰ FOIA Request Process, U.S. EPA, <https://www.epa.gov/foia/foia-request-process> (accessed Mar. 24, 2017).

¹⁴¹ *Id.*

[Region 10](#)¹⁴² (States: AK, ID, OR, WA)

Regional Freedom of Information Officer

U.S. EPA, Region 10

Office of Ecosystems, Tribal and Public Affairs

1200 6th Avenue ETPA-124

Seattle, WA 98101

(206) 553-8665

OREGON PUBLIC MEETING AND PUBLIC RECORD LAWS

[OR. REV. STAT. Chapter 192](#)

Oregon Public Meetings Law

[OR. REV. STAT. 192.610 et seq.](#)

The Oregon Public Meetings Law requires that certain bodies do their work in public and enforces the method by which public meetings are conducted. A meeting is defined as any convening of a quorum of the members of a governing body to discuss or decide public business, subject to some exemptions. If violated, if public business is conducted in private, a court may void any action taken during the meeting and assess fines. An individual must file suit within 60 days of the violation.

Closed meetings are permitted in some cases for personnel matters, filling an empty elective office, misconduct investigations, investigations of conduct of medical staff at public hospitals, some labor negotiations, property negotiations, trade or commerce negotiations, and attorney consultations.

Oregon Public Records Law

[OR. REV. STAT. 192.410 et seq.](#)

The Oregon Public Records Law is designed to guarantee that the public has access to government public records. A public record includes any writing that contains information that relates to the conduct of the public's business, is prepared, owned, used, or maintained by a public body regardless of physical form or characteristics.¹⁴³ If a record does not relate to the conduct of the public's business and is contained on a privately owned computer, then it is not a public record as

¹⁴² EPA Region 10 (Pacific Northwest), U.S. EPA, <https://www.epa.gov/aboutepa/epa-region-10-pacific-northwest>

(accessed Mar. 24, 2017).

¹⁴³ OR. REV. STAT. § 192.410(4)(a) (2015).

defined by the law.¹⁴⁴

Anyone can request public records. A statement of purpose is not required; there are no restrictions on the use of records, nor is there a specified time limit for responses.

Exempt: Records less than 75 years old containing information on the health care treatment of a living individual, impending litigation, trade secrets, criminal investigation materials, testing materials, real estate appraisals, personnel disciplinary action, and computer programs.

Appeal a denial of request for records

If a public record request is denied, the individual who made the request may petition the Attorney General to issue a Public Records Order (PRO). The Attorney General may only review petitions relating to state agency records. If a local public body denied a request, petitions can be made to the District Attorney in the county.¹⁴⁵

Making a public record request and fees¹⁴⁶

Public record requests must be made to the “custodian” of the record—the government agency or official who has possession or control of the record or a copy of it. Public bodies are required to respond to records requests in a reasonable amount of time. Public agencies may charge a fee to recover the cost of fulfilling a records request, however an agency cannot charge more than \$25 without first providing an estimate. Individuals have the right to ask for the fee to be waived or reduced if it is in the public’s interest to release the records. Additionally, individuals can appeal a public agency’s refusal to waive the fee.¹⁴⁷

Community Right to Know

The Oregon Community Right to Know and Protection Act is designed to provide information about hazardous substances to first responders and the public in their response areas and local neighborhoods. Businesses and government facilities are surveyed about the presence of hazardous substances and information is collected about incidents involving hazardous substances. The law also directs the Office of State Fire Marshal to provide planning and training assistance to local jurisdictions

¹⁴⁴ *Oregon FOI Resources*, NFOIC, <http://www.nfoic.org/oregon-foi-resources#quick> (accessed Mar. 24, 2017).

¹⁴⁵ OR. REV. STAT. § 192.450 (2015); OR. REV. STAT. § 192.460 (2015).

¹⁴⁶ *Citizen’s Guide to Public Records and Meetings*, Oregon Department of Justice, http://www.doj.state.or.us/public_records/citizens_guide.shtml (accessed Mar. 24, 2017)

¹⁴⁷ OR. REV. STAT. § 192.440 (2015).

on hazardous substance emergency response and preparedness.

Information that is required by the Oregon Community Right to Know and Protection Act overlaps with the federal Emergency Planning and Community Right to Know Act (EPCRA), both discussed above.

Collected information is used to assist emergency responders and emergency planners with hazardous materials pre-emergency planning and response, and to help inform and familiarize the public regarding hazardous materials. To access collected information, refer to the Information Access and Reports section on the [Community Right to Know website](#).¹⁴⁸

CAFO PROPERTY TAX APPEAL¹⁴⁹

Property tax appeals are available for Oregon property owners who want to challenge their property tax assessments because the assessments don't account for the negative impacts that nearby factory farms have on their properties.

The economic, environmental, public health, labor, social, and ethical problems associated with factory farms are becoming increasingly familiar. These problems are often felt by rural communities, and one impact is lower property values for those who live near the factory farms.

A property tax assessment should account for any of the negative impacts a factory farm has on property. The Oregon Citizens Guide on tax appeals for properties near factory farms can help with understanding the appeals process. The Guide is available at www.factoryfarmtaxprotest.org, and the website also includes other resources.

¹⁴⁸ *Community Right to Know*, Oregon State Government, https://www.oregon.gov/OSP/SFM/pages/cr2k_home.aspx (accessed Mar. 24, 2017).

¹⁴⁹ Tax Appeals for Properties near Factory Farms, OR, Citizens Guide, 2009

ANIMAL WELFARE

OR. REV. STAT. §§ 167.335, 600.150, 632.835–.850

Like many other states, Oregon’s anti-cruelty statutes specifically exempt many animal agricultural practices that implicate animal welfare.¹⁵⁰ These exemptions include the killing of livestock, the production of commercially grown poultry, the treatment of livestock being transported by owner or common carrier, agricultural research or teaching involving the use of animals, and animals subject to good animal husbandry practices.¹⁵¹

However, Oregon is one of the only states that has an exception to the exemption if gross negligence can be shown in these animal agriculture practices.¹⁵² Additionally, Oregon has recently passed several laws that outlaw certain animal agricultural practices. In 2007, Oregon passed a law phasing out the use of gestation crates for pregnant sows. The law prohibits confining a pregnant pig in a manner that prevents her from freely turning, lying down, or fully extending her limbs for more than 12 hours during any 24-hour period.¹⁵³ However, the law contains exemptions for medical care, caging starting seven days before the anticipated birthing date, transport, exhibition, slaughter, and research.¹⁵⁴

In 2011, Oregon also passed a law intended to transition poultry facilities into using larger cages for egg-laying hens and introducing enriched colony systems.¹⁵⁵ This law prohibited the use of small battery cages¹⁵⁶ and required cages constructed before January 1, 2012 to meet the United Egg Producers’ animal husbandry guidelines, and required cages constructed afterwards to meet standards equivalent to requirements for certification of enriched colony facility systems established in the American Humane Association’s farm animal welfare certification program.¹⁵⁷ It also laid out a progressive implementation of enriched colony facility standards by 2026.¹⁵⁸

¹⁵⁰ OR. REV. STAT. § 167.335 (2015).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ OR. REV. STAT. § 600.150(2) (2015).

¹⁵⁴ *Id.* § 600.150(3).

¹⁵⁵ OR. REV. STAT. §§ 632.835–.850 (2015).

¹⁵⁶ OR. DEP’T OF AGRIC. INTERNAL SERVICES PROTECTION PROGRAM, CAGE REQUIREMENTS (2014), <https://www.oregon.gov/ODA/shared/Documents/Publications/InternalServices/EggLayingHenCageRequirements.pdf>

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

RESOURCES

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

Socially Responsible Agriculture Project (SRAP)

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at www.sraproject.org, and contact SRAP for support at 503-632-8303 or through our [website](#).¹⁵⁹

General

- **Socially Responsible Agriculture Project:** <http://www.sraproject.org/>
- **Food & Water Watch:** <http://www.foodandwaterwatch.org/>
- **Friends of Family Farmers:** Supporting farmers and residents for socially and environmentally responsible family-scale agriculture in Oregon: <http://www.friendsoffamilyfarmers.org/>
- **Center for Food Safety:** <http://www.centerforfoodsafety.org/#>
- **Center for Biological Diversity:** <http://www.biologicaldiversity.org/>
- **Oregon Rural Action:** <https://www.oregonrural.org/>

Legal

- **Oregon State Bar Pro Bono Program:** <https://www.osbar.org/probono/>
- **Oregon Legal Aid:** <http://oregonlawhelp.org/>
- **Center for Animal Law Studies at Lewis & Clark:** https://law.lclark.edu/centers/animal_law_studies/
- **Animal Legal Defense Fund:** <http://aldf.org>

Water

- **Waterkeeper Alliance:** Local Waterkeepers include Columbia Riverkeeper, Rogue Riverkeeper, Tualatin Riverkeepers, and Willamette Riverkeeper: <http://waterkeeper.org/>
- **Citizens Water Advocacy Group:** Serves residents of the Upper Verde River Basin and the Prescott Active Management Area: <http://www.cwagaz.org/>
- **Water Watch:** Protecting natural flows in Oregon: <http://waterwatch.org/>

¹⁵⁹ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

- **Columbia Riverkeeper:** <https://www.columbiariverkeeper.org/>
- **Friends of the Gorge:** <https://gorgefriends.org/>

Air

- **Neighbors for Clean Air:** <http://www.whatsinourair.org/>
- **Eastside Portland Air Coalition:** <http://eastsideportlandair.org/>
- **Beyond Toxics:** <http://www.beyondtoxics.org/>

Public Health

- **Oregon Organizations working on Food Policy:**
<https://www.upstreampublichealth.org/sites/default/files/Food%20Organizations%20April%202014.pdf>
- **Oregon State Public Interest Group:** Works towards banning the use of antibiotics on farms to prevent illness: <http://www.ospirg.org/home>
- **Oregon Public Health Institute:** <http://ophi.org/>
- **Oregon Public Health Association:** <http://www.oregonpublichealth.org/>
- **Oregon Health Authority—Healthy Environments:**
<https://public.health.oregon.gov/HealthyEnvironments/Pages/index.aspx>

LIST OF STATUTES & REGULATIONS

Below is a list of relevant statutes and regulations discussed in this Guide. This list serves as a starting reference point for additional research or more in-depth analysis of environmental authority in Oregon.

Statute/Regulation	Subject
OR. ADMIN. R. 340-051-0010(2) (2016).	Defining CAFOs
OR. REV. STAT. § 468B.035(2) (2016); OR. REV. STAT. § 468B.050(1)(2016).	ODA authority to issue NPDES permits for CAFOs
OR. REV. STAT. § 468.050(1)(a) (2016).	Prohibiting discharge of wastes into waters of U.S. without a permit from DEQ
OR. ADMIN R. 340-045-0015(3) (2016).	state NPDES permit requirement

OR. REV. STAT. § 468B.050(1)(d) (2016)	state discharge permits (WPCF)
OR. ADMIN. R. 340-045-0033(10) (2016).	CAFO individual permit situations when may be required
OR. REV. STAT. §§ 568.900 to 568.933	Agricultural Water Quality Management Act
OR. REV. STAT. § 561.191 (2015).	ODA develops and implements any program or rules that directly regulate farming practices to protect water quality
OR. ADMIN. R. 340-042-0080 (2016).	Local advisory committee roles in water quality
OR. REV. STAT. § 468A.020 (2015).	Oregon's air pollution laws expressly exempt agriculture from regulation
OR. ADMIN. R. 340-208-0300(1) (2016); OR. REV. STAT. § 30.930(1) (2015).	DEQ has the authority to identify and reduce certain nuisance odors, not including animal agriculture odors.
OR. ADMIN. R. 660-015-0000(3) (2016).	Statewide Planning Goals: Goal 3 (Agriculture)
OR. REV. STAT. § 215.243 (2) (2015).	Farmland Protection Program
OR. REV. STAT. § 215.203 (2015).	Exclusive Farm Use Zone
OR. REV. STAT. §§ 30.930-30.947	Oregon Right to Farm
OR. REV. STAT. § 192.410 et seq.	Oregon Public Records Law
OR. REV. STAT. § 167.335 (2015).	Animal Cruelty Agriculture Exemption and the exception to this exemption
OR. REV. STAT. § 600.150 (2015).	Confinement of Pregnant Sow Restrictions
OR. REV. STAT. §§ 632.835-.850 (2015)	Larger Cages for Egg-Laying Hens