



**SRAP**  
Socially Responsible  
Agriculture Project

## Guide to Confronting Concentrated Animal Feeding Operations in

# PENNSYLVANIA



# Guide to Confronting Concentrated Animal Feeding Operations in PENNSYLVANIA

**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).

## **SRAP HELP HOTLINE**

Facing a factory farm? Contact SRAP for support.

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

(503) 362-8303

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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](https://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: CAFOs IN PENNSYLVANIA

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Agriculture in Pennsylvania is dominated by dairy farming, but the state is also home to a wide array of other types of animal agriculture that have significant impacts on communities across the state. Based on 2015 United States Department of Agriculture (USDA) statistics, Pennsylvania has approximately 58,000 farming operations on 7.7 million acres.<sup>2</sup> The state contains approximately 190.4 million chickens, 6.5 million turkeys, 2.4 million cattle, 1.2 million hogs, 94,000 sheep, and 50,000 goats.<sup>3</sup> Pennsylvania is 5<sup>th</sup> in the nation for milk production, 12<sup>th</sup> for hogs, and 10<sup>th</sup> for poultry.

Animal feeding operations pose serious risks to water, air, and soil quality, local ecosystems, and public health. These risks are a result of the vast amounts of animal waste and wastewater generated by these facilities, and the logistical difficulties of responsibly disposing of so much waste. A single Concentrated Animal Feeding Operation (CAFO) can produce as much waste as a large U.S. city. However, unlike human waste, which is subject to thorough treatment and processing to remove chemical and biological contaminants, animal waste is largely untreated, and is then spread onto land where it can easily seep into groundwater and surface waters. The large amounts of untreated animal waste also create air quality and odor issues for neighbors and the surrounding areas. Pennsylvania has implemented various measures and programs to control the harmful effects of animal agriculture on the environment while also protecting the states' agricultural interests. The state has made strides toward addressing environmental quality issues but there is considerable room for improvement.

State regulation of agricultural facilities is critically important given the number of facilities, amount of waste produced, and the proximity to impaired waters of the state and the Chesapeake Bay. The Chesapeake Bay is the largest estuary in the U.S. and appears on the U.S. Environmental Protection Agency (EPA) "Dirty Waters" list. It suffers from algal blooms, dead zones, eutrophication, toxic algae, and impaired water quality because of pollution, sediment, and excess nutrients like nitrogen and phosphorous.<sup>4</sup> Pennsylvania agriculture is a significant contributor of nitrogen and phosphorous in the Bay. The state covers approximately one third of the Chesapeake

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<sup>2</sup> 2015 State Agriculture Overview: Pennsylvania, United States Department of Agriculture, [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=PENNSYLVANIA](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=PENNSYLVANIA).

<sup>3</sup> *Id.*

<sup>4</sup> About the Bay: Nitrogen and Phosphorous, CHESAPEAKE BAY FOUNDATION, <http://www.cbf.org/about-the-bay/issues/dead-zones/nitrogen-phosphorus>.

Bay Watershed and is responsible for 44% of the total nitrogen, 24% of the phosphorous, and 32% of the sediment in the Bay. Pennsylvania's agricultural sector is responsible for a significant portion of this pollution. The problem is made worse by the fact that approximately 66% of the state's farms are located in the Chesapeake Bay Watershed. Pennsylvania agriculture is responsible for 55% of the state's nitrogen contribution, 24% of the state's nitrogen contribution, and 35% of the state's sediment contribution. There are approximately 360 CAFOs and 1,200 Concentrated Animal Operations (CAOs) in the state and they produce around half of all animal manure generated in the state. Manure issues in Pennsylvania are particularly problematic because there is an overabundance of manure and not enough crop land to spread it on since many facilities import animal feed from the Midwest.

Pennsylvania is authorized by the U.S. Environmental Protection Agency to administer the NPDES Program at the state level. The Pennsylvania Department of Environmental Protection (DEP) oversees the CAFO program under both the Clean Water Act and the Pennsylvania Clean Streams Law. There are also a number of programs and regulations regarding aspects of agricultural operations such as nutrient management, odor control, and erosion and sediment control. However, enforcement is lacking and some of the plans have conflicting practices. For example, erosion and sediment control measures encourage no till practices, however no till practices increase nutrient runoff into nearby waters of the state and undermine nutrient management plan goals. Also, the PA DEP has attempted to delegate CAFO inspection and enforcement responsibilities to county conservation districts. However, PA DEP's cooperative approach with conservation districts and other agencies undermines effective enforcement or deterrence efforts.





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## CAFOs: STATE REGULATORY DEFINITIONS

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### Concentrated Animal Operation (CAO)

Pennsylvania has a separate animal agriculture categorization that considers both number of animals as well as the density of animals in a given area. A Concentrated Animal Operation (CAO) is an animal operation with greater than eight Animal Equivalent Units (AEUs)<sup>5</sup> and with an animal density of greater than two AEUs per acre. This includes all livestock, not just production animals; recreational animals like horses are included in the calculation. Additionally, the CAO calculation only includes acreage that is suitable for the application of manure—farmstead and forestland are not included in the acreage amount. The State Conservation Commission is authorized to establish criteria for categorizing an operation as a CAO.<sup>6</sup>

CAOs are regulated by the state, and large enough CAOs may be considered Concentrated Animal Feeding Operations (CAFOs) under state definitions. A CAO with greater than 300 AEUs is a CAFO under Pennsylvania law. Any operation that qualifies as a CAO must develop and implement a Nutrient Management Plan,<sup>7</sup> discussed further below.

For more information about CAOs, see the Pennsylvania State Extension [website](#), which provides a helpful overview of CAO calculations and requirements.<sup>8</sup>

### Animal Feeding Operation (AFO)

An AFO is a facility where animals are fed and confined for at least 45 days in a year and the facility does not grow crops or forage where the animals are confined. So this could apply to a handful of animals kept in a small barn, outbuilding, or hobby farm for 45 days or more. Being an AFO alone does not prompt regulation, but it is a component of some federal and state CAFO designations.

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<sup>5</sup> 1 Animal Equivalent Units (AEU) = 1,000 lb. live animal weight.

<sup>6</sup> 25 Pa. Code §92(a)(2).

<sup>7</sup> Agriculture, Communities and the Rural Environment Act. Act 38 (2005).

<sup>8</sup> Pennsylvania's Nutrient Management Act: Who Is Affected, PENNSTATE EXTENSION, <http://extension.psu.edu/plants/nutrient-management/act-38/pennsylvania-s-nutrient-management-act-act-38-who-is-affected>.

Below are the federal size distinctions between small, medium, and large AFOs, which may be considered CAFOs depending on facility size, animal quantity, or discharge requirements discussed further below.

**AFO/CAFO Size Chart**

<b>Animal</b>	<b>Large</b>	<b>Medium</b>	<b>Small</b>
<b>Cattle</b> (bull, steer, heifer, or calf)	≥ 1,000	300–999	< 300
<b>Dairy cow</b>	≥ 700	200–699	< 200
<b>Horses</b>	≥ 500	150–499	< 150
<b>Veal</b>	≥ 1,000	300–999	< 300
<b>Swine</b> (≥ 55 pounds)	≥ 2,500	750–2,499	< 750
<b>Swine</b> (< 55 pounds)	≥ 10,000	3,000–9,999	< 3,000
<b>Sheep/lambs</b>	≥ 10,000	3,000–9,999	< 3,000
<b>Ducks</b> (with liquid manure handling)	≥ 5,000	1,500–4,999	< 1,500
<b>Ducks</b> (with dry manure handling)	≥ 30,000	10,000–29,999	< 10,000
<b>Chickens</b> (with liquid manure handling)	≥ 30,000	9,000–29,999	< 9,000
<b>Laying hens</b> (with dry manure handling)	≥ 82,000	25,000–81,999	< 25,000
<b>Chickens</b> (other than laying hens) with dry manure handling	≥ 125,000 Or ≥ 100,000 square feet	37,500–124,999 Or < 100,000 square feet	< 37,500
<b>Turkeys</b>	≥ 55,000	16,500–54,999	< 16,500

### Concentrated Animal Feeding Operation (CAFO)

Pennsylvania’s definition of a CAFO is consistent with the federal definition, but it also goes beyond the federal definition by including a number of operations that would not be considered CAFOs under federal law. CAFOs in Pennsylvania are defined to include any of the following:<sup>9</sup>

- An animal operation that is a large CAFO per the federal definition<sup>10</sup>

<sup>9</sup> 25 PA Code §92a.2.

<sup>10</sup> 40 C.F.R. § 122.23(b)(4).



- An animal operation that is a small or medium CAFO per the federal definition because it discharges pollutants to surface waters or has been designated a CAFO by the EPA or PA DEP<sup>11</sup>
- An animal operation with 1,000 Animal Equivalent Units of any combination of animals<sup>12</sup>
- A CAO with greater than 300 AEUs

As of 2012, there were approximately 365 CAFOs in Pennsylvania.<sup>13</sup>

While Pennsylvania's CAFO definition appears to go slightly beyond the federal CAFO definition, its focus on the number of animals instead of the actual practices, discharges, and environmental impacts of the facility leaves many potentially harmful operations unregulated.

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## RESPONSIBLE REGULATORY AGENCIES

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### Environment & Natural Resources

#### Pennsylvania Department of Environmental Protection

The Pennsylvania Department of Environmental Protection (PA DEP) seeks to “protect Pennsylvania’s air, land, and water from pollution and to provide for the health and safety of its citizens through a cleaner environment.”<sup>14</sup> The PA DEP is the primary agency for handling environmental issues associated with CAFOs in the state. They issue permits, conduct inspections, develop strategies and programs, and play a role in environmental enforcement actions. While the agency has passed some of these responsibilities to local conservation districts, the PA DEP is the primary agency responsible for permitting and addressing many of the environmental issues caused by CAFOs in the state.

PA DEP has offices across the state; use their [website to find](#) the closest office.<sup>15</sup>

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<sup>11</sup> 40 CFR § 122.23(b)(6).

<sup>12</sup> 1 Animal Equivalent Units (AEU) = 1,000 lb. live animal weight.

<sup>13</sup> Rena Steinzor and Yee Huang, *Manure in the Bay: A Report on Industrial Animal Agriculture in Maryland and Pennsylvania* (2012), CENTER FOR PROGRESSIVE REFORM, at page 50.

<sup>14</sup> PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, [www.dep.pa.gov/Pages/default.aspx](http://www.dep.pa.gov/Pages/default.aspx).

<sup>15</sup> About DEP – Office Locations, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, [www.dep.pa.gov/About/Pages/Office-Locations.aspx](http://www.dep.pa.gov/About/Pages/Office-Locations.aspx)

## Department of Agriculture

### Pennsylvania Department of Agriculture

The Pennsylvania Department of Agriculture (PDA) “encourages, protects, and promotes agriculture and related industries throughout the commonwealth while providing consumer protection through inspection services that impact the health and financial security of Pennsylvania’s citizens.”<sup>16</sup> PDA provides valuable services to farmers and consumers across the state but has little involvement in actions, laws, or programs that impact factory farms, with the exception of odor management certification and food safety. PDA implements the Odor Management Certification Program but the State Conservation Commission administers the Odor Management Program. PDA certifies people writing or reviewing Odor Management Plans as required by state law.<sup>17</sup>

### USDA Natural Resource Conservation Service

The USDA Natural Resource Conservation Service is a federal office that provides technical assistance for agricultural operations and certifies technical service providers to develop and write Comprehensive Nutrient Management Plans. However, it does not have enforcement responsibilities.

## Department of Health

### Pennsylvania Department of Health

The Pennsylvania Department of Health seeks to provide “top-quality programs and services that benefit the health, safety, and well-being of all Pennsylvanians.”<sup>18</sup> The Department plans and coordinates health resources throughout the state by regulating health facilities, recording state health data, supporting outreach and education, and coordinating with community groups to provide services.

While the Department of Health does not directly regulate agricultural operations, it works with “federal, state, county, and local officials, and the public on a regular basis to help address environmental health issues and concerns.”<sup>19</sup> You can report concerns about the health impacts of environmental issues in your community to

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<sup>16</sup> About PDA, PENNSYLVANIA DEPARTMENT OF AGRICULTURE, <http://www.agriculture.pa.gov/Pages/About-PDA.aspx>.

<sup>17</sup> Act 38 of 2005 (Nutrient and Odor Management Act).

<sup>18</sup> About the Department of Health, PENNSYLVANIA DEPARTMENT OF HEALTH, <http://www.health.pa.gov/Your-Department-of-Health/About%20Us/Pages/About-the-Department-of-Health.aspx>.

<sup>19</sup> Environmental Health, PENNSYLVANIA DEPARTMENT OF HEALTH, <http://www.health.pa.gov/My%20Health/Environmental%20Health/Pages/default.aspx>.

the Department of Health. Environmental health complaints are investigated and reviewed by the department's Bureau of Epidemiology. The Department of Health also tracks diseases and health conditions that may be related to environmental exposure. Therefore, the Pennsylvania Department of Health can inform residents and influence the regulation of CAFOs in the state from a public health perspective.

## **Conservation Districts**

### **County Conservation Districts (CCDs)**

County Conservation Districts operate as the primary local government units responsible for providing a field presence for CAFOs and CAOs across the state. They are political subdivisions of the Commonwealth of Pennsylvania and work in partnership with federal and state agencies. Each county in Pennsylvania has a conservation district, except Philadelphia. County Conservation Districts conduct annual on-site inspections to verify record keeping and proper implementation of the operations' Nutrient Management Plans. CCDs also investigate complaints and provide assistance with implementing an operation's best management practices. If the conservation district is unable to achieve compliance from facilities in their district, they refer the issue to an agency with enforcement power.

As part of Pennsylvania's efforts to comply with EPA's mandate to reduce the nitrogen, phosphorous, and sediment runoff into the Chesapeake Bay, 29 of the state's CCDs in the Chesapeake Bay Watershed have signed up to conduct inspections aimed at reducing agricultural runoff into local waters in exchange for funding and support by PA DEP. Participating CCDs include: Adams, Bedford, Berks, Blair, Cambria, Centre, Chester, Clearfield, Clinton, Columbia, Cumberland, Fulton, Huntingdon, Indiana, Juniata, Lackawanna, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Union, and Wyoming. If you live in one of those counties, the CCD will be the primary contact for discharge and runoff-related concerns and complaints. If the conservation district is unable to achieve compliance from facilities in their district, they refer the issue to an agency with enforcement power—generally the PA DEP.

Find your local conservation district information and contacts [here](http://pacd.org/your-district/find-your-district/).<sup>20</sup>

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<sup>20</sup> Find Your Conservation District, PENNSYLVANIA ASSOCIATION OF CONSERVATION DISTRICTS, <http://pacd.org/your-district/find-your-district/>.

For more detail about County Conservation Districts in Pennsylvania, see Conservation District Law, Public Law 1125, No. 221 (1984), available [here](#).<sup>21</sup>

### **State Conservation Commission**

The State Conservation Commission (SCC) is responsible for administering the Facility Odor Management Program. CAFOs and CAOs engaged in construction activities after February 27, 2009 must develop and implement an Odor Management Plan, which must be approved by the SCC.

### **U.S. EPA Region 3**

Pennsylvania is part of the U.S. EPA Region 3, the Mid-Atlantic, which also includes Delaware, District of Columbia, Maryland, and West Virginia. While considerable CAFO regulation happens at the state level, the EPA has oversight authority; contact its regional office if the state is not performing its duties or fails to regulate CAFOs under applicable federal and state environmental laws.

Pennsylvania U.S. EPA Region 3 Headquarters address:

U.S. EPA Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

Contact information for EPA Region 3's CAFO Team:

David McGuigan mcguigan.david@epa.gov 215-814-2158	Mark Zolandz zolandz.mark@epa.gov 215-814-2319	Kyle Zieba zieba.kyle@epa.gov 215-814-5420
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<sup>21</sup> Conservation District Law, PENNSYLVANIA ASSOCIATION OF CONSERVATION DISTRICTS, <http://pacd.org/webfresh/wp-content/uploads/2009/06/217.pdf>.



### Pennsylvania Clean Streams Law

Pennsylvania's Clean Streams Law is the primary statute to protect the state's water quality.<sup>22</sup> Among other things, the law prohibits the discharge of industrial waste, sewage, and pollutant—which includes animal waste—into waters of the state. It asserts that discharging such substances without the proper permit is not a natural use of state waters and that the pollution of state waters is a public nuisance.

#### **Penalties<sup>23</sup>**

- Any person who violates the act is guilty of a summary offense and may be subject to a fine between \$100 and \$10,000 for each separate offense or imprisonment for 90 days.
- Any person who negligently violates the act is guilty of a second-degree misdemeanor and subject to a fine between \$2,500 and \$25,000 for each separate offense or imprisonment for up to two years, or both.
- Any person already convicted of a second-degree misdemeanor that negligently violates the act again is guilty of a first-degree misdemeanor and subject to a fine between \$5,000 and \$50,000 or imprisonment for up to five years, or both.
- Each day of a continued violation of the act is considered a separate offense.
- The maximum fines the state will impose are consistent with the federal Clean Water Act.

### Pennsylvania Pollutant Discharge Elimination System Program

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

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<sup>22</sup> The Clean Streams Law, P.L. 1987, Act 394 (1937), as amended; 35 P.S. § 691.1 et seq.

<sup>23</sup> The Clean Streams Law, 35 P.S. §691.602.

## Types of Permits

Animal agricultural may be subject to the following PA PDES permits:

- **CAFO Permit**
  - General or Individual
- **Stormwater Permit for Construction Activities**

## CAFO Permit

### General and Individual CAFO Permits

The PA DEP issues two kinds of CAFO Permits: Individual and General. Both permits are valid for five years. An Individual Permit is required for facilities with greater than 1,000 AEUs, if the operation discharges into a high-quality watershed, or when the discharges and pollution contribution is more appropriately controlled under an individual permit.<sup>24</sup> The remaining CAFOs seek coverage under the General Permit, PAG-12, which went into effect in April 2013. See the current CAFO General Permit Fact Sheet [here](#).<sup>25</sup>

### Nutrient Management Plan

The state's Nutrient Management Program (NMP) is primarily concerned with the nutrients nitrogen and phosphorous. Animal agriculture is a dominant source of nitrogen and phosphorous in the states waters, and high levels of these nutrients have serious impacts on water quality, safe drinking water, and biodiversity.

CAOs and CAFOs seeking a NPDES permit must develop and implement a NMP, but some other agricultural operations may volunteer to abide by an NMP to regulate the considerable manure generated by animal agriculture in the state.

The NMP is an effort to estimate the amount of waste an operation generates and how the nutrients in the waste will be disposed of in order to prevent surface and groundwater pollution, to meet state water quality standards, and to achieve Chesapeake Bay TMDL goals. They are an attempt to calculate output versus absorption rates to minimize nutrient runoff. This supposedly helps establish manure application rates for operators to follow. Due to the technical calculations involved, NMPs must be written by a certified nutrient management specialist.

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<sup>24</sup> 25 Pa. Code § 92a.54(e) (eligibility criteria for coverage under General Permit).

<sup>25</sup> PAG-12 Authorization to Operate Under the NPDES General Permit for CAFOs Fact Sheet, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-94437/3710-PM-BCR0032%20Fact%20Sheet.pdf>

The NMP must meet the requirements in PA Code Chapter 83, Subchapter D, and must be approved by the County Conservation District or the State Conservation Commission.<sup>26</sup> The NMP must be renewed once every three years.

CAFOs and CAOs must develop and implement NMPs that contain the following elements:

- **Basic contact information**
- **Basic information about the operation**
  - Number of animals raised
- **Manure generation summary**
  - Manure import/export information
- **Manure application rates and methods**
  - Winter application is discouraged but not prohibited
- **Manure application setbacks**
  - Not applied within 100 ft. of surface water unless 35 ft. vegetated buffer
  - Not applied within 100 ft. of a private or public drinking water source
- **Waste storage standards**
  - Designed, constructed, maintained, and operated to prevent runoff and to protect surface and ground water
  - Waste storage prohibited within 100 ft. of surface water, wetland, well, sinkhole, or property line
    - 200 ft. slope is greater than 8% or if containment capacity is equal to or greater than 1.5 million gallons
- **Crop information**
  - Types of crops grown and where
- **Site-specific emergency response plans**
- **Record keeping requirements**
- **Stockpiling restrictions**
  - CAFO Permit Program requires that manure stockpiled for more than 15 days is covered or stored to prevent discharge
  - Note: NMPs for CAOs and other operations subject to an NMP, but not a CAFO permit program, state that the manure for land application may be stockpiled for up to 120 days, and after 120 days, it must be covered or placed on a permanent stacking pad. So if you see manure stockpiling, determine if it is a permitted CAFO or a non-CAFO subject to an NMP before submitting a stockpiling complaint

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<sup>26</sup> 25 Pa. Code §92a.29(e)(1).

- **Best Management Practices**

Individuals can provide public input on a NMP during a public meeting of the County Conservation District board. Public notice of the development and approval of a NMP is published in the *Pennsylvania Bulletin*, also available on DEP's [eComment](#) website.<sup>27</sup>

Violations of the NMP are subject to the following penalties:

- Up to \$500 for the first day of each violation
- Up to \$100 for each additional day of noncompliance.

### **Preparedness, Prevention, and Contingency Plan**

Pennsylvania Code requires a CAFO to develop and implement a Preparedness, Prevention, and Contingency Plan that addresses the pollutants related to CAFO and how various chemicals and contaminants will be handled on-site.<sup>28</sup>

### **Erosion and Sediment Control Plan**

In order for a CAFO to receive a NPDES permit, the CAFO must develop and implement an Erosion and Sediment Control Plan.<sup>29</sup> PA has regulations to control sediment runoff from disturbances from construction or human activity, including plowing, tilling, or operating animal heavy use areas.<sup>30</sup> This plan must meet the requirements of Title 25 Chapter 102 of the Pennsylvania Code. The DEP or County Conservation District may oversee development and implementation of these plans.

- Disturbance less than 5,000 sq. ft. → operation must implement best management practices for sediment and erosion control.
- Disturbance greater than 5,000 sq. ft. → operation must have written erosion and sediment control plan designed to minimize potential for erosion and sedimentation.

While there's little to no opportunity for public participation or input in Erosion and Sediment Control Plans, familiarize yourself with the plan requirements to keep an eye on these facilities and report any violation to the DEP or CCD.

### **Recordkeeping and Reporting Requirements**

Permitted facilities must:

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<sup>27</sup> eComment, DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.ahs.dep.pa.gov/eComment/>

<sup>28</sup> 25 Pa. Code §92a.29(e)(4).

<sup>29</sup> 25 Pa. Code §92a.29(e)(2).

<sup>30</sup> 25 PA Code § 102.1 (Definitions–Erosion & Sediment Control).



- Keep a copy of the NMP at the facility;
- Submit an annual report covering the period of January 1 through December 30 by February 15 of each year;
- Maintain manure application records, including records of weather conditions the 24 hours before, during, and after application;
- Maintain records of exported manure;
- Conduct daily inspections of drinking water, weekly inspection of the level of liquid manure in manure storage facilities, and maintain records of designs for manure storage facilities and the amount of nitrogen and phosphorous applied;
- Annually test each manure type generated at the operation;<sup>31</sup>
- Test soil once every three years.<sup>32</sup>

### **Setback & Buffer Requirements**

- PA prohibits land application of manure within 100 ft. of a surface water unless there is a 35 ft. vegetated buffer between the application site and the surface water.

### **Animal Mortality**

- Deceased animals must be disposed of within 24 hours of death.<sup>33</sup>

### **General Permit for Stormwater Associated with Construction Activities**

Pennsylvania DEP oversees permit coverage for the discharge of stormwater when one acre or more of earth is disturbed by construction activities. Any facilities engaged in such construction activities must obtain the General Permit PAG-02, or an individual permit if the applicant is not eligible for general permit coverage. While the permit does not apply for activities like plowing and tilling, it does apply for construction projects for new or expanding CAFOs that disturb one acre or more.

Farms seeking a NPDES Stormwater Permit must submit a Notice of Intent and abide by Best Management Practices and pollution prevention measures described in the permit. There is an emphasis on minimizing the extent and duration of the earth disturbance to protect water quality and minimize erosion and sedimentation of state waters.

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<sup>31</sup> 25 Pa. Code § 83.291 (Annual Manure Testing).

<sup>32</sup> 25 Pa. Code § 83.292 (Soil Testing once every 3 years).

<sup>33</sup> 3 Pa. Cons. Stat. § 2352 (Animal Composting and Mortality).

## Permit Application Process and Public Participation

### CAFO NPDES Permit

- For an existing CAFO with permit coverage:
  - CAFO must submit a Notice of Intent 180 days before their permit coverage expires.
- For proposed CAFOs:
  - CAFO must submit Notice of Intent 180 days before operation begins.
- Applicant must submit the following supporting documents with the permit application:
  - NMP & NMP approval letter from County Conservation District or State Conservation Commission
    - Note: The NMP is subject to review by the public and you can file comments on the NMP with the County Conservation District or State Conservation Commission. Individuals may also present oral comments at the public County Conservation District board meeting.
  - Erosion and Sediment Control Plan
  - Engineer certification of manure storage structures
  - Preparedness, Prevention, and Contingency Plan
  - Measures to prevent discharge
  - Copy of all notices sent to municipal governments
  - U.S. Geological Survey topographical map of the farm
- Notice is published in the [\*Pennsylvania Bulletin\*](#)<sup>34</sup>
- You may file comments during the comment period—typically 30 days from the date of publication of the notice in the *Pennsylvania Bulletin*
  - DEP is required to consider and respond to all public comments before approving or denying a permit application
- You may request a public hearing from DEP
- Final agency decisions are published in the *Pennsylvania Bulletin*
- Anyone who is adversely affected by DEP's permit decision can appeal the decision to the Environmental Hearing Board within 30 days of DEP's decision.

### Wetlands

Wetlands are a critically important resource that require strong protections from federal and state government. Wetlands influence groundwater discharge rates,

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<sup>34</sup> The Pennsylvania Bulletin, COMMONWEALTH OF PENNSYLVANIA, <http://www.pabulletin.com>

assist with stormwater and flood control, filter pollutants and nutrients from the water, reduce erosion, and provide critical habitat for plant and animal species. There are various federal and state laws designed to protect wetlands from degradation and destruction. See the Federal Guide for a discussion of federal regulation of wetlands.

### **Wetland Permit Application**

If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they have not, you can submit a complaint to the appropriate agency. If the operation applied for a permit, you can submit public comments and request a public hearing. Emphasize the importance of Pennsylvania's wetlands to protect groundwater, the Chesapeake Bay, and biodiversity.

### **Water Quality**

#### **Water Quality Standards and The Water Quality Management Program**

Water quality standards are set to protect and prevent degradation of the state's waters. The water quality standards are designed to protect the waters for various types of designated uses such as supporting aquatic life, drinking water, recreation, fishing, agriculture, industry, or other protected uses.<sup>35</sup> For more details about state water quality standards, see Title 25, Chapter 93 of the Pennsylvania Code. For details about implementation of water quality standards, see Title 25, Chapter 96 of the Pennsylvania Code.

The Pennsylvania Water Quality Management Program is authorized under the state Clean Streams Law and overseen by the PA DEP.<sup>36</sup> In an effort to achieve these standards, the program imposes requirements on manure storage facilities, land application of manure, and the discharge of pollutants.

#### **Manure Storage**

- An operation with a waste storage facility with storage capacity greater than 2.5 million gallons must obtain a permit.
- An operation with a waste storage structure in the vicinity of high quality or exception value waters or in an impaired watershed must obtain a permit.

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<sup>35</sup> Water Quality Standards, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.dep.pa.gov/Business/Water/PointNonPointMgmt/WaterQuality/Pages/default.aspx>.

<sup>36</sup> 25 Pa. Code § 91.36 (Water Quality Management Regulations).

## Land Application of Manure

- Agricultural operations should apply manure or wastewater at agronomic rates.
- State regulations prohibit the application of manure or wastewater within 100 ft. of surface water unless there is a 35 ft. vegetated buffer.

## Discharge of Pollutants

- State law asserts that agricultural operations may not discharge pollutants into waters of the state without a NPDES permit from PA DEP.

## Impaired Water Bodies

The Clean Water Act requires states to perform annual water quality assessments<sup>37</sup> and identify waters not meeting the state's water quality standards.<sup>38</sup> Pennsylvania compiles and submits this information to the EPA as an Integrated Water Quality Monitoring and Assessment Report. PA DEP's current 2016 Draft Integrated Report accepted public comments through September 12, 2016.

It can be helpful to know about impaired water bodies and their proximity to CAFOs in the region.

Find more about the Integrated Report and impaired water bodies [here](#).<sup>39</sup> Find the 2016 Draft Integrated Report [here](#).<sup>40</sup>

## Total Maximum Daily Load

The Total Maximum Daily Load (TMDL) is the maximum amount of pollution a body of water can receive and still meet water quality standards.<sup>41</sup>

## Chesapeake Bay TMDL

The Chesapeake Bay is the largest estuary in the U.S. and has been struggling to meet Clean Water Act standards for decades. Pennsylvania is one of the multiple states that borders or feeds into the Chesapeake Bay and must act to address water

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<sup>37</sup> CWA § 305(b).

<sup>38</sup> CWA § 303(d).

<sup>39</sup> Integrated Water Quality Report – 2016, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.dep.pa.gov/Business/Water/PointNonPointMgmt/WaterQuality/Integrated%20Water%20Quality%20Report-2016/Pages/default.aspx>.

<sup>40</sup> 2016 Draft Pennsylvania Integrated Water Quality Monitoring and Assessment Report, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-13014>

<sup>41</sup> Chesapeake Bay TMDL Fact Sheet, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>.



quality issues both in the state and in the Bay. Since agriculture is the primary contributor of these nutrients and pollutants, the existence, addition, or expansion of CAFOs will interfere with Pennsylvania's ability to meet its reduction goals and improve the water quality of the Chesapeake Bay.

In 2010, the EPA established TMDL for Chesapeake Bay, which calls for reduction of nitrogen, phosphorous, and sediment and sets pollution limits to attempt to achieve water quality standards. States then develop Watershed Implementation Plans (WIPs) detailing how the state intends to achieve the pollutant limitations in the TMDL.

### **Watershed Implementation Plans**

In addition to setting the Chesapeake Bay TMDLs, the EPA required Pennsylvania and other bay area states to develop Watershed Implementation Plans (WIPs) to help achieve the states' TMDLs.

- WIPs allocate the allowable amount of nitrogen, phosphorous, and sediment within state boundaries
  - The WIP must also describe how it plans to achieve pollutant allocations
- WIPs provide a discussion of the plans and programs that the state uses to meet TMDL goals.

Pennsylvania's Phase 2 WIP is available on DEP's website [here](#).<sup>42</sup>

### **Nutrient Credit Trading Program**

The Nutrient Credit Trading Program (NCT), established in 2006 is administered by the DEP and allows operations with NPDES permits to purchase nutrient reduction credits from other permitted operations to meet effluent limitation goals and achieve state water quality standards. It generally operates to allow waste treatment plants to buy nutrient reduction credits from farms since it's easier and cheaper for farms to make nutrient reductions than it is for a waste treatment plant. In order to participate, the operation must be in compliance with applicable permits and the following requirements:

- Has a Manure Management Plan or Nutrient Management Plan
  - Is in compliance with NMP and/or Manure Management Plan
- Has adequate animal waste storage facilities

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<sup>42</sup> Pennsylvania Chesapeake Watershed Implementation Plan Phase 2, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
[https://www.dep.state.pa.us/river/iwo/chesbay/docs/refmaterials/PAChesapeakeWIPPhase2\\_3-30-12.pdf](https://www.dep.state.pa.us/river/iwo/chesbay/docs/refmaterials/PAChesapeakeWIPPhase2_3-30-12.pdf).

- Has an Erosion and Sediment Plan that addresses soil loss from plowing, tilling, and animal heavy use areas
- Has a NPDES CAFO permit, if required for the facility.

The PA DEP or the County Conservation District must verify that the operation meets these requirements in order to qualify for the program, but agricultural consulting companies may conduct inspections to verify adherence to Best Management Practices.

The program is not very popular and arguably counter-productive for achieving pollution reduction. Both farmers and waste treatment facilities should strive to reduce nutrient and pollutant reduction to work toward improving water quality instead of trying to imperfectly redistribute pollution allowances, but such reductions are understandably costly and often difficult for permitted facilities. There is also concern that trading between point source and non-point source operations is inaccurate because non-point source pollution is difficult to measure.

### **Public Participation in Nutrient Credit Trading Program**

After the DEP has received and reviewed a nutrient credit proposal, the DEP provides public notice of the proposal in the *Pennsylvania Bulletin* and DEP's [eComment website](#)<sup>43</sup> for public review and an opportunity to comment. The DEP will then also publish a notice upon final action (approval or denial of the proposal). Anyone adversely affected by the final action may appeal the decision to the Environmental Hearing Board.

The public can access nutrient credit trading program information about discharge monitoring and credit-generating practices on DEP's [NCT program website](#).<sup>44</sup>

### **Animal Mortality**

Deceased animals may cause odor, insect, health, and water quality issues, and therefore, state law attempts to ensure proper handling and disposal of deceased animals.<sup>45</sup> The Pennsylvania Domestic Animal Act provides for four methods of animal disposal: burial, composting, rendering, and incineration, and imposes requirements on livestock operations based on their disposal methods.

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<sup>43</sup> eComment, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.ahs.dep.pa.gov/eComment/>.

<sup>44</sup> Credit Generation Process, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.dep.pa.gov/Business/Water/PointNonPointMgmt/NutrientTrading/Pages/Credit-Generation-Process.aspx>.

<sup>45</sup> 3 Pa. Code § 2353.

Livestock operations should:

- Dispose of the dead animal within 48 hours of the animal's death
- Keep the dead animal away from other live animals
- Consider odors and impacts on neighbors when deciding which method of carcass disposal to use.

If an operation chooses to bury its deceased animals, there are a number of requirements in place to protect ground water quality and neighboring well contamination.

Burial sites:

- Must be located outside of the 100-year flood plain
- Must be at least 100 feet from waters of the state (200 feet is recommended)
- Must cover the dead animals with at least 2 feet of soil
- Should be located at least 100 feet from wells or sinkholes (200 feet is recommended)
- Should be at least 100 feet from property lines (200 feet is recommended)
- Should be away from public view
- Should have the bottom of the burial site at least 2 feet above bedrock, the water table, or highly permeable soils<sup>46</sup>

The Pennsylvania Department of Agriculture oversees animal mortality management but the DEP may get involved when disposal practices impact water quality.

If you see dead or decomposing animals at an operation or if you see burial sites too close to water bodies, neighboring properties, or wells, the farm may be subject to a citation, enforcement actions, or a nuisance complaint.

### **CAFO Inspections**

CAFOs have annual permit reporting requirements. Individual permits require quarterly reports and general permits require annual reports from operations. It is DEP policy to inspect CAFOs with individual permits once per year, and CAFOs with general permits once every five years.

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<sup>46</sup> Livestock and Poultry Mortality Disposal in Pennsylvania, PENNSTATE EXTENSION, <http://extension.psu.edu/animals/health/composting/livestock-and-poultry-mortality-disposal-in-pennsylvania>

Local County Conservation Districts have the primary responsibility for verifying compliance with nutrient management plans and conduct annual inspections for CAFO nutrient management activities. 29 County Conservation Districts in the Chesapeake Bay Watershed have agreed to conduct farm inspections aimed at reducing agricultural runoff into waters. Noncompliance issues are referred to the State Conservation Commission.

Inspecting agencies will attempt to resolve CAFO violations through compliance assistance but when cooperative efforts fail, more formal enforcement action may follow.

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## AIR

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### Air Quality

Animal agriculture is a significant source of air pollutants including ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, animal agriculture operations could be regulated since they are stationary sources that emit pollutants in amounts that jeopardize the environment and public health, but the agricultural industry has largely evaded meaningful regulation. The agricultural industry argues that agriculture should not be regulated due to monitoring difficulties, variable climates, data collection methods, etc. In order to respect industry concerns while also working toward meaningful regulation to protect air quality, EPA has entered agreements with animal agriculture where CAFOs monitor and collect air emissions data in exchange for immunity for violating air pollution laws. In short, federal law does not require much from CAFOs to address their impacts on air quality and public health. See the Federal Guide for further discussion of the Clean Air Act, air quality agreements, and applicable regulations.

While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions. Pennsylvania could regulate AFO air emissions as part of its State Implementation Plan (SIP), required by the Clean Air Act, to help the state achieve its air quality standards. However, it does not appear that Pennsylvania regulates agricultural operations with regard to air emissions, though the state does attempt to regulate odors from these facilities.

## Odor Management Program

Farming odors are to be expected by those living in rural farming areas, to a certain degree. The extent of agricultural odors can vary depending on time of year, weather conditions, size of operation, and types of products produced. Animal agricultural operations can be particularly pungent due to the gases produced by the animals and their waste—emitting significant quantities of volatile organic compounds like ammonia and hydrogen sulfide. The gases and airborne particulate matter emitted by large animal operations can pose significant health problems for those living nearby. Pennsylvania has enacted legislation to manage odors from new or expanding CAFOs and CAOs<sup>47</sup> and the State Conservation Commission oversees the Odor Management Program.

In an attempt to limit odors from large livestock operations, Pennsylvania has an Odor Management Program to regulate odors from manure storage areas. The program applies to new or expanding CAFOs and CAOs, requiring these facilities to obtain an odor management plan that utilizes an Odor Site Index (OSI) to determine odor impacts on neighboring properties. The OSI provides a way to assign a score to the CAFO/CAO, and depending on the score, the operation must implement specific Best Management Practices to control odor migration.

The OSI score considers the following factors:

- Proximity to adjoining landowners
- Land use of surrounding areas
- Proposed storage or containment structures
- Type of animals
- Local topography
- Prevailing wind direction

Unfortunately, the program is relatively new and has considerable limitations, including the following:

- The program only went into effect in 2009 and only applies to a small subset of the state's animal agricultural operations.
- The program does not regulate odors from existing CAFOs/CAOs; it only applies to new or expanding parts of the operations.
- The program specifically exempts odor regulation regarding the land application of animal waste. This is significant considering that land

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<sup>47</sup> Act 38 of 2005, 3 Pa.C.S. §§ 501-522; 25 Pa. Code § 83.701 et seq.

application is one of the main odor problems for individuals living near these operations and their application sites.

- There are nuisance liability protections for CAFOs/CAOs that participate in the Odor Management Program that limit nearby residents' ability to bring a successful nuisance claim. Compliance with an Odor Management Plan is a mitigating factor for civil actions related to odors. If you are considering legal action against a CAFO/CAO for an odor-related claim, inquire if the facility is regulated under an Odor Management Plan and see Act 38 for more information about the program and its legal requirements.

### **Opportunity for Public Participation**

The public has an opportunity to participate in the Odor Management Plan process. The process is as follows:

1. The new or expanding CAFO/CAO submits the proposed Odor Management Plan to the SCC for review.
2. The SCC determines if the proposed plan is administratively complete. They basically check that the proposed plan appears to be complete and contains the necessary elements.
3. The SCC publishes notice that the plan is under review by the SCC and allows 21 days for an individual to submit a written comment on the OMP. Current notices of Odor Management Plans are available [here](#).<sup>48</sup> This is the primary opportunity for the public to speak up and voice concerns about the proposed plan.
4. After the comment period has closed, there will be a public meeting where SCC will take final action regarding approval or denial of the plan. Individuals can attend the public meeting and submit written or oral comments about the plan before the SCC makes a decision. Note: It's a good idea to let the SCC know in advance that you intend to submit oral or written comments at the public meeting.

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<sup>48</sup> PA Odor Management Program Public Notices, PENNSYLVANIA DEPARTMENT OF AGRICULTURE, <http://www.agriculture.pa.gov/Protect/StateConservationCommission/OdorManagementProgram/Pages/PA-Odor-Management-Program-Public-Notices.aspx>



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## ZONING & LAND USE

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### Land Use

Municipalities may impose land use restrictions<sup>49</sup> and may regulate activities that threaten the health, safety, or welfare of its residents. For most construction projects, the individual must obtain a building permit from their municipality, but state building code law<sup>50</sup> exempts agricultural operations from having to obtain a building permit. However, municipalities may go beyond the state exemption and require that agricultural facilities obtain a building permit and conform to building codes. Therefore, check if your municipality is one that requires a building permit for agricultural facilities. If a CAFO is constructing or altering a building on the premises without a building permit, they may be violating municipal code.

### Zoning

Zoning ordinances are generally established and enforced by the municipality or county. Zoning is not required by state law so there are many rural areas of the state where there are no zoning ordinances in place. Similar to land use planning and building codes discussed above, local governments are authorized to adopt zoning ordinances to protect the health, safety, and welfare of their residents. The ordinances specify areas where, and under what conditions, certain activities and development can take place.

Zoning ordinances vary in how protective they are of agricultural, residential, or business interests, but it should come as no surprise that agricultural operations are given considerable protection. If a municipality adopts zoning ordinances, state code requires that the zoning ordinances encourage the “continuity, development, and viability of agricultural operations.”<sup>51</sup> State code also asserts that zoning ordinances “may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally not been present, unless the agricultural operation will have a direct adverse effect on the public health and safety.”<sup>52</sup> These zoning protections are great for traditional and

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<sup>49</sup> The land use restrictions must be consistent with the state Municipal Planning Code.

<sup>50</sup> Uniform Construction Code.

<sup>51</sup> Pennsylvania Municipal Planning Code § 603(h).

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

sustainable agricultural operations, but the protections often benefit CAFOs more than sustainable farming operations.

Engagement in the zoning process can impede new CAFOs looking to come into a community or existing CAFOs seeking to expand. Residents can participate in developing, passing, or opposing proposed zoning ordinances or they may participate in zoning decisions, permits, or variances. For most zoning decisions, there is a hearing where the public has an opportunity to participate and weigh in on the decision. Regardless of whether the public participated in developing ordinances or permits, residents should be aware of their local zoning requirements so they can keep an eye on CAFOs to determine compliance.

See your municipal or county zoning website to research zoning rules and explore if the rules are consistent with the region's comprehensive plan, discussed below.

### **Comprehensive Plans**

Counties or municipalities create and adopt comprehensive plans that detail how the area must develop. Section 301 of the Pennsylvania Municipal Code requires that comprehensive plans include the following:

- Statement of objectives and community development objectives
- A plan for land use addressing the following:
  - residences, industry, business, agriculture, traffic, transit, utilities, community facilities, public grounds, parks and recreation, preservation of agricultural lands, and flood plains
- A plan to meet housing needs of current and future residents of all income levels
- A plan for movement of people and goods—such as roads, parking, pedestrian systems, public transit, airports, railroad facilities, etc.
- A plan for community facilities and utilities
  - Education, recreation, municipal, fire, police, libraries, hospitals, water supply, waste treatment and management, storm drainage, flood plain management, utilities, etc.
- An estimate of environmental, energy, fiscal, economic, and social consequences
- Short- and long-term implementation strategies
- A plan for protecting natural and historic resources
  - Wetlands, aquifers, woodlands, slopes, prime agricultural land, flood plains, and unique natural areas
- A plan for the reliable supply of water

- A statement acknowledging that commercial agricultural production impacts the water supply
- A review of the plan at least every 10 years.

These comprehensive plans are significant because local zoning actions must be consistent with the plan's objectives and recommendations. These plans also present a meaningful opportunity for public participation and input. If the local authority is considering changing an ordinance or approving a zoning variance benefiting CAFOs that is inconsistent with the elements of the comprehensive plan, speak up to your local zoning authority.

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## **RIGHT TO FARM & NUISANCE CLAIMS**

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### **Nuisance Claims**

A nuisance is something that interferes with the right to use and enjoy real property. Noise, odors, dust, smoke, pollution, pests, illness, or light could be considered nuisances. Courts may look to the extent of harm, the frequency of the nuisance, if plaintiffs came to the nuisance, or if the nuisance complies with applicable zoning ordinances. Many individuals and communities describe CAFOs as nuisances. CAFOs can decrease local property values, prevent people from using and enjoying their homes or yards, and can contribute to health issues. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield agricultural operations from nuisance liability—Pennsylvania included.

### **State Right-to-Farm Laws**

Right-to-farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities who experience unpleasant effects of agricultural production. The Pennsylvania Right to Farm Act<sup>53</sup> states that its purpose is to “reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.”<sup>54</sup> The act applies to all agricultural operations of 10 acres or more or that have a yearly gross income of \$10,000 or more. While the act has the potential to protect responsible and sustainable operations, it also serves to

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<sup>53</sup> 3 Pa. Stat. §§ 951–957.

<sup>54</sup> 3 Pa. Stat. § 951.

shield the many CAFOs in the state from nuisance suits brought by neighbors who have legitimate grievances against these operations.

The law states:

No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operation, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered...<sup>55</sup>

In addition to limiting the time period in which an interested party may bring a nuisance claim, state law also requires that when a municipality passes an ordinance defining or prohibiting a public nuisance, the ordinance also excludes agricultural operations from the definition or prohibition.<sup>56</sup> Needless to say, these ag-friendly nuisance limitations are serious roadblocks to residents seeking legal action against CAFOs that impact a neighbors' use and enjoyment of their property.

Fortunately, these roadblocks are not impenetrable. The Pennsylvania Right to Farm Act does not eliminate the right of a person to recover damages if the agricultural operation is "conducted in violation of any Federal, State or local statute or governmental regulation which applies to that agricultural operation or portion thereof"<sup>57</sup> and "so long as the agricultural operation does not have a direct adverse effect on the public health and safety."<sup>58</sup> Therefore, CAFO neighbors should understand their local and state CAFO laws in order to monitor the operations and report violations as they occur. A successful nuisance claim may rely on lengthy record demonstrating the operation's failure or continued inability to comply with applicable federal, state, local, zoning, health, and permitting laws and regulations.

Know what's required, report violations, keep track of health and safety impacts, and, if possible, do it early—preferably within the first year of operation or within one year of any substantial changes to the operation.

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<sup>55</sup> 3 Pa. Stat. § 954(a).

<sup>56</sup> 3 Pa. Stat. § 953(a).

<sup>57</sup> 3 Pa. Stat. § 954(b).

<sup>58</sup> 3 Pa. Stat. § 953(a).

## **Local Right-to-Farm Laws**

In addition to state right-to-farm laws and protection from nuisance actions, a number of counties have passed ordinances that contain additional right-to-farm components or requirements. For example, some ordinances include topics like a good neighbor policy, dispute resolution procedures, additional definitions, limitations of actions, mediation or arbitration requirements, bad faith, and notice. Therefore, you should locate your county's right-to-farm-related ordinances to understand what protections and possible weaknesses exist to bring a nuisance claim against a CAFO in their area.

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## **ENFORCEMENT**

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### **Where to Find Data**

#### **Environmental Facility Application Compliance Tracking System (eFACTS)**

The PA DEP provides access to compliance information on their Environmental Facility Application Compliance Tracking System (eFACTS) [website](#).<sup>59</sup> Individuals can access things like authorizations, facility information, inspection visits, violation notices, and enforcement actions.

You can also sign up for email alerts through PA DEP's eNotice [website](#)<sup>60</sup> to receive notice of permit applications, enforcement notices, and regulatory updates.

#### **Enforcement and Compliance History Online (ECHO)**

The EPA Region 3 provides a list of NPDES program enforcement actions. Individuals can access Pennsylvania CAFO compliance information using EPA's Enforcement and Compliance History Online (ECHO) [search tools](#).<sup>61</sup> Simply search by your city or zip code and view applicable permits and compliance information for facilities in your area.

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<sup>59</sup> Welcome to eFacts, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
<http://www.ahs.dep.pa.gov/eFACTSWeb/default.aspx/default.aspx>

<sup>60</sup> Welcome to the eNotice Subscription Site, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
<http://www.ahs.dep.pa.gov/eNOTICEweb/>

<sup>61</sup> Enforcement and Compliance History Online, U.S. ENVIRONMENTAL PROTECTION AGENCY,  
<https://echo.epa.gov/?redirect=echo>.

## Complaints & Reporting Violations

For concerns or complaints about water pollution from a nearby CAFO, individuals should report their complaint to their regional DEP office. The DEP and County Conservation Districts handle complaints for farming operations but the DEP is ultimately responsible for ensuring compliance with CAFO permit requirements. Individuals should take pictures, video, or document problems and, if they would like, state law allows individuals to accompany the DEP inspector on the resulting investigation of the complaint.<sup>62</sup> If you would like to accompany the inspector during the investigation, inform the regional DEP office when you submit the complaint.

**Note: Never trespass when collecting evidence of a violation for submitting a complaint.**

DEP Regional Offices and phone contact information:

- Southeast  
484-250-5900
- Northeast  
570-862-2511
- Southcentral  
877-333-1904
- Northcentral  
570-327-3636
- Southwest  
412-442-4000
- Northwest  
814-332-6945

## Fines, Penalties, and Enforcing Agencies

There are two primary levels of enforcement for the state's mandatory and voluntary CAFO-related programs. The first level involves negotiated resolutions, consent orders, agreements, schedules for corrective action, or civil penalties if no corrective action is taken. The second level involves an enforcement order and civil penalties. However, once an enforcement action is filed, the parties generally settle.

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<sup>62</sup> Clean Streams Law, 35 P.S. § 691.601(d).



## Penalties

Civil penalties shall not exceed \$10,000 per day for each violation.<sup>63</sup>

Civil penalties may be assessed based on one or more of the following factors:

- Willfulness of the violation
- Costs avoided by the operator by incurring the violation
- Damage or injury to the land or waters of the state
- Cost of restoration or remedial measures
- The potential hazards to public health or safety
- Property damage
- Interference with a person's right to the enjoyment of life or property
- Administrative costs expended by the state as a result of the violation.

## Who Enforces?

The following agencies are responsible for enforcing their respective programs:

- Department of Environmental Protection
  - CWA CAFO Program
- County Conservation Districts
  - Best Management Practices
  - Reviews and oversees Nutrient Management Plan implementation
  - Often assists DEP with inspections and oversight of CAFO programs
  - Generally refers CAFO noncompliance issues to DEP for formal enforcement actions
- State Conservation Commission
  - Provides support and oversight for county conservation districts

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## HEALTH

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### Environmental Health

The PA Department of Health (DOH) Environmental Health division works with federal, state, county, and local officials to help address environmental issues and concerns.<sup>64</sup> It may be useful for those seeking to report environmental health concerns, access environmental health data, and advocate for PA DOH to develop

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<sup>63</sup> 35 P.S. § 691.605(a).

<sup>64</sup> Environmental Health, PENNSYLVANIA DEPARTMENT OF HEALTH,  
[http://www.health.pa.gov/My%20Health/Environmental%20Health/Pages/default.aspx#.V1m2\\_aTD-Co](http://www.health.pa.gov/My%20Health/Environmental%20Health/Pages/default.aspx#.V1m2_aTD-Co).

practices and policies to address the public health issues posed by CAFOs in the state. The state department of health may not intervene in CAFO regulations and enforcement, but may provide support for residents seeking to challenge a CAFO on the basis of public health concerns.

### **Environmental Health Tracking**

The PA DOH participates in Environmental Public Health Tracking, gathering environmental health data to provide access to information, facilitate research, and improve public health practices. This data can be useful to individuals seeking to challenge a CAFO in a community already experiencing quantifiable health issues.

The state tracks data on the following:

- Air quality
- Drinking water quality
- Asthma
- Heart attacks
- Heart conditions
- Heat stress
- Carbon monoxide mortality
- Birth defects
- Blood lead levels
- Reproductive data
- Cancer incidence.

For more about Pennsylvania Environmental Public Health Tracking, see its [website](#).<sup>65</sup>

A National Environmental Public Health Tracking system is operated by the Centers for Disease Control and Prevention; learn more on its [website](#).<sup>66</sup>

### **Reporting Environmental Health Concerns**

The Pennsylvania Department of Health provides a way for individuals to report environmental health concerns. This can help residents who have experienced health issues that could be related to CAFOs. The more information you have to support your concerns, the better. This may include information like doctor visits,

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<sup>65</sup> Pennsylvania Environmental Public Health Tracking Program, PENNSYLVANIA DEPARTMENT OF HEALTH, <http://www.health.pa.gov/My%20Health/Environmental%20Health/Environmental%20Public%20Health%20Tracking/Pages/home-page.aspx>

<sup>66</sup> National Environmental Public Health Tracking, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/nceh/tracking/>

water/air/soil testing results, medical history, proximity to contaminants, and length of exposure.

Individuals can file an environmental health concern at

- Mail: Pennsylvania Department of Health  
Division of Environmental Health Epidemiology  
Room 933, Health and Welfare Building  
625 Forster St., Harrisburg, PA 17120
- Email: [RA-DHENVHEALTH@pa.gov](mailto:RA-DHENVHEALTH@pa.gov)
- Fax: (717) 346-3286
- Phone: (877) 724-3258

The PA DOH may request additional information and ultimately provides a formal response to anyone who submits an environmental health complaint. Based on DOH's findings, DOH may contact DEP to address the concerns.

### **Antibiotic Resistance**

In 2016, Pennsylvania was the home to the nation's first case of an E. coli bacterial infection that was resistant to last-resort antibiotics. In response, the state recommends that people do not unnecessarily use antibiotics in an effort to minimize the emergence of antibiotic resistant bacteria. Yet the vast majority of unnecessary antibiotic use in Pennsylvania<sup>67</sup> takes place on the state's farming operations—not to treat infections, but to promote growth and prevent illness in livestock populations raised in crowded, confined conditions. While there is little to no state or federal legislation to limit antibiotic usage in livestock, this is an issue of growing concern. You can point this out when challenging a CAFO that uses growth-promoting antibiotics, which may pose a threat to public health.

### **Public Health Ordinances**

Communities can pressure counties to adopt public health ordinances to address the health impacts of CAFOs. Consult your municipal or county ordinances to identify possible protections against health-related CAFO issues.

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<sup>67</sup> The national average is that approximately 80% of antibiotics are used in animal agriculture.

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## PUBLIC INFORMATION LAWS

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### Freedom of Information Act

The Freedom of Information Act (FOIA) is federal law that allows individuals to access information from government agencies, subject to some restrictions. See the Federal CAFO Guide for more information.

### **EPA Region 3**

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 3 FOIA Officer is:

Regional Freedom of Information Officer  
U.S. EPA, Region 3  
1650 Arch Street (3CG00)  
Philadelphia, PA 19103  
(215) 814-2050

See the Federal Guide for more information on FOIA. Several EPA websites contain useful summaries of the FOIA request process, response time guidance, and other pertinent information.<sup>68</sup> Note that you're potentially 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>69</sup> EPA will only consider waiver requests that are submitted at the same time as the corresponding FOIA request.<sup>70</sup>

Additionally, there are a variety of maps, reports, and databases available through the EPA to find information and documents about regulated facilities. For example, EPA's [MyPropertyInfo](#) database can provide information about a facility without having to file a FOIA request for the same records.<sup>71</sup> While viewing EPA's websites may prove helpful, state or federal FOIAs will produce more records and information.

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<sup>68</sup> FOIA Request Process, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process>.

<sup>69</sup> Fee Waivers, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process#waivers>.

<sup>70</sup> See *id.*

<sup>71</sup> MyProperty tool, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www3.epa.gov/enviro/html/fii/myproperty/index.html>

## **State Public Information Act & Public Records**

The Pennsylvania Right to Know Law<sup>72</sup> gives the public access to public records from state or local agencies. Individuals may want to request public records for a CAFO to better understand the operation, view compliance issues and enforcement actions, build a case for a nuisance lawsuit, inform their public comments concerning the operation, or for several other reasons. Here are the basics of Pennsylvania's Right to Know Law:

- It does not apply to records requests to federal agencies.
- Anyone can request public records and you do not need to give a reason why you are requesting the records.
- Records are defined as "information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law in connection with a transaction, business or activity of the agency."<sup>73</sup>
  - This extends to records of contractors working on behalf of a governmental agency.
- There is a presumption that the records possessed by state or local agencies are public.<sup>74</sup> If the agency claims the record is not public, the burden is on the agency to establish that.
  - Presumption does not apply to records protected by privilege or one of the 30 listed exemptions in Section 708 of the Pennsylvania Right to Know law.
- The Pennsylvania Right to Know law established an Office of Open Records to serve as a resource to the public to assist in obtaining records and enforcing the law.
  - Each agency should have a records officer you can contact to request records.
  - Each agency should have a form or guidance for filing a request.
- The law requires a response to record requests within five business days but agencies may request a 30-day extension.
- Agencies may charge reasonable fees.

## **Records from DEP**

You don't necessarily need to file a right to know request to get access to information and CAFO records. DEP provides access to a fair amount of public information on its

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<sup>72</sup> Act 3 of 2008 (Pennsylvania's Right to Know Law).

<sup>73</sup> Act 3 of 2008, § 102.

<sup>74</sup> Act 3 of 2008, § 305.

website, so check there first or use it as a starting point before filing a right to know request. If it isn't available on the website, you can also visit your local DEP office.

DEP records include the following:

- Notifications
- Inspection reports
- Notices of violations
- Enforcement orders
- Applications
- Permit review letters
- Sampling results
- Remediation plans
- Progress reports
- Monitoring reports
- Permits
- Approvals
- Denials
- Public comments
- Penalty assessments
- Consent orders
- Closure reports
- Pollution prevention plans
- Well monitoring records
- External correspondence

To access and review these DEP records, first see if the information is available on the agency's website. If you can't find information on the website, schedule a file review by submitting the DEPs informal file review form, available [here](#),<sup>75</sup> to the appropriate regional office, or call your regional DEP office and schedule an appointment. If the documents you are looking for are not available at the regional office, you may need to submit a Right to Know Law request, discussed in the previous section.

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<sup>75</sup> Pennsylvania Department of Environmental Protection Request for Informal File Review, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
<http://files.dep.state.pa.us/PublicRecords/PublicRecordsPortalFiles/Informal%20File%20Review.pdf>



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## CAFO PROPERTY TAX APPEALS

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### CAFO Property Tax Appeals

Neighbors of CAFOs may also be harmed by the failure of local governments to account for the adverse impacts of the CAFO when assessing their property for tax purposes. Without knowledge of how to challenge an uninformed assessment, individuals can find themselves paying too much in property taxes.

Property taxes are based on two factors: the tax rate and property value. While property owners cannot challenge the tax rate set by local officials, property owners may challenge the assessed property value. The assessed property value is generally based on what the property would sell for. Given the smells, sounds, sights, and pollution caused by CAFOs, it's no surprise that nearby property values often decline. If you are interested in appealing your property tax value, it's a good idea to research the values of similar nearby properties. You can do this by reviewing records at the county tax assessor's office, consulting online property value sources such as [Zillow](#), or speaking with a local real estate broker or qualified appraiser.

To challenge the taxable value of property, the property owner will need to establish one of the following:

- The tax assessor set the value of the property higher than the current market value.
- The tax assessor set the value of the property higher than similar properties in the community.
- The tax assessor relied on incomplete or incorrect information.

If the property owner can establish one of these points, he or she can contact the county assessor to discuss the issue and potentially revise the assessment. However, the county assessor is prohibited from engaging in spot reassessment and may only change the assessment under certain conditions such as subdivided property, physical changes to the property, catastrophic loss has occurred to the property, or a change in use of the property.<sup>76</sup> If the county assessor will not change the assessment, property owners can appeal the valuation to the county Board of Assessment Appeals. This generally involves filling out a form within a deadline after

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<sup>76</sup> 53 Pa. Cons. Stat. § 8843.

the property owner receives their property tax assessment. Note: this varies by county, so check your local ordinances and resources.

After the appeal is submitted, the Board of Assessment Appeals will schedule a hearing during which the property owner may present evidence for the board to consider. After the hearing, the board will issue its decision. If this is unsuccessful, the property owner may pursue further legal action, but this will likely require getting an attorney.

While appealing your property tax assessment does not address the multitude of issues that arise from having a CAFO near your home, it could put some lost money back into your pocket and sends a message that the county stands to lose property tax revenue as a result of depreciating property values caused by CAFOs in their region.

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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](#).<sup>77</sup>

### **State Organizations**

**[PennFuture](#)**

**[PennEnvironment](#)**

**[Delaware Riverkeeper](#)**

### **State Pro-Bono Clinics or Low Cost Legal Services**

### **University of Pittsburgh Environmental Law Clinic**

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<sup>77</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

The Environmental Law Clinic at the University of Pittsburgh School of Law works with low-income clients to solve environmental-related legal problems in Western and Central Pennsylvania.

### **University of Pennsylvania Environmental Law Project**

The Environmental Law Project and the University of Pennsylvania Law School is a pro-bono organization that connects students with opportunities to engage in legal advocacy on environmental issues. It is not a legal clinic but it may provide research or assistance on CAFO-related environmental issues.

### **Fair Shakes Environmental Legal Services**

Fair Shakes is a nonprofit law firm that provides legal services on environmental issues for clients of modest means. They have a diverse practice that includes animal and agricultural law, environmental and natural resource law, land use and zoning law, and energy law.

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## **LIST OF STATUTES AND REGULATIONS**

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

<b>Statute</b>	<b>Subject</b>
25 Pa. Code § 83	Manure and Soil Testing
25 Pa. Code § 91.36	Water Quality Management
25 Pa. Code § 92a	CAFO PA NPDES Permit
25 Pa. Code § 102.1	Erosion and Sediment Control
35 P.S. § 691.1 et seq	PA Clean Streams Law
3 Pa. Stat. § 951-957	Right to Farm Act
3 Pa. Cons. Stat. § 2352	Animal Composting and Mortality
53 Pa. Cons. Stat. § 8843	Spot Reassessment by Tax Assessor
Act 3 of 2008	Right to Know Law
Act 3 of 2008, § 102	Definition of “Records”
Act 38 of 2006	Nutrient Management Plan
Pa. Munic. Planning Code § 603	Zoning Protection for Agricultural Operations
Pa. Munic. Planning Code § 301	Comprehensive Plans