

**Guide to Confronting Concentrated Animal
Feeding Operations in**

RHODE ISLAND

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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: CAFOs IN RHODE ISLAND

Animal feeding operations (AFOs) pose many risks to water, air, and soil quality, the local ecosystems, and public health. These risks are a result of the vast amounts of animal waste and wastewater generated, and the logistical difficulties of responsibly disposing of so much waste in a relatively small geographic area. One 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, AFO waste is largely untreated and is then spread onto land where it can easily seep into groundwater and local surface waters.

Animal agriculture in Rhode Island is a very small industry. According to the United States Department of Agriculture, Rhode Island has approximately 1,240 farm operations on just over ten percent of the state's acreage.¹ Under the most recent counts, Rhode Island was home to approximately 4,667 cattle, 2,000 hogs, 13,402 broiler (and other meat-type) chickens, and 69,662 layers. The state was 50th in the nation for total value of livestock, poultry and their products sold. For the time being, it seems animal agriculture in the state is not at threateningly high concentrated levels. In fact, consolidation of the animal agricultural industry is cited as a factor contributing to the decreased viability of animal farming in Rhode Island.

As of 2018, Rhode Island has no livestock farming operations registered as CAFOs.²

Rhode Island has implemented various measures and programs to regulate or control the harmful effects of animal agriculture on the environment while also protecting the states' agricultural interests. Additionally, Rhode Island has regulated animal agriculture in concern of potential animal-borne disease and humane treatment of animals.

¹ 2015 State Agriculture Overview. USDA National Agricultural Statistics Service Rhode Island Field Office.

https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=RHODE%20ISLAND.

² NPDES CAFO Permitting Status Report -- National Summary, Endyear 2017. It is important to keep in mind that registered CAFOs would only be those operations which were actively discharging into waters and therefore requiring a RIPDES permit.

WATER

The Clean Water Act

The Clean Water Act (CWA) is the primary federal law governing water pollution and establishes the National Pollutant Discharge Elimination System (NPDES) permit program (administered by the US Environmental Protection Agency (EPA)).³ Under the CWA, the EPA has also set water quality standards for industry and water quality standards for a contaminant in surface waters. The CWA makes discharge of any “pollutant” from a “point source” into “waters of the United States” unlawful, unless a permit is obtained.⁴

RIPDES⁵

The EPA has authorized Rhode Island to implement its own NPDES program to control water pollution—the Rhode Island Pollutant Elimination System (RIPDES) program. RIPDES is Rhode Island’s “system for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing discharge permits.”⁶ The agency primarily responsible for implementing the RIPDES program is the Rhode Island Department of Environmental Management (DEM). The purpose of the program is to “to restore, preserve, and enhance the quality of the surface waters and to protect the waters from discharges of pollutants so that the [State] waters shall be available for all beneficial uses and thus protect the public health, welfare and the environment.”⁷

Individual homes that use a septic system, that are connected to municipal water/waste systems, or that do not have a surface discharge do not need to obtain a permit. However, animal farming facilities must obtain permits if their discharges go (or will go) directly to surface waters.

States are authorized to require more than federal standards in order to protect their waters. Certain states do this by requiring that AFOs (including ones not meeting

³ Summary of Clean Water Act. US Environmental Protection Agency. <https://www.epa.gov/laws-regulations/summary-clean-water-act>

⁴ Summary of Clean Water Act. US Environmental Protection Agency. <https://www.epa.gov/laws-regulations/summary-clean-water-act>

⁵ In this section referenced rules, e.g. (RI-Rule-#), refer to Regulations For The Rhode Island Pollutant Discharge Elimination System, Department of Environmental Management Office of Water Resources, available at <http://www.dem.ri.gov/pubs/regs/regs/water/ripdes03.pdf>

⁶ (RI-Rule-3)

⁷ (RI-Rule-1)

CAFO size animal unit numbers) of a certain size or type obtain a permit, even if they do not discharge or do not propose to discharge and may be required to submit nutrient management plans. Rhode Island has not opted to set the bar higher than the federal standards and only requires what is required by federal laws and regulations. Therefore, there may be AFOs that fall below CAFO size requirements that are discharging animal waste into state waters.

What Can Residents Do?

The NPDES program requires that the public (that means you!) be notified and allowed to comment on all NPDES permit applications. As a state authorized to issue permits, Rhode Island, namely DEM is required to provide the same access to RIPDES permit applications. This means that you can have a voice in any CAFO permitting application. The details of these procedures, how you can find out about a proposed permit for a CAFO facility near you, and how you can participate in the permitting process is explained below.

It is imperative that local residents get involved and participate in the process by doing things like requesting public hearings, voicing their concerns, and reporting permit violations. Rhode Island may not need to address the environmental issues associated with CAFOs currently, but local advocates will play a critical role in its continued protection.

RIPDES Definitions & Regulatory Agencies

The RIPDES Program essentially adopts the federal definitions of AFOs and CAFOs. CAFOs are a point source subject to the RIPDES permit program. Designation of AFOs as CAFOs is determined on a case-by-case basis. DEM may consider the size and amount of waste reaching “waters of the State,” the location of the operation relative to “waters of the State,” the way animal waste and wastewaters reach “waters of the State,” additional factors (including slope, vegetation, and rainfall) affecting the likelihood of discharge into “waters of the State,” and “other relevant factors.” (RI-Rule 27)

RIPDES Regulations: Definitions to Know

Certain terms above are defined very broadly in the CWA and have been subsequently defined after 25 years of litigation. RIPDES’ regulations similarly define those terms. The following legal definitions of terms are important for understanding how the RIPDES program applies to CAFOs:

Pollutant—“any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal or *agricultural waste*.” (RI-Rule 3)

Point source—“any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, *concentrated animal feeding operation*, or vessel, or other floating craft, from which pollutants are or may be discharged. (RI-Rule 3)

Waters of the State or Water—“all surface water and groundwater of the State of Rhode Island, including all tidewaters, territorial seas, wetlands, land masses partially or wholly submerged in water, and both inter- and intrastate bodies of water which are, have been or will be used in commerce, by industry, for the harvesting of fish and shellfish or for recreational purposes.” (RI-Rule 3)

Groundwater—water below the land surface in a zone of saturation. (RI-Rule 3)

Surface water—any “waters of the State” which are not “groundwater.” (RI-Rule 3)

Animal Feed Operation (AFO)

An AFO is “a lot or facility” (think barns, hen houses, or other farm outbuildings) where:

- (1) animals “have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
- (2) “crops, vegetation, forage, growth or post-harvest residues are not [grown or] sustained in the normal growing season over any portion of the lot or facility”⁸

If two or more operations are under common ownership and (a) adjoin each other or (b) use a common area or system for pollutant disposal, they are considered to be a single AFO for the purposes of regulations. Being an AFO alone does not prompt state regulation or registration requirements. (RI-Rule 3)

Concentrated Animal Feed Operation (CAFO)

The AFO/CAFO Size Chart shows the size criteria used to determine if AFOs are considered CAFOs under the RIPDES program and, therefore, subject to regulation.⁹ RIPDES permit applications are required only after DEM has conducted an on-site inspection and determined that the operations should be regulated. (RI-Rule 27)

⁸ See 40 CFR 122.23; see also Regulations for RIPDES Rule 3

⁹ Regulations for RIPDES, Appendix B

AFO/CAFO Size Chart

Animal Type	Large CAFO	Small CAFO
Mature Dairy Cow (milked or dry)	≥ 700	≥ 200
Cattle (slaughter and feeder)	≥ 1,000	≥ 300
Swine (≥ 55 pounds)	≥ 2,500	≥ 750
Horses	≥ 500	≥ 150
Turkeys	≥ 55,000	≥ 16,500
Sheep or Lambs	≥ 10,000	≥ 3,000
Laying Hens or Broilers (if the operation has a liquid manure system)	≥ 30,000	≥ 9,000
Laying Hens or Broilers (if the operation has continuous overflow watering)	≥ 100,000	≥ 30,000
Ducks	≥ 5,000	≥ 1,500
Animal Units ¹⁰	≥ 1,000	≥ 300

Any AFO with less than the numbers set forth in the Departments size qualifications for CAFOs will not be designated as such, unless animal wastes or wastewaters are discharged through a manmade device into or through direct contact with “waters of the State.”

Who Decides if it's a CAFO?

Generally, the AFO owner or operator decides whether to request a RIPDES permit for their operation, but DEM has the final say in whether permitting is required. It's possible that there are qualifying operations that have erroneously (or untruthfully) decided they are not CAFOs and are evading regulation.

This is particularly an issue for smaller AFO facilities that significantly contribute to pollution but have flown under the radar and nobody has brought it to the state's

¹⁰ “The term ‘animal unit’ means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.” Regulations for RIPDES, Appendix B

attention. If nearby residents believe that an AFO in their community should be a CAFO, but it has not filed with the appropriate state agency, residents can and should contact the Rhode Island Department of Environment Management to look into the matter. Failure to obtain the necessary permits can result in fines and sets an example for other operators in the community.

PERMITTING & PUBLIC PARTICIPATION UNDER RIPDES

The Permit Issuance Process

The RIPDES permit issuing process has seven major procedural steps. Below is a very simplified breakdown of the process:

1. The operator determines their AFO is a CAFO and submits an application to DEM.
2. DEM prepares a tentative decision to issue or deny a draft permit (which must be made available for public comment).
3. After consideration of any comments received during the comment period, DEM issues a final permit or denies the permit.
4. The operator may request an adjudicatory hearing to contest DEM's determination (to grant, deny, suspend, or revoke), and DEM decides whether to grant a hearing.
5. DEM holds the hearing (if granted).
6. The Department Director makes a final decision concerning the permit.
7. A request for permit modification, revocation, reissuance, or termination is made.

Application Requirements for CAFOs (RI-Rule 11.03(a)(1-3))

New and existing CAFOs must provide the following information in their RIPDES permit applications: "(1) [t]he type and number of animals in open confinement and housed under roof[,], (2) [t]he number of acres used for confinement feeding[, and] (3) [t]he design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor."

Draft Permits (RI-Rule 41), Public Notice (RI-Rule 41), Public Comments (RI-Rule 42), and Public Hearings (RI-Rule 42 & 43)

If a CAFO owner/operator submits an application and a draft permit has been prepared or a public hearing has been scheduled, DEM must give public notice of its tentative decision.

- DEM must allow at least **30 days** for public comment on the draft permit and/or
- give public notice of a permit hearing at least **30 days** before the hearing
- (public notice of draft permit and public hearing may be combined and given at the same time).

Subscribe to the RIPDES Program Permit Actions Public Notice E-mail List:

The Office of Water Resources (OWR) has created an e-mail list in which one can be added to receive notice of RIPDES permit actions via email. After subscribing you will receive an email with links to all future public notices of draft permit actions and the draft permit(s). You can subscribe

at: <http://listserve.ri.gov/mailman/listinfo/ripdesnotice>. If you have difficulty subscribing or have other questions, email mailman-owner@listserve.ri.gov.

For information about the **E-Mail list only**, contact Traci Pena. For information about specific permit actions, direct all inquiries to the contact listed on the public notice.

To ensure you are notified about any possible CAFO permit actions you can join DEM's email list. The information provided in the table below is provided on DEM's website.¹¹

Public notice must also be given:

- "in a daily or weekly newspaper within the area to be affected by the [CAFO] facility" and
- in "any other method reasonably calculated to give actual notice of the action...to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation."

Any person (that means you!)

- may submit **written comments** on the draft permit and/or
- may request **a public hearing (1) in writing, (2) stating** "the nature of issues proposed to be raised in the hearing."

¹¹ The table below is provided from the RIPDES' program webpage. Available at <http://www.dem.ri.gov/programs/water/permits/ripdes/>

Remember you may only have **30 days** from the time of public notice to submit your comments and/or request for public hearing.

All comments are considered and answered in making the final decision. That means **your comments are important!**

DEM's decision to hold a public hearing is based on its finding of a "significant degree of public interest in a draft permit." Typically, a public hearing will be held if 25 people or an organization having more than 25 people submit a request for public hearing. So, **don't forget to request a public hearing!**

Where Can You Send Your Comments and Requests?

Written comments and requests for public hearing can be sent to:

Office of Water Resources

Rhode Island Department of Environmental Management

235 Promenade Street Providence, Rhode Island 02908-5767

If DEM decides to hold a hearing, public notice will be given and "any person may submit oral or written statements and data concerning the draft permit" during the public hearing. The comment period will be extended to the close of the public hearing or may be extended by the hearing officer.

Issuance of Permit (RI-Rule 46) and Response to Comments (RI-Rule 47)

DEM must notify the applicant and anyone who submitted written comments or requested notice of the final permit decision of its final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

Final decisions become effective 30 days after notice of the final decision is given, unless an adjudicatory hearing is requested (see below).

If no comments are received during the public comment period, the final permit becomes effective immediately upon issuance (most likely with no ability to challenge it). Again, **your comments are important!**

DEM must describe and respond to "all significant comments" received during public comment period or during public hearing. The response must specify which provisions, if any, were changed and the reasons for the change.

New Applicants, Special Provisions (RI-Rule 11.06)

Before beginning any on-site construction of any facility that may be a new source, the facility's owner or operator must submit information to the Director of DEM so that he or she can determine if the facility is a new source. The Director makes an initial determination whether the facility is a new source within 30 days of receiving all necessary information. The Director issues a public notice in accordance with Rule 41 (same as the procedure above) of the new source determination.

Individual Permits on a Case-By-Case Basis (RI-Rule 54)

If DEM finds that a CAFO should be required to obtain a RIPDES permit, the department will notify the owner/operator discharger and provide a permit application. The owner/operator must submit a completed application within 60 days of notice. The initial determination will remain open during the public comment period and any subsequent public hearing.

Wetlands

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. Several federal and state laws are designed to protect wetlands from degradation and destruction. See the Federal Guide for a discussion of federal regulation of wetlands. In addition to federal protection of wetlands, Rhode Island has enacted further laws and programs designed to protect both tidal and nontidal wetlands.

Rhode Island Freshwater Wetlands Act¹²

The Rhode Island Freshwater Wetlands Act authorizes DEM to preserve and regulate the state's freshwater wetlands. The Wetlands Act requires farmers to submit an *Agricultural Wetlands Permit Application* if they want to complete a non-exempt activity. If the DEM Division of Agriculture determines that the application will not require significant alteration of the wetland a permit will be issued. If the project represents a significant alteration, a permit cannot be issued and farmers must

¹²Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, <http://www.dem.ri.gov/pubs/regs/regs/water/wetInd07.pdf>;

submit an *Application to Alter a Freshwater Wetland* directly to the Wetlands Permitting Program.

You can call DEM Division of Agriculture at (401) 222-2781 to discuss the details regarding farming applications.

See [here](#) for Frequently Asked Questions about the Freshwater Wetlands Program.¹³

Water Quality

DEM's Office of Water Resources (OWR) implements a variety of programs to protect and restore the state's surface waters, groundwaters, and wetlands.

Surface Water Quality Standards, Rhode Island's Section 305(b) State of the State's Waters Report, and Section 303(d) List of Impaired Waters

Under Section 305(b) of the Clean Water Act (CWA) States are required to assess and report on the overall quality of the waters in their state. OWR implements Rhode Island's Water Quality Standards Program to ensure compliance with the CWA. The purpose of the program is to preserve, restore, and enhance the water quality of Rhode Island's waters. The program standards are developed to define water quality goals by deciding "designated uses" for each body of water and setting "criteria" necessary to protect those uses.

The attainment of water quality goals is measured by determining how well each waterbody supports its designated use. Each waterbody is placed into an Integrated List consisting of five categories. Waterbodies not meeting their criteria or designated uses (category 5 waterbodies), are placed on the Rhode Island's List of Impaired Waters (in accordance with CWA Section 303(d)) and require a Water Quality Restoration Plan, also known as Total Maximum Daily Load (TMDL).

Rhode Island submits this information to the EPA as the *Integrated Water Quality Monitoring and Assessment Report* (Integrated Report). "This document includes a description of the quality assurance requirements, methods used to evaluate water quality data and assess water quality standards attainment, and the rationale for the placement of waterbodies into the integrated list."¹⁴

¹³"What's the Scoop on Wetlands?," Rhode Island Department of Environmental Management, <http://www.dem.ri.gov/programs/benviron/water/wetlands/pdfs/scoop.pdf>.

¹⁴ Integrated Water Quality Monitoring and Assessment Reporting, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, OFFICE OF WATER RESOURCES,

The information in the Internal Report could be important for a citizen concerned about a CAFO/AFO polluting water in their area. It can be helpful for citizens to know about impaired water bodies and their proximity to CAFOs in their region.

Designated Uses

For the purposes of the 305(b) water quality assessments, seven designated uses are evaluated:

- fish and wildlife habitat (aquatic life use);
- drinking water supply;
- shellfish consumption;
- shellfish controlled relay and depuration;
- fish consumption;
- primary contact recreation;
- secondary contact recreation.

Assessment Categories

Each surface waterbody of the state is placed into one of the following categories:

- **Category 1:** Attaining all designated uses
- **Category 2:** Attaining some of the designated uses; and insufficient or no data and information is available to determine if the remaining uses are attained.
- **Category 3:** Insufficient or no data and information are available to determine if any designated use is attained or impaired.
- **Category 4:** Impaired or threatened for one or more designated uses but does not require development of a TMDL.
 - TMDL has been completed.
 - Other pollution control requirements are reasonably expected to result in attainment of the water quality standard in the near future.
 - Impairment is not caused by a pollutant.
- **Category 5: Impaired or threatened for one or more designated uses by a pollutant(s), and requires a TMDL.** This Category constitutes the **303(d) List of waters impaired** or threatened by a pollutant(s) for which one or more TMDL(s) are needed.

List of Impaired Waters and Water Restoration Studies (a.k.a. Total Maximum Daily Loads)

<http://www.dem.ri.gov/programs/water/quality/surface-water/integrated-water-quality-monitoring.php>

If waterbodies do not meet their criteria or designated uses, they are placed on Rhode Island's List of Impaired Waters, now found on the Integrated Report. Find the report publications [here](#).

DEM's Office of Water Resources develops water quality restoration studies, with public input, to restore and maintain water quality for (Category 5) impaired/polluted waters. These studies, also known as Total Maximum Daily Load (TMDL) studies, are required by the CWA.

"TMDL studies identify water quality goals, necessary pollutant reductions to achieve these goals, the sources of pollution found contributing to the pollution problems, and the necessary pollution control actions to achieve the required reductions and restore water quality."¹⁵

The TMDL represents the maximum amount of a pollutant that a waterbody can assimilate and still meet water quality standards.¹⁶ .

No animal farming operations have been mentioned as a source of water pollution in the TMDLs that were reviewed for this report. Concerned citizens can learn more about which waterbodies have reported TMDLs and access study documents [here](#).

AIR

Air Quality

Animal agriculture is a significant source of air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and other contaminants, and animal agriculture, in theory, may be regulated. 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 points to a number of reasons why agriculture should not be regulated—such as monitoring difficulties, variable climates, data collection methods, etc. In order to respect industry concerns while also working toward meaningful regulation to protect the air quality for citizens, the EPA has entered into agreements with

¹⁵ <http://www.dem.ri.gov/programs/water/quality/restoration-studies/>

¹⁶ To learn more about RI's restoration efforts visit:

<http://www.dem.ri.gov/programs/water/quality/restoration-studies/about-tmdl.php>

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.

In theory, Rhode Island could regulate AFO/CAFO 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 Rhode Island regulates agricultural operations regarding air emissions.

ZONING & LAND USE

Zoning

Zoning ordinances are established and enforced by your municipality or your county. Zoning ordinances vary in how protective they are of agricultural, residential, or business interests. They specify areas where, and under what conditions, certain activities and development can take place. Engagement in the zoning process can impede new AFOs looking to come into a community or existing AFOs seeking to expand. See your municipal or county zoning [website](#) to research applicable zoning rules and explore if its actions are consistent with the region's comprehensive plan, discussed below.¹⁷

Comprehensive Plans

Counties or municipalities create and adopt comprehensive plans that detail how the area must develop. It is a comprehensive document that should address the following topics: land use, transportation, community facilities, mineral resources, development regulations, areas of state concern, sensitive areas, implementation, development capacity analysis, fisheries, municipal growth, water resources, environmental protection, and sewage. It must be reviewed and, if necessary, updated every six years. The Rhode Island Department of Planning reviews comprehensive plans for consistency with applicable state laws regarding things like land use, economic growth, resource protection, and sustainable growth. These

¹⁷Rhode Island Zoning Ordinances, <http://www.rizoning.com/research/RIzords.html>

comprehensive plans are significant because local zoning actions must be consistent with the plan's objectives and recommendations. These plans also offer a good opportunity for public participation and input.

Learn more about comprehensive plans on this Rhode Island Division of Planning website,¹⁸ and see approved comprehensive plan here.¹⁹

Rhode Island Farmland Preservation Program

While zoning is primarily handled at the local and county level, Rhode Island has passed legislation intended to preserve agricultural land and control urban expansion.²⁰ This can prevent zoning changes that allow for residential or industrial zoning of the state's farmland. The program is run by the Agricultural Land Preservation Commission (ALPC), a quasi-governmental agency working closely with DEM. ALPC's primary purpose is to acquire the development rights to farmland in Rhode Island.²¹ ALPC meetings are generally held monthly, and applications are evaluated based on criteria including: parcel size; soil quality; agricultural operation and viability; protection of water supplies and quality; open space, cultural and scenic features; flood protection; relative development pressure; and consistency with state and local plans. The program is funded by voter-approved bonds for farmland protection along with funding from USDA, local land trusts, The Nature Conservancy, and other NGOs.

RIGHT TO FARM & NUISANCE CLAIMS

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

¹⁸ Comprehensive Plans, RHODE ISLAND DIVISION OF PLANNING, <http://www.planning.ri.gov/statewideplanning/compplanning/>.

¹⁹ Comprehensive Plans: View Draft Plans and Comments, RHODE ISLAND DIVISION OF PLANNING <HTTP://WWW.PLANNING.RI.GOV/STATEWIDEPLANNING/COMPPLANNING/UNDERREVIEW.PHP>.

²⁰ RIGL 42-82 (Farmland Preservation Act) available at <http://webserver.rilin.state.ri.us/Statutes/TITLE42/42-82/INDEX.HTM>

²¹ Rhode Island Farmland Preservation. RHODE ISLAND DIVISION OF AGRICULTURE. <http://www.dem.ri.gov/programs/agriculture/farmpres.php>.

ordinances. Many individuals and communities describe CAFOs as nuisances since they can decrease local property values, prevent people from using and enjoying their homes or yards, and can contribute to health issues. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield such facilities from nuisance liability—Rhode Island 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 some of the more unpleasant effects of agricultural production. The Rhode Island Right-to-Farm Act provides protection for agricultural facilities by giving them an affirmative defense to nuisance suits.²² It applies to all agriculture operations, as defined by the statute. While this provides considerable protection to farms, it is not without limits—the operation must not be conducted in a negligent or malicious manner. So while there are considerable protections for agriculture, CAFOs are not invulnerable to nuisance suits.

See [GrowSmartRI](#) for more information about Rhode Island’s local ordinances related to agriculture.

ENFORCEMENT

Compliance and Inspection

Here is an overview of DEM’s Office of Compliance and Inspection, the primary agency responsible for investigating complaints and suspected violations of environmental laws in Rhode Island:

“The OC&I is responsible for the regulatory enforcement activities related to Air, Waste, and Water. The OC&I investigates complaints and suspected violations of environmental laws and regulations and performs compliance monitoring of regulated activities... Compliance with environmental laws, rules, regulations, permits and licenses is enforced through both informal and formal enforcement actions. Formal enforcement includes orders and assessment of penalties that are subject to appeal and enforceable through the courts.”²³

²² Right to Farm, RI, R.I. Gen. Laws §§ 2-23-1 to 2-23-7, available at <http://webserver.rilin.state.ri.us/Statutes/TITLE2/2-23/INDEX.HTM>

²³ Overview. <http://www.dem.ri.gov/programs/complianceandinspection/index.php>

This office has programs to investigate citizens' complaints related to water pollution, air pollution, freshwater wetlands, and other regulated activities.

Submitting Complaints

Complaints should be submitted to the appropriate office below.²⁴

COMPLAINT TYPE	OFFICE	TELEPHONE NUMBER
Air Odors, emissions, exterior lead paint removal, burning, fugitive dust	Compliance & Inspection	222-1360 (after hours) 222-3070
Animal Health Farm Animals, Dog Pounds, Boarding Kennels, Pet Shops	Agriculture	222-2781 (after hours) 222-3070
Dumping Improper dumping or disposing of solid waste	Compliance & Inspection	222-1360 (after hours) 222-3070
Emergency Response Oil spills related to accidents, facility spills, homeowner spills, above ground storage tanks	Compliance & Inspection	222-1360 (after hours) 222-3070
Water Pollution Septic systems, surface water and coastal waters	Compliance & Inspection	222-1360 (after hours) 222-3070
Web site complaints/issues	Thomas Epstein Tech. & Customer Assistance	222-4700 ext. 7501
Wetlands Swamps, marshes, bogs, ponds, rivers, streams, lakes, floodplains, riverbanks and dams	Compliance & Inspection	222-1360 (after hours) 222-3070
Still don't know who to call? Try our ---	Office of Technical & Customer Assistance	222-6800
Have complaints about DEM?	OCTA	

²⁴ This table has been borrowed from DEM's website and is also available at <http://www.dem.ri.gov/contact/index.php>

Where to Find Data

Rhode Island Department of the Environmental publishes an Annual Enforcement Action Summary that can be found here.²⁵ DEM also provides reports and publications covering a wide range of environmental issues [here](#).²⁶

HEALTH

Public Health Ordinances

Communities can pressure their counties to adopt public health ordinances to address the health impacts of CAFOs.

PUBLIC INFORMATION LAWS

Freedom of Information Act

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

EPA Region 1

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 1 FOIA Officer is as follows:

Regional Freedom of Information Officer
U.S. EPA, Region 1 (OARM01-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
(617) 918-1102

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

²⁵ Office of Compliance & Inspection, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, <http://www.dem.ri.gov/programs/complianceandinspection/enfact.php>.

²⁶ Reports & Publications, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, <http://www.dem.ri.gov/documents/publications/>

information.²⁷ Note that concerned citizens are 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.”²⁸ EPA will only consider waiver requests that are submitted at the same time as the corresponding FOIA request.²⁹

A variety of maps, reports, and databases are 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. While poking around EPA’s websites may prove helpful, state or federal FOIAs will produce more records and information.

Rhode Island Access to Public Records Act

RI’s Access to Public Records Act (ARPA) gives individuals the right to see and obtain access to public records. All state and local governments are subject to ARPA. In short, anyone may request public records that are not privileged for a fee (but you may request a fee waiver since the information sought is intended to serve the public interest). This is a powerful tool for individuals seeking information about impending or noncompliant CAFOs.

Open Meetings, Department of Environmental Management

In addition to making records public, state agencies are also subject to the state’s open meetings law. Rhode Island’s Open Meetings Act ensures that state business is conducted in an open manner so that the public can participate in the process.³⁰ The law contains requirements for notice, minute-keeping, and accessibility. If you believe an agency or local government has kept the public from attending or engaging in meetings that should be public, consult the statute and raise any concerns in writing. Learn more about DEM’s public meetings [here](#).³¹

²⁷ FOIA Request Process, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process>.

²⁸ Fee Waivers, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process#wavers>.

²⁹ See *id.*

³⁰ R.I. Gen. Laws § 42-46.

³¹Rhode Island Department of State, Public Meetings, Department of Environmental Management

http://sos.ri.gov/openmeetings/?page=listing&listing=associated_entities&eid=3844

OTHER RESOURCES

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](#).³²

Rhode Island Office of the Attorney General, Environmental Advocacy Unit

The Environmental Unit employs a community-based legal approach to achieve a healthful environment for present and future Rhode Islanders. The Unit's mission is: (1) vigorous enforcement of environmental laws, (2) securing public access to the Ocean State's shore and other natural areas, (3) promoting sound implementation of state and federal environmental statutes, and (4) defending against unjust claims by polluters. The Unit, which is situated within the Civil Division, has three attorneys and the equivalent of one secretary.³³

State Organizations

Below is a list of state organizations that may be resources for individuals and communities.

- [Environmental Council of Rhode Island](#)³⁴
- [Conservation Law Foundation, Rhode Island](#)³⁵
- [Save The Bay, Narragansett Bay](#)³⁶
- [Grow Smart Rhode Island](#)³⁷

State Pro-Bono Clinics

University of Rhode Island School of Law Environmental Clinic

The Environmental Law Clinic at the University of Rhode Island School of Law "is the largest public interest environmental law firm in the State of Rhode Island devoted to

³² Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

³³ Description from Environmental Advocacy Unit, State of Rhode Island Attorney General, available at <http://www.riag.ri.gov/CivilDivision/EnvironmentalAdvocacyUnit.php>

³⁴ Environment Council of Rhode Island, <http://www.environmentcouncilri.org/>.

³⁵ CONSERVATION LAW FOUNDATION, RHODE ISLAND, <http://www.clf.org/serving-new-england/rhode-island/>.

³⁶ SAVE THE BAY, NARRAGANSETT BAY, [HTTP://WWW.SAVEBAY.ORG/](http://WWW.SAVEBAY.ORG/).

³⁷ Grow Smart Rhode Island, <http://www.growsmartri.org/>.

providing free legal services to support environmental litigation and legal reform that protects the Chesapeake Bay Watershed.”³⁸

Responsible Regulatory Agencies

Rhode Island Department of Environmental Management

The Rhode Island Department of Environmental Management is the primary state agency which develops, enforces, and provides guidance in complying with environmental laws. It is composed of several offices or sub-divisions that help implement the variety of legal frameworks and programs that regulate CAFOs and animal agriculture more broadly in the state of Rhode Island. See DEM’s website for information about permits, forms, guidance documents, and related links and resources.³⁹

Office of Water Resources

The Office of Water Resources issues permits for discharges to surface and groundwater through the RIPDES permit program. They handle issuing permits for alterations to wetlands and construction stormwater permits.

Office of Air Resources

The Office of Air resources seeks to preserve, protect, and improve air quality in Rhode Island. They handle air quality planning, monitoring, permitting, and compliance programs. For more information about OAR’s permits and approvals, see their website [here](#).⁴⁰

Rhode Island Division of Agriculture

The Rhode Island Division of Agriculture seeks to sustain, promote, and enhance Rhode Island’s agriculture. For more information see their website [here](#).⁴¹

³⁸ Environmental Law Clinic, UNIVERSITY OF RHODE ISLAND FRANCIS KING CAREY SCHOOL OF LAW, <https://www.law.uRhodeIsland.edu/programs/environmental/clinic/>.

³⁹ Environmental Protection, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, <http://www.dem.ri.gov/programs/environmentalprotection/>.

⁴⁰ Air Resource Permits, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, <http://www.dem.ri.gov/programs/air/permits.php>.

⁴¹ RHODE ISLAND DIVISION OF AGRICULTURE, <http://www.dem.ri.gov/programs/agriculture/index.php>.

To help farmers and communities develop farm resources, the Division of Agriculture has developed best management practices (BMP) that aim to prevent, abate, or minimize pollution to surface and ground water.⁴²

BPMs include the following:

- Erosion and Sediment Control
- Nutrient Management
- Pest and Pesticide Management
- Livestock Grazing Management
- Irrigation Management
- Vehicle and Petroleum Storage

Rhode Island Department of Health

The Rhode Island Department of Health, Division of Environmental Health is a possible resource for communities seeking to fight CAFOs due to the adverse human health impacts. Residents can attempt to assess the health impacts in their area using resources available from the state health department. For example, the health department promotes Community Health Assessments and provides resources to empower communities to take health assessment into their own hands. The department also has the power to inspect milk production facilities and requires dairy producers to register their business through the Dairy Industry Program.

To contact Rhode Island Department of Health for “Risk Assessment, Environmental Health” call: (401) 222-3424

US EPA Region 1

Rhode Island is part of the U.S. EPA New England Region 1, which also includes Connecticut, Maine, Massachusetts, New Hampshire, Vermont, and 10 tribal Nations. While a considerable amount of CAFO regulation happens at the state level, the EPA has oversight authority, and citizens and organizations can contact their regional office if the state is not performing its duties or is failing to regulate CAFOs under the applicable federal and state environmental laws.

U.S. EPA New England Headquarters Mailing Address:

EPA New England Headquarters
5 Post Office Square – Suite 100

⁴²Best Management Practices, Rhode Island Division of Agriculture, <http://www.dem.ri.gov/programs/agriculture/best-management.php>.

Boston, MA 02109-3912
1 (888) 372-7341

EPA New England's Laboratory

11 Technology Drive North
Chelmsford, MA 01863-2431
1 (888) 372-7341
1 (617) 918-8300

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.