



**SRAP**  
Socially Responsible  
Agriculture Project

## Guide to Confronting Concentrated Animal Feeding Operations in

# SOUTH DAKOTA



# Guide to Confronting Concentrated Animal Feeding Operations in SOUTH DAKOTA

**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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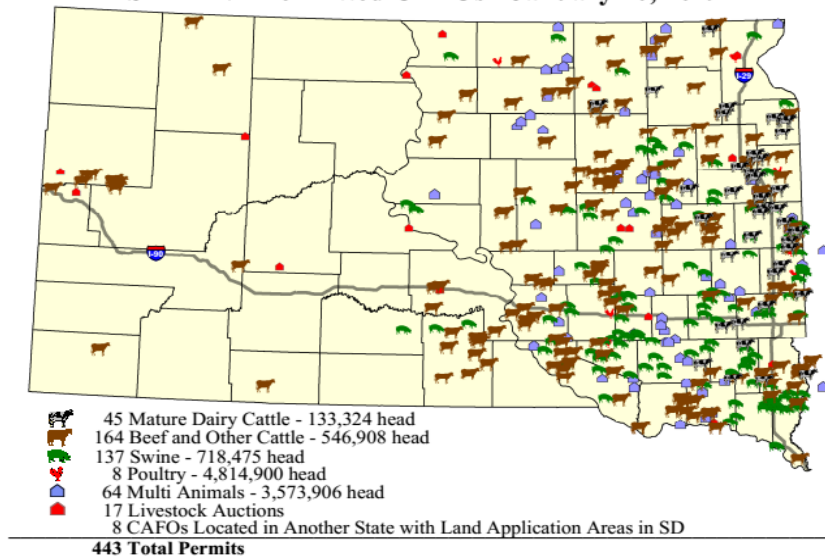
## INTRODUCTION: ANIMAL AGRICULTURE AND CAFOs IN SOUTH DAKOTA

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Agriculture plays a prominent role in South Dakota as the state's primary industry and a way of life for a significant portion of its population. Agriculture accounts for approximately 20 percent of the state's economic activity—around \$25.6 billion annually—and the state prides itself on its longstanding and abundant family farms. The state boasts that 98% of farms are family owned and operated, and that thousands of these farms have been under the same family ownership for 100 years or more. Approximately 31,000 farming operations cover 43 million acres.

Animal agriculture in South Dakota is dominated by cattle operations. According to the United States Department of Agriculture (USDA), South Dakota is home to 6.2 million cattle, 4.3 million turkeys, 1.4 million hogs, and 255,000 sheep.<sup>2</sup> Despite the focus on family farming, South Dakota has experienced an increase in the number of CAFOs. After the U.S. Environmental Protection Agency (EPA) delegated the National Pollutant Discharge Elimination System (NPDES) in 1993, South Dakota began issuing general permits for swine CAFOs in 1997 and general permits for all state CAFOs in 2003. The state NPDES CAFO General Permit expired in 2008 and has been administratively extended by the South Dakota Department of Environmental Resources. As of January 2015, there were 412 AFOs covered by the GWPC Permit for CAFOs. According to the EPA's NPDES CAFO Permitting Status Report, there are 431 CAFOs in SD.<sup>3</sup> As a result, South Dakota has experienced some pushback and concern about the growth of CAFOs and industrial agriculture in the state.

**SD DENR Permitted CAFOs - January 10, 2019**



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<sup>2</sup> [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=SOUTH%20DAKOTA](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=SOUTH%20DAKOTA)

<sup>3</sup> [https://www.epa.gov/sites/production/files/2018-05/documents/tracksum\\_endyear\\_2017.pdf](https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf)



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## CAFOs: State Definitions & Regulatory Agencies

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### What is a CAFO?

A concentrated animal feeding operation (CAFO) is an Animal Feeding Operation (AFO) with certain number of animals, is responsible the discharge of pollutants into waters of the state, or is a significant contributor of pollutants. An AFO is a facility that confines animals for 45 days or more in any 12-month period and does not sustain crops or vegetation in the normal growing season over any portion of the facility.<sup>4</sup> While some states have their own CAFO definitions, South Dakota adopts the federal definition. The operation becomes a CAFO when the AFO meets the following criteria:

- When the operation qualifies as a large CAFO based on the number of animals listed in Table 1 below:
- When the operation qualifies as a medium CAFO based on the number of animals listed in Table 1; AND
  - Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; OR
  - Pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation;
- When the operation qualifies as a small CAFO based on the number of animals listed in Table 1 AND the Secretary has designated the operation as a CAFO because it is a significant contributor of pollutants to surface water.



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<sup>4</sup> See 40 C.F.R. 122.23(b)(1) (2012).

**Table 1 CAFO SIZE CHART<sup>5</sup>**

<b>ANIMALS</b>	<b>LARGE CAFO</b>	<b>MEDIUM CAFO</b>	<b>SMALL CAFO<sup>6</sup></b>
<b>Beef Cattle</b> (includes heifers, calves, steer, and bulls)	1,000 or more	300–999	Less than 300
<b>Dairy Cows</b> (mature)	700 or more	200–699	Less than 200
<b>Swine</b> (≥ 55 lbs.)	2,500 or more	750–2,499	Less than 750
<b>Swine</b> (< 55 lbs.)	10,000 or more	3,000–9,999	Less than 3,000
<b>Horses</b>	500 or more	150–499	Less than 150
<b>Sheep</b>	10,000 or more	3,000–9,999	Less than 3,000
<b>Turkeys</b>	55,000 or more	16,500–54,999	Less than 16,500
<b>Laying Hens or Broilers</b> (uses liquid manure handling system)	30,000 or more	9,000–29,999	Less than 9,000
<b>Chickens</b> (doesn't use liquid manure handling system)	125,000 or more	37,500–124,999	Less than 37,500
<b>Laying Hens</b> (doesn't use liquid manure handling system)	82,000 or more	25,000–81,999	Less than 25,000
<b>Ducks</b> (doesn't use liquid manure handling system)	30,000 or more	10,000–29,999	Less than 10,000
<b>Ducks</b> (uses liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500

In short, the CAFO designation is dependent upon the type of operation, the number of animals, and whether the facility discharges pollutants into waters of the state. In

<sup>5</sup> *Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs*, ENVIRONMENTAL PROTECTIONS AGENCY, [https://www3.epa.gov/npdes/pubs/sector\\_table.pdf](https://www3.epa.gov/npdes/pubs/sector_table.pdf).

<sup>6</sup> Not a generally considered a CAFO but may be designated as a CAFO on a case-by-case basis.

South Dakota, CAFO designation triggers permit requirements discussed later in this guide.

### **Responsible Regulatory Agencies**

Several state and federal agencies regulate CAFOs in South Dakota. This section provides an overview of the agencies, their roles, and contact information.

### **Natural Resource and Environmental Agencies**

#### **U.S. Environmental Protection Agency (U.S. EPA)**

The U.S. Environmental Protection Agency's (EPA) mission is to protect human health and the environment. The agency seeks to accomplish this by writing regulations that implement federal environmental laws, setting standards for states to follow, working with states to understand and implement state and federal environmental laws and regulations, and enforcing regulations. The EPA is the ultimate oversight for states that do not, cannot, or will not implement the applicable environmental laws and regulations in their states.

When states are uncooperative or unresponsive to their legal duties and obligations under state or federal law, contact your Regional EPA Office (discussed below) to explore federal oversight and enforcement options.

For details about the U.S. EPA and its duties, regional offices, and department contacts, see the Federal Guide.

#### **U.S. EPA Region 8**

South Dakota is included in U.S. EPA Region 8. Find a description of the CAFO Program, along with regional contact information, on the Program's [website](#).<sup>7</sup>

Region 8 contact for Animal Feeding Operations in South Dakota:

Qian Zhang

Email: [zhang.qian@epa.gov](mailto:zhang.qian@epa.gov)

Phone: (303) 312-6267

U.S. EPA retains oversight authority to take enforcement action when states fail to meet federal requirements like those outlined in the Clean Water Act. For this reason,

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<sup>7</sup> <https://www.epa.gov/npdes/animal-feeding-operations-afos>



EPA CAFO contacts are helpful if you're tracking specific livestock operations or have questions about a state CAFO program's compliance with federal laws. See the Federal Guide for more about the interplay between states and the U.S. EPA.

### **South Dakota Department of Environment & Natural Resources**

The South Dakota Department of Environment and Natural Resources (SDDENR) seeks to “protect public health and the environment by providing environmental monitoring and natural resource assessment, technical and financial assistance for environmental projects, and environmental regulatory services; all done with reduced red tape, expanded e-government functions, and exceptional customer service to promote a prosperous economy while protecting South Dakota’s environmental and natural resources for today and tomorrow.”<sup>8</sup> The SDDENR is the primary agency for most CAFO-related environmental questions and concerns. SDDENR regulates areas such as air quality, drinking water, feedlot permitting, ground water quality, surface water quality, and waste management.

SDDENR is an excellent resource for information, agency contacts, public notices, data, maps, and reference guides. It’s also responsible for developing rules and regulations for CAFO-related environmental laws and programs.<sup>9</sup> Therefore, residents should utilize SDDENR’s services while also pressuring the agency to create rules that demand more from the state’s CAFOs.

Find a list of who to call in the agency, broken down by topic, [here](#).<sup>10</sup>

If you’d like to speak with someone at the agency in person, SDDENR’s home office is in Pierre, but there are field offices in Mitchell, Rapid City, Sioux Falls, Vermillion, and Watertown.

### **SDDENR Boards and Commissions**

SDDENR is home to the following boards and commissions:

- Board of Water Management
  - Water Quality
  - Water Use
  - Drinking Water

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<sup>8</sup> <http://denr.sd.gov/denrorganization.aspx>

<sup>9</sup> S.D. CODIFIED LAWS § 1-40-38 (DENR Promulgation of Rules Governing Inspection of Certain CAFOs)

<sup>10</sup> <http://denr.sd.gov/WhotoCall.pdf>

- Board of Water & Natural Resources
  - State Water Plan
  - Financial Assistance for Water & Solid Waste Projects
- Board of Minerals and Environment
  - Air Quality
  - Hazardous Waste
  - Solid Waste
  - State Emergency Response Commission
  - Chemical Reporting
  - Community Right to Know
- Board Operator Certification
  - Water and Wastewater Operator Certification
- Small Business Clean Air Advisory Panel
  - Air Quality Small Business & Assistance

## **Agricultural Agencies**

### **South Dakota Department of Agriculture (SDDA)**

The South Dakota Department of Agriculture (SDDA) seeks to “promote, protect, and preserve SD agriculture for today and tomorrow.”<sup>11</sup> The SDDA is responsible for the following services:

- Animal Health Maintenance
- Market & Dealer Licensing
- Meat Inspection
- Dead Animal Disposal
- Rendering Facilities
- Inhumane Treatment of Animals
- Branding and Recording Livestock
- Sale and Transportation of Livestock
- Seed Certification
- Weed and Pest Control
- Agricultural Financing and Mediation
- Burn Permits

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<sup>11</sup> <https://sdda.sd.gov/>

In general, the SDDA will not be very helpful for communities seeking to prevent new or expanding CAFOs, or to help hold existing CAFOs accountable for their impacts on communities. SDDA operates to serve, support, and expand agricultural operations in the state. However, it does regulate aspects of animal agriculture that could impact CAFOs or processing facilities. For more information about SDDA's duties and programs, see its [website](#).<sup>12</sup>

## Health Agencies

### South Dakota Department of Health (SDDH)

Manure application, surface water pollution, ground water pollution, and particularly air pollution from CAFOs can have harmful health impacts for individuals living nearby. The South Dakota Department of Health's purpose is to help protect the state's residents' health, but there is little legislation that would authorize SDDH involvement in CAFO regulation. However, the agency could be helpful to residents seeking health data and regional health information, which could support CAFO opposition efforts. For the state's health data and statistics, see its [website](#).<sup>13</sup>

One of the most important services SDDH provides to communities facing serious CAFO-related groundwater pollution is well testing. Anyone can request private well testing [here](#),<sup>14</sup> or public water testing [here](#).<sup>15</sup> Individuals near a proposed CAFO site should request well testing before a CAFO comes into the area in order to establish a baseline to prove the connection between the CAFO and groundwater pollution. Those who live near existing CAFOs should also conduct regular well testing for health reasons and to help build a record.

SDDH's Office of Health Protection is authorized to conduct environmental health investigations, which might be a useful strategy to draw attention to health risks posed by CAFOs. However, SDDH's website mentions this authority in passing and provides very little additional information.

## Conservation Districts

### South Dakota's Conservation Districts

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<sup>12</sup> <https://sdda.sd.gov/>

<sup>13</sup> <https://doh.sd.gov/statistics/>

<sup>14</sup> <https://doh.sd.gov/Lab/Environmental/privatew.aspx>

<sup>15</sup> <https://doh.sd.gov/Lab/Environmental/publicwa.aspx>

Conservation districts are a subdivision of state government that develop solutions to natural resource concerns at a local level. There are 69 districts in South Dakota and each one is governed by a board of 5 supervisors who are elected by the public. Individuals should contact their local conservation district to explore local options, resources, and potential allies for a community's fight against a CAFO in the district. These conservation districts are supposed to provide local leadership, encourage conservation efforts, and implement conservation practices that maintain the health of air, land, water, plants, and animals.<sup>16</sup> For more details about conservation districts, see Title 38, Chapter 8 of the South Dakota Codified Law. Below is a list and map of the state's conservation districts.

#### **List of South Dakota Conservation Districts**

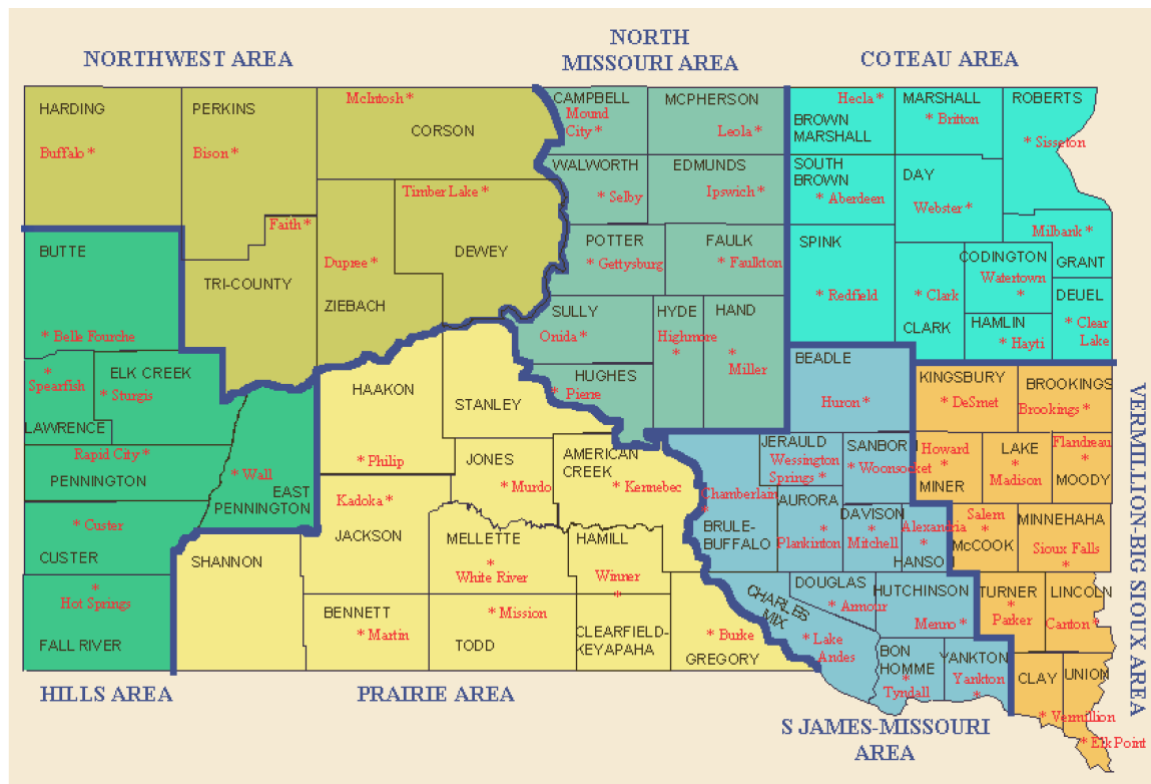
American Creek Conservation District	Aurora County Conservation District	Beadle Conservation District	Bennett County Conservation District
BonHomme Conservation District	Brookings Conservation District	Brown-Marshall Conservation District	Brule-Buffalo Conservation District
Campbell County Conservation District	Charles Mix Conservation District	Clark County Conservation District	Clay County Conservation District
Clearfield-Keyapaha Conservation District	Codington Conservation District	Corson County Conservation District	Custer County Conservation District
Davison County Conservation District	Day Conservation District	Deuel Conservation District	Dewey County Conservation District
Douglas County Conservation District	East Pennington Conservation District	Edmunds County Conservation District	Fall River Conservation District

<sup>16</sup> [http://www.sdconservation.org/index.asp?SEC=5141FF1F-481F-4BA5-9B1C-EE54D2713C24&Type=B\\_BASIC](http://www.sdconservation.org/index.asp?SEC=5141FF1F-481F-4BA5-9B1C-EE54D2713C24&Type=B_BASIC)



Faulk County Conservation District	Grant Conservation District	Gregory County Conservation District	Haakon Conservation District
Hamill Conservation District	Hamlin Conservation District	Hand County Conservation District	Hanson County Conservation District
Harding County Conservation District	Hughes County Conservation District	Hutchinson Conservation District	Hyde County Conservation District
Jackson County Conservation District	Jerauld County Conservation District	Jones County Conservation District	Kingsbury Conservation District
Lake County Conservation District	Lawrence Conservation District	Lincoln Conservation District	Marshall Conservation District
McCook County Conservation District	McPherson County Conservation District	Mellette County Conservation District	Miner Conservation District
Minnehaha Conservation District	Moody Conservation District	Pennington Conservation District	Perkins County Conservation District
Potter Conservation District	Roberts Conservation District	Sanborn Conservation District	Shannon Conservation District
South Brown Conservation District	Spink Conservation District	Stanley County Conservation District	Sully County Conservation District
Todd County Conservation District	Tri-County Conservation District	Turner County Conservation District	Union County Conservation District
Walworth County Conservation District	Yankton County Conservation District	Ziebach County Conservation District	

## South Dakota Conservation Districts<sup>17</sup>



## WATER

## Water Quantity

South Dakota asserts that the state's surface and ground water belong to the people of the state who may seek to make beneficial use of this public resource, though non-domestic water usage may be subject to permit requirements and limitation.

## Water Right Permit

A CAFO must obtain a Water Right Permit if the facility uses or will use more than 18 gallons of water per minute or 26,000 gallons per day. The CAFO must submit a water right permit application and anyone can search for issued water right permits on SDDENR's [website](#),<sup>18</sup> and view pending water right applications [here](#).<sup>19</sup>

The Water Right Permit requires applicants to establish the following:

<sup>17</sup> [http://www.sdconservation.org/index.asp?SEC=5141FF1F-481F-4BA5-9B1C-EE54D2713C24&Type=B\\_BASIC](http://www.sdconservation.org/index.asp?SEC=5141FF1F-481F-4BA5-9B1C-EE54D2713C24&Type=B_BASIC)

<sup>18</sup> <http://denr.sd.gov/des/wr/dbwrsearch.aspx>

<sup>19</sup> <http://denr.sd.gov/des/wr/pubnotice.aspx>

- Reasonable probability that unappropriated water is available for the proposed use.
- The permit will not unlawfully impair existing water rights.
- The proposed use is a beneficial use of the water.
- It is in the public interest.

### **Water Quality, Impaired Waters, & Total Maximum Daily Loads**

The Clean Water Act requires states to identify impaired water bodies and establish Total Maximum Daily Loads (TMDLs) for the state's waterbodies.<sup>20</sup> Find South Dakota's integrated report of impaired water bodies and TMDLs [here](#).<sup>21</sup> Find SDDENR's list of TMDLs [here](#).<sup>22</sup>

South Dakota sets water quality standards to protect the water's designated or beneficial uses such as recreation, drinking, and supporting aquatic life.<sup>23</sup> States are required to develop TMDLs that specify the amount of pollutants that a water body can receive and still meet water quality standards. The state's water quality standards are outlined in Chapter 74:51:01 of the Administrative Rules of South Dakota. The water quality standards are both narrative and numeric.

### **National Pollutant Discharge Elimination System Program**

The Clean Water Act (CWA) prohibits the discharge of pollutants into waters of the United States unless there is an authorizing permit that allows for the discharge, subject to certain conditions.<sup>24</sup> The National Pollutant Discharge Elimination System (NPDES) program regulates these discharges in attempt to protect state and national water quality. The CWA authorizes states to develop and implement their own NPDES program at the state level as long as it's as protective as the federal requirements. South Dakota has been authorized to issue NPDES permits in South Dakota since 1993.

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<sup>20</sup> CWA § 303(d)

<sup>21</sup> <http://denr.sd.gov/documents/14irfinal.pdf>

<sup>22</sup> <http://denr.sd.gov/dfta/wp/tmdlpage.aspx>

<sup>23</sup> "The Water Management Board shall promulgate rules...to establish water quality standards and to classify water according to its beneficial uses. The board shall consider environmental, technical, social, and economic factors and present use, persons adversely affected, natural background waters in relationship to the contaminants and pollutants contained in the waters, existing degradation, and irretrievable man-induced conditions placed on those waters. The standards shall protect the public health and welfare and the use of the waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses in accordance with the Federal Water Pollution Control Act...." S.D. CODIFIED LAWS § 34A-2-11

<sup>24</sup> CWA § 301(a); 33 U.S.C. § 1311(a)

SDDENR issues NPDES permits (which it calls Surface Water Discharge permits) to facilities that may discharge to waters of the state. Anyone can search the permit and inspection information for any NPDES/Surface Water Discharge permitted facility on SDDENR's [website](#).<sup>25</sup>

### **Permit Application and Public Participation**

The CAFO or permit applicant must publish notice of the permit application in one of the region's official newspapers. The notice is also available on SDDENR's website. Individuals seeking to participate in the permit application process should submit a written petition to the applicant and chief engineer stating their name, signature, address, interest in the application, and reasons for supporting or opposing the application. If the application is contested, a contested case hearing will be scheduled and interested parties may submit evidence and testimony regarding the pending permit application. Following an uncontested permit application or a contested case hearing, the water management board makes a final decision and provides a written decision of their findings, reasoning, and conclusions.

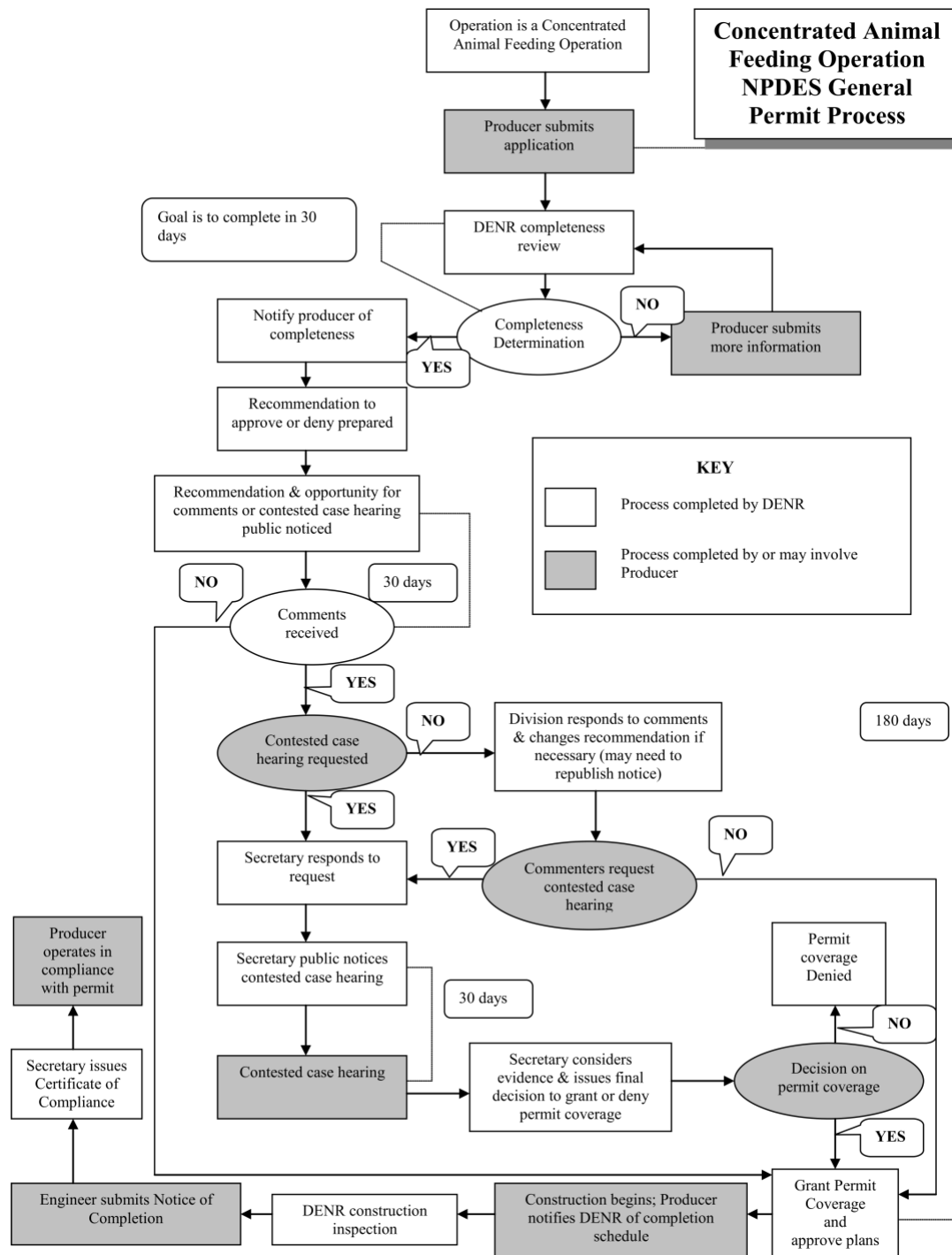
The CAFO must seek a NPDES permit or a state permit. Under the state permit, an operation may not discharge to waters of the state under any circumstances, public notice occurs concurrent with DNR review, and the permit process does not allow for a contested case hearing. Under the NPDES permit, discharges are allowed in the even of a 25-year, 24-hour storm event, DNR's review should be completed prior to public notice, and contested case hearings are allowed.

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<sup>25</sup> <http://denr.sd.gov/des/sw/dbnpdessearch.aspx>.



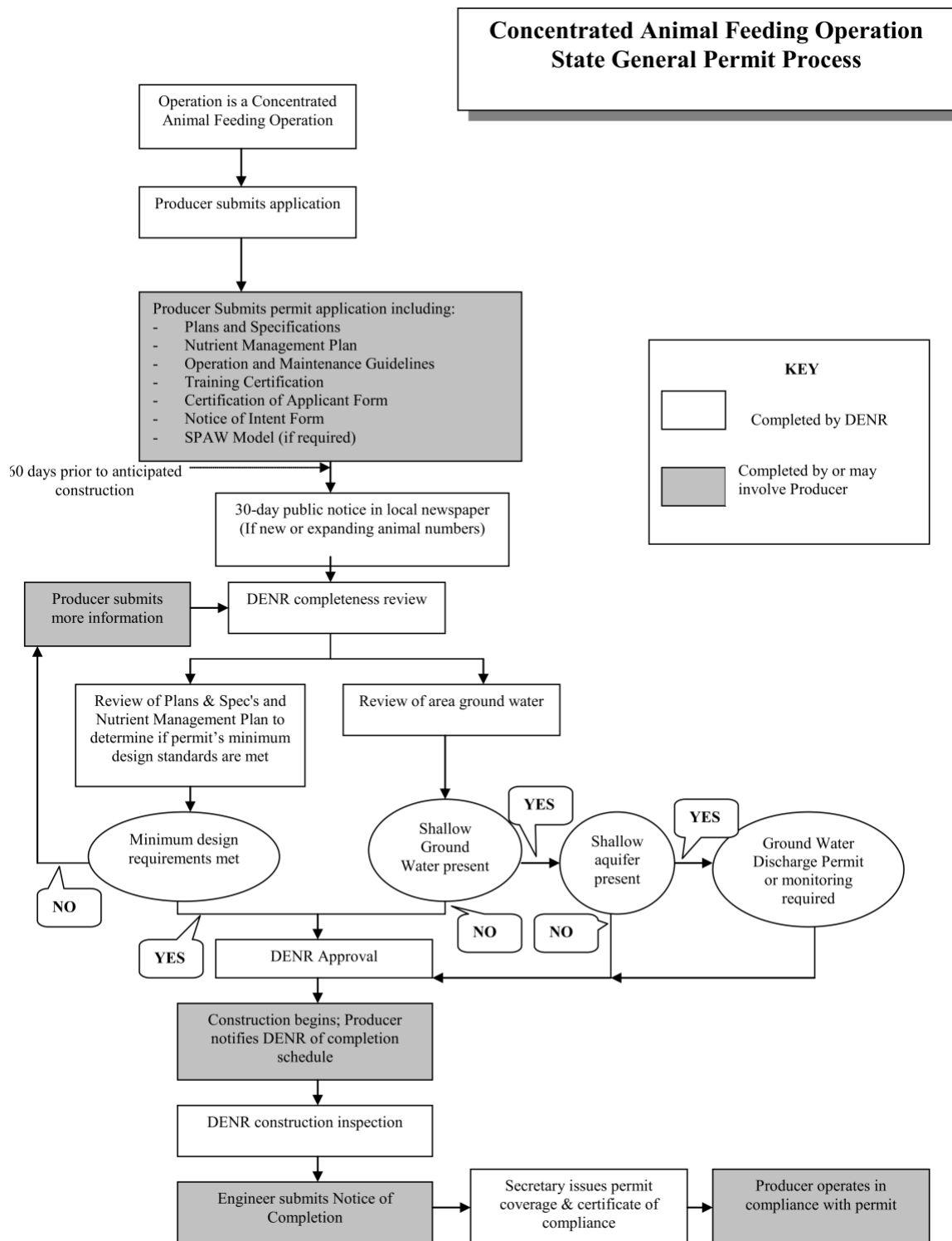
Below is the process for obtaining a NPDES permit.<sup>26</sup>



<sup>26</sup> Dep't of Environmental and Natural Resources Concentrated Animal Feeding Operation Permit Process Application Checklist (2017)

<https://denr.sd.gov/des/fp/documents/2017ApplicationChecklist.pdf>

Below is the process for obtaining the state permit.<sup>27</sup>



<sup>27</sup> <https://denr.sd.gov/des/fp/documents/2017ApplicationChecklist.pdf>

SDDENR's Surface Water Discharge permit program consists of several interrelated permitting programs. The main Surface Water Discharge permitting program related to CAFOs is the Feedlot Permit Program.

### **Feedlot Permit Program**

South Dakota attempts to protect surface and ground waters by requiring a Feedlot Permit that regulates CAFOs and on-site wastewater systems.

### ***Comprehensive General Water Pollution Control (CGWPC) Permit for CAFOs***

All CAFOs that do not obtain a NPDES permit are required to seek coverage under a general or individual surface water discharge permit.<sup>28</sup>

- The general permit is drafted by SDDENR
- The draft permit goes through public notice and a formal comment period
- Draft general permit may be subject to a hearing to discuss contested issues
- General permits are valid for five years

The most recent version of the CGWPC Permit went into effect in April 2017 and is available online.<sup>29</sup> The CGWPC Permit for CAFOs imposes several requirements—it's helpful to thoroughly understand these in order to monitor the facility and submit complaints about violations.

### **Site Planning**

The CGWPC Permit for CAFOs requires the producer to contact local governments, check zoning ordinances, and obtain site approval to build or expand a CAFO. South Dakota has local control so local governments may have setback distances, buffer zones, and other requirements that a permit applicant must satisfy.

### **Collection & Storage of Manure and Wastewater**

The CGWPC Permit for CAFOs imposes several requirements for collecting and storing animal waste and wastewater.

- New waste storage structures must be able to hold at least 270 days' worth of waste. Existing waste storage structures must hold at least 180 days' worth of waste.
- Storage structures that store runoff must be able to hold the estimated annual runoff, plus the runoff from a 25-year, 24-hour storm event (meaning 24 hours' worth of runoff from the worst storm that occurred in the last 25 years).

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<sup>28</sup> S.D. CODIFIED LAWS § 34A-2-36.2 (Water Pollution Control Permit Required for CAFOs)

<sup>29</sup> <https://denr.sd.gov/des/fp/documents/2017GeneralPermit.pdf>

## Ground Water Protection

- If the CAFO is located over a shallow aquifer, the CAFO must obtain a ground water discharge permit and must conduct ground water monitoring.
- Waste lagoons and manure applications must be a certain distance from the following:
  - 1,000 feet from public drinking water sources
  - 250 feet from a private well
  - 150 feet from the CAFO's well.

## Nutrient Management Plan

It's no secret that CAFOs produce an astounding amount of waste. While application of this waste to land, in proper amounts, can be beneficial to crops, over-application can cause serious problems for soil quality, crop health, air quality, surface and ground water quality, and the quality of life of those who live nearby. As a result, the CGWQC Permit for CAFOs requires a Nutrient Management Plan (NMP) that attempts to control over-application of nitrogen and phosphorous. The NMP must demonstrate that there is adequate land available to apply the manure and corresponding nutrients generated at the operation.

The NMP considers the nitrogen and phosphorous in the waste, the amount of land available for application, the type of crops grown on the application land, and soil testing. The SDDENR provides resources and tools to assist with nutrient management and helps CAFOs calculate agronomic manure application rates.

Learn more about Nutrient and Manure Management Plans [here](#).<sup>30</sup>

## Other Permit Requirements

- The CAFO must test manure and soil annually for nitrogen and phosphorous.
- The CAFO must keep the following manure application records:
  - Soil testing results
  - Manure testing results
  - Land application amounts and rates
  - Manure application fields
  - Dates and times of application
  - Method of manure application
- Application of liquid manure on frozen ground is prohibited.

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<sup>30</sup> <http://denr.sd.gov/des/fp/nutrientmanagementtools.aspx>



- Application of dry or solid manure on frozen ground is permitted if the land has less than a 4% slope and a 100-foot buffer between waterways or wetlands and the application site.
- CAFOs must incorporate the manure application into the land within a certain timeframe, unless it is a no-till cropland such as pasture, grassland, cropped fields, or alfalfa fields.
- CAFO owner/operators must complete a training program about natural resource management and maintaining manure management systems.
- CAFOs must conduct weekly inspections of the manure storage structures.
- CAFOs must conduct and document a daily inspection of land application sites on the days they are applying waste to those sites.
- CAFOs must keep their inspection records for five years.
- CAFOs must report any discharge to SDDENR within 24 hours of the discharge.

### Permit Fees

CAFOs operating under a CGWPC Permit must pay an annual fee based on the size of the operation (1 Animal Unit = 1,000 lbs).<sup>31</sup>

- < 1,000 Animal Units → \$100
- 1,000 to 1,999 Animal Units → \$175
- ≥ 2,000 Animal Units → \$ 250

The fee is due by September 30 each year.

### Permit Process and Public Participation

CAFO permit application guidance and forms are located on SDDENR's [website](#).<sup>32</sup> Before issuing any discharge permit, the SDDENR secretary must provide notice of an opportunity for a public hearing.<sup>33</sup> If no one contests the agency's decision on the permit application, the permit will be approved or denied based on SDDENR's recommendation.

### General Permit Process (New or Expanding CAFO)

- Permit applicant submits permit application to SDDENR consisting of:
  - Notice of Intent Form
  - Certification of Applicant
  - Plans and specifications signed and stamped by SD licensed engineer
  - Signed operation and maintenance guidelines

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<sup>31</sup>S.D. CODIFIED LAWS § 34A-2-125 (CAFO CGWPC Permit Fees)

<sup>32</sup> <http://denr.sd.gov/formsprogram.aspx#Feedlot>

<sup>33</sup> S.D. CODIFIED LAWS § 34A-2-35 (Public hearing on permit to discharge waste)

- Training Certification
  - Nutrient Management Plan
- SDDENR reviews the application
- SDDENR approves or rejects the permit application
- If SDDENR approves the general permit application, the owner/operator must notify SDDENR when construction begins because they need to conduct a state-mandated construction inspection
- The project engineer submits a notice of completion to SDDENR when construction of the manure management system is complete.

### **General Permit Process (Existing CAFO)**

- Permit applicant submits an application to SDDENR consisting of the following:
  - Notice of Intent Form
  - Certification of Applicant
  - Signed operation and maintenance guidelines
  - Training Certification
  - Nutrient Management Plan
- CAFOs without a manure containment system must submit manure containment system plans and specifications, signed and stamped by SD licensed engineer
- CAFOs with a manure containment system must submit plans and specifications of the existing manure containment system (including size, shape, calculated capacity, location, and elevation).

### **Ground Water Discharge Permit**

While NPDES and the CGGWPC Permit for CAFOs focus on surface water discharges, South Dakota has additional permit requirements in place to protect the state's ground water.<sup>34</sup> The legislature emphasizes the need for awareness, education, action, and enforcement to prevent the pollution, particularly since it is much easier to prevent ground water pollution in the first place than to fix it after the fact.

South Dakota requires CAFOs located over a shallow aquifer to obtain a Ground Water Discharge Permit.<sup>35</sup> See South Dakota Codified Law § 34A-3A-24 for a detailed

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<sup>34</sup> The legislature has declared that ground water pollution "constitutes a menace to public health, welfare and the environment...." S.D. CODIFIED LAWS § 34A-2-104. (Declaration of policy to prevent protect state ground water for the public)

<sup>35</sup> S.D. CODIFIED LAWS § 34A-3A-24 (CAFOs prohibited for locating over shallow aquifer without ground water discharge permit)

definition of a shallow aquifer. See the Administrative Rules of South Dakota 74:54:01–74:54:02 for details about ground water discharge plans and requirements.

Note: this permit requirement doesn't apply to CAFOs in operation before July 1, 1997.

<sup>36</sup>

### **Permit Application and Public Participation**

Below is an overview of the ground water permit application process and the main opportunities for the public to weigh in on CAFOs seeking to discharge into ground water.

- CAFOs must apply for a ground water discharge permit at least 180 days before the discharge.
- The ground water discharge permit application is available on SDDENR's [website](#).<sup>37</sup>
- SDDENR will review the application for completeness.
- After SDDENR decides the application is complete, SDDENR will publish public notice of the application in a local newspaper.
  - Individuals may also be able to view ground water permit applications on SDDENR's [website](#).<sup>38</sup>
- The public notice period lasts for 30 days
  - If anyone contests the application during the public notice period, the Board of Water Management will hold a hearing for interested parties to present their concerns
    - The Board of Water Management will issue a decision whether to grant or deny the permit
  - If no one contests the application during the notice period, the permit goes into effect at the close of the comment period.

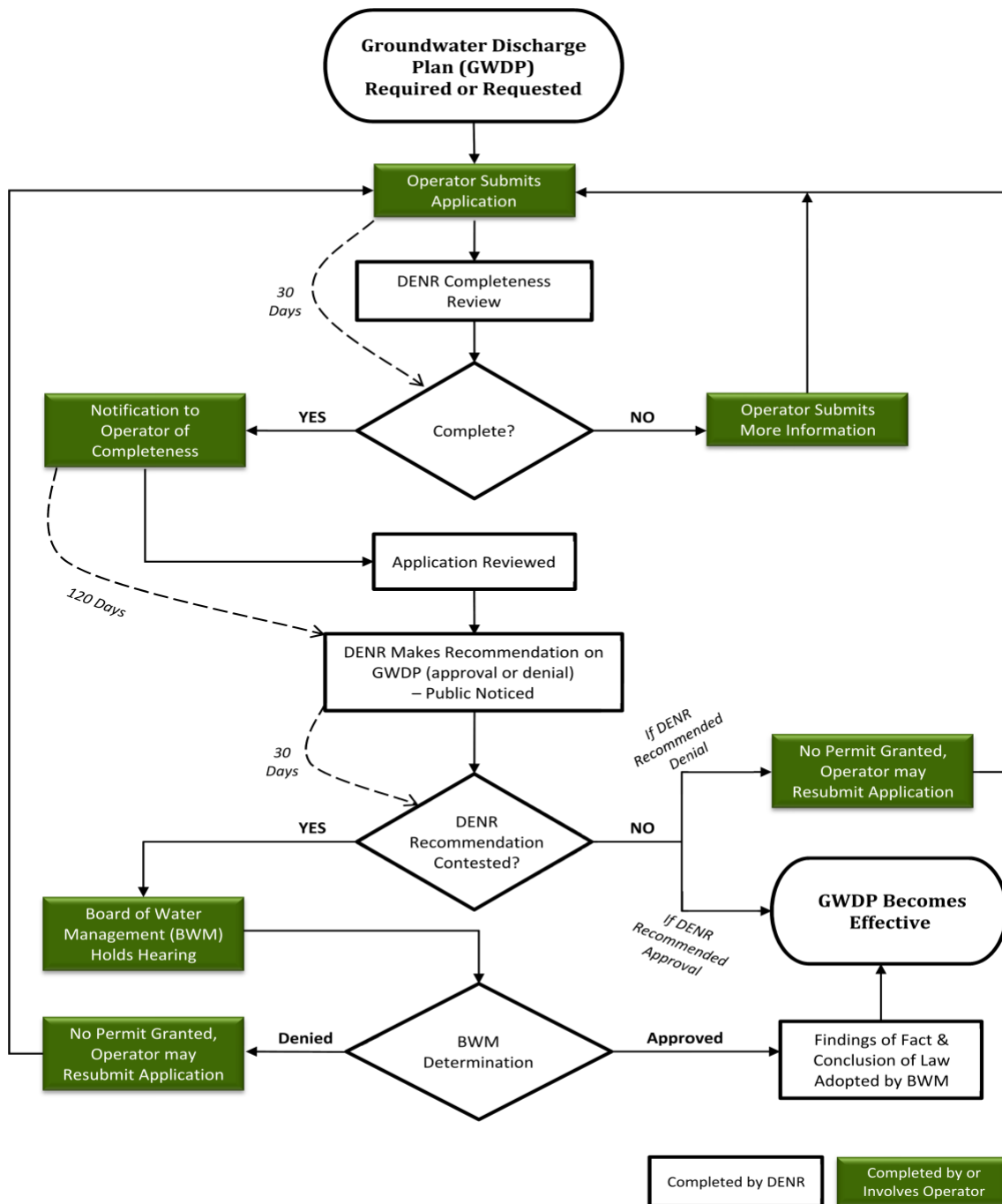
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<sup>36</sup> S.D. CODIFIED LAWS § 34A-3A-24

<sup>37</sup> <http://denr.sd.gov/des/gw/tanks/GWQReportingForms.aspx>

<sup>38</sup> <http://denr.sd.gov/public/default.aspx>

SDDENR created this flowchart outlining the process.<sup>39</sup>



<sup>39</sup> <http://denr.sd.gov/des/gw/GWDischarge/GWDiPFlowChart.aspx>



## Construction Permit

A new or expanding CAFO must obtain a storm water construction permit if the construction will disturb at least one acre of land.<sup>40</sup> The permit requires the construction project to attempt to prevent storm water from becoming polluted on the construction site.

Find the current storm water construction permit [here](#).<sup>41</sup>

## Permit Process

CAFO construction that requires a storm water permit must submit a notice of intent application<sup>42</sup> to SDDENR's Surface Water Quality Program at least 15 days before construction. Before construction and before sending the notice of intent application, the applicant must develop a pollution prevention plan that includes information like responsible parties, pollution sources, project descriptions, site estimates, soil types, receiving surface waters, maps, and pollution control measures.

There is almost no participation in the issuance of construction storm water permits, but if CAFOs engage in construction that disturbs more than 1 acre without the required permit, they are non-compliant.

## Wetlands

Wetlands are an important natural resource that require strong federal and state protection. South Dakota regulations state that "the discharge of pollutants from any source, including indiscriminate use of fill material, may not cause destruction or impairment of wetlands except where authorized under § 402 or § 404 of the Federal Water Pollution Control Act..."<sup>43</sup>

The Federal Water Pollution Control Act, or Clean Water Act, regulates the discharge or placement of dredged or fill material into waters of the United States, which includes wetlands.<sup>44</sup> Therefore, any dredge or fill activities will require a Section 404 Permit, unless they are exempt. Note that many agricultural activities are exempt—such as established farming, ranching, and silviculture activities; construction or maintenance of irrigation ditches, farm or stock ponds; and maintenance of

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<sup>40</sup> 34A-2-27 (Construction permits required for activities discharging wastes into water)

<sup>41</sup> <http://denr.sd.gov/documents/ConstructionGeneralPermit2010.pdf>

<sup>42</sup> <http://denr.sd.gov/des/sw/eforms/D2112LDVI-StormWaterConstNOI.pdf>

<sup>43</sup> S.D. ADMIN. R. § 74:51:01:11 (protection of wetlands as waters of the state)

<sup>44</sup> Clean Water Act, § 404.

drainage ditches, dams, dikes, and levees.<sup>45</sup> Despite these exceptions, some CAFO activities that impact wetlands may require a 404 permit from the EPA and U.S. Army Corps of Engineers; see the supplemental Federal Guide for more information.

While wetland permits are mainly administered by federal agencies, state standards, policies, and public interest play an important role in the process. A Section 404 Permit requires a Section 401 Water Quality Certification, which requires the federal permit to be consistent with the state's water quality standards, anti-degradation policy, and water quality management plan, and is subject to public notice requirements.

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## PUBLIC NOTICE

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Most CAFO-related public notice requirements call for public notice in local newspapers in the affected area. In addition to newspaper notices, SDDENR provides a helpful [One-Stop List of Current Public Notices](#)<sup>46</sup> where anyone can view each public notice, commenting opportunities, and supporting information. This great resource encompasses notice for the following CAFO-related activities:

- Proposed Rules
- Air Quality Permits
- Air Quality
  - Exceptional Events
  - Annual Air Monitoring Network Plan and Five-Year Review
  - State Implementation Plan
- CAFOs
- General Permits
- Ground Water Discharge
- Surface Water Discharge
- Waste Permits
- Water Rights
- Watershed Projects

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<sup>45</sup> Clean Water Act, § 404(f)(1).

<sup>46</sup> DENR One-Stop List of Current Public Notices, South Dakota Department of Environment & Natural Resource, <http://denr.sd.gov/public/>.

Note that this website may be incomplete or outdated; SDDENR states that the site is “a public service and does not constitute official public notice unless otherwise provided by law.”<sup>47</sup>

Alternatively, individuals can subscribe to email updates to be notified weekly of any new public notices. To subscribe, send your email address to the following email address: [DENRINTERNET@state.sd.us](mailto:DENRINTERNET@state.sd.us)

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## COMPLAINTS, INSPECTIONS, & ENFORCEMENT

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### Complaints

Submitting complaints is one of the most powerful ways to hold these operations accountable and to build a record for future enforcement or litigation. It also lets these operations know that the community is paying attention.

### Water Quality Complaints

Complaints must be signed in order for the responsible agency to take action or conduct an inspection.<sup>48</sup> Individuals must fill out the complaint form and mail it to:

SD Department of Environment and Natural Resources  
Surface Water Quality Program  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501-3181

The complaint form may be printed and filled out [by hand](#),<sup>49</sup> or filled out [online](#) and then printed.<sup>50</sup> Either way, it must be mailed in.

### Inspections

CAFOs in South Dakota are subject to inspections under multiple circumstances throughout the life of the operation, such as during construction, during operation,

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<sup>47</sup> DENR One-Stop List of Current Public Notices, South Dakota Department of Environment & Natural Resource, <http://denr.sd.gov/public/>.

<sup>48</sup> S.D. CODIFIED LAWS §34A-2-111 (Complaints required to be signed)

<sup>49</sup> Complaint Form, State of South Dakota Department of Environment and Natural Resources, <http://denr.sd.gov/des/sw/eforms/D0424VI-ComplaintForm.pdf>.

<sup>50</sup> Complaint Form, State of South Dakota Department of Environment and Natural Resources, <http://denr.sd.gov/des/sw/eforms/E0424LDVI-ComplaintForm.pdf>

upon closure, or in response to a complaint.<sup>51</sup> SDDENR may inspect any CAFO and its records and reports to ensure that the operation is being conducted pursuant to its permit(s). If the CAFO refuses to give SDDENR permission to inspect, SDDENR may revoke the operation's permits.<sup>52</sup>

### Construction Inspection

SDDENR will inspect each new operation applying for coverage under a general or individual water pollution control permit.<sup>53</sup> The CAFO is required to inform SDDENR when construction of the manure management system begins. The owner may not put animals in the facility until SDDENR has conducted a construction inspection.

### Operational Inspection

CAFOs with general or individual water pollution control permits are subject to general operational inspections throughout their operation and at varying intervals depending on the size and age of the operation.

- **Annual Inspections:** SDDENR is supposed to conduct inspections of CAFOs with at least 2,000 animal units<sup>54</sup> at least once per year.
- **New Operation Inspection:** SDDENR is supposed to inspect new CAFOs within the first 18 months of operation.<sup>55</sup>
- **Triennial Inspections:** SDDENR is supposed to conduct inspections of all CAFOs with a water pollution control permit at least once every three years of operation.<sup>56</sup>
- **Closure Inspection:** SDDENR is supposed to conduct an inspection of the CAFO before terminating coverage under the water pollution control permit.

### Complaint Inspection

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<sup>51</sup> These inspections are authorized under state law by South Dakota Codified Law § 34A-2-40 and the regulations concerning CAFO inspections are found in South Dakota Administrative Rules § 74:57:01.

<sup>52</sup> S.D. ADMIN. R. § 74:57:01:07 (Permission to Inspect).

<sup>53</sup> S.D. ADMIN. R. § 74:57:01:03 (Construction Inspections).

<sup>54</sup> S.D. ADMIN. R. § 74:57:01:04 (Annual Inspections) (2,000 Animal Units = 2,000 slaughter or feeder cattle or dairy heifers; 1,400 mature dairy cattle, whether milked or dry cows; 5,000 finish hogs; 20,000 nursery hogs; 4,260 sows (production unit – breeding, gestating, and farrowing); 540 sows (farrow to finish); 1,000 horses; 20,000 sheep or lambs; 110,000 turkeys; 60,000 chickens; 10,000 ducks; 10,000 geese; or a combination of any of the above livestock that equals 2,000 animal units.)

<sup>55</sup> S.D. ADMIN. R. § 74:57:01:05. (Triennial Inspections)

<sup>56</sup> S.D. ADMIN. R. § 74:57:01:05. (Triennial Inspections)

SDDENR may conduct an inspection in response to a signed complaint form.<sup>57</sup> Find the complaint form on SDDENR's [website](#).<sup>58</sup>

### **Enforcement**

SDDENR is the primary enforcer of the state's CAFO laws and regulations, but it may need a push. Individuals may compel or pressure for enforcement actions by filing complaints and reporting violations of the CAFO's permit to build a history of non-compliance, both for SDDENR enforcement actions as well as potential private actions against the CAFO.

If SDDENR or the state fails to enforce state and federal laws and regulations applicable to CAFOs, involving the U.S. EPA may be the next step to address non-compliance and enforcement issues. The U.S. EPA, while strongly suggesting that individuals exhaust state and local options first, provides an [online complaint form](#) for individuals to report environmental violations.<sup>59</sup>

The U.S. EPA maintains the [Enforcement and Compliance History Online \(ECHO\)](#) database, which allows individuals to search and see how nearby facilities are complying with environmental laws.<sup>60</sup>

The violation of a NPDES permit is a violation of the CWA. The penalties for such violations are detailed in Section 309 of the CWA. For more information about EPA's enforcement standards, programs, and initiatives, see EPA's enforcement [websites](#).<sup>61</sup>

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## **AIR**

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### **Air Quality**

Air quality in South Dakota is regulated by state and federal laws. The Clean Air Act regulates air pollution on a national level but also calls for state monitoring and regulation to meet the national emissions and air quality standards set by the Clean Air Act. For a more details, see the Federal Guide.

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<sup>57</sup> S.D. CODIFIED LAWS § 34A-2-111. (Complaints must be signed)

<sup>58</sup> <https://denr.sd.gov/des/sw/eforms/E0424LDV1-ComplaintForm.pdf>

<sup>59</sup> <https://www.epa.gov/enforcement/report-environmental-violations>

<sup>60</sup> Enforcement and Compliance History Online: Search Community, U.S. Environmental Protection Agency, <https://echo.epa.gov/>.

<sup>61</sup> Enforcement Basics, U.S. Environmental Protection Agency, <https://www.epa.gov/enforcement/enforcement-basic-information>.



South Dakota's Air Quality Program handles the permitting, monitoring, inspection, and enforcement for the state's air quality program. Most air quality regulations don't apply to agricultural facilities, but that may change in the future, and a facility may still be subject to a nuisance suit for harmful odors. Also, some local ordinances address odor control so be sure to check local laws.

### **Ambient Air Quality Standards**

Federal and state air quality standards are intended to prevent air pollution from reaching levels that harm people, plants, or animals. There can be both federal and state standards, as long as the state standards are at least as protective as the federal standards. South Dakota follows federal National Ambient Air Quality Standards.<sup>62</sup> See the Federal Guide for a discussion of National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, or see SDDENR's [website on NAAQS](#).<sup>63</sup>

### **State Implementation Program**

EPA delegates authority to states to administer air quality programs and issue permits as part of a State Implementation Plan (SIP). South Dakota's SIP is a collection of programs, plans, regulations, and policies to achieve federal standards.

While the current SIP does little to regulate harmful air pollution from animal agricultural facilities, the state is required to involve the public in any SIP revisions or changes. States may demand more from industries than what is required by federal law, but to compel states to do so, the public must get involved in hearings and public comment opportunities to pressure states to regulate agriculture as it does with other industries that emit considerable air pollutants.

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## **ZONING**

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### **Zoning and Land Use in South Dakota**

Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in the community. It's crucial to know your local elected officials and establish a working relationship.

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<sup>62</sup> S.D. ADMIN. R. § 74:36:02:02 (Ambient Air Quality Standards).

<sup>63</sup> <http://denr.sd.gov/des/aq/monitoring/ambientstandards.aspx>

In South Dakota, local governments such as counties and municipalities have zoning authority and the authority to manage land use. Counties are responsible for zoning ordinances in “unincorporated areas” of their respective counties. Otherwise, you should look to incorporated governments, such as townships, as the appropriate local authority to make zoning and other decisions impacting the location and operation of CAFOs. Municipalities have broad authority to regulate in all areas absent explicit prohibition in statute or extensive regulation of a particular issue at the state level.

Local action from government and/or advocacy organizations can also influence state regulation of impacts of large-scale agricultural operations.

In sum, local government decision-making is crucial, particularly for issues such as protecting local public health and safety, which are “traditional” areas of local control. Residents should consult their local zoning ordinances and keep an eye out for public participation opportunities in the zoning process.

### **State Zoning Authority**

While zoning and land use planning are primarily done at the local level, state laws authorize, guide, and limit what local governments can do. For instance, state law prohibits changes to zoning or comprehensive plans without notice and a public hearing.<sup>64</sup> Notice of the public hearing must be given in a local county publication at least 10 days before the hearing and any person may appear to protest or weigh in on the proposed changes.<sup>65</sup>

State law authorizes what counties or municipalities may regulate or restrict—height, number of stories, and size of buildings or structures; percentage of a lot that may be occupied, size of yards, courts, and open space; population density; and location and use of buildings and land for trade, industry, residence, or other purposes.<sup>66</sup> State law also requires counties and municipalities to create and conform to comprehensive plans.

### **Comprehensive Plans**

Comprehensive plans are useful for individuals to consult when local zoning authorities propose changes to zoning ordinances or fail to pass ordinances that residents would like to see in their locality. Zoning authorities are supposed to make

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<sup>64</sup> S.D. CODIFIED LAWS § 11-2-19

<sup>65</sup> S.D. CODIFIED LAWS § 11-2-29

<sup>66</sup> S.D. CODIFIED LAWS § 11-2-13 (Adoption of zoning ordinance)

ordinances and decisions in accordance with their region's comprehensive plan. The S.D. CODIFIED LAWS § 11-2-12 outlines the purposes of comprehensive plans. It states:

The comprehensive plan shall be for the purpose of protecting and guiding the physical, social, economic, and environmental development of the county; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources.<sup>67</sup>

Residents may point to the region's comprehensive plan to contest changes to zoning ordinances that are inconsistent with the comprehensive plan's goals.

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## **RIGHT TO FARM & NUISANCE LAWS**

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### **Nuisance Claims**

A nuisance is something that interferes with the right to use and enjoy real property. South Dakota law states:

A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

- 1) Annoys, injures, or endangers the comfort, repose, health, or safety of others;
- 2) Offends decency;
- 3) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway;
- 4) In any way renders other persons insecure in life, or in the use of property.

CAFO-related issues like 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. While CAFO operations seem like the perfect example of a nuisance for those living nearby, many states have enacted laws to shield these facilities from nuisance liability—South Dakota included. South Dakota has enacted legislation to protect farmers from nuisance lawsuits.

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<sup>67</sup> S.D. CODIFIED LAWS § 11-2-12 (Purposes of comprehensive county plan)

### South Dakota Right to Farm Act

South Dakota declares that it is state policy to protect agricultural operations from nuisance suits.<sup>68</sup> The law states:

It is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The Legislature finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of §§ 21-10-25.1 to 21-10-25.6, inclusive, to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.”

One of the primary limiting circumstances for nuisance suits is the provision stating that no agricultural operation can be a public or private nuisance due to changed conditions at the operation if the operation has been operating for a year or more and was not a nuisance at the time the operation began.<sup>69</sup> This creates a kind of indemnity for 1+ year old operations that seek to expand. One way to combat this is for the community to assert that new CAFOs are a nuisance within the first year of operation.

Note that this protection does not extend to nuisance claims filed as a result of CAFO negligence, improper operation, damages due to water pollution,<sup>70</sup> or for CAFOs within an incorporated municipality’s limits.<sup>71</sup> Therefore, individuals seeking to pursue a nuisance action against a CAFO should focus on these exceptions to the state’s nuisance shield.

Be aware that South Dakota seeks to limit or curb nuisance claims against CAFOs by making complainants pay for what the state deems to be a frivolous action against an agricultural operation.<sup>72</sup>

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<sup>68</sup> S.D. CODIFIED LAWS § 21-10-25.1 (State policy to protect agricultural operations from nuisance suits)

<sup>69</sup> S.D. CODIFIED LAWS § 21-10-25.2 (Certain agricultural operations protected)

<sup>70</sup> S.D. CODIFIED LAWS § 21-10-25.4

<sup>71</sup> S.D. CODIFIED LAWS § 21-10-25.5

<sup>72</sup> S.D. CODIFIED LAWS § 21-10-25.5

### Digging up the Dirt: Public Information Generally

Accessing information and documents about CAFOs in your communities and the agencies that interact with them is a critically important step to understanding the issues, building a record, putting pressure on agencies, and fact-finding to assess litigation possibilities or publicly challenge facilities that are entering or expanding in the region. Records requests are often an early step in the CAFO fight. While state and federal laws ensure public access to information, there are limits on the types of documents that are available, and agencies have been known to be difficult in facilitating records requests. Requests have to be specific enough for the agency to narrow its search but broad enough to ensure that important records are not left out. See the supplemental Federal Guide for information about the Freedom of Information Act. The sections below address the state public information laws.

### South Dakota Public Records

The South Dakota Sunshine Law states that “all citizens of this state, and all other persons interested in the examination of the public records ... are hereby fully empowered and authorized to examine such public record...”<sup>73</sup> While there are exceptions, public records include “all records and documents, regardless of physical form, of or belonging to this state, any county, municipality, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing.”<sup>74</sup> See South Dakota Codified Law § 1-27 for more detailed information about South Dakota public records.

### Requesting Records from SDDENR

The public may ask to inspect any of SDDENR’s records that aren’t confidential.<sup>75</sup> SDDENR will provide copies, files, or reproductions of the requested records, but note that SDDENR may charge a fee for the records. Fortunately, SDDENR provides a fee waiver for records requests “from the press or communications media, public interest groups, educational organizations, or institutions of government.”<sup>76</sup> SDDENR

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<sup>73</sup> S.D. CODIFIED LAWS § 1-27-1 (Public Records Open to Inspection and Copying)

<sup>74</sup> S.D. CODIFIED LAWS § 1-27-1.1 (public records defined)

<sup>75</sup> S.D. CODIFIED LAWS § 1-40-31 (SDDENR full public disclosure of nonconfidential public records)

<sup>76</sup> S.D. CODIFIED LAWS § 1-40-31

should respond to written requests for public records within 20 working days of receiving the request. SDDENR records requests should be sent to the department secretary:

South Dakota Department of Environment & Natural Resources  
Department Secretary or Public Records Officer  
Joe Foss Building  
523 E Capitol  
Pierre, SD 57501

### **Requesting Records from EPA Region 8**

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 8 FOIA Officer is:

Regional Freedom of Information Officer  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

See the federal supplement to this Guide for more information on FOIA. Several EPA websites also include useful information about the FOIA request process and response time guidance.<sup>77</sup> Note that you're entitled to a waiver of fees if requesting information that is "likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester."<sup>78</sup> EPA will only consider waiver requests submitted at the same time as the corresponding FOIA request.<sup>79</sup>

### **Enforcement and Compliance History Online**

The Enforcement and Compliance History Online (ECHO) is a searchable database that provides information about a facility's enforcement and compliance status and history regarding applicable environmental regulations and programs. You can locate enforcement and compliance information about facilities in your community

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<sup>77</sup> U.S. Environmental Protection Agency, The FOIA Request Process, <https://www.epa.gov/foia/foia-request-process>.

<sup>78</sup> U.S. Environmental Protection Agency, Fee Waivers, <https://www.epa.gov/foia/foia-request-process#wavers>.

<sup>79</sup> See *id.*



by searching [here](#).<sup>80</sup> ECHO is a useful starting point for determining which facilities are non-compliant and what types of records you might ask for in a more detailed records request or FOIA request.

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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>81</sup>

### **State Organizations**

[Dakota Rural Action](#)<sup>82</sup>

[South Dakota Chapter of the Sierra Club](#)<sup>83</sup>

[Environmental Law & Policy Center](#)<sup>84</sup>

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<sup>80</sup> Enforcement and Compliance History Online, United States Environmental Protection Agency, <https://echo.epa.gov/>.

<sup>81</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

<sup>82</sup> <http://www.dakotarural.org/>

<sup>83</sup> <http://www.sierraclub.org/south-dakota>

<sup>84</sup> <http://elpc.org/states/south-dakota/>

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## LIST OF STATUTES & REGULATIONS

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Below is a list of relevant statutes and regulations, most of which are discussed in this Guide.

<b>S.D. Codified Laws</b>	<b>Topic</b>
§ 1-27	Public records
§ 1-40-31	DENR disclosure of records
§ 11-2-12	Comprehensive plans
§ 11-2-12	Adopting zoning ordinances
§ 21-10-25.1-5	Farm protection from nuisance suits
§ 34A-2-11	Water quality standards
§ 34A-2-35	Public notice and hearing for discharge permit
§ 34A-2-36.2	CAFO water pollution control permit
§ 34A-2-40	CAFO inspections
§ 34A-2-125	CAFO permit fees
§ 34A-2-104	Ground water protection policy
§ 34A-3A-24	Shallow aquifer
§ 34A-6-1.2	Solid waste policy
§ 34A-6-1.13	Solid waste permit procedures
§ 34A-11	Hazardous waste
§ 38-8	Conservation districts
<b>S.D. Administrative Rules</b>	<b>Topic</b>
§74:27:08	Solid waste permit
§ 74:36:02:02	Ambient air quality standards
§ 74:51:01:11	Wetland protection
§ 74:54:01-74:54:02	Ground water discharge permit
§ 74:57:01	CAFO inspections