



**SRAP**  
Socially Responsible  
Agriculture Project

# Guide to Confronting Concentrated Animal Feeding Operations in

# TENNESSEE



# Guide to Confronting Concentrated Animal Feeding Operations in TENNESSEE

## **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](http://www.sraproject.org).

### **SRAP HELP HOTLINE**

Facing a factory farm? Contact SRAP for support.

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

(503) 362-8303

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

## LOOK FOR PUBLIC NOTICES

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

## REQUEST AND REVIEW PUBLIC RECORDS

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

## **NEW OR EXPANDING CAFOS**

### **REVIEW ZONING ORDINANCES**

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

### **REVIEW PERMIT APPLICATIONS**

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

### **COLLECT DATA**

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

## **EXISTING CAFOS**

### **REVIEW CAFO DOCUMENTS**

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

### **COLLECT DATA**

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

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

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

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

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

### **ORGANIZE A COMMUNITY GROUP**

Organize your group and develop a public presence.

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

### **SEEK LEGAL ADVICE**

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

### **IDENTIFY IMPAIRED WATER BODIES**

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

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

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

### **CHECK FOR PUBLIC FINANCING**

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

### **TRACK PUBLIC NOTICES**

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

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

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

### **AGENCIES & STATE DEFINITIONS**

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

### **SEEK PROPERTY TAX ADJUSTMENT**

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

### **ENGAGE IN RULEMAKING PROCESSES**

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

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## INTRODUCTION

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Animal agriculture in Tennessee is dominated by poultry and beef operations. It ranks 15<sup>th</sup> out of all 50 states for broiler production and 15<sup>th</sup> for cattle and calves. Poultry and egg sales account for approximately 15 percent of all agricultural sales in Tennessee. Cattle and calves account for 20 percent of all agricultural sales in the state.<sup>1</sup> According to the Tennessee Department of Agriculture, Tennessee has 36,168 farms with livestock and poultry operations.<sup>2</sup> Although Tennessee prides itself on the fact that 94 percent of its farms are family-owned, the state still has its share of large scale industrial animal agriculture;<sup>3</sup> according to the U.S. Environmental Protection Agency (EPA), Tennessee has 44 concentrated animal feeding operations (CAFOs) that require discharge permits and approximately 129 unpermitted large CAFOs that have Nutrient Management Plans.<sup>4</sup> Authority over these operations rests with the Tennessee Department of Environment and Conservation (TDEC), which oversees implementation of the TN/NPDES permits and implementation of the Nutrient Management Program.

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## AGENCIES & STATE DEFINITIONS

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

### Agencies

#### **Tennessee Department of Environment and Conservation (TDEC)**

TDEC is the primary state agency that develops, implements, and enforces state and federally authorized environmental laws and regulations that may apply to livestock operations. TDEC's Office of Water Pollution Control implements the environmental

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<sup>1</sup>Tennessee Ag Stats,

[https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=TENNESSEE](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=TENNESSEE)

<sup>2</sup> 2017 Tennessee Census of Agriculture, Tennessee Department of Agriculture,

[https://www.nass.usda.gov/Publications/AgCensus/2017/Online\\_Resources/Rankings\\_of\\_Market\\_Value/Tennessee/](https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Rankings_of_Market_Value/Tennessee/)

<sup>3</sup> <https://www.farmflavor.com/tennessee/tennessee-family-farms/>

<sup>4</sup> NPDES CAFO Permitting Status Report, U.S. Environmental Protection Agency, (2017)

[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).

laws and programs that regulate AFOs in Tennessee. For more information, see [TDEC's website](#).<sup>5</sup>

### **Tennessee Department of Agriculture (TDA)**

The Tennessee Department of Agriculture (TDA) manages the 319 Water Quality Program, (aka Nonpoint Source Program) in Tennessee with approval and oversight of the U.S. Environmental Protection Agency (U.S. EPA). This federal program provides funds to states, territories, and Indian tribes for installing Best Management Practices (BMPs) to stop NPS pollution, providing training, education, and demonstrations; and monitoring water quality.

The Tennessee Nonpoint Source Program (TN-NPS) is non-regulatory and promotes voluntary, incentive-based solutions. The program is a cost-share program, meaning that it pays for 60 percent of the cost of a project. It's the grantee's responsibility to provide the remaining 40 percent, usually in cash and "in-kind" services. The TN-NPS extends beyond the USEPA grant; Tennessee funds additional projects under state programs such as the Agricultural Resources Conservation Fund (ARCF). Together, the goal of the TN-NPS program is to restore impaired waterbodies, prevent decline of high-quality waterbodies, and promote education of nonpoint source issues.<sup>6</sup>

So, while TDA may not help stop a developing AFO, TDA employees can be a valuable source of information.

### **USDA-Natural Resources Conservation Service (NRCS)**

NRCS works with contract livestock growers to effectively manage animal waste. They help the grower to create and implement Nutrient Management Plans (NMPs) and provide agricultural waste management training, as well as publish research and publications to help contract livestock producers understand and follow federal regulations.<sup>7</sup>

NRCS also published an [Agricultural Waste Management Field Handbook](#).<sup>8</sup>

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<sup>5</sup> TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/content/tn/environment.html>.

<sup>6</sup> Nonpoint Source Program, TENNESSEE DEPARTMENT OF AGRICULTURE, [https://www.tn.gov/agriculture/farms/conservation/nonpoint-source-program\\_rd.html](https://www.tn.gov/agriculture/farms/conservation/nonpoint-source-program_rd.html).

<sup>7</sup> USDA – NATURAL RESOURCES CONSERVATION SERVICE, <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/ecoscience/mnm/?cid=stelprdb1044732>.

<sup>8</sup> Agricultural Waste Management Field Handbook, NATURAL RESOURCES CONSERVATION SERVICE, <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/ecoscience/mnm/?cid=stelprdb1045935>.

## **U.S. EPA Region 4**

Tennessee is part of the U.S. EPA Region 4, the Southeast, which also includes Alabama, Georgia, Florida, Kentucky, North Carolina, South Carolina and Mississippi. While most AFO regulation happens at the state level, the EPA has oversight authority of the state's implementation of federal laws.

For more information about EPA Region 4 and its involvement in Tennessee, see its [website](#).<sup>9</sup>

## **University of Tennessee Extension**

Tennessee Agricultural Extension service is operated by the University of Tennessee and provides research-based information, educational programs, and technology transfer. It facilitates litter and manure sample analysis and encourages best management practices (BMPs) to reduce the adverse impacts of agricultural waste on the state and its watersheds. It also conducts and publish research that is of importance to contract livestock producers.

For more information, see [UT Agricultural Extension webpage](#).<sup>10</sup>

## **Definitions**

### **Animal Feeding Operation (AFO)**

*TN Code § 69-3-(103,108)*

An AFO is a facility where animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Below are the size distinctions between small, medium and large AFOs.

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<sup>9</sup> EPA Region 4 (Southeast), U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/aboutepa/about-epa-region-4-southeast> .

<sup>10</sup> UT AGRICULTURAL EXTENSION SERVICE, <https://extension.tennessee.edu/Pages/default.aspx>.

### AFO/CAFO Size Chart

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

### Concentrated Feeding Operation (CAFO)

*TN Code § 69-3-(103,108)*

A CAFO is a Large AFO or a Medium AFO where pollutants are discharged into waters of Tennessee either through a ditch, flushing system, or device, or from waters that pass over or through the facility and comes into contact with the confined animals. Note: two or more AFOs under common ownership are considered a single AFO if they adjoin each other or use a common system or area for waste disposal. A small AFO may be designated as a small CAFO by TDEC if they determine that it's a significant contributor of pollutants to the waters of the state.



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## WATER

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*Most states are responsible for implementing the Clean Water Act and several other programs and permits that address water quality and availability across the state.*

### **Tennessee National Pollutant Discharge Elimination System (TN/NPDES)**

*TN Code § 69-3-108(b) Rules and Regulations of Tennessee 0400-40-01,03,04,05*

### **National Pollutant Discharge Elimination System Permit (NPDES)**

TDEC only requires individual NPDES permits for CAFOs if they are required under the federal Clean Water Act (33 U.S.C. § 1251 et seq.). A CAFO must apply for a TN NPDES water pollution control permit if the CAFO discharges or proposes to discharge into waters of the state.<sup>11</sup> They must also include a Nutrient Management Plan (NMP) with their NPDES permit application. Unsurprisingly, most operations assert that they do not discharge and therefore do not need a permit. Be sure to point out if that's not actually the case if you observe an operation discharging. As of 2017, 44 CAFOs in Tennessee had NPDES permits.<sup>12</sup>

For more information about the TN NPDES program and permit requirements, see [TDEC's NPDES Application and Forms page](#)<sup>13</sup> and the applicable regulations.<sup>14</sup> Any NPDES permit application is subject to state public notice requirements. The NOI must be published on [TDEC's website](#)<sup>15</sup> and the most recent version of the NMP will be available for review. Applicable regulations can be read [here](#).<sup>16</sup> From the date of the notice, you have 30 days to submit written comments on the permit application and request a public hearing. A hearing is not automatic—**request one**. TDEC will only hold a hearing if “significant interest” is received.

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<sup>11</sup> *Rules and Regulations of Tennessee 0400-40-05-.14*

<sup>12</sup> NPDES CAFO Permitting Status Report, [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)

<sup>13</sup> National Pollutant Discharge Elimination System (NPDES) Individual Permits, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/environment/permit-permits/water-permits/npdes-permits/national-pollutant-discharge-elimination-system--npdes--permit.html> .

<sup>14</sup> *TN Code § 69-3-108(b) Rules and Regulations of Tennessee 0400-40-01,03,04,05*

<sup>15</sup> Public Participation, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-water.html> .

<sup>16</sup> NPDES Permit, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-water.html> .

## **State Operating Permit (SOP)**

*Rules and Regulations of the State of Tennessee 0400-40-06-.03*

State Operating Permits (SOPs) are only required of non-discharging large CAFOs that utilize liquid waste management systems. SOPs are not required for poultry CAFOs with a dry litter waste system.

## **Certified Nutrient Management Plans**

All permitted CAFOs are required to develop and implement a Certified Nutrient Management Plan (CNMP). TDEC-Division of Water Resources is the permitting authority in Tennessee. TDEC does not aid in the development of the CNMP for the CAFO. The CNMP is developed by a certified nutrient management planner and should include the [following](#):<sup>17</sup>

- The number of animals, amounts of manure or litter applied or transferred, an aerial or topographic map, and crop details
- Adequate storage of manure, litter, and process wastewater
- Procedures to ensure proper operation and maintenance of storage facilities
- Proper management of mortalities
- Diversion of clean water
- Preventing contact between animals and waters of the state
- Protocol to manage chemicals
- Identification of site-specific conservation practices that should be implemented
- Protocol for testing of manure, litter, process wastewater, and soil
- Records that must be maintained
- New soil and manure analyses every three years
- Annual reporting requirements.

Most use NRCS's services to develop the CNMP. There are cost-share monies available through NRCS for CNMP development. Also, a CNMP is required in order to acquire a loan through FSA for building the facility.

**Note:** Currently, Tennessee does not have any laws or regulations that govern setbacks for agricultural building sites. Manure, litter, and process wastewater shall be applied no closer than 100 feet to any down-gradient surface waters, open tile

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<sup>17</sup> Nutrient Management Plan Content, RULES AND REGULATIONS OF TENNESSEE 0400-40-05-.14(10), <https://publications.tnsosfiles.com/rules/0400/0400-40/0400-40-05.20180822.pdf> .

line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless the CAFO substitutes the 100-foot setback with a 35-foot wide vegetated buffer or by leaving in place a 60-foot natural riparian buffer. Manure, litter, and process wastewater shall be applied no closer than 100 feet of any potable well.<sup>18</sup>

## **Wetlands**

*TN Code § 69-3-1, TN Code § 11-14-4*

Wetlands are a critically important resource that require strong governmental protections. Wetlands constitute only a small percentage of Tennessee's total land area and are therefore considered a scarce resource.<sup>19</sup> The Tennessee Department of Environment and Conservation, Natural Resources Section, Division of Water Pollution Control is the primary State management agency for wetlands. The Department monitors and enforces many water-quality standards and regulations that directly affect wetlands. The state also has a wetlands preservation program.<sup>20</sup> The Tennessee Water Quality Control Act of 1977 states:

Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right. It is further declared that the purpose of this part is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters.

It also establishes the need for permits for the alteration of the physical, chemical, radiological, biological, or bacteriological properties of waters of the state. "Waters" means any and all waters public or private, on or below the surface of the ground, except for those bodies of water confined to and retained within the limits of private

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<sup>18</sup> *Rules and Regulations of Tennessee 0400-40-05-.14*

<sup>19</sup> Tennessee Wetland Resources, U.S. FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Water-Summary-Reports/National-Water-Summary-Wetland-Resources-Tennessee.pdf>.

<sup>20</sup> *TN Code § 11-14-4*

property in single ownership which do not combine or affect a junction with natural surface or underground waters.<sup>21</sup>

Wetlands use in Tennessee is regulated under the dredge and fill permit program of the federal Clean Water Act (CWA) and the state water quality control regulations. These two regulatory programs work together to require that all activities in state wetlands be permitted. Wetlands regulation in Tennessee is enforced jointly by the Corps, TDEC's Division of Water Resources, and in some cases, the Tennessee Valley Authority (TVA). TVA does not directly regulate wetland activities but conducts a wetlands review for any action affecting TVA-controlled properties. Through the review process, TVA attempts to minimize the destruction, loss, or degradation of wetlands.

Many activities affecting wetlands in the state are regulated under the Army Corps of Engineers nationwide permits. Generally, modification to wetlands, including depositing fill, excavating, or draining, require a federal 404 permit from the U.S. Army Corps of Engineers (US ACoE). However, Section 401 of the CWA prevents a federal agency from issuing a permit for any activity that may result in a discharge to water (including wetlands) until the state where the discharge would occur has granted or waived Section 401 certification. For activities that do not require a federal Section 404 dredge and fill permit, the state water quality regulations will require an alteration permit approval from TDEC.<sup>22</sup> During project review, the Division of Water Pollution Control attempts to prevent wetland losses by requesting that alternatives be considered. For unavoidable losses, the agency requests mitigation.<sup>23</sup> Denial of 401 certification by TDEC prevents the federal permit or license from being issued. This process ensures that the issuance of federal permits will not violate state water quality standards.<sup>24</sup>

If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they haven't, submit a complaint to the appropriate agency.

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<sup>21</sup> *TN Code § 69-3-1 aka Tennessee Water Quality Control Act of 1977*

<sup>22</sup> Tennessee Wetlands: What you need to know, BLR, <https://www.blr.com/Environmental/Water/Wetlands-in-Tennessee>.

<sup>23</sup> Tennessee Wetland Resources, U.S. FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Water-Summary-Reports/National-Water-Summary-Wetland-Resources-Tennessee.pdf>.

<sup>24</sup> 401 Certification, TENNESSEE DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://www.tn.gov/environment/permit-permits/water-permits/aquatic-resource-alteration-permit-arap.html>.

Learn more about U.S. ACoE's role in 404 wetland permitting on its [Regulatory website](#).<sup>25</sup>

Locate wetlands in your area using U.S. Fish & Wildlife Service's [Wetlands Mapper](#).<sup>26</sup>

## **Water Quality**

### **Water Quality Standards**

*TN Code § 69-3-101,102*

### **Impaired Water Bodies**

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments<sup>27</sup> and identify waters not meeting the state's water quality standards.<sup>28</sup> Since states are supposed to protect waters from further degradation, it may be important to note if a CAFO or large AFO is seeking to discharge into or near an already impaired water of the state. Find this information in [Tennessee's Statewide Water Quality Assessment Report](#)<sup>29</sup> or [EPA's Tennessee Water Quality Assessment Report](#).<sup>30</sup>

### **Groundwater**

*TN Code § 68-221-702*

The Clean Water Act calls for the regulation of discharges to surface waters, but states have varying degrees of protection for groundwater. Tennessee has implemented [EPA's Groundwater Rule \(GWR\)](#).<sup>31</sup> The state acknowledges that groundwater is a precious natural resource and provides 58 percent of Tennessee's drinking water needs and thus should be protected. "Recognizing that the waters of

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<sup>25</sup> Regulatory, U.S. ARMY CORPS OF ENGINEERS NASHVILLE DISTRICT, <https://www.lrn.usace.army.mil/Missions/Regulatory/>.

<sup>26</sup> Wetland Mapper, US FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Mapper.html>

<sup>27</sup> CWA § 305(b).

<sup>28</sup> CWA § 303(d).

<sup>29</sup> Tennessee 2014 Statewide 305(b) Water Quality Report, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, [https://www.tn.gov/content/dam/tn/environment/water/documents/wr\\_wq\\_report-305b-2014.pdf](https://www.tn.gov/content/dam/tn/environment/water/documents/wr_wq_report-305b-2014.pdf).

<sup>30</sup> Tennessee Water Quality Assessment Report, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, [https://ofmpub.epa.gov/waters10/attains\\_state.control?p\\_state=TN](https://ofmpub.epa.gov/waters10/attains_state.control?p_state=TN).

<sup>31</sup> Drinking Water Requirements for States and Public Water Systems, United States Environmental Protection Agency, <https://www.epa.gov/dwreginfo/ground-water-rule>.

the state are the property of the state and are held in public trust for the benefit of its citizens, it is declared that the people of the state are beneficiaries of this trust and have a right to both an adequate quantity and quality of drinking water.”<sup>32</sup>

Groundwater Remediation Program: *Rules and Regulations of the State of TN 0400-45-01-.40*

Groundwater Protection Plans: *Rules and Regulations of the State of TN 0400-45-01-.34*

Groundwater Variances: *TN Code § 69-3-108(m)(1-5), Rules and Regulations of the State of TN 0400-45-01-.40*

Underground Injection Control: *Rules and Regulations of the State of TN 0400-45-06*

### **Construction & Stormwater**

While an AFO may not need an NPDES permit to operate, its construction may require an NPDES permit. The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.<sup>33</sup> TDEC administers stormwater construction permits for Tennessee. Permits are required of operators of construction sites involving clearing, grading or excavation that result in an area of disturbance of one or more acres, and activities that result in the disturbance of less than one acre if it's part of a larger common plan of development or sale. Construction of actual structures (e.g., barns) that disturb one acre or more of soil are considered associated with industrial activity and a Construction General Stormwater Permit (CGP) is required.

The owner or operator must complete the Notice of Intent for Construction Activity-Stormwater Discharges (**NOI**), which must include a map on 8.5 by 11 inch paper with boundaries 1-2 miles outside the site property with the site and construction area outlined and the receiving water or receiving storm sewer highlighted and identified. It's preferable for this map to be the appropriate portion of a USGS Quad map. NOIs must be sent to the appropriate Environmental Field Office. A site-specific Stormwater Pollution Prevention Plan (SWPPP) must be developed and submitted with the NOI. The SWPPP must be developed, implemented, and updated according to Part 3 of the CGP (Construction General Permit). For more information, application, and forms, see the [TDEC NPDES Stormwater Construction Permit webpage](https://www.tn.gov/environment/permit-permits/water-permits/npdes-permits/npdes-stormwater-permitting-program/npdes-stormwater-construction-permit.html).<sup>34</sup>

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<sup>32</sup> TN Code § 68-221-702

<sup>33</sup> CWA § 402; 40 C.F.R. §§ 122.26, 450.

<sup>34</sup> NPDES Stormwater Construction Permit, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/environment/permit-permits/water-permits/npdes-permits/npdes-stormwater-permitting-program/npdes-stormwater-construction-permit.html>.

## Karst

Karst is a geological formation where soluble carbonate rocks such as limestone or dolomite occur at or near the surface and dissolve to create sinkholes, sinking streams, depression, caves, and subterranean drainage. Karst terrain is particularly susceptible to groundwater contamination because it provides a fast and easy route for unfiltered contaminants from the land surface to reach the aquifer. As a result, some states take karst into account when making land use decisions. They may impose additional construction or waste application setbacks from known sinkholes.

Karst terrain can be found across much of middle and east Tennessee.<sup>35</sup> Tennessee has limited laws or regulations on the subject. However, a permit is required to operate a Class V underground injection well or to have stormwater discharge or to modify a karst feature. Find policies and guidance [here](#).<sup>36</sup>

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## AIR

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### Air Quality & Odors

*TN Code § 68-201-1*

Industrial livestock operations are a significant source of odors and air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, animal agriculture may be regulated, but the industry has largely evaded meaningful regulation. While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions.

The Tennessee Air Quality Act states:

It is the intent and purpose of this part to maintain purity of the air resources of the state consistent with the protection of normal health, general welfare and physical property of the people, maximum employment and the full industrial development of the state. The board and department shall seek the

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<sup>35</sup> Karst Terrain in Tennessee. <https://extension.tennessee.edu/publications/Documents/W453-C.pdf>.

<sup>36</sup> Karst Policy and Guidance <https://www.tn.gov/content/dam/tn/environment/water/policy-and-guidance/DWR-UIC-G-01-Regulation%20of%20Karst%20for%20Stormwater%20Management-draft-060717.pdf>.

accomplishment of these objectives through the prevention, abatement and control of air pollution by all practical and economically feasible methods. It is also the intent of this part to qualify for receipt of federal funds available for state air pollution control programs and, to that end, this part shall be construed to give the authority to so qualify and maintain such qualification.<sup>37</sup>

Unfortunately, Tennessee does little to regulate air pollution or odors from AFOs. CAFOs are exempt from being required to have an air quality permit.

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## ZONING & LAND USE

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*Local governments are often the first to know of a proposal for a CAFO or other livestock operation to locate or expand in a community.*

### Zoning

*TN Code § 13-7-1*

According to Tennessee Code:

The county legislative body of any county is empowered...to regulate, in the portions of such county which lie outside of municipal corporations, the location, height and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes, and identify areas where there are inadequate or nonexistent publicly or privately owned and maintained services and facilities when the planning commission has determined the services are necessary in order for development to occur.<sup>38</sup>

Tennessee has broad authority to regulate land use absent an explicit prohibition. Some states have used similar authority to pass ordinances such as increased setbacks or moratoriums to protect communities from the impacts of CAFOs.

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<sup>37</sup> TN Code § 68-201-103

<sup>38</sup> TN Code § 13-7-1



However, Tennessee limits the enactment of zoning ordinances that could impact agricultural operations.

TN Code § 6-54-126 states:

For any land that is used for agricultural purposes as of May 10, 1998, a municipality may not use its zoning power to interfere in any way with the use of such land for agricultural purposes as long as the land is used for agricultural purposes.

Therefore, local control to enact zoning ordinances relating to agriculture is limited in Tennessee.

### **Setbacks**

It is *recommended* that poultry houses, litter sheds, or compost locations be at least:

- 1,000 feet from a school, public well, public spring, public water intake, or town
- 400 feet from a residential dwelling, retail business, church, or public building
- 150 feet from any property line
- 75 feet from the edge of any public road.

Currently, Tennessee doesn't have any laws or regulations that govern setbacks for agricultural building sites. However, most poultry industry companies have self-imposed setback guidelines that need to be considered.<sup>39</sup>

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## **PUBLIC PARTICIPATION**

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*Take advantage of every opportunity to make your voice heard about CAFOs in your communities. AFO operators and regulators will not take additional steps to check the industry unless the public demands it.*

### **Public Notice**

Depending on the type of permit, TDEC may be required to issue public notice. In this case, public notice will be published in the community where the proposed permit will take effect, generally in a local newspaper. TDEC will also send notice to those on

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<sup>39</sup> Site Selection Factors for New Poultry Facilities, Ag Extension Service of the University of Tennessee, <https://extension.tennessee.edu/publications/Documents/SP592.pdf>.

the TDEC mailing list and on TDEC's DWR [Data Viewer](#).<sup>40</sup> Permit applicants are required to post a sign near their property advertising the permit application. Visit [TDEC's Public Participation webpage](#) to learn more about the permitting process and to view current permits at public notice.<sup>41</sup>

### **Comments and Requesting a Public Hearing**

*TN Code § 69-3-101, Rules and Regulations of the State of Tennessee 0400-40-06-.04*

Community members have limited time (30 days) to submit written comments after publication of notice. This process moves very quickly, so it's important to submit written comments on time and to the correct contact person. Deadlines and contact information will be included in the public notice. When submitting written comments, review the draft permit as well as the permit rationale sheet in order to provide an informed comment. Instructions for obtaining copies of these documents will be included in the public notice. During the public comment period, you should also request a public hearing. Requests should be directed to TDEC's Water Permits Division as soon as possible to demonstrate "significant interest" in the permit decision.

### **Permit Appeals**

The Tennessee Division of Water Resources Water Quality Control Board hears appeals regarding permits issued or denied by TDEC. Appeals must be filed within 30 days of the issuance of the permit or order.<sup>42</sup> Contact TDEC's Division of Water Resources Water Quality Control through your local [Environmental Field Office \(EFO\)](#) to file an appeal.<sup>43</sup>

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<sup>40</sup> Division of Water Resources Data Viewer, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, [http://environment-online.tn.gov:8080/pls/enf\\_reports/f?p=9034:34001:0:::~](http://environment-online.tn.gov:8080/pls/enf_reports/f?p=9034:34001:0:::)

<sup>41</sup> Public Participation Webpage, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/environment/ppo-public-participation.html> .

<sup>42</sup> NPDES Permit Appeal, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/environment/permit-permits/water-permits1/npdes-permits1/national-pollutant-discharge-elimination-system--npdes--permit.html> .

<sup>43</sup> Environmental Field Offices, TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, <https://www.tn.gov/environment/contacts/about-field-offices.html> .

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## NUISANCE & RIGHT TO FARM LAW

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*When state and federal regulations fail to protect people from the harmful impacts of industrial livestock facilities, they may consider filing a nuisance lawsuit. Unfortunately, Tennessee's Right to Farm Law makes this strategy ineffective unless nuisance claim has been filed within the first year of operation.*

### **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. 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 impair human health. However, many states—including Tennessee—have enacted laws to shield livestock operations from nuisance liability.

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

*TN Code § 43-26-101 through 43-26-104*

Right to farm laws exist in all states and seek to protect farmers from nuisance suits brought by neighbors and communities experiencing unpleasant effects of agricultural production. Tennessee's Right to Farm Act states:

(a) It is a rebuttable presumption that a farm or farm operation is not a public or private nuisance. The presumption created by this subsection (a) may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that either:

- (1) The farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or
- (2) The farm or farm operation alleged to cause the nuisance does not comply with any applicable statute or rule, including without limitation statutes and rules administered by the department of agriculture or the department of environment and conservation.

### **Definitions:**

As used in this chapter, unless the context otherwise requires:

- 1) "Farm" means the land, buildings, and machinery used in the commercial production of farm products and nursery stock as defined in *TN Code § 70-8-303*;
- 2) "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of farm products or nursery stock as defined in § 70-8-303, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; the employment and use of labor; marketing of farm products in conjunction with the production of farm products thereof; and any other form of agriculture as defined in *TN Code § 43-1-113*;
- 3) "Farm product" means those plants and animals useful to man and includes, but is not limited to, forages and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; industrial hemp; trees; fish; apiaries; equine and other similar products; or any other product that incorporates the use of food, feed, fiber or fur.

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## ENFORCEMENT

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*It's not surprising that industrial agriculture isn't eager to self-report violations of local, state, or federal law. Given Tennessee's sporadic inspection schedule, it's often up to residents to report violations and push for enforcement. A record of compliance issues demonstrates that penalties or enforcement actions are necessary.*

### **Submitting Complaints & Reporting Violations**

If an AFO is violating its permit, NMP, or any other regulation, you can submit a complaint to TDEC by calling (888)891-8332 (tell the operator that you wish to report an environmental problem), or by filling out the [Ask TDEC online form](#).<sup>44</sup> Your call will be automatically forwarded to the appropriate Environmental Field Office based on where you are calling from.

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<sup>44</sup> TDEC Online Form, Tennessee Department of Environment and Conservation  
<https://www.tn.gov/environment/ask-tdec-form.html>.

Be sure to properly describe and document the compliance issue you are reporting. Take detailed notes and take pictures whenever possible but **do not trespass** in order to do so.

**Note:** All complaints are public record.

TDEC will investigate complaints and exercise civil, criminal, and administrative laws to compel enforcement when necessary.

## Inspections

The NPDES program is administered by the Tennessee Department of Environment and Conservation (TDEC), Division of Water Pollution Control (WPC). TDEC's central office is in Nashville. In addition to the central office, TDEC has eight Environmental Field Offices (EFOs), which handle environmental issues in specified counties. EFO staff are responsible for inspections, compliance and ambient monitoring, as well as certain enforcement functions. The EFOs are located in Chattanooga, Columbia, Cookeville, Jackson, Johnson City, Knoxville, Memphis, and Nashville. EPA Region 4 does not have any direct implementation responsibilities in Tennessee except for bio-solids.

The Permit Section (in TDEC's central office) handles all permitting issues except for mining, which is handled by the Mining Section (i.e., industrial, municipal, stormwater, general permits). The Enforcement and Compliance Section (also in TDEC's central office) handles all enforcement (with assistance from the EFOs), with the exception of enforcement involving mining facilities, which is handled by the Mining Section.<sup>45</sup> TDEC only requires individual NPDES permits for CAFOs if they are required under the federal Clean Water Act (33 U.S.C. § 1251 et seq.). State Operating Permits (SOPs) are only required of Non-discharging large CAFOs that utilize liquid waste management systems. TDEC inspects registered CAFOs as needed.<sup>46</sup> The infrequent inspection of those facilities and lack of inspection of other CAFOs demonstrates the importance of understanding AFO regulations and submitting complaints when the operation is not in compliance.

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<sup>45</sup> Permitting for Environmental Results, NPDES Profile: Tennessee, U.S. ENVIRONMENTAL PROTECTION AGENCY, [https://www3.epa.gov/npdes/pubs/tennessee\\_final\\_profile.pdf](https://www3.epa.gov/npdes/pubs/tennessee_final_profile.pdf).

<sup>46</sup> Id.

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## PUBLIC INFORMATION LAWS

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*One of the first steps when dealing with a new, expanding, or problematic industrial livestock operation is gathering information by searching online, submitting record requests, and attending public meetings. Fortunately, state laws increase government transparency and provide public access to certain types of information.*

### **Freedom of Information Act**

5 U.S.C. § 552

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 CAFO Guide for more information.

### **Tennessee Public Records Act**

TN Code § 10-7-501

The TN Public Records Act is Tennessee's law covering access to state records according to the federal Freedom of Information Act (FOIA). The TN Public Records Act is intended to provide access to information about the workings of the government, and applies to all state, county, and municipal officers, governing bodies, agencies, departments, boards, commissions, and any other entities created or funded by state or local authority.

For more information, see the state Attorney General's TN Public Records Policy [webpage](#).<sup>47</sup> [The National Freedom of Information Coalition](#) also provides Tennessee FOIA resources, including governmental contacts and sample letters.<sup>48</sup>

FOIA requests can be submitted orally, in writing, or in person to the TN Attorney General's office. Requests in writing can be sent by U.S. mail or by email to [tnattygen@ag.tn.gov](mailto:tnattygen@ag.tn.gov). Although no specific form is required to make a FOIA request, a sample Tennessee FOIA request is available [here](#).<sup>49</sup> Agencies are required to respond

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<sup>47</sup> Public Records Policy, STATE OF TENNESSEE OFFICE OF THE ATTORNEY GENERAL,

<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/public-records-policy.pdf>.

<sup>48</sup> Tennessee FOI Resources, NATIONAL FREEDOM OF INFORMATION COALITION, <https://www.nfoic.org/tennessee-foi-resources#lett>.

<sup>49</sup> Tennessee Sample FOIA Request, NATIONAL FREEDOM OF INFORMATION COALITION, <https://www.nfoic.org/tennessee-sample-foia-request>.

to records requests within seven business days.<sup>50</sup> The TN FOIA includes an explicit fee waiver provision.

FOIA regulations and procedures can change frequently, so consult the most current laws and regulations before filing a request.

### **Tennessee Open Meetings Act**

*TN Code § 8-44-101 through 104*

The Tennessee Open Meetings Act legislates how public meetings are conducted. It states that all meetings of all groups who manage or spend public funds shall be open to the public—with a few exceptions—and outlines adequate notice of the meetings. For more information about exemptions, notice, meeting minute requirements, and enforcement of the act, see TN Code § 8-44-(101-104).

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## **PROPERTY TAX APPEAL**

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*Industrial livestock operations have been shown to reduce nearby property values by as much as 80 percent. Unfortunately, local governments often fail to adjust property value assessments accordingly, causing owners of nearby properties to pay more than their fair share of property taxes, in addition to enduring the other harmful impacts of industrial livestock production. In these cases, property owners may be able to seek a property tax reduction. This may also help convince local government officials that CAFOs aren't as economically beneficial to communities as their proponents claim.*

### **Property Tax Appeal**

*TN Rules and Regulations Ch. 0600-01, TN Code § 67-5-101*

Tennessee property owners may file an appeal when they believe that their property assessment does not reflect the market value of the property. If a taxpayer wishes to dispute the assessment of their property, they must start with the county board of equalization, then appeal to the State Board of Equalization (starting with a hearing examiner, followed by the Assessment Appeals Commission, and then the board itself) and finally, to the courts (i.e., Chancery Court). If the taxpayer fails to protest the assessment to the county board of equalization while it's in session, the

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<sup>50</sup> TN Code § 10-7-503(a)(2)(B)(iii)

assessment becomes final and the taxpayer loses the opportunity to challenge it. Taxpayers who were not notified of an increase in valuation by the county assessor can appeal directly to the State Board of Equalization. Appeals to the State Board of Equalization must be made before August 1 of the tax year, or within 45 days of the date of the decision of the county board of equalization, whichever is later.<sup>51</sup>

For more information about Tennessee’s property tax assessment process and appeal rules, see the [Property Assessment webpage](#).<sup>52</sup>

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## OTHER RESOURCES

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

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

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at [www.sraproject.org](http://www.sraproject.org), and contact SRAP for support at 503-632-8303 or through our [website](#).<sup>53</sup>

### **State and Nonprofit Organizations**

#### **The Center for Progressive Reform**

<http://www.progressivereform.org/>

Phone: (202) 747-0698

#### **Tennessee Riverkeeper**

<http://tennesseeriverkeeper.org>

Phone: (423) 451-6807

#### **Tennessee Environmental Council**

<https://www.tectn.org>

Phone: 615-248-6500

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<sup>51</sup> Contested Case Procedures, Rules of State Board of Equalization, TENNESSEE SECRETARY OF STATE, <https://publications.tnsosfiles.com/rules/0600/0600-01.20180522.pdf> .

<sup>52</sup> Property Assessments, TENNESSEE COMPTROLLER OF THE TREASURY, <https://www.comptroller.tn.gov/office-functions/pa/tax-resources/reports-handbooks-reference.html> .

<sup>53</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>



**Sierra Club – Tennessee Chapter**

<https://www.sierraclub.org/tennessee>

Phone: 865-806-0980

**Southern Environmental Law Center**

<https://www.southernenvironment.org>

Phone: (434)977-4090

**Tennessee Clean Water Network**

<https://www.tcwn.org>

865-522-7007