

# Guide to Confronting Concentrated Animal Feeding Operations in

# TEXAS



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## **A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT**

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

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Animal agriculture plays an important role in the culture and economy of Texas. The state boasts the top spot for cattle, sheep, number of farms and ranches, and value of livestock sold,<sup>1</sup> and ranks 6 out of all 50 states for poultry and eggs as well as dairy. As of early 2019, Texas had approximately 247,000 farm operations spanning 127 million acres, and an inventory of more than 13 million cattle, 653 million broiler chickens, 1.1 million hogs, and 750,000 sheep.<sup>2</sup>

Despite being the second largest state in nation, Texas still faces the challenges of handling the vast quantity of waste generated by so many animals. Although most people envision rangeland cattle operations when they think about animal agriculture in Texas, the state has many confinement operations and feedlots. According to the U.S. Environmental Protection Agency (EPA), Texas has approximately 1,049 CAFOs, though only 523 have CAFO discharge permits.<sup>3</sup>

While animal agriculture is fiercely protected in Texas, the industry is not entirely unregulated. The Texas Commission on Environmental Quality oversees the state's concentrated animal feeding operation (CAFO) program, but requirements vary significantly based on the location and type of operation. The state has begun to impose additional requirements to address nutrient pollution in areas with already impaired waters. Be sure to check which permits and requirements apply based on the species of animal and location of the operation.

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## AGENCIES & STATE DEFINITIONS

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

### **Agencies**

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<sup>1</sup> [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=TEXAS](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=TEXAS);  
<https://www.texasagriculture.gov/About/TexasAgStats.aspx>

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

<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)

## Texas Commission on Environmental Quality (TCEQ)

TCEQ is the primary state agency responsible for the CAFO permit program. TCEQ has been delegated authority by the EPA to regulate discharge of pollutants to surface waters and therefore administers the Texas Pollutant Discharge Elimination System (TPDES) program, which regulates discharges from CAFOs. Note that TCEQ does not regulate discharges associated with oil, gas, and geothermal exploration and development activities. For more information, see [TCEQ's website](#).<sup>4</sup>

## Texas State Soil and Water Conservation Board (TSSWCB)

TSSWCB provides assistance to the state's 216 local Soil and Water Conservation Districts, administers the state's soil and water conservation law, works with TCEQ to implement the Texas Nonpoint Source Management Program, and is the primary agency that regulates dry litter poultry operations by requiring the operation to implement a water quality management plan. The water quality management plan for poultry operations includes requirements for litter management, mortality management, and best management practices to help the state achieve its water quality standards.<sup>5</sup> For more information, see [TSSWCB's website](#).<sup>6</sup>

## US EPA Region 6

Texas is part of the U.S. EPA Region 6, South Central, which also includes Arkansas, Louisiana, New Mexico, and Oklahoma. While most AFO regulation happens at the state level, the EPA has some oversight authority regarding the state's implementation of federal laws. For more information about EPA Region 6 and its involvement in Texas, see its [website](#).<sup>7</sup>

## Definitions

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

30 TAC 321.32(2)

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<sup>4</sup> <https://www.tceq.texas.gov/>

<sup>5</sup> <https://www.tsswcb.texas.gov/programs/water-quality-management-plan/poultry-water-quality-management-program>

<sup>6</sup> <https://www.tsswcb.texas.gov/>

<sup>7</sup> <https://www.epa.gov/aboutepa/epa-region-6-south-central>; <https://www.epa.gov/tx>

An animal feeding operation (AFO) is defined as

A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the lot or facility. Two or more AFOs under common ownership are a single AFO if they adjoin each other, or if they use a common area or system for the beneficial use of manure, sludge, or wastewater. A land management unit is not part of an AFO.<sup>8</sup>

### **Large Concentrated Animal Feeding Operation (CAFO)**

*30 TAC 321.32(14)(A)*

A Large CAFO is any AFO that confines more than the following numbers of animals:

- 1,000 cattle other than mature dairy cattle or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.
- 1,000 veal calves
- 700 mature dairy cattle (whether milkers or dry cows)
- 2,500 swine, each weighing 55 pounds or more
- 10,000 swine, each weighing less than 55 pounds
- 500 horses
- 10,000 sheep or lambs
- 55,000 turkeys
- 125,000 chickens (other than laying hens, if the operation does not use a liquid manure handling system)
- 30,000 laying hens or broilers (if the operation uses a liquid manure handling system)
- 82,000 laying hens (if the operation does not use a liquid manure handling system)
- 5,000 ducks (if the operation uses a liquid manure handling system)
- 30,000 ducks (if the operation does not use a liquid manure handling system)

### **Medium Concentrated Animal Feeding Operation (CAFO)**

*TAC 321.32(14)(B)*

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<sup>8</sup> 30 TAC 321.32(2)

A Medium CAFO is “any AFO that discharges pollutants into water in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into water in the state with the following number of animals:”

- 300 to 999 cattle other than mature dairy cattle or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.
- 300 to 999 veal calves
- 200 to 699 mature dairy cattle (whether milkers or dry cows)
- 750 to 2,499 swine, each weighing 55 pounds or more
- 3,000 to 9,999 swine, each weighing less than 55 pounds
- 150 to 499 horses
- 3,000 to 9,999 sheep or lambs
- 16,500 to 54,999 turkeys
- 37,500 to 124,999 chickens (other than laying hens, if the operation does not use a liquid manure handling system)
- 9,000 to 29,999 laying hens or broilers (if the operation uses a liquid manure handling system)
- 25,000 to 81,999 laying hens (if the operation does not use a liquid manure handling system)
- 1,500 to 4,999 ducks (if the operation uses a liquid manure handling system)
- 10,000 to 29,999 ducks (if the operation does not use a liquid manure handling system).

### **Small Concentrated Animal Feeding Operation (CAFO)**

*30 TAC 321.32(14)(C)*

A small CAFO is defined as “any AFO that is designated by the executive director [of TCEQ] as a CAFO because it is a significant contributor of pollutants into or adjacent to water in the state and is not a large or medium CAFO.”

### **State-Only Concentrated Animal Feeding Operation (CAFO)**

*30 TAC 321.32(14)(D)*

A state-only CAFO is defined as an AFO whose number of animals fall within the range of a Medium CAFO, and while it may not directly discharge like a Medium CAFO, may be designated as a state-only CAFO if it is located in a dairy outreach program area or if it has been designated by the executive director of TCEQ as a CAFO because it is a significant contributor of pollutants into or adjacent to water in 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.*

### **Texas Pollutant Discharge Elimination System (TPDES)**

*Texas Water Code Chapter 26; 30 TAC Chapters 205, 305, and 321; 30 TAC §321.34*

A CAFO must apply for a general or individual permit prior to construction or operation of the facility. The general permit allows CAFOs to discharge pollutants into surface waters of the state only if the facility is designed, constructed, maintained, and operated in accordance with the requirements in the permit. However, in some cases, such discharges are not allowed, and the operation may be required to seek an individual permit or may be denied a permit due its potential to adversely impact waters and/or drinking waters of the state.

Individual CAFO TPDES permits may be required if any of the following conditions applies to the operation seeking the permit:<sup>9</sup>

- CAFO is within one mile of coastal natural resource area;<sup>10</sup>
- CAFO is a dairy CAFO in Segment 1226 or 1255 of the Bosque River watershed;
- CAFO is in the protection zone of a sole source surface drinking water supply;
- CAFO is in an impaired watershed where water quality protection measures are required;
- TCEQ's executive director decides that the CAFO needs an individual permit;
- CAFO has a "poor" or "unsatisfactory performer" compliance history rating.<sup>11</sup>

Consult the most recent version of the general TPDES CAFO permit to learn about the various permit requirements. The current general permit, [TXG920000](#),<sup>12</sup> expired in July 2019, so be sure to check for the most current version.

Note that TPDES CAFO permits are subject to public notice requirements. See the public participation section later in this guide for more details.

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<sup>9</sup> 30 TAC §321.33; <https://www.tceq.texas.gov/permitting/wastewater/cafo/cafo.html>

<sup>10</sup> Texas Natural Resources Code §33.203

<sup>11</sup> 30 TAC §60.3

<sup>12</sup> <https://www.tceq.texas.gov/assets/public/permitting/wastewater/general/txg920000.pdf>

Note that several requirements that apply to CAFOs in Texas also apply to AFOs. While an AFO may not be required to obtain a TPDES permit, it's still required to operate in a way that protects water quality standards in the state. See 30 TAC §321.47 for the requirements for AFOs not defined or designated as CAFOs.

### **Nutrient Management Program (NMP) & Nutrient Utilization Plan (NUP)**

CAFOs seeking a general or individual TPDES permit are required to develop and submit a Nutrient Management Plan (NMP) with their notice of intent (NOI) to apply for a permit. The NMP is based on NRCS Practice Standard Nutrient Management Code 590 and addresses the amount, rate, source, and the method and timing of applying waste to the soil at agronomic rates. The NMP must be certified by a Certified Nutrient Management Specialist.

The NMP may also incorporate a Nutrient Utilization Plan (NUP) to address site-specific conditions of the land to ensure that disposal of manure, sludge, or wastewater won't have an adverse impact on water quality.

CAFOs wishing to make changes to their NMP must submit a notice of change (NOC) to the TCEQ. TCEQ will determine if the change is substantial and it may be subject to public notice and comment.

Note: the NMP requirement is not applicable to State-Only CAFOs.

### **Pollution Prevention Plan (PPP)**

A pollution prevention plan (PPP) must be developed and submitted along with an NOI and NMP to apply for a general CAFO permit. The PPP must be prepared in accordance with good engineering practices, include control measures to limit the discharge of pollutants to surface waters, describe the practices that will be used to assure compliance with the permit, and identify who is responsible for the development, implementation, operation, maintenance, inspections, recordkeeping, and revision of the PPP. This should be available to the public when the operation applies for permit coverage. See the current permit for details and a full list of all requirements for a PPP.

### **Wetlands**

*Texas Water Code §11.502; Clean Water Act §401 & 401;*

Wetlands are a critically important resource that require strong governmental protections. Texas is an ecologically diverse state with many different types of wetlands, including deepwater swamps, freshwater marshes, playa lakes, riparian wetlands, and saline and brackish marshes.<sup>13</sup> Wetlands act as a filter to improve water quality, provide critical habitat to flora and fauna, reduce the severity of floods, control shoreline erosion, and promote recreation and wildlife watching.<sup>14</sup> As a result, federal and state laws protect and regulate these resources. For the most part, Texas abides by federal wetland protection laws and does not have its own formal state wetland program plan.

Generally, any modification to wetlands, including depositing fill, excavating, or draining, will 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. Denying 401 certification 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. Texas utilizes a tiered system for §401 water quality certification review

For information about state water quality certification, see [TCEQ's 401 Certification website](#).<sup>15</sup>

For information about the U.S. ACoE role in 404 wetland permitting, see [USACoE's website](#).<sup>16</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.

To locate wetlands in your area, use [U.S. Fish & Wildlife Service's Wetlands Mapper](#).<sup>17</sup>

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<sup>13</sup> [https://tpwd.texas.gov/landwater/water/habitats/wetland/ecology/texas\\_wetlands.phtml](https://tpwd.texas.gov/landwater/water/habitats/wetland/ecology/texas_wetlands.phtml)

<sup>14</sup> <https://texaswetlands.org/why-are-wetlands-important/>

<sup>15</sup> <https://www.tceq.texas.gov/permitting/401certification>

<sup>16</sup> <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>; <https://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Permit-Application/>

<sup>17</sup> <https://www.fws.gov/wetlands/data/Mapper.html>

## Water Quality

### **Water Quality Standards**

*30 TAC Chapter 307*

See [TCEQ's Texas Surface Water Quality Standards website](#) for more information.<sup>18</sup>

### **Impaired Water Bodies**

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments<sup>19</sup> and identify waters not meeting the state's water quality standards.<sup>20</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. You can find this information in [TCEQ's Integrated Report of Surface Water Quality](#)<sup>21</sup> or [EPA's Texas Water Quality Assessment Report](#).<sup>22</sup>

### **Groundwater**

*Texas Water Code Chapter 35 (Groundwater Management Areas); 30 TAC 293 & 294; Texas Water Code 26.406 (Groundwater Protection Strategy); 31 TAC 523*

The Clean Water Act calls for the regulation of discharges to surface waters, but states have varying degrees of protection for groundwater. Texas law states "The laws and administrative rules relating to the use of surface water do not apply to groundwater."<sup>23</sup> However, that does not mean groundwater in Texas is entirely unregulated. Texas's primary groundwater regulations are found in Chapter 35 of Texas Water Code and provide for the establishment of groundwater management areas to "provide for the conservation, preservation, protection, recharging, and prevention of waste of the groundwater, and of groundwater or their subdivisions...."<sup>24</sup> The code also provides for the establishment of priority groundwater management areas where critical groundwater problems (relating to either quantity or quality) are being experienced or will soon be experienced. TCEQ, Texas Groundwater Protection

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<sup>18</sup> <https://www.tceq.texas.gov/waterquality/standards>

<sup>19</sup> CWA § 305(b).

<sup>20</sup> CWA § 303(d).

<sup>21</sup> <https://www.tceq.texas.gov/waterquality/assessment>

<sup>22</sup> [https://iaspub.epa.gov/waters10/attains\\_index.control?p\\_area=TX](https://iaspub.epa.gov/waters10/attains_index.control?p_area=TX)

<sup>23</sup> Texas Water Code, Title 2, §35.003.

<sup>24</sup> Texas Water Code, Title 2, §35.001.

Committee, and groundwater conservation districts play a role in regulating groundwater in the state. This has resulted in some restrictions on CAFO water withdrawal and waste storage and disposal in certain areas. If you are concerned about the amount of water an operation will withdraw and its impact on groundwater quality, check to see if there are any groundwater protections that apply in your area. For example, several additional regulations apply to CAFOs in order to protect the Edward Aquifer.

View [a map](#) of groundwater contamination in Texas.<sup>25</sup>

For more information about groundwater management in Texas, see [TCEQ's website on Groundwater and Wells](#).<sup>26</sup>

### **Construction & Stormwater**

While an AFO may not need an TPDES permit to operate, it may require a permit in order to begin construction on the operation. The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.<sup>27</sup> TCEQ administers stormwater construction permits for the state and anyone planning a construction project that will disturb more than one acre of earth must obtain a General Permit to Discharge under TPDES. Additional requirements apply to construction activities that will disturb more than five acres.

For more information, see [TCEQ's Stormwater General Permit for Construction Activities website](#)<sup>28</sup> or the most recent [Construction General Permit TXR150000](#).<sup>29</sup>

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## **AIR**

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*Unlike many other states, Texas has air quality and odor regulations that apply to livestock operations. The requirements vary depending on the size, type of animal,*

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<sup>25</sup>

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=478b575733ca4662a1441f93c9b973f5>; <https://www.tceq.texas.gov/gis/groundwater-contamination-viewer>

<sup>26</sup> <https://www.tceq.texas.gov/groundwater>

<sup>27</sup> CWA § 402; 40 C.F.R. §§ 122.26, 450.

<sup>28</sup> <https://www.tceq.texas.gov/permitting/stormwater/construction>

<sup>29</sup> <https://www.tceq.texas.gov/assets/public/permitting/stormwater/txr150000-cgp.pdf>

*distance, and other permits already obtained, so be sure to read the following laws and regulations closely.*

### **Air Quality & Odors**

*Texas Health & Safety Code, Title 5, Chapter 382 (Texas Clean Air Act); 30 TAC §106; 30 TAC §116.615; 30 TAC §116.101.4; 30 TAC §321.43*

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. Texas has several sections of state laws and regulations relating to air quality and odors that could potentially apply to animal agriculture operations in the state.

Animal feeding operations may be required to obtain air quality authorization under the Texas Clean Air Act by either obtaining an individual permit under Chapter 116, a permit by rule under Chapter 106, or an air standard permit for AFOs under Chapter 321.<sup>30</sup>

For more information about air quality authorization, permitting, and requirements, see 30 TAC §321.43, 30 TAC §106, 30 TAC §116, and TCEQ's website on [Air Permits for AFOs](#).<sup>31</sup>

In addition to imposing some air permit requirements on CAFOs, the state also has regulations regarding odor and nuisance related to air quality. Texas administrative code states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property."<sup>32</sup> TCEQ published [Odor Complaint Investigation Procedures](#) to determine when the rule has been violated and how to respond to nuisance complaints.<sup>33</sup>

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<sup>30</sup> 30 TAC §321.43

<sup>31</sup> <https://www.tceq.texas.gov/permitting/air/permitbyrule/subchapter-f/afo.html>

<sup>32</sup> 30 TAC §101.4

<sup>33</sup> [http://wpna.fried.cc/Odor\\_Complaint\\_Procedures.pdf](http://wpna.fried.cc/Odor_Complaint_Procedures.pdf)

Texas code addresses agricultural odors specifically when it states “AFOs shall be operated in such a manner as to prevent the creation of a nuisance or a condition of air pollution as mandated by Texas Health and Safety Code, Chapter 341 and Chapter 382.”<sup>34</sup> This includes AFO odor management strategies and required buffers between the odor source and neighboring properties. See 30 TAC §321.43 for a list of odor management strategies and buffer distances. The state code also specifically addresses odor from poultry facilities and how the state must respond to poultry odor complaints.<sup>35</sup>

Therefore, residents with air quality and odor concerns should check state and local laws and regulations that could pertain to their situation.

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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 and Local Control**

*Texas Local Government Code*

A municipality or county may regulate land use in its jurisdiction and enact zoning ordinances that are reasonably necessary to protect the public health, safety, peace, morals, or general welfare and preserve places and areas of historical, cultural, or architectural importance and significance.<sup>36</sup> Some states have used similar authority to pass ordinances such as increased setbacks or moratoriums to help protect communities from the impacts of industrial livestock operations.

Unlike many other states that have removed local government’s control over counties and municipalities, local governments in Texas have a degree of local control. In Texas, if a county or municipality passes an ordinance that imposes higher standards, that ordinance must be followed.<sup>37</sup> (Local governments can’t lower standards, but they can try to raise them.) However, Texas legislature can preempt

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<sup>34</sup> 30 TAC §321.31(b)

<sup>35</sup> 30 TAC §382.068

<sup>36</sup> Texas Local Government Code, Title 7, §211.001

<sup>37</sup> Texas Local Government Code, Title 7, §231.023

cities and counties from establishing their own policies on certain issues. Unfortunately, Texas does place limitations on local control related to agriculture. Texas Local Government Code explicitly states, “This subchapter does not authorize the commissioners court to...restrict the right of the landowner...to construct improvements for agriculture and ranching operations. Agriculture and ranching operations include....raising or keeping livestock or poultry.....”<sup>38</sup> This certainly impedes local control over agriculture operations but some wiggle room remains.

The government codes goes on to state that the local government may take actions “to restrict or prohibit any commercial agricultural enterprise, such as a commercial feed lot, that are reasonably necessary to protect the public health, safety, peace, morals, and general welfare...”<sup>39</sup> So it appears that local government may have some discretion to pass ordinances regarding industrial livestock operations if they can demonstrate it’s reasonably necessary to protect local residents.

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## PUBLIC PARTICIPATION

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

### **Public Notice**

*30 TAC §321.34*

Depending on the type of permit, TCEQ or the applicant may be required to issue public notice. Public notice requirements are usually outlined in the general permit. Any application for a new or expanding CAFO must publish public notice in a local newspaper of general circulation where the CAFO is located or proposed to be located. Additionally, the public must be able to access a copy of the application, a copy of the general permit, a technical summary of the proposed project, the notice of intent (NOI) to apply for a permit, the nutrient management plan (NMP) (unless it’s a state-only CAFO), and TCEQ’s preliminary decision regarding the application. These materials must be made available to the public in a public building such as the county courthouse, county extension agent’s office, or public library.

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<sup>38</sup> Texas Local Government Code, Title 7, §231.140

<sup>39</sup> Texas Local Government Code, Title 7, §231.140



## Comments and Requesting a Public Hearing

Concerned community members have limited time to submit 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. The publication of public notice begins a 30-day public comment period regarding the proposed project. When submitting written comments, you should review all of the application materials and any supporting documents or summaries. Instructions for obtaining copies of these documents will be included in the public notice. During the public comment period, you can request an extension for the public comment period and should request a public hearing. The executive director of TCEQ can require a public meeting on the project but will generally only do so if there is significant public interest and if people request one. If there is significant interest and the executive director decides to require a public meeting, TCEQ will instruct the CAFO permit applicant to publish notice of the public hearing at least 30 days before the public meeting. The meeting must be in the county where the facility is located and the comment period will end at the conclusion of the public meeting.

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### **NUISANCE & RIGHT TO FARM LAW**

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*When state and federal regulations fail to protect residents from the harmful impacts of industrial livestock facilities, these residents may consider filing a nuisance lawsuit. Unfortunately, Texas's Right to Farm Law makes this strategy ineffective in most cases.*

## 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 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. While this sounds like a perfect example of a nuisance, many states—including Texas—have enacted laws to shield livestock operations from nuisance liability.

## State Right-to-Farm Laws

*Texas Agricultural Code §251.001 to 251.006*

Right-to-farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities experiencing unpleasant effects of agricultural production. Texas's right-to-farm law is very protective of agricultural operations—particularly if they have been around for more than a year and are in compliance with local, state, and federal laws and regulations. It also includes a fee-shifting provision that requires unsuccessful plaintiffs in a nuisance matter to pay for the cost of the CAFO to defend the action. It also places restrictions and conditions on what types of ag-nuisance related measures they can pass. Despite these very ag-friendly provisions, there are some protections for neighbors dealing with problematic operations. First, if an existing operation's conditions have changed or expanded, the one-year clock starts over. Second, people may still bring a claim against a CAFO if the operation is conducted in violation of federal, state, or local laws and regulations. Third, local governments may pass ordinances that restrict agriculture if they can demonstrate that it would protect public health, safety, and welfare. So while Texas's right-to-farm law is very protective of agriculture, it's not an impenetrable shield against nuisance claims. You should consult a legal professional if you're interested in a nuisance claim against a CAFO.

Texas's right-to-farm law:

### **Sec. 251.001. POLICY**

It is the policy of this state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be regulated or considered to be a nuisance.

### **Sec. 251.002. DEFINITIONS**

In this chapter:

1. "Agricultural operation" includes the following activities:
  - a) cultivating the soil;
  - b) producing crops for human food, animal feed, planting seed, or fiber;
  - c) floriculture;
  - d) viticulture;

- e) horticulture;
  - f) silviculture;
  - g) wildlife management;
  - h) raising or keeping livestock or poultry; and
  - i) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.
2. "Governmental requirement" includes any rule, regulation, ordinance, zoning, or other requirement or restriction enacted or promulgated by a county, city, or other municipal corporation that has the power to enact or promulgate the requirement or restriction.

**Sec. 251.003. ESTABLISHED DATE OF OPERATION**

For purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced operation. If the physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is a separate and independent established date of operation established as of the date of commencement of the expanded operation, and the commencement of expanded operation does not divest the agricultural operation of a previously established date of operation.

**Sec. 251.004. NUISANCE ACTIONS**

- a) No nuisance action may be brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation. This subsection does not restrict or impede the authority of this state to protect the public health, safety, and welfare or the authority of a municipality to enforce state law.
- b) A person who brings a nuisance action for damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of Subsection (a) of this section is liable to the agricultural operator for all costs and expenses incurred in defense of the action, including but not limited to attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense.

- c) This section does not affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of an agricultural operation.

**Sec. 251.005. EFFECT OF GOVERNMENTAL REQUIREMENTS**

- a) For purposes of this section, the effective date of a governmental requirement is the date on which the requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation. The recodification of a municipal ordinance does not change the original effective date to the extent of the original requirements.
- b) A governmental requirement of a political subdivision of the state other than a city:
  - 1. applies to an agricultural operation with an established date of operation subsequent to the effective date of the requirement;
  - 2. does not apply to an agricultural operation with an established date of operation prior to the effective date of the requirement; and
  - 3. applies to an agricultural operation if the governmental requirement was in effect and was applicable to the operation prior to the effective date of this chapter.
- c) A governmental requirement of a city does not apply to any agricultural operation situated outside the corporate boundaries of the city on the effective date of this chapter. If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of the city do not apply to the agricultural operation unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of:
  - 1. explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, or traffic hazards; or
  - 2. discharge of firearms or other weapons, subject to the restrictions in Section 229.002, Local Government Code.

(c-1) A governmental requirement may be imposed under Subsection (c) only after the governing body of the city makes findings by resolution that the requirement is necessary to protect public health. Before making findings as to the necessity of the requirement, the governing body of the city must use the services of the city health officer or employ a consultant to prepare a report to identify the health hazards related to agricultural operations and determine the necessity of regulation and manner in which agricultural operations should be regulated.

(c-2) A governmental requirement of a city relating to the restraint of a dog that would apply to an agricultural operation under Subsection (c) does not apply to a dog used to protect livestock on property controlled by the property owner while the dog is being used on such property for that purpose.

- d) This section shall be construed to maintain, to the limited degree set forth in this section, the authority of a political subdivision under prior law over nonconforming uses but may not be construed to expand that authority.
- e) A governmental requirement of a political subdivision of the state does not apply to conduct described by Section 42.09(f), Penal Code, on an agricultural operation.

**Sec. 251.006. AGRICULTURAL IMPROVEMENTS**

- a) An owner, lessee, or occupant of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly prohibited by statute or a governmental requirement in effect at the time the improvement is constructed. Such an improvement does not constitute a nuisance.
- b) This section does not apply to an improvement that obstructs the flow of water, light, or air to other land. This section does not prevent the enforcement of a statute or governmental requirement to protect public health or safety.
- c) In this section:
  - 1. "Agricultural land" includes any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter 23, Tax Code.

2. "Agricultural improvement" includes pens, barns, fences, and other improvements designed for the sheltering, restriction, or feeding of animal or aquatic life, for storage of produce or feed, or for storage or maintenance of implements.

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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. It is 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, Nutrient Management Plan, Pollution Prevention Plan, Water Quality Management Plan, or any other AFO-related law or regulation, you can submit a complaint to TCEQ via the agency's [online form](#)<sup>40</sup> or call them at (888) 777-3189.

According to TCEQ, they can assist with the following:<sup>41</sup>

- Water that may be polluted
- See or smell something unpleasant in the air
- Land that may be contaminated
- Problems with your drinking water
- Information or evidence about an environmental problem
- Problems with an individual or company licensed or registered by the TCEQ
- More information about a possible pollution source, including permitting status, compliance history, or other complaints that may have been filed against that source
- Assistance understanding environmental laws

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

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<sup>40</sup>

<https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>

<sup>41</sup> [https://www.tceq.texas.gov/compliance/complaints/type\\_complaint.html](https://www.tceq.texas.gov/compliance/complaints/type_complaint.html)

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

For an overview of TCEQ's environmental enforcement process, see its website [The Enforcement Process: From Violations to Actions](#).<sup>42</sup>

If the complaint is about an odor, there are separate procedures for complaints. The agency will consider frequency, intensity, duration, and offensiveness, so be specific and timely with any complaints. Note: TCEQ will only investigate poultry odor complaints within 18 hours if there have been multiple complaints against the facility or there have been substantiated nuisance conditions from the facility within the last year.

You can submit complaints using the agency's [online form](#)<sup>43</sup> or call them at (888)777-3186.

For odor complaint information, see TCEQ's website [What If Your Complaint is About an Odor](#).<sup>44</sup>

To track the status of a complaint, ongoing or resolved, see the state's [WACI Tracker](#).<sup>45</sup>

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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. It can entail finding information online, submitting record requests, and attending public meetings. Fortunately, there are state laws that are intended to increase government transparency and provide public access to certain types of information.*

### **[Freedom of Information Act](#)**

5 U.S.C. § 552

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<sup>42</sup> <https://www.tceq.texas.gov/compliance/enforcement/process.html>

<sup>43</sup>

<https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>

<sup>44</sup> [https://www.tceq.texas.gov/compliance/complaints/odor\\_complaint.html](https://www.tceq.texas.gov/compliance/complaints/odor_complaint.html)

<sup>45</sup> <https://www.tceq.texas.gov/compliance/complaints/waci.html>

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.

### **Texas Public Information Act (TX PIA)**

*Texas Government Code, Title 5, Section 552 et seq.*

Texas's public information law states:

Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

In short, anyone can request public information, for any reason, and the government must respond within 10 days. Some public records may be exempt from production but the governmental body must refer the request to the Texas Office of Attorney General within 10 days of the request for a determination regarding whether the exception applies. Requesters should be prepared to pay the cost of production for the documents. A governmental body may waive the fees for producing the records if the information requested is "in the public interest," but that decision rests with the governmental body whose records are requested.

For more detailed information, see the full text of the TX PIA at Texas Government Code, Title 5, Section 552. For practically every detail about TX PIA, see the state Attorney General's [Public Information Act Handbook](#).<sup>46</sup>

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<sup>46</sup> [https://www.texasattorneygeneral.gov/sites/default/files/2018-06/PIA\\_handbook\\_2018\\_0.pdf](https://www.texasattorneygeneral.gov/sites/default/files/2018-06/PIA_handbook_2018_0.pdf)



Public information and open meetings regulations and procedures can change frequently, so consult the most current laws and regulations before filing TX PIA requests.

### **Texas Open Meetings Act (TX OMA)**

*Texas Government Code, Title 5, Section 551 et seq.*

The TX Open Meetings Act (TX OMA) sets how public meetings should be conducted, when meetings may be closed, meeting notice requirements, how meetings are recorded, penalties for violating the Act, and mandates open meetings training for each elected or appointed public official who is a member of a governmental body. Note that actions taken by a governmental body in violation of TX OMA are voidable.<sup>47</sup>

For more information, see Texas Government Code, Title 5, Section 551. For considerably more detail, see the Texas Attorney General's [Open Meetings Act Handbook](#).<sup>48</sup>

For the most current handbooks on TX PIA and TX OMA, see the [Texas Attorney General's website Open Government](#).<sup>49</sup>

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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.*

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<sup>47</sup> Texas Government Code §551.141

<sup>48</sup> [https://www.texasattorneygeneral.gov/sites/default/files/2018-06/OMA\\_handbook\\_2018.pdf](https://www.texasattorneygeneral.gov/sites/default/files/2018-06/OMA_handbook_2018.pdf)

<sup>49</sup> <https://www.texasattorneygeneral.gov/open-government>

## **Property Tax Appeal**

*Texas Tax Code, Title 1, chapter 41, 41A, and 42*

Texas property owners may file an appeal when they believe that their property assessment does not reflect the market value of the property. The deadline to file a protest is May 15 or 30 days after notice of your assessed value is mailed to you. The deadlines and appeal form should be provided by the appraisal district along with the assessment. Review your county's specific procedures and policies; if you fail to accurately apply for relief, you waive your right to relief for that year. For more information about tax appeals, informal hearings, appraisal review board (ARB) hearings, and appealing the ARB decision, see Texas Tax Code and the [Texas Comptroller's website on Appraisal Protests and Appeals](#).<sup>50</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>51</sup>

### **State and Nonprofit Organizations**

#### **Sustainable Food Center**

<https://sustainablefoodcenter.org/>

#### **Clean Water Action**

<https://www.cleanwater.org/states/texas/campaigns>

#### **Texas Campaign for the Environment**

<https://www.texasenvironment.org/take-action/>

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<sup>50</sup> <https://comptroller.texas.gov/taxes/property-tax/protests/index.php>

<sup>51</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

**Sierra Club – Lone Star Chapter**

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

**Downwinders at Risk**

<https://www.downwindersatrisk.org/>

**Citizens' Environmental Coalition**

<http://cechouston.org/>

**Environment Texas**

<https://environmenttexas.org/page/txe/about-environment-texas>