



**SRAP**  
Socially Responsible  
Agriculture Project

# Guide to Confronting Concentrated Animal Feeding Operations in

# UTAH



# Guide to Confronting Concentrated Animal Feeding Operations in UTAH

## **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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**Date of publication: June 2019**





# 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 Utah mostly consists of cattle, dairy, swine, and lamb. Despite its relatively arid climate, the state has approximately 18,000 farm operations over 10.7 million acres.<sup>1</sup> According to Utah Department of Agriculture (UDA) 2018 statistics, Utah ranks 5<sup>th</sup> for sheep, 17<sup>th</sup> for hogs, 21<sup>st</sup> for chickens, 21<sup>st</sup> for milk production, and 33<sup>rd</sup> for cattle out of all 50 states.<sup>2</sup> Twenty-five of twenty-nine counties in Utah report livestock as the dominant agricultural sector and animal agriculture is the single largest sector of farm income in the state.<sup>3</sup>

Many of the cattle and sheep livestock operations in Utah are grazing operations, but there are some animal feeding operations in the state. According to the U.S. Environmental Protection Agency, Utah has 59 concentrated animal feeding operations (CAFOs), none of which have National Pollutant Discharge Elimination System (NPDES) permits.<sup>4</sup> Utah maintains that a permit is required only if the operation discharges or is designated as a CAFO. It's not surprising that all operations assert that they do not discharge and therefore should not be subject to permit requirements and CAFO regulations. The Utah Department of Environmental Quality (UDEQ) oversees the state's CAFO permit program but UDEQ but is heavily influenced by the AFO/CAFO Committee consisting of various stakeholders with an interest in the CAFO industry.

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

<sup>2</sup> <http://www.ag.utah.gov/documents/2018AgriculturalStatistics.pdf> at page 15.

<sup>3</sup> <http://www.ag.utah.gov/animal.html>

<sup>4</sup> [https://www.epa.gov/sites/production/files/2018-05/documents/tracksum\\_endyear\\_2017.pdf](https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf)

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## 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**

#### **Utah Department of Environmental Quality (UDEQ)**

UDEQ is the primary state agency that develops, implements, and enforces state and federally authorized environmental laws and regulations that may apply to livestock operations. UDEQ is composed of several administrations or sub-departments that help implement the environmental laws and programs that regulate animal agriculture in Utah. For more information, see [UDEQ's website](#).<sup>5</sup>

#### **Utah Department of Agriculture and Food (UDAF)**

UDAF is responsible for many of the state's agricultural laws and is involved in activities or programs dealing with plant and animal disease prevention, insect control, organic certification, meat inspection, food safety, consumer protection, and agricultural loans. UDAF does not directly regulate CAFOs but it may become involved in aspects of an animal agriculture operation. For more information, see [UDAF's website](#).<sup>6</sup>

#### **Utah Conservation Districts**

Utah has 38 local conservation districts whose goal is to improve and protect natural resources for the public benefit. A conservation district is governed by the Citizen Board, which consist of five member-elected individuals who serve for a term of four years. The Citizen Board provides input on federal, state, and local government programs that relate to conservation in their district. Conservation districts develop voluntary and incentive-based programs to protect water, soil, and natural resources. Conservation districts do not directly regulate animal agricultural operations but are involved in several programs that intersect with animal agriculture. So, while they may not help stop a developing AFO, district employees can be valuable sources for local environmental information. See a [map](#) of Conservation Districts/Zones.<sup>7</sup>

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<sup>5</sup> <https://deq.utah.gov/>

<sup>6</sup> <http://www.ag.utah.gov/>

<sup>7</sup> <https://www.uacd.org/map-of-district-zones>

Find [contact information](#) for all 38 Conservation Districts.<sup>8</sup>

Learn more about Utah’s Conservation Districts and policy positions on the [Utah Association of Conservation Districts website](#).<sup>9</sup>

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

Utah is part of the U.S. EPA Region 8, Mountains and Plains, which also includes Montana, North Dakota, South Dakota, Wyoming, and Colorado. While most AFO regulation—if there is any—happens at the state level, the EPA has some oversight authority regarding the state’s implementation of federal laws. Learn more about EPA Region 8 and its involvement in Utah on its [website](#).<sup>10</sup>

### **Definitions**

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

*UAC Title R317-8-10*

“Animal Feeding Operation” (AFO) means a lot or facility where the following conditions are met:

- a) animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of 45 days or more in any 12-month period;
- b) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and
- c) two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste.<sup>11</sup>

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<sup>8</sup> <https://www.uacd.org/district-directory>

<sup>9</sup> <https://www.uacd.org/>

<sup>10</sup> <https://www.epa.gov/aboutepa/epa-region-8-mountains-and-plains>

<sup>11</sup> UAC R317-8-10.2

Below are the size distinctions between small, medium and large AFOs.<sup>12</sup>

### 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> (milking and dry)	≥ 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)

*UAC Title R317-8-10*

Utah’s Administrative Code defines CAFOs but also incorporates federal regulations through reference. Below are the relevant definitions and references to the Code of Federal Regulations.

A concentrated animal feeding operation (CAFO) is defined as “an AFO that is a Large CAFO; or an AFO that is a Medium CAFO; or an AFO that is a Small AFO or Medium AFO that is a Designated CAFO.”<sup>13</sup>

“**Large CAFO**” means an AFO that stables, houses, or confines the type and number of animals that fall within any of [the ranges for large AFO listed in the table above].<sup>14</sup>

<sup>12</sup> UAC R317-8-10.2

<sup>13</sup> UAC R317-8-10.2

<sup>14</sup> UAC R317-8-10.2



**“Medium CAFO”** means an AFO that confines the number of animals to be classified as a Medium AFO, and where the conditions specified in 40 CFR 122.23(b)(6)(ii) are met.<sup>15</sup>

The conditions of 40 CFR 122.23(b)(6)(ii) are:

- Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or
- Pollutants are discharged directly to waters of the state which originate outside of a pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

**“Small CAFO”** means an AFO that confines the number of animals to be classified where the following conditions are met:

(a)(i) The Small AFO discharges through a man-made ditch, flushing system, or other similar man-made device; or (ii) the Small AFO discharges into surface waters of the state which waters originate outside of pass over, across, or through the facility or otherwise come into direct contact with the animals confined at the operation; and

(b) the Director has designated the Small AFO as a CAFO according to criteria in 40 CFR 122.23(c).<sup>16</sup>

**“Designated CAFO”** means an AFO that is designated as a CAFO by the Director according to criteria in 40 CFR 122.23(c) and thereby required to obtain a UPDES permit.<sup>17</sup>

The criteria at 40 CFR 122.23(c) are:

- Size of the AFO and amount of wastes reaching the waters of the state;
- The location of the AFO relative to waters of the state;
- The means of conveyance of animal wastes and process waste waters into waters of the state;
- The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the state; and
- Other relevant factors.

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<sup>15</sup> UAC R317-8-10.2

<sup>16</sup> UAC R317-8-10.2

<sup>17</sup> UAC R317-8-10.2

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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.*

### **Utah Pollutant Discharge Elimination System (UPDES)**

*UAC Title R317, Chapter 8*

Utah has been delegated authority by the U.S. Environmental Protection Agency to implement protections and enforcement of the Clean Water Act (CWA) at the state level. This includes implementing a state version of the National Pollutant Discharge Elimination System (NPDES) required by the CWA. Accordingly, the state has developed the Utah Pollutant Discharge Elimination System (UPDES). The purpose of the permit is to protect water quality from potential pollution sources resulting from the operation of CAFOs in Utah. CAFOs that discharge process wastewater or solid or liquid manure to waters of the state are required to obtain a UPDES permit. Also, Large CAFOs that discharge storm water to surface waters of the state from land application may be required to obtain a permit.

A UPDES permit is the primary tool for regulating CAFOs in Utah. It imposes requirements, enforcement actions, and opportunity for public participation in the process. However, due to the discharge requirement, most AFOs claim they do not discharge and therefore are not required to obtain a UPDES permit.

Even with a UPDES, a CAFO may discharge during a large weather event.<sup>18</sup> (See UAC R317-8-10.2 for the definition of a large weather event, and see UAC R317-8-10.9 for reasonable measures for large weather events.)

### **Permit Application Materials**

A UPDES permit application must include a notice of intent (NOI) form and an NMP approved by a Natural Resource Conservation Service certified planner.

*Timing of UPDES Permit Application: UAC R317-8-10.4*

*UPDES CAFO Permit Application Requirements: UAC R317-8-10.5*

*Technical Standards: UAC R317-8-10.6; Utah Natural Resources Conservation Service Practice Standard 590*

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<sup>18</sup> UAC R318-8-10.2

## Public Notice

Once UDEQ's Division of Water Quality (DWQ) receives a completed application, the NOI and NMP will undergo public notice on DEQ's website for 30 days. Public comments should be submitted during this time. This is one of the few times the public will have an opportunity to weigh in on CAFO permit decisions, so be sure to make your voice heard and request a public hearing.

Check [Utah DEQ's public notice website](#) or [Utah's Public Notice website](#) (filter by agency) to stay on top of permit applications and opportunities for public comment.<sup>19</sup> You can also sign up for [email alerts](#) for public participation opportunities.<sup>20</sup>

## Nutrient Management Plan (NMP)

*UAC R317-8-10.7*

An AFO or CAFO that is required to obtain an UPDES permit should also develop and maintain a facility-specific nutrient management plan (NMP).<sup>21</sup> NMPs must be approved by an NRCS-certified planner.<sup>22</sup> UDEQ DWQ must approve the NMP prior to permit coverage for the facility.

The NMP must, at a minimum, contain best management practices to meet effluent limitations and standards, and should address the following:<sup>23</sup>

- Ensuring adequate storage of manure, litter, and process wastewater
- Establish procedures to ensure the proper operation and maintenance of the storage facilities;
- Ensure property management of mortalities;
- Ensure that clean water is diverted from the production area;
- Prevent direct contact of confined animals with waters of the state;
- Ensure chemicals and contaminants on site are not disposed of in any manure, litter, process wastewater, or storm water treatment system;
- Identify site-specific conservation practices to be implemented to control the runoff of pollutants;
- Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

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<sup>19</sup> <https://deq.utah.gov/communication/public-notice>; <https://utah.gov/pmnl/index.html>

<sup>20</sup> <https://deq.utah.gov/general/email-alerts>

<sup>21</sup> UAC R317-8-10.7

<sup>22</sup> UAC R317-8-10.7(2)

<sup>23</sup> UAC R317-8-10.7(1)(c); 40 CFR 122.42(e)

- Establish protocols to land-apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of nutrients; and
- Identify specific records that will be maintained.<sup>24</sup>

For more details, see the [NRCS Nutrient Management Practice Standard 590](#) adopted by Utah.<sup>25</sup>

For an industry perspective, see [Nutrient Management Planning for Livestock Producers: A 10-Step Guide](#).<sup>26</sup>

## **Water Quality**

*Utah Code Title 19, Chapter 5 Utah Water Quality Act*

## **Water Quality Standards**

*UAC R317-2*

Water quality standards are intended to protect Utah's waters and improve quality for beneficial uses such as drinking water, fish and aquatic life, wildlife, agricultural, industrial, and recreational uses.<sup>27</sup> The standards are reviewed and updated every three years. Permits ensure that the water quality standards of receiving waters will not be violated.

## **Impaired Water Bodies**

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments<sup>28</sup> and identify waters not meeting the state's water quality standards.<sup>29</sup> Since states are supposed to protect waters from further degradation, it may be important to note if a CAFO or large AFO seeks to discharge into or near an already impaired water of the state. Find impaired waters in [Utah's Final 2016 Integrated Report](#)<sup>30</sup> or [UDEQ's Water Quality Assessment Program website](#).<sup>31</sup>

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<sup>24</sup> 40 CFR 122.42(e)

<sup>25</sup> <https://ag.utah.gov/aces/cropping/documents/590-NutrientManagementStandard.pdf>

<sup>26</sup> [https://extension.usu.edu/agwastemangement/ou-files/pdfs/NMP\\_10\\_Step\\_Guide\\_Final.pdf](https://extension.usu.edu/agwastemangement/ou-files/pdfs/NMP_10_Step_Guide_Final.pdf)

<sup>27</sup> <https://deq.utah.gov/water-quality/water-quality-standards>

<sup>28</sup> CWA § 305(b).

<sup>29</sup> CWA § 303(d).

<sup>30</sup> <https://documents.deq.utah.gov/water-quality/monitoring-reporting/integrated-report/DWQ-2017-004941.pdf>

<sup>31</sup>



## Setbacks

*UAC R317-8.1.10; 40 CFR 412*

Utah adopts federal water quality setback requirements that manure, litter, or process wastewater cannot be applied within 100 feet of a surface water. However, the setback may be reduced if there is a 35-foot wide vegetative buffer or other conditions that provide pollution reductions equivalent to a 100-foot setback.

## Ground Water

*UAC Title R317, Chapter 6*

The Clean Water Act calls for the regulation of discharges to surface waters, but states have varying degrees of protection for groundwater. Compared to other states, Utah has relatively strong groundwater protection regulations. Most noteworthy is that any activity with the potential to cause a discharge of pollutants into groundwater may be required to obtain a groundwater discharge permit.

The Utah Administrative Code states:

(A) No person may construct, install, or operate any new facility or modify an existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into groundwater, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Director. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

...

(C) No person may construct, install, or operate any new liquid waste storage facility or modify an existing or new liquid waste storage facility for a large animal feeding operation not permitted by rule under R317-6-6.2A.17, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, without a ground water discharge permit from the Director. A ground water discharge permit application should be submitted at least 180

days before the permit is needed and the applicant must comply with the requirements of R317-1-2 for submitting plans and specifications and obtaining a construction permit.

The permit requires that liquid waste storage facilities construct a proper liner that meets the specification of NRCS Conservation Practice Standard 313.

The permit may also be forced to include the installation of monitoring wells and testing schedules.

Any Large CAFO with a liquid waste management system must have a ground water protection permit but there are a few exceptions. See UAC R317-6-6.2 for a complete list of the AFOs which may not be required to obtain a ground water permit.

If UDEQ decides to approve the ground water discharge permit application, UDEQ must public notice in a newspaper in the affected area and provide at least 30 days but no more than 60 days for interested persons to comment on the application.

See Utah Administrative Code, Title R317, Chapter 6 for full text. For more details, see UDEQ's [Utah Ground Water Quality Protection Program](#) website.<sup>32</sup>

### **Construction & Stormwater**

#### *UAC R317-8-3.9*

While an AFO may not need an UPDES CAFO permit to operate, it may require a UPDES Storm Water permit. The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.<sup>33</sup> UDEQ administers storm water construction permits for the state, and anyone planning a construction project that will disturb more than one acre of earth must obtain a UPDES Construction Storm Water Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP). The construction of agricultural facilities is not exempt from this requirement. Unlike the UPDES CAFO Permit and Ground Water Discharge Permit, a UPDES Construction Storm Water Permit is not subject to public notice. Its coverage begins as soon as the applicant submits a Notice of Intent and pays the fee.

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<sup>32</sup> <https://deq.utah.gov/water-quality/current-permits-utah-ground-water-quality-protection-program#cgwdp>

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

For more information and a copy of the most current permit, see [UDEQ's General Construction Storm Water UPDES website](#).<sup>34</sup>

## **Wetlands**

*UAC R317-15-3*

Wetlands comprise approximately one percent of the landscape in Utah and are therefore considered a scarce resource requiring strong governmental protections.<sup>35</sup> Wetlands "provide diverse ecosystem services including flood attenuation, water-quality enhancement, sediment storage, and nutrient cycling, as well as providing critical habitat for wildlife and economic and aesthetic values for people."<sup>36</sup>

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. 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.

For more information about the U.S. ACoE role in 404 wetland permitting, see [USACE's Regulatory website](#).<sup>37</sup>

For more information about state water quality certification, see [UDEQ's Water Quality website](#)<sup>38</sup> or UAC R317-15-3.

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<sup>34</sup> <https://deq.utah.gov/water-quality/general-construction-storm-water-updes-permits>

<sup>35</sup> <http://geology.utah.gov/resources/wetlands/>

<sup>36</sup> *Id.*

<sup>37</sup> <https://www.spk.usace.army.mil/Missions/Regulatory/>

<sup>38</sup> <https://deq.utah.gov/water-quality/water-quality-permits>

To locate wetlands in your area, see [U.S. Fish & Wildlife Service’s Wetlands Mapper](#)<sup>39</sup> or [Utah Geological Survey’s Wetland Map](#).<sup>40</sup>

For more information about wetlands in Utah, see the latest version of [Utah’s Wetland Program Plan](#).<sup>41</sup>

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## AIR

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### [Air Quality & Odors](#)

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. Unfortunately, Utah does little to regulate air pollution or odors from AFOs. While the state does not regulate the industry for air quality or odors, Utah does enable its local governments to develop ordinances to control or address odors.

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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](#)

*Utah Code, Title 17; Utah Code, Title 10*

A municipality or county may regulate land use in its jurisdiction and enact zoning ordinances that promote the general public health, safety, and welfare. Zoning and land use decisions should be consistent with the county or municipality’s general plan. In Utah, cities and counties have limited powers and may only pass laws or

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<sup>39</sup> <https://www.fws.gov/wetlands/data/Mapper.html>

<sup>40</sup> <https://geology.utah.gov/apps/wetlands/index.html>

<sup>41</sup> <https://documents.deq.utah.gov/water-quality/standards-technical-services/gsl-website-docs/wetlands-program/wetland-program-plan/DWQ-2017-013741.pdf>



ordinances that are enabled by statute or necessarily implied to carry out its responsibilities. If a state law is specific, local government does not have the discretion to go beyond it. Additionally, Utah places limitations on local regulations pertaining to agriculture.<sup>42</sup> See Utah Code, Title 17, Chapter 41, Part 4 for more details about the limitations.

Each county or municipality's general plan and land use regulations are different. Consult your county or municipality zoning laws to determine if there are any provisions that could apply.

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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, these individuals may consider filing a nuisance lawsuit. Unfortunately, Utah'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 individuals and communities describe CAFOs as nuisances. CAFOs can decrease local property values, prevent people from using and enjoying their homes or yards, and can impair human health. While this sounds like a perfect example of a nuisance, many states—including Utah—have enacted laws to shield livestock operations from nuisance liability.

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

*Utah Code Ann. § 17-41-401 to 406; Utah Code Ann. 4-44-201*

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. Utah's code states:

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<sup>42</sup> Utah Code § 17-41-402.

- 1) A political subdivision shall ensure that any of the political subdivision's laws or ordinances that define or prohibit a public nuisance exclude from the definition or prohibition:
  - a. for an agriculture protection area, any agricultural activity or operation within an agriculture protection area conducted using sound agricultural practices unless that activity or operation bears a direct relationship to public health or safety;
  - b. for an industrial protection area, any industrial use of the land within the industrial protection area that is consistent with sound practices applicable to the industrial use, unless that use bears a direct relationship to public health or safety; or
  - c. for a critical infrastructure materials protection area, any critical infrastructure materials operations on the land within the critical infrastructure materials protection area that is consistent with sound practices applicable to the critical infrastructure materials operations, unless that use bears a direct relationship to public health or safety.
- 2) In a civil action for nuisance or a criminal action for public nuisance under Section 76-10-803, it is a complete defense if the action involves agricultural activities and:
  - a. those agricultural activities were:
    - i. conducted within an agriculture protection area; and
    - ii. not in violation of any federal, state, or local law or regulation relating to the alleged nuisance or were conducted according to sound agricultural practices.<sup>43</sup>

**4-44-201:**

- 1) It is a defense in a civil action for nuisance against an agricultural operation that:
  - a. the plaintiff is not a legal possessor of the real property affected by the conditions alleged to be the nuisance;
  - b. the real property affected by the conditions alleged to be the nuisance is located outside one-half mile of the source of the activity or structure alleged to be the nuisance; or
  - c. the action is filed more than one year after:
    - i. the establishment of the agricultural operation; or
    - ii. the agricultural operation undergoes a fundamental change.

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<sup>43</sup> Utah Code § 17-41-403

- 2) This section may not be construed to invalidate any contract made before May 14, 2019.
- 3) In a nuisance action against an agricultural operation, the court shall award costs and expenses, including reasonable attorney fees, to:
  - a. the agricultural operation when the court finds the agricultural operation is not a nuisance and the nuisance action is frivolous or malicious; or
  - b. the plaintiff when the court finds the agricultural operation is a nuisance and the agricultural operation asserts an affirmative defense in the nuisance action that is frivolous and malicious.<sup>44</sup>

As you can see, in addition to shielding agricultural operations from nuisance suits, Utah also has a fee-shifting provision that place the costs of an unsuccessful nuisance action on the party complaining of the nuisance and not with the operation.

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## ENFORCEMENT

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*Since industrial livestock operations are rarely eager to self-report violations of local, state, or federal law, it's often up to residents to report violations and push for enforcement. A record of noncompliance 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 report an incident via [UDEQ's reporting website](#).<sup>45</sup> For reporting discharges, the contact number is (801) 536-4300.

Be sure to properly describe and document the compliance issue you're reporting; record dates, take detailed notes, and take photos when possible but **don't trespass** in order to do so.

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<sup>44</sup> Utah Code § 4-44-201

<sup>45</sup> <https://deq.utah.gov/general/report-an-incident>

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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. This can involve research online, submitting record requests, and attending public meetings. Fortunately, there are state laws that 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 Guide for more information.

### **Utah Government Records Access and Management Act**

*Utah Code, Title 63G, Chapter 2*

The Utah Government Records Access and Management 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. Anyone can request public records. The requester does not have to disclose the reason that they're requesting the records and the government is required to respond to requests within 10 business days. Record requests can be submitted by mail or electronically. Although no specific form is required to make a request, a sample request is available [here](#).<sup>46</sup>

See the full text of the Government Records Access and Management Act for details about the categories of records that may be withheld from disclosure.

Government Records regulations and procedures can change frequently, so consult the most current laws and regulations before filing record requests.

### **Utah Open and Public Meetings Act**

*Utah Code, Title 52, Chapter 4*

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<sup>46</sup> <https://www.nfoic.org/utah-sample-foia-request>.



The Utah Open and Public Meetings Act legislates how public meetings are conducted. It declares that:

The state, its agencies, and political subdivisions, exist to aid in the conduct of the people’s business. It is the intent of the legislature that the state, its agencies, and its political subdivisions take their actions openly; and conduct their deliberations openly.<sup>47</sup>

It states that all meetings of any governing body shall be open to the public—with a few exceptions—and outlines adequate notice of the meetings. The public body is required to give at least 24 hours of public notice for each meeting and public notice should include the agenda, date, time, and place. The minutes of each meeting must be recorded and kept for public inspection.

For more information about exemptions, notice, meeting minute requirements, and enforcement of the act, see the Open and Public Meetings Act at Title 52, Chapter 4.

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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**

*Utah Admin. Code R861*

Utah property owners may file an appeal when they believe that their property assessment does not reflect the market value of the property. Appeal must be filed within 30 days of the date on the property tax assessment notice. Learn more about tax appeals in Utah on the [Utah State Tax Commission website](#).

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<sup>47</sup> Utah Code § 52-4-102

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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>48</sup>

### **State Organizations**

#### **Sierra Club – Utah Chapter**

<https://utah.sierraclub.org/>

#### **Sustain Utah**

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

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<sup>48</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>