



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

VIRGINIA



Guide to Confronting Concentrated Animal Feeding Operations in VIRGINIA

**A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT
WITH THE ASSISTANCE OF MIDWEST ENVIRONMENTAL ADVOCATES, INC.¹**

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

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¹ Midwest Environmental Advocates is a nonprofit environmental law center that works for healthy water, air, land, and government for this generation and the next. For more information, visit midwestadvocates.org.



CAFO Guide Overview

This guide outlines CAFO laws, regulatory processes, and useful resources for advocates. Below is an overview of actions communities can take if a CAFO is being built, expanding, or violating regulations.

EDUCATE YOURSELF

Learn how CAFOs harm communities at sraproject.org. Use this guide to find state agencies that regulate CAFOs; state permitting requirements for zoning, construction, etc.; and public open meetings and records laws. Use SRAP's Federal Guide to learn relevant federal laws like the Clean Water Act, Clean Air Act, and Endangered Species Act.

LOOK FOR PUBLIC NOTICES

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

REQUEST AND REVIEW PUBLIC RECORDS

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

NEW OR EXPANDING CAFOS

REVIEW ZONING ORDINANCES

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

REVIEW PERMIT APPLICATIONS

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

COLLECT DATA

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

EXISTING CAFOS

REVIEW CAFO DOCUMENTS

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

COLLECT DATA

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

MONITOR CAFOS AND BUILD A RECORD

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

FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

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

ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

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

SEEK LEGAL ADVICE

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

IDENTIFY IMPAIRED WATER BODIES

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

CONTACT STATE OR LOCAL HEALTH DEPARTMENT

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

CHECK FOR PUBLIC FINANCING

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

TRACK PUBLIC NOTICES

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

REVIEW STATE RIGHT-TO-FARM LAW

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

AGENCIES & STATE DEFINITIONS

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

SEEK PROPERTY TAX ADJUSTMENT

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

ENGAGE IN RULEMAKING PROCESSES

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

INTRODUCTION: CAFOs IN VIRGINIA

Animal agriculture in Virginia is dominated by poultry and cattle operations. According to the United States Department of Agriculture (USDA), as of early 2016 Virginia had approximately 44,700 farm operations on over eight million acres of the land.² Around 30% of the land in Virginia is used for agriculture.³ The state was 31st in the nation for agricultural products sold and sixth for turkeys. That's a lot of animals and agriculture in a relatively small state⁴ that borders a critically important but considerably impaired waterbody in the mid-Atlantic region—the Chesapeake Bay.

Animal feeding operations pose many risks to water, air, and soil quality, the local ecosystems, and public health. These risks are a result of the vast amounts of animal waste and wastewater generated by these facilities, and the logistical difficulties of responsibly disposing of so much waste in a relatively small geographic area. One CAFO can produce as much waste as a large U.S. city. However, unlike human waste that undergoes treatment and processing to remove chemical and biological contaminants, AFO waste is largely untreated and is then typically spread onto land where it can easily seep into groundwater and local surface waters. Virginia has implemented various measures and programs to regulate or control the harmful effects of animal agriculture on the environment while also protecting the State's agricultural interests.

A discussion of animal agriculture in Virginia is incomplete without a discussion of its impacts on the Chesapeake Bay, a 64,000 square-mile watershed,⁵ much of which is plagued by pollution and nutrient overloading from agriculture.⁶ After decades of failed restoration efforts, in 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), setting pollution limits and requiring pollution reduction from Maryland, Delaware, Virginia, West

² 2015 State Agriculture Overview. USDA National Agricultural Statistics Service Virginia Field Office, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=VIRGINIA.

³ Virginia's 2016 Water Quality Assessment Integrated Report: State Background Information, Virginia Department of Environmental Quality, https://www.deq.virginia.gov/Portals/0/DEQ/Water/WaterQualityAssessments/IntegratedReport/2016/ir16_Ch2_State_Background.pdf

⁴ Virginia ranks 35 out of 50 states by size with 42,774 square miles.

⁵ Chesapeake Bay, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/ChesapeakeBay.aspx>.

⁶ Rena Steinzor & Yee Huang, *Manure in the Bay: A Report on Industrial Animal Agriculture in Maryland and Pennsylvania*, page 10, CENTER FOR PROGRESSIVE REFORM, June 2012.

Virginia, Pennsylvania, New York, and the District of Columbia.⁷ The Virginia Department of Environmental Quality (VDEQ) implements the TMDL for the State both through the TMDL limitations and through the broader VDEQ Chesapeake Bay Program.⁸

In addition to the bay impairment, the state struggles with impairment of its rivers, lakes, and estuaries. Of the waters assessed in 2016, 68% of river miles, 82% of lake acres, and 87% of estuary square miles were considered impaired.⁹ Agriculture is identified as the most significant source of nonpoint source pollution in the state.¹⁰ According to 2017 data from the United States Environmental Protection Agency (US EPA), Virginia had 178 concentrated animal feeding operations (CAFOs) as of year-end of 2017, but only 8 had National Pollutant Discharge Elimination System (NPDES) permits.¹¹

With the backdrop of the Chesapeake Bay TMDL as a major regional environmental issue, it's significant that Virginia's CAFO program goes beyond minimum federal standards. While the Clean Water Act requires permits for facilities that discharge or propose to discharge pollutants to regulated waters, states are authorized to enact more stringent regulations. Virginia exercises this authority in part by requiring livestock operations of a certain size or type to obtain a permit even if they do not discharge or do not propose to discharge. The state has Individual and General Virginia Pollution Discharge Elimination System Permits, Animal Feeding Operation Permits, and Poultry Waste Management Permits.

While Virginia's CAFO program goes beyond federal minimums, the State has received low marks in terms of its commitment to reducing nutrient runoff into

⁷ Chesapeake Bay TMDL Fact Sheet. U.S. ENVIRONMENTAL PROTECTION AGENCY.

<https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>.

⁸ Chesapeake Bay, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,

<http://www.deq.virginia.gov/Programs/Water/ChesapeakeBay.aspx>.

⁹ Virginia's 2016 Water Quality Assessment Integrated Report: Executive Summary, Virginia Department of Environmental Quality,

https://www.deq.virginia.gov/Portals/0/DEQ/Water/WaterQualityAssessments/IntegratedReport/2016/ir16_Executive_Summary.pdf.

¹⁰ Virginia's 2016 Water Quality Assessment Integrated Report: Nonpoint Source Assessment, Virginia Department of Environmental Quality,

https://www.deq.virginia.gov/Portals/0/DEQ/Water/WaterQualityAssessments/IntegratedReport/2016/ir16_Ch5_NPS_Assessment.pdf

¹¹ U.S. Environmental Protection Agency, NPDES CAFO Permitting Status Report -- National Summary, Endyear 2017, completed 12/31/17, https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf.

Chesapeake Bay.¹² For example, in a report card-style 2011 publication from the Center for Progressive Reform, the state received a failing grade because of questionable “commitment and resources . . . [as well as] transparency and strength of program design.”¹³ Perhaps the State’s commitment to water quality programming has improved since 2011, but it remains essential that Virginia residents get involved in the CAFO permitting process by doing things like requesting public hearings, voicing concerns, and reporting permit violations. This Guide is intended to provide legal and policy resources to help residents understand and participate in Virginia’s CAFO program.

CAFOs: State Definitions & Regulatory Agencies

Definitions

As described below, Virginia distinguishes between regulated and non-regulated operations based upon two determinations: the number of animal units at an operation, and whether the operation site discharges pollutants to surface waters. It’s worth noting that Virginia goes beyond minimum federal law by requiring a permit for certain livestock operations even if those operations don’t discharge pollutant to regulated waters. Also note that the permitting and related ramifications of being defined as an animal feeding operation (AFO) or CAFO are discussed further in the Virginia Pollutant Discharge Elimination System (VPDES) section below.

AFOs

Virginia regulations define a facility as an AFO if the following conditions are met:

1. 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
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at

¹² Missing the Mark in the Chesapeake Bay, CENTER FOR PROGRESSIVE REFORM, http://www.progressivereform.org/articles/chesbay_wips_1102.pdf.

¹³ See *id.* at page 28.

an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.¹⁴

Even small AFO facilities have responsibilities not to endanger water quality. VDEQ and the Virginia Department of Agriculture and Consumer Services cooperate regarding a “strategy by which small animal feeding operations (AFOs) will be evaluated for site-specific risks or impacts to water quality.”¹⁵ Residents with concerns about smaller feeding operations should consult the [Small Feeding Operations Evaluation and Assessment Strategy](#)¹⁶ and a related [Factsheet](#).¹⁷

Discharging versus non-discharging operations

Once an operation is defined as an AFO, the next threshold issue is whether it “discharges,” which generally means “any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.”¹⁸ Discharging operations require an individual VPDES permit, while non-discharging operations typically receive a general permit that is less “individualized” and “restrictive.”¹⁹

If an AFO does not discharge, it will not require a permit as long as the facility houses less than 300 livestock animal units or less than 200 poultry animal units. An ‘animal unit’ is not equal to the number of animals.

¹⁴ 9 VA. ADMIN. CODE § 25-32-10(I)(A).

¹⁵ Livestock and Poultry, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/LandApplicationBeneficialReuse/LivestockPoultry.aspx>.

¹⁶ Virginia’s Small AFO Evaluation and Assessment Strategy, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY & VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, http://www.deq.virginia.gov/Portals/0/DEQ/Water/VirginiaPollutionAbatement/SmallAFO/Small_AFO_Evaluation_and_Assessment_Strategy_7.23.12.pdf.

¹⁷ Fact Sheet: Virginia’s Small AFO Evaluation and Assessment Strategy, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY & VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, http://www.deq.virginia.gov/Portals/0/DEQ/Water/VirginiaPollutionAbatement/SmallAFO/Final_Small_AFO_factsheet_2014-7-23_BKB.pdf.

¹⁸ 9 VA. ADMIN. CODE § 25-32-10(I)(A).

¹⁹ Permit Decision Tree, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, http://www.deq.virginia.gov/Portals/0/DEQ/Water/VirginiaPollutionAbatement/AFOdocuments/AFO_CAFO_Decision_Tree20130318.pdf.

Defining the Regulated AFO Threshold: operations with less than the number of animals in the table below are NOT regulated AFOs provided that these smaller operations do not violate Virginia's Water Control Laws.

Animal	Number of animals
Cattle (slaughter/feeder)	≥ 300
Dairy cow	≥ 200
Swine (≥ 55 pounds)	≥ 750
Chickens (laying hen or broiler)	≥ 30,000
Sheep or Lambs	≥ 3,000
Turkeys	≥ 16,500
Horses	150

CAFOs

A CAFO is simply a discharging AFO that meets certain animal unit thresholds and/or is defined as a CAFO by VDEQ based on certain practices or circumstances. An operation is defined either as a large, medium, or small CAFO based on the table below:

Animal	Large CAFO (number of animals)	Medium CAFO + manmade device or animal contact with surface water	Small
Cattle (beef)	≥ 1,000	300–999	Regulated only after VDEQ designation as a significant contributor of pollutants.
Dairy cow	≥ 700	200–699	
Swine (≥ 55 pounds)	≥ 2,500	750–2,499	

Note that discharging CAFO permits are much less commonly issued by VDEQ than the Virginia Pollutant Abatement permits issued to non-discharging AFOs.²⁰ VDEQ issued the first two CAFO VPDES Permits in 2015, though the frequency of reviewing livestock operations for VPDES permit necessity is increasing.²¹ By the end of 2017, only eight of Virginia's CAFOs have obtained VPDES permits. Operations are not eager to admit to discharging waste. This makes it all the more important for residents to monitor AFOs to determine whether they're actually complying with the zero-discharge standard and to report to VDEQ with questions or concerns about non-compliance.

AFO/CAFO "Decision Tree"

VDEQ publishes a useful "decision tree" to help permittees understand if a livestock operation is an AFO, CAFO, or neither, as well as the permitting ramifications created by those definitions.²² If neighbors of a proposed or expanding livestock operation believe it should be a regulated CAFO but has not obtained necessary permits, they should contact VDEQ and/or local government to look into the matter. Failure to obtain necessary permits can result in fines and sets an example for other operations in the community.

Responsible Regulatory Agencies

Virginia Department of Environmental Quality

VDEQ is the primary state agency that develops, implements, and enforces state and federally-authorized environmental laws and regulations that may apply to livestock operations. VDEQ is composed of several administrations or sub-departments that help implement the environmental laws and programs that regulate AFOs in Virginia. The VDEQ animal waste program maintains a website with information about permits, forms, guidance documents, and AFO-related links and resources.²³

²⁰ Virginia Animal Agriculture Program Assessment at pages 5-6, U.S. ENVIRONMENTAL PROTECTION AGENCY REGION III, https://www.epa.gov/sites/production/files/2015-07/documents/virginia_animal_agriculture_program_assessment_final_2.pdf.

²¹ See *id.*

²² Permit Decision Tree, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, http://www.deq.virginia.gov/Portals/0/DEQ/Water/VirginiaPollutionAbatement/AFOdocuments/AFO_CAFO_Decision_Tree20130318.pdf.

²³ Livestock and Poultry, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/LandApplicationBeneficialReuse/LivestockPoultry.aspx>.

VDEQ has three citizen boards that play a policy, rulemaking, and enforcement function for the Department.²⁴ These boards public notice all meetings along with regulations, guidance, and enforcement decision-making.²⁵

Department of Agriculture

Virginia Department of Agriculture

The Virginia Department of Agriculture and Consumer Services, though not primarily responsible for CAFO permitting, does “work[] directly with farmers to improve their operations.”²⁶ The Department is also the primary contact for training and certifying fertilizer applicators.²⁷ Find more information on their [website](#).²⁸

USDA Natural Resource Conservation Service

The USDA Natural Resource Conservation Service is a federal office that provides technical assistance for agricultural operations and certifies technical service providers to develop and write Comprehensive Nutrient Management Plans. However, it does not have enforcement responsibilities.

Department of Natural Resources

Virginia is somewhat unique in that it does not have an overarching Department of Natural Resources, instead operating two separate Departments: The Department of Game and Inland Fisheries and The Department of Conservation and Recreation.²⁹ The Virginia Department of Conservation and Recreation has responsibility for nutrient management plan (NMP) review and NMP certification trainings, as discussed further below.

While these Departments have limited involvement in CAFO regulation, resident monitors should consider involving appropriate staff if the siting or impact of a CAFO threatens nearby public or protected lands, waters, or other recreational resources. It is almost always useful to frame CAFO impacts to demonstrate a need, for example,

²⁴ Citizen Boards, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/ConnectWithDEQ/CitizenBoards.aspx>.

²⁵ See *id.*

²⁶ Conservation & Environmental, VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, <http://www.vdacs.virginia.gov/>.

²⁷ See *id.*

²⁸ VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, <http://www.vdacs.virginia.gov/>.

²⁹ VIRGINIA DEPARTMENT OF GAME AND INLAND FISHERIES, <https://www.dgif.virginia.gov/>; see also VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION, <http://www.dcr.virginia.gov/>.

to involve hunting and fishing advocates and those who otherwise use and enjoy the natural resources that are impacted by large-scale livestock operations.

Department of Health

Virginia Department of Health

State and local health departments and health care professionals add an important perspective and expertise to the public discourse about CAFO impacts. The Virginia Department of Health (VDH) is a possible resource for communities seeking to respond to adverse human health impacts caused by large-scale agriculture. For example, the following VDH programs may prove useful as resident CAFO monitors seek to understand and detail public health impacts of certain operations: Drinking Water, Environmental Health Services, Environmental Epidemiology, and Health Equity.³⁰

See [Virginia Department of Health](http://www.vdh.virginia.gov)³¹ for contacts and more information. Both state and local health departments are potentially crucial first points of contact for questions and concerns about private well contamination that may result from agricultural-related runoff and pollution.

Local Health Departments

Each county in Virginia is assigned to a local health district department, which may provide insight and guidance on how the health laws and ordinances could apply to local or regional agricultural-related health concerns. For a statewide interactive map with contact information, see the VDH [website](http://www.vdh.virginia.gov).³²

Virginia Cooperative Extension

Both agricultural producers and CAFO monitors may benefit from extensive publications and information from the Virginia Cooperative Extension. See the Extension's [Natural Resources and Environmental Quality website](http://www.pubs.ext.vt.edu/category/natural-resources-environmental-quality.html) for publications that range in topic from agricultural-related air quality issues to manure management.³³

³⁰ VDH Programs, VIRGINIA DEPARTMENT OF HEALTH, <http://www.vdh.virginia.gov/vdh-programs/>.

³¹ VIRGINIA DEPARTMENT OF HEALTH, <http://www.vdh.virginia.gov/>.

³² Local Health Districts, VIRGINIA DEPARTMENT OF HEALTH, <http://www.vdh.virginia.gov/local-health-districts/>.

³³ Publications and Educational Resources: Natural Resources & Environmental Quality, VIRGINIA COOPERATIVE EXTENSION, <http://www.pubs.ext.vt.edu/category/natural-resources-environmental-quality.html>.

Local Conservation Districts

There are 47 Soil and Water Conservation Districts in Virginia.³⁴ These Districts are “political subdivisions of the state, . . . [each] directed by a board of elected and appointed directors who are elected in general elections and serve four year terms.”³⁵ They are not involved in CAFO regulation but are knowledgeable about natural resources in the region. They may be valuable contacts for local environmental information. For more information and contacts, see the Virginia Association of Soil and Water Conservation Districts [website](#).³⁶

US EPA Region 3

Virginia is part of the EPA Region 3, the Mid-Atlantic, which also includes Delaware, District of Columbia, Maryland, Pennsylvania, and West Virginia. While a considerable amount of CAFO regulation happens at the state level, the EPA has oversight authority, and residents and organizations can contact their regional office if the state is not performing its duties or is failing to regulate CAFOs under the applicable federal and state environmental laws.

WATER

Virginia Pollutant Discharge Elimination System Program

The EPA has authorized Virginia to implement the National Pollutant Discharge Elimination System (NPDES), a component of the Clean Water Act, at the state level. The Virginia Department of Environmental Quality is the primary agency involved in issuing permits for a variety of activities that result in a discharge of pollutants into waters of the state. These permits may be required for existing facilities, new facilities, or construction activities, and allow for discharge to surface or ground waters under specific circumstances.

CAFOs that discharge pollutants to surface waters generally must receive an individual VPDES permit. VPDES regulations are found at Title 9 of Virginia’s Administrative Code at section 25, chapter 31. Specific CAFO permit requirements are at 9 VA. ADMIN. CODE § 25-31-130.³⁷ Note that permit coverage pursuant to these

³⁴ Welcome to VASWCD, VIRGINIA ASSOCIATION OF SOIL & WATER CONSERVATION DISTRICTS, <http://vaswcd.org/>.

³⁵ Who We Are, VIRGINIA ASSOCIATION OF SOIL & WATER CONSERVATION DISTRICTS, <http://vaswcd.org/about-us>.

³⁶ Welcome to VASWCD, VIRGINIA ASSOCIATION OF SOIL & WATER CONSERVATION DISTRICTS, <http://vaswcd.org/>.

³⁷ 9 VA. ADMIN. CODE § 25-31-130, available at <http://law.lis.virginia.gov/admincode/title9/agency25/chapter31/section130/>.

regulations invokes EPA oversight as for more traditional end-of-pipe dischargers like power plants, further invoking federal Clean Water Act enforcement potential for both the government and residents.

Highlights of CAFO VPDES permits include, but are not limited to: (1) a requirement to submit with the permit application a nutrient management plan approved by the Department of Conservation and Recreation; and (2) a requirement not to discharge any pollutants to surface waters unless authorized by a permit.³⁸ This means that an owner/operator must submit a permit application to VDEQ at least 180 days before proposing to discharge any such pollutants.³⁹ CAFO VPDES applicants must comply with requirements for a complete VPDES permit application pursuant to the same regulations for point source dischargers such as power plants or waste water treatment facilities.⁴⁰

Public notice procedures and resources for VPDES permits are discussed later in this Guide. Other CAFO resources are available on the VDEQ animal waste program website,⁴¹ including useful VPDES guidance interpreting EPA's CAFO rules and the distinctions between discharging and zero-discharge livestock operations.⁴²

General No-Discharge Permits for Animal Feeding Operations

General permit coverage is typically only an option for Virginia AFOs that do not discharge pollutants into regulated waters. VDEQ distinguishes these general pollution abatement (VPA) permits from the VDPES Program that covers discharging operations. Find general permit regulations for all livestock except poultry at Title 9 of Virginia's Administrative Code, at section 25, chapter 192.⁴³ Find poultry general permit regulations in the same section at chapter 630.⁴⁴

³⁸ See generally VA. ADMIN. CODE § 25-31-130.

³⁹ 9 VA. ADMIN. CODE § 25-31-100(D).

⁴⁰ See generally 9 VA. ADMIN. CODE § 25-31-100.

⁴¹ Livestock and Poultry, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/LandApplicationBeneficialReuse/LivestockPoultry.aspx>.

⁴² Memorandum from Ellen Gilinsky, VDEQ Water Division Director, to Virginia Pollution Abatement AFO Permit Holders, Jan. 21, 2009, available at http://www.deq.virginia.gov/Portals/0/DEQ/Water/VirginiaPollutionAbatement/final_memo_Large_CAF Os_2009_01_21.pdf.

⁴³ See generally 9 VA. ADMIN. CODE § 25, chapter 192, available at <https://law.lis.virginia.gov/admincode/title9/agency25/chapter192/>.

⁴⁴ See generally 9 VA. ADMIN. CODE § 25, chapter 630, available at <http://law.lis.virginia.gov/admincode/title9/agency25/chapter630/>.

The livestock and poultry general permit regulations contain the following common requirements:

- **Registration statements:** applicants must begin the permit application process by submitting a registration statement to VDEQ. Template statements for livestock and poultry AFOs are available on the VDEQ animal waste program website,⁴⁵ and specific regulations outline the requirements for complete registration statements.⁴⁶
- **Public notice:** general permit applicants must provide notice to adjoining property owners and “any person” may comment to VDEQ within 30 days of registration statement submittal.
 - Poultry: see 9 VA. ADMIN. CODE § 25-630-30(A)(5);
 - Livestock: see 9 VA. ADMIN. CODE § 25-192-50(A)(5).
- **Manure and runoff management:** Owner/grower must obtain Department of Conservation and Recreation approval of a nutrient management plan prior to submitting a registration statement to VDEQ.
 - Poultry: see 9 VA. ADMIN. CODE § 25-630-30(A)(4);
 - Livestock: see 9 VA. ADMIN. CODE § 25-192-50(A)(4).
- **General permit expiration:** The poultry AFO general permit is set to expire in 2020, while the livestock AFO permit will expire in 2024.⁴⁷ Residents and public interest groups should press VDEQ only to issue general permits under up-to-date and effective permits.

Residents with questions about specific pollution incidents, deficient structures, or related problems should more thoroughly review the administrative code that outlines minimum general AFO permit requirements.⁴⁸

General No-Discharge Permit Application Process

Below is a very simplified breakdown of the AFO general no-discharge permit application process:

1. The owner/operator submits a registration statement.
 - a. Application package must include a nutrient management plan.
 - b. Application package must include nutrient management plan approval letter from Virginia Department of Conservation and Recreation.
2. VDEQ reviews the application.

⁴⁵ Livestock and Poultry, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/LandApplicationBeneficialReuse/LivestockPoultry.aspx>.

⁴⁶ See generally 9 VA. ADMIN. CODE § 25-630-40; see also 9 VA. ADMIN. CODE § 25-192-60.

⁴⁷ See generally 9 VA. ADMIN. CODE § 25-630-50; see also 9 VA. ADMIN. CODE § 25-192-70.

⁴⁸ See generally 9 VA. ADMIN. CODE § 25-630-50; see also 9 VA. ADMIN. CODE § 25-192-70.

3. VDEQ publishes a 30-day comment period on its [VPA Public Notice](#) website.⁴⁹
 - a. This is the primary opportunity for individuals to voice their concerns by submitting public comments and requesting a public hearing.
 - b. Individuals may submit comments and/or request a public hearing.
 - c. VDEQ will receive comments for up to 30 days following the public notice.
4. VDEQ approves the general no-discharge permit application if registration statement and all corresponding requisite materials are complete.

Virginia Nutrient Management Program

The Virginia Department of Conservation and Recreation (“VDCR”) is the lead agency for Virginia’s Nutrient Management Program.⁵⁰ As noted above, Virginia AFOs and CAFOs must submit complete nutrient management plans (NMPs) along with corresponding permit applications. VDCR must approve all permitted AFO and some CAFO NMPs. These plans may differ based on the size and type of facility but all NMPs are “guides for applying organic or inorganic fertilizers to maximize yield while preventing the movements of nutrients into ground and surface waters.”⁵¹

Permitted livestock⁵² and poultry⁵³ AFOs must have NMPs approved by planners who are certified through VDCR.⁵⁴ These NMPs must include at least the following six elements:

1. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;
2. Site evaluation and assessment of soil types and potential productivities;
3. Nutrient management sampling including soil and waste monitoring;
4. Storage and land area requirements;
5. Calculation of waste application rates; and
6. Waste application schedules.

⁴⁹ Status of Animal Feeding Operations (AFO) Applications, MARYLAND DEPARTMENT OF THE ENVIRONMENT, <http://www.mde.state.md.us/programs/Land/RecyclingandOperationsprogram/AFO/Pages/CAFO.aspx>.

⁵⁰ Virginia’s Nutrient Management Program, VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION, <http://www.dcr.virginia.gov/soil-and-water/nutmgt>.

⁵¹ See, e.g., Nutrient management on small farms. VIRGINIA SMALL FARM NUTRIENT MANAGEMENT TEAM, *available at* <http://www.dcr.virginia.gov/soil-and-water/document/nm-small-farm-bro.pdf>.

⁵² 9 VA. ADMIN. CODE § 25-192-70(B)(12).

⁵³ 9 VA. ADMIN. CODE § 25-630-50(B)(6).

⁵⁴ VA. CODE ANN. § 10.1-104.2.

Wetlands

Wetlands are a critically important resource that depend upon strong protections from federal and state government. Wetlands impacts, depending on the project details of a new or expanding CAFO, may provide another means through which residents can review, comment on, and potentially decrease the environmental impacts of large-scale agriculture operations.

Virginia's highly diverse wetlands are defined as those areas that "are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."⁵⁵ Furthermore, Virginia law specifies that "wetlands" means both vegetated and non-vegetated wetlands.⁵⁶ These wetlands influence groundwater discharge rates, assist with stormwater and flood control, filter pollutants and nutrients from the water, reduce erosion, and provide critical habitat for numerous plant and animal species.

Various federal and state laws are designed to protect wetlands from degradation and destruction. See the Federal Guide for a discussion of federal regulation of wetlands. In addition to federal protection of wetlands, Virginia state law mandates obtaining a Virginia Water Protection (VWP) Permit prior to engaging in certain activities that would disturb a wetland. The VWP Permit Program also acts as Virginia's § 401 certification process for activities are permitted under § 404 of the Clean Water Act.⁵⁷ This Clean Water Act provision applies to activities or projects that may result in a discharge into waters of the United States.⁵⁸ Projects subject to 401 Certification most commonly include irrigation or filling of wetlands.

Tidal Wetlands

The Virginia Tidal Wetlands Act of 1972 gave the Virginia Marine Resource Commission the responsibility for issuing tidal wetland permits⁵⁹ in accordance with the goal of "preserv[ing] and prevent[ing] the despoliation and destruction of

⁵⁵ Wetlands and Streams, FAQs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/FAQs.aspx#how_can_i_protect.

⁵⁶ VA. CODE ANN. § 28.2-1300.

⁵⁷ Wetlands and Streams, Regulations, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Regulations.aspx>.

⁵⁸ Clean Water Act, 33 U.S.C. § 1341 (West 2016).

⁵⁹ Wetlands and Streams, Regulations, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Regulations.aspx>.

wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation.”⁶⁰

Additionally, Chapters 12 and 13 of Title 28.2 of the Virginia Code govern activities related to the disturbance and preservation of Virginia’s wetlands. While Chapter 12 activities may require a VWP permit, Chapter 13 activities only require a VWP permit if § 401 Certification is also required.⁶¹

Chapter 12. Submerged Lands

Chapter 12 makes it unlawful to “build, dump, trespass or encroach upon or over” Virginia’s bays, ocean, rivers, streams, or creeks, absent a permit or applicable exception under VA Code § 28.2-1203(A)(1)–(7).

Chapter 12 also authorizes the Virginia Marine Resource Commission to issue permits for activities including (but not limited to) “dredging, the taking and use of material, and the placement of wharves, bulkheads, and fill by owners of riparian land in the waters opposite their lands, provided such wharves, bulkheads, and fill do not extend beyond any lawfully established bulkhead lines.”⁶²

Chapter 13. Wetlands

Chapter 13 empowers counties, cities, or towns to voluntarily adopt a wetlands zoning ordinance⁶³ that mandates the creation of a local wetlands board. This board would work beneath the Virginia Marine Resource Commission to monitor activities affecting local wetlands and aid in the issuance of permits.

Additionally, Chapter 13 enumerates authorized uses and activities relating to wetlands.⁶⁴ Any individual who wishes to engage in an activity or use not included in this list must apply for a permit through the wetlands board (if applicable) or the Virginia Marine Resource Commission.⁶⁵

⁶⁰ VA. CODE ANN. § 28.2-1301.

⁶¹ Wetlands and Streams, Regulations, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Regulations.aspx>.

⁶² VA. CODE ANN. § 28.2-1204.

⁶³ VA. CODE ANN. § 28.3-1302.

⁶⁴ VA. CODE ANN. § 28.3-1302.

⁶⁵ VA. CODE ANN. § 28.3-1306.

See [here](#) for more information about the Virginia Tidal Wetlands Act, which may afford protection for certain CAFO projects in applicable tidal areas of the State.⁶⁶

Nontidal Wetlands

In 2000, the Virginia General Assembly passed the Nontidal Wetlands Act, allowing for a regulatory program aimed at achieving “no net loss” of existing nontidal wetland acreage and function.⁶⁷ Regulated activities include excavating, permanent flooding or impounding, filling or dumping, changing drainage patterns, and altering or degrading wetland acreage and function.⁶⁸

There are four types of general VWP permits that may be used when a single activity impacts less than the specified acreage and linear footage of nontidal surface water. Find a detailed description of the four permits [here](#).⁶⁹

Permit Application

Permit applications and application instructions are available on the Virginia Department of Environmental Quality’s website.⁷⁰ The state also compiled a detailed guide to the Wetland Permitting Process in Virginia.⁷¹

If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue to all appropriate regulating entities. Determine whether a new or expanding operation has sought necessary permit(s). If not, submit a complaint and always seek opportunity for public comment and hearing to

⁶⁶ *State Wetland Protection, Status, Trends, & Model Approaches*, ENVIRONMENTAL LAW INSTITUTE, 2008, https://www.eli.org/sites/default/files/docs/core_states/Virginia.pdf.

⁶⁷ Wetlands and Streams, Regulations, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Regulations.aspx>.

⁶⁸ *A Public Guide to the Wetland Permitting Process in Virginia*, Office of Wetland & Stream Protection, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, 1-2, <http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/PublicGuideRevised2012.pdf>, (2012).

⁶⁹ *A Public Guide to the Wetland Permitting Process in Virginia*, Office of Wetland & Stream Protection, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, 2-3 & 3-3, <http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/PublicGuideRevised2012.pdf> (2012).

⁷⁰ Wetlands and Streams, Permits, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WetlandsStreams/Permits.aspx>.

⁷¹ *A Public Guide to the Wetland Permitting Process in Virginia*, Office of Wetland & Stream Protection, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/PublicGuideRevised2012.pdf>, (2012).

emphasize the importance of Virginia's wetlands to protect public health, groundwater, the Chesapeake Bay, and biodiversity.

Water Quality

Water Quality Standards⁷²

Virginia has established water quality standards that are intended to “protect all state waters for recreation, wildlife, the growth of a balanced population of aquatic life, and the production of edible and marketable fish and shellfish.”⁷³ These standards are comprised of at least three components, including designated uses, water quality criteria, and an anti-degradation policy.

Designated Uses⁷⁴

Every water body in Virginia is designated at a minimum for the following uses, which are protected by water quality standards:

- Recreational use;
- The propagation and growth of a balanced, indigenous population of aquatic life;
- Wildlife;
- The production of edible and marketable natural resources.

By protecting these minimum uses, water quality standards indirectly protect additional uses, including industrial supply, irrigation, and navigation. Additionally, the State Water Control Board may adopt or remove a designated use pursuant to the relevant section of the Virginia Administrative Code.⁷⁵

⁷²See generally 9 VA. ADMIN. CODE § 25-260; see also Water Quality Standards, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards.aspx>.

⁷³ Water Quality Standards, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards.aspx>.

⁷⁴ 9 VA. ADMIN. CODE § 25-260-10; see also Designated Uses, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards/DesignatedUses.aspx>.

⁷⁵ 9 VA. ADMIN. CODE §§ 25-260-10 (D),(G),(H).

Water Quality Criteria

Water quality sets the minimum water quality thresholds, either numerically or narratively, which must be met to achieve the water body's designated use. Narrative criteria mandates that state waters must be free from "substances attributable to sewage, industrial waste, or other waste..."⁷⁶ Find a list of numerical water quality criteria [here](#).⁷⁷

Water quality criteria are useful since they show, in quantifiable terms, what condition the water bodies should be in, and whether the water bodies are achieving these standards.

Anti-degradation⁷⁸

Virginia developed an anti-degradation policy to ensure that waters are not allowed to fall below minimum standards. Under this policy, Virginia's surface waters are protected by one of the following tiers:

- **Tier I:** Minimum Standards Quality. This ensures that the surface water's existing uses (and the necessary water quality level to protect those uses) are maintained
- **Tier II:** High Quality. This ensures that the high quality of the waters shall be maintained and may only be lowered in limited circumstances
- **Tier III:** Outstanding Quality. This ensures that no new, additional, or increased pollution may be discharged into these waters
 - Virginia currently has 30 Exceptional State Water Designations; find a list [here](#).⁷⁹

Anyone seeking a permit to discharge to Tier II waters should consider alternatives or provide justification.⁸⁰ Residents should be familiar with Tier II waters in their

⁷⁶ 9 VA. ADMIN. CODE § 25-260-20; Criteria, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards/Criteria.aspx>.

⁷⁷ 9 VA. ADMIN. CODE § 25-260-140, available at <http://lis.virginia.gov/cgi-bin/legp604.exe?000+reg+9VAC25-260-140>.

⁷⁸ 9 VA. ADMIN. CODE § 25-260-30.

⁷⁹ Exceptional State Waters (Tier III), Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, [http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards/ExceptionalStateWaters\(TierIII\).aspx](http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityStandards/ExceptionalStateWaters(TierIII).aspx).

⁸⁰ 9 VA. ADMIN. CODE § 25-260-30 A.2.

communities and point to 9 VA. ADMIN. CODE § 25-260-30.A.2 to challenge AFO permitting that will impact these waters.

Impaired Water Bodies

The Clean Water Act requires states to perform annual water quality assessments⁸¹ and identify waters not meeting the state's water quality standards.⁸² Virginia compiles this provision and submits its findings to the EPA in the Virginia Water Quality Assessment 305(b)/303(d) Integrated Report.⁸³ This information is available to the public. Individuals can access various maps and resources on the Virginia Department of Environmental Quality's [Final Water Quality Assessment Integrated Report](#) website⁸⁴ or on EPA's [Virginia's Water Quality Assessment Report](#) website.⁸⁵

Residents may find it helpful to know about impaired water bodies and their proximity to CAFOs/AFOs in their region.

Total Maximum Daily Load

The Total Maximum Daily Load (TMDL) is the "total amount of a pollutant that a waterbody can handle without resulting in the impaired status of that waterbody."⁸⁶ The Virginia Department of Environmental Quality composed a [guidance manual](#)⁸⁷ outlining the process for developing and implementing TMDL.

Public participation is an important part of this process and the public is invited to attend a series of meetings concerning the TMDLs. According to the Virginia Department of Environmental Equality's website, the public may receive notice of these meetings through the local newspapers, direct mailings, and in the Virginia

⁸¹ CWA § 305(b).

⁸² CWA § 303(d).

⁸³ Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx>.

⁸⁴ Final 2016 305(b)/303(d) Water Quality Assessment Integrated Report, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2016305b303dintegratedReport.aspx>.

⁸⁵ Virginia's Water Quality Assessment Report, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, https://iaspub.epa.gov/waters10/attains_state.control?p_state=VA.

⁸⁶ TMDL, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL.aspx>.

⁸⁷ *Guidance Manual for Total Maximum Daily Load Implementation Plans*, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://deq.state.va.us/Portals/0/DEQ/Water/TMDL/ImplementationPlans/ipguide.pdf> (2003).

Register.⁸⁸ This process begins with a first meeting to outline the impairment, the TMDL process, and offer an opportunity for public comment. Intermittent meetings are held to discuss the ongoing TMDL process. A final meeting will present the TMDL study and offer another opportunity for public comment before the study is submitted to the EPA.

See this [website](#) for opportunities to comment on draft TMDLs in your area.⁸⁹ You can also search for Approved TMDL reports [here](#).⁹⁰

Chesapeake Bay TMDL⁹¹

In 2010, the EPA established Total Maximum Daily Load for Chesapeake Bay. The TMDL calls for reducing nitrogen, phosphorous, and sediment and sets pollution limits to attempt to achieve water quality standards. The current reduction amounts are:

- 185.9 million pounds of nitrogen per year (= 25% reduction)
- 12.5 million pounds of phosphorous per year (= 24% reduction)
- 6.45 billion pounds of sediment per year (= 20% reduction)

This TMDL is an extensive undertaking and is actually made up of a combination of 92 smaller TMDLs for individual tidal segments. It is the largest and most complex TMDL ever developed by the EPA to date.⁹² The TMDLs call for reductions and actions from various states and multiple sectors in order to improve water quality of the bay. The Chesapeake Bay TMDL calls for reductions from Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

⁸⁸ FAQs, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/FrequentlyAskedQuestions.aspx>.

⁸⁹ Public Notices, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://deq.state.va.us/Programs/Water/WaterQualityInformationTMDLs/TMDL/PublicNotices.aspx>.

⁹⁰ Approved TMDL Reports, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

⁹¹ Chesapeake Bay TMDL Fact Sheet, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>.

⁹² See, e.g., Maryland Animal Agricultural Program Assessment. U.S. ENVIRONMENTAL PROTECTION AGENCY, at page 18, available at <https://www.epa.gov/sites/production/files/2015-09/documents/marylandanimalagricultureprogramassessment.pdf>.

Since agriculture is the primary contributor of these nutrients and pollutants, the existence, addition, or expansion of CAFOs will interfere with Virginia's ability to meet its reduction goals and improve the water quality of the Chesapeake Bay.

Best Management Practices

Virginia has identified several practices that will help the state protect the environment from the adverse impacts of animal agriculture. Best management practices include:⁹³

- Livestock exclusion from streams
- Reducing stormwater run-off from concentrated livestock areas by additional buffering in the riparian (near-stream) zone
- Manure management practice

Find more information about best management practices [here](#).⁹⁴

Watershed Implementation Plans

In addition to setting the Chesapeake Bay TMDLs, the EPA required Virginia and other bay area states to develop Watershed Implementation Plans (WIPs) to help achieve the state's TMDLs. WIP implementation goals for animal agriculture include implementing nutrient management plans, soil conservation and water quality plans, an animal waste management system, and barnyard runoff controls.

Learn more about Virginia's WIP [here](#).⁹⁵ If a region is not meeting its WIP milestones, the Virginia Department of Environmental Quality should work closely with individuals in the region to identify shortcomings and get back on track.

Water Quality Improvement Act⁹⁶

The purpose of the Virginia Water Quality Improvement Act of 1997 is "to restore and improve the quality of state waters and to protect them from impairment and destruction for the benefit of current and future citizens of the Commonwealth."⁹⁷

⁹³ FAQs, Water Quality Information & TMDLs, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/FrequentlyAskedQuestions.aspx>.

⁹⁴ Virginia Agricultural Cost Share BMP Manual, DEPARTMENT OF CONSERVATION AND RECREATION, <http://dswcapps.dcr.virginia.gov/htdocs/agbmpman/csmanual.pdf>.

⁹⁵ Chesapeake Bay TMDL Phase I Watershed Implementation Plan, COMMON WEALTH OF VIRGINIA, <http://www.deq.virginia.gov/Portals/0/DEQ/Water/TMDL/Baywip/vatmdlwippphase1.pdf>.

⁹⁶ VA. CODE ANN. § 10.1-2117 to 2134.

⁹⁷ VA. CODE ANN. §10.1-2118.

Virginia's General Assembly revised this act in 2006 to better address the state's water quality concerns and to improve state waters that the EPA has listed as impaired.⁹⁸ The act also establishes the Virginia Water Quality Improvement Fund,⁹⁹ which provides local governments with technical and financial support to implement point and nonpoint source pollution prevention, reduction, and control programs.¹⁰⁰ The Department of Environmental Quality provides this support for control of point source pollution while the Department of Conservation and Recreation provides this support for control of non-point source pollution.¹⁰¹ The Water Quality Improvement Act creates a grant program for awarding these services and support.

Grant Eligibility and Application

Any Virginian local government, soil and water conservation district, institution of higher education, or individual may apply for this grant.¹⁰² However, eligibility is currently "limited to design and installation of nutrient reduction technology at Chesapeake Bay watershed publicly owned wastewater treatment plants."¹⁰³

Although the grant application is available [online](#),¹⁰⁴ the applications may only be submitted during a solicitation period. Once an application is accepted, the Department of Environmental Quality develops a draft agreement. The act mandates that this agreement include "provisions that govern design and installation and require proper long-term operation, monitoring and maintenance of funded projects, including design and performance criteria, as well as contractual or stipulated penalties in an amount sufficient to ensure compliance with the agreement."¹⁰⁵ The department then makes the agreement available to the public for a 30-day review/comment period—instructions for submitting comments are

⁹⁸ Virginia Water Quality Improvement Fund Guidelines, NATURAL RESOURCES, http://www.deq.virginia.gov/Portals/0/DEQ/Water/ChesapeakeBay/Nov2006WQIFGuidelines-updated_5-15-12.pdf (Nov. 2006), pg. 2.

⁹⁹ VA. CODE ANN. § 10.1-2128.A.

¹⁰⁰ VA. CODE ANN. § 10.1-2128.B.

¹⁰¹ Virginia Water Quality Improvement Fund Guidelines, NATURAL RESOURCES, http://www.deq.virginia.gov/Portals/0/DEQ/Water/ChesapeakeBay/Nov2006WQIFGuidelines-updated_5-15-12.pdf (Nov. 2006), pg. 2.

¹⁰² VA. CODE ANN. § 10.1-2128.B.

¹⁰³ Water Quality Improvement Fund, Clean Water Financing and Assistance, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/CleanWaterFinancingAssistance/WaterQualityImprovementFund.asas>.

¹⁰⁴ Grant Application for Water Quality Improvement Funds, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Portals/0/DEQ/Water/ChesapeakeBay/WQIFApplication.pdf>.

¹⁰⁵ VA. CODE ANN. § 10.1-2130.

available [here](#).¹⁰⁶ Following the review/comment period, the agreement will be formally signed and listed on the Department's [website](#).¹⁰⁷

Find more information about the Virginia Water Quality Improvement Fund and instructions for grant application [here](#).¹⁰⁸

CAFO Construction

Construction & Stormwater

The federal NPDES stormwater program calls for the control of pollution generated from runoff associated with construction activity.¹⁰⁹ VDEQ administers the stormwater construction permits for the state. Construction projects in size between one and five acres must apply for a general stormwater construction permit.¹¹⁰ An individual permit may be necessary for a construction project over five acres in size.¹¹¹

A main requirement of the general stormwater construction permit is the completion of a stormwater pollution prevention plan.¹¹² Permittees must post this plan at the construction site along with the general permit itself, which may prove useful for monitors who wish to determine if construction stormwater runoff from a livestock-related construction site is compliant with permit terms and conditions.¹¹³

Virginia statute allows a permitting exception for certain land clearing and construction for agricultural purposes, specifically the following:

¹⁰⁶ Water Quality Improvement Fund List, Clean Water Financing and Assistance, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/CleanWaterFinancingAssistance/WaterQualityImprovementFund/WaterQualityImprovementFundList.aspx>.

¹⁰⁷ *Id.*

¹⁰⁸ Virginia Water Quality Improvement Fund Guidelines, NATURAL RESOURCES, http://www.deq.virginia.gov/Portals/0/DEQ/Water/ChesapeakeBay/Nov2006WQIFGuidelines-updated_5-15-12.pdf (Nov. 2006).

¹⁰⁹ CWA § 402; 40 C.F.R. §§ 122.26, 122.450.

¹¹⁰ See, e.g., Construction General Permit, VIRGINIA DEPARTMENT OF THE ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPPermits/ConstructionGeneralPermit.aspx>; see also 9 VA. ADMIN. CODE § 25-870-10(I).

¹¹¹ See, e.g., Construction General Permit, VIRGINIA DEPARTMENT OF THE ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPPermits/ConstructionGeneralPermit.aspx>.

¹¹² See *id.*

¹¹³ See *id.*

Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation[.]¹¹⁴

Note that this list does not appear to explicitly exempt construction of larger agricultural-related construction, such as building housing or production areas for livestock.

Animal Waste Storage Structure Construction

CAFO monitors should be aware of the construction requirements imposed upon owners per the State's laws and issued permit(s). For example, owners must construct poultry waste storage facilities with certain barriers between surface and ground water, and owners typically cannot build new poultry houses in an area within the 100-year floodplain.¹¹⁵ Similar guidelines exist in Virginia's administrative code as incorporated into general permits for livestock AFOs.¹¹⁶

CAFO Inspections

Virginia has made efforts to minimize the harmful effects of factory farming by going beyond federal requirements, but considerable work remains to be done. A general shortage of staff, resources, and inspectors means that public participation is crucial for documenting and monitoring irresponsible large-scale agricultural practices.

Permits for Virginia CAFOs as well as 'no-discharge' AFOs have conditions that require owner/operators to grant reasonable access to the state for inspections. The state conducts permit compliance inspections as well as initial site inspections to determine the appropriate permit for a new or expanding livestock operation. VPDES CAFO permits are not common enough to have robust data on the frequency of facility inspection, but the EPA's assessment of Virginia's Pollution Abatement permit

¹¹⁴ VA. CODE ANN. § 62.1-44.15:34(C)(2).

¹¹⁵ 9 VA. ADMIN. CODE §§ 25-630-50(B)(2)-(3).

¹¹⁶ 9 VA. ADMIN. CODE § 25-192-70(B).

program for no-discharge AFOs reveals that VDEQ attempts to inspect these facilities once every two years.¹¹⁷

The most common violations found during AFO inspections by VDEQ staff were violations of nutrient management plans.¹¹⁸ A February 2015 report from EPA Region 3 found that VDEQ did not consistently follow its [Civil Enforcement Manual](#)¹¹⁹ to address these NMP violations, choosing instead to following “Informal Corrections” procedures. It is therefore important for residents to connect with regional VDEQ staff to urge appropriate inspection and follow-up action by regulatory staff. VDEQ’s regional offices are the main contacts for enforcement response. Find contact information on VDEQ’s [Enforcement Contacts](#) website.¹²⁰

AIR

Animal agriculture is a significant source of air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and other contaminants, and animal agriculture, in theory, may be regulated. They are stationary sources that emit pollutants in amounts that jeopardize the environment and public health, but the agricultural industry has largely evaded meaningful regulation. The agricultural industry points to a number of reasons why agriculture should not be regulated—such as monitoring difficulties, variable climates, data collection methods, and so on. In order to respect industry concerns while also working toward meaningful regulation to protect the air quality, the EPA has entered into agreements with animal agriculture where CAFOs monitor and collect air emissions data in exchange for immunity for violating air pollution laws. In short, federal law does not require much from CAFOs to address their impacts on air quality. See the federal guide for further discussion of the Clean Air Act, air quality agreements, and regulations.

While federal air-related laws and regulations do not require much from CAFOs, states are able to develop their own regulations for CAFO emissions. For instance, the

¹¹⁷ Virginia Animal Agriculture Program Assessment at page 5, U.S. ENVIRONMENTAL PROTECTION AGENCY REGION III, https://www.epa.gov/sites/production/files/2015-07/documents/virginia_animal_agriculture_program_assessment_final_2.pdf.

¹¹⁸ See *id.*

¹¹⁹ Enforcement Manual, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Enforcement/Laws,Regulations,Guidance.aspx>.

¹²⁰ Contacts, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.deq.virginia.gov/Programs/Enforcement/Contacts.aspx>.

state could regulate AFO air emissions as part of its State Implementation Plan (SIP), required by the Clean Air Act, to help achieve its air quality standards. However, as is the case in many states, air pollution statutes and regulations in Virginia are not structured to address air quality impacts from large-scale agricultural operations. For example, Virginia issues Title V Operating Permits¹²¹ for facilities with the potential to emit 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.¹²² Additionally, State Operating Permits may be issued at the discretion of Virginia's State Air Pollution Control Board in order to "cap the emissions of a stationary source or emissions unit causing or contributing to a violation of any air quality standard."¹²³ While these permits may be applicable to some very large CAFO's, as of the publishing of this Guide, to the best of our knowledge Virginia does not impose this permit requirement on any AFOs.

For more information on Virginia's Air Quality Plans in general, see this [website](#).¹²⁴

ZONING & LAND USE

Virginia is, by virtue of the State's Constitution and judicial case law, a "Dillon's Rule" state, wherein local governments generally have those powers explicitly afforded by state law. This "Dillon's Rule" approach contrasts "home rule" states that give local governments broad authority, particularly in the realm of public health and safety, to regulate where not explicitly preempted by statute.

As an example, Virginia's Fairfax County website contains the following language:

Virginia courts have concluded that local governments in Virginia have only:

1. Those powers that are specifically conferred on them by the Virginia General Assembly
2. Those powers that are necessarily or fairly implied from a specific grant of authority

¹²¹ DEQ Permit Guide: Introductory Overview, Air Permits, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, available at http://www.deq.virginia.gov/Portals/0/DEQ/Permits/Permit_guide.pdf.

¹²² 9 VA. ADMIN. CODE § 5-80-60.

¹²³ DEQ Permit Guide: Introductory Overview, Air Permits, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, available at http://www.deq.virginia.gov/Portals/0/DEQ/Permits/Permit_guide.pdf.

¹²⁴ Air Quality Plans, VIRGINIA DEPARTMENT OF THE ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Air/AirQualityPlans.aspx>.

3. Those powers that are essential to the purposes of government -- not simply convenient but indispensable.

For well-established county functions, like planning, zoning, and taxation, there are a number of statutes that give the county clear direction and authority to act, but in new areas of governmental concern, the Dillon Rule can serve as a constraint to innovative governmental responses.¹²⁵

Zoning is often used to regulate agricultural and other impacts of land-use decisions (learn more below). The limited scope of this Guide cannot cover all permitted and unpermitted local government functions, but as a “Dillon’s Rule state,” Virginia residents will need to refer to pertinent state laws to determine whether a local government can legally take certain action(s) that may protect against large-scale agricultural impacts.

Zoning

Zoning ordinances are established and enforced by your municipality or your county. Zoning ordinances vary in how protective they are of agricultural, residential, or business interests. They specify areas where, and under what conditions, certain activities and development can take place. Engaging in the zoning process can help you protect your community from the impacts of new or expanding CAFOs/AFOs. See your municipal or county zoning website to research applicable zoning rules and explore the extent of local authority.

- The Virginia Association of Counties maintains a comprehensive list of all County websites.¹²⁶
- The [Virginia Municipal League](http://www.vml.org/) provides resources relating to the State’s Cities, Towns, and Counties.¹²⁷

¹²⁵ Dillon Rule in Virginia, FAIRFAX COUNTY, VIRGINIA, <http://www.fairfaxcounty.gov/government/about/dillon-rule.htm> (emphasis in original).

¹²⁶ Link to County Websites, VIRGINIA ASSOCIATION OF COUNTIES, <http://www.vaco.org/links-to-county-websites/>.

¹²⁷ Home, VIRGINIA MUNICIPAL LEAGUE, <http://www.vml.org/>.

PERMITTING & PUBLIC PARTICIPATION

This section focuses on permitting and public participation for discharging CAFOs subject to the VDEQ VPDES Program. See above for information applicable to non-discharging AFOs.

CAFO VPDES Permitting Process

Below is a simplified overview of the CAFO VPDES permitting process:

- The owner/operator submits an application for VPDES permit coverage “at least 180 days before the date on which the discharge is to commence.”¹²⁸
- VDEQ reviews the application for completeness, including a nutrient management plan and other minimum requirements outlined in VPDES regulations.¹²⁹
- VDEQ issues draft permits for tentatively approved applications.
 - Public notice is required per the federal Clean Water Act as well as state administrative code.¹³⁰
 - This minimum 30-day public comment period is the primary opportunity for individuals to voice their concerns by submitting public comments and requesting a public hearing.¹³¹
- If no comments are received, the preliminary approval becomes the final approval.
- If VDEQ receives comments, the Department must respond and these responses are available to the public.
- VDEQ sends the final permit approval letter.

¹²⁸ 9 VA. ADMIN. CODE § 25-31-100(D).

¹²⁹ 9 VA. ADMIN. CODE § 25-31-100(J).

¹³⁰ 9 VA. ADMIN. CODE § 25-31-290.

¹³¹ See *id.*; see also 9 VA. ADMIN. CODE §§ 25-31-300 and 310.

Public Notice for CAFO VPDES Permits

VDEQ VPDES permits, including those for CAFOs, are public noticed on [this website](#).¹³²

This process moves quickly and public participation is crucial! VPDES public notice and comment requirements are found at 9 VA. ADMIN. CODE § 25-31-290.¹³³

VDEQ may hold a public hearing on its own accord, but the interested public must otherwise request a public hearing in writing during the public comment period.¹³⁴

These written public hearing requests constitute a request for a hearing before the State Water Control Board and must include the following information:

1. The name, mailing address, and phone number of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);
3. The reason why a public hearing or Board consideration is requested;
4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and
5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester believes are needed to conform the permit to the intent and provisions of the State Water Control Law (§ [62.1-44.2](#) et seq.).¹³⁵

VDEQ maintains a two-page [Guide for Effective Public Comments](#), which provides user-friendly information for CAFO monitors looking to participate in a public comment opportunity.¹³⁶

¹³² VPDES Public Notices, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/PermittingCompliance/PollutionDischargeElimination/PublicNotices.aspx>.

¹³³ 9 VA. ADMIN. CODE § 25-31-290, *available at* <http://law.lis.virginia.gov/admincode/title9/agency25/chapter31/section290/>.

¹³⁴ 9 VA. ADMIN. CODE § 25-31-300.

¹³⁵ VA. CODE ANN. § 62.1-44.15:02.

¹³⁶ A Guide for Effective Public Comments, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Portals/0/DEQ/Resources/Factsheets/GetTheFacts-PublicCommentsGuide.pdf>.

Direct requests for a public hearing and written comments should be sent to the contact listed in the relevant CAFO VPDES permit documentation. The State Water Control Board must make a determination on a public hearing request within 30 days of the end of the public comment period.¹³⁷ Residents can find a list of current individual and general VPDES permittees on the VPDES Permits, Fees, and Regulations website—scroll to the bottom of the page for Excel spreadsheets with permittee information.¹³⁸ VDEQ also maintains a list of active water division permit applications, including those in the VPDES Program.¹³⁹

Permit Appeals

A person who is aggrieved by a VDEQ State Water Control Board permitting decision must typically appeal by requesting a formal hearing within 30 calendar days of the decision.¹⁴⁰ The contested case hearing is limited to contesting the terms of the approved plans.

Permit appeals must contain the following information:

1. The names and addresses of the petitioner, the petitioner's counsel (if any), and all persons for whom the petitioner is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);
2. A statement of the action appealed from;
3. A statement setting forth the interest of the petitioner and explaining how and to what extent the permitting decision will directly and adversely affect such interest;
4. A statement setting forth the errors alleged in the Board's action and the reasons why such action is deemed contrary to law;
5. A statement by the petitioner that, should its petition be granted and a hearing held, the petitioner and all persons represented by the petitioner in connection with the appeal will be available, without cost to any other party, to appear at such hearing; and

¹³⁷ VA. CODE ANN. § 62.1-44.15:02.

¹³⁸ VPDES Permits, Fees and Regulations, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/PermittingCompliance/PollutionDischargeElimination/PermitsFees.aspx#GGPs>.

¹³⁹ Water Division Active Permit Applications, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Programs/Water/PermittingCompliance/PermitApplicationStatus.aspx>.

¹⁴⁰ 9 VA. ADMIN. CODE § 25-230-130.

6. A statement setting forth the specific relief requested.¹⁴¹

Submitting Complaints¹⁴²

VDEQ

The VDEQ How to Report Pollution website gives information about submitting complaints online and by phone, and specifically outlines the information you should include in such a complaint. For after-hours complaints, VDEQ uses an emergency 24-hour reporting phone line:

In-state calls only: 1-800-468-8892

Out-of-state calls: 1-804-674-2400

RIGHT TO FARM & NUISANCE CLAIMS

Nuisance Claims

A nuisance is something that interferes with the right to use and enjoy real property. Noise, odors, dust, smoke, pollution, pests, illness, or light could be considered nuisances. Courts may look to the extent of harm, the frequency of the nuisance, if plaintiffs came to the nuisance, or if the nuisance complies with applicable zoning ordinances. Many individuals describe CAFOs as nuisances since they can decrease local property values, prevent people from using and enjoying their homes or yards, and can impair public health. While this sounds like the perfect example of a nuisance, many states have enacted laws to shield such facilities from nuisance liability—Virginia included.

State Right-to-Farm Laws

Right to farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities who experience the more unpleasant effects of agricultural production. Virginia law protects agricultural operations as long as operations comply with best management practices and existing State laws and regulations.¹⁴³ While this provides considerable protection to farms, it's not

¹⁴¹ See *id.*

¹⁴² See *generally*, Environmental and Pollution Complaints, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, available at

<http://www.deq.virginia.gov/Programs/Enforcement/EnvironmentalandPollutionComplaints.aspx>.

¹⁴³ VA. CODE ANN. § 3.2-302.

without limits; it's important to understand that large-scale agriculture is not invulnerable to nuisance suits.

Here are the basics of Virginia's right to farm law:¹⁴⁴

1. It applies to any "agricultural operation or any of its appurtenances";
2. It places limitations upon local ordinances that require "a special exception or special use permit" for operations in agriculturally-zoned areas;
3. It requires operations to comply with best management practices and state laws; and
4. Protection is not afforded to negligent or improper operations.

The following language from the State's right to farm law is important for understanding related local ordinances:

Localities may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens.¹⁴⁵

You should therefore consult local ordinances to determine whether a local government is regulating to minimize impacts of large-scale agriculture to the full extent allowed by this State law. Review of related blog posts,¹⁴⁶ media,¹⁴⁷ and other public-friendly resources is also important in understanding the limitations and potential utility of right to farm challenges.

¹⁴⁴ VA. CODE ANN. § 3.2-300-302.

¹⁴⁵ VA. CODE ANN. § 3.2-301.

¹⁴⁶ Right to Farm Act, VIRGINIA AG LAW, <http://virginiaaglaw.com/category/right-to-farm-act/>.

¹⁴⁷ FTCLDF Member Bavuso Wins Virginia Right to Farm Case, FARM-TO-CONSUMER LEGAL DEFENSE FUND, <http://www.farmtoconsumer.org/blog/2015/07/18/ftcldf-member-bavuso-wins-virginia-right-to-farm-case/>.

ENFORCEMENT

VDEQ

See the VDEQ Enforcement Overview website for information about the goals and philosophies of the Department's enforcement program.¹⁴⁸ Note VDEQ's commitment to public noticing consent orders that may help CAFO monitors understand whether the State is addressing environmental impacts from livestock operation(s) of concern.¹⁴⁹ Final enforcement-related orders are also published but not subject to public comment.¹⁵⁰ Note that the appropriate VDEQ board may also get involved in enforcement and related penalties for non-compliance with laws and/or permit terms.¹⁵¹

EPA Region 3 provides a list of NPDES program enforcement actions for CAFOs.¹⁵² You can also access compliance information using EPA's Enforcement and Compliance History Online (ECHO) search tools [here](#).¹⁵³ Simply search by city or zip code to view applicable permits and compliance information.

PUBLIC INFORMATION LAWS

Freedom of Information Act

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

¹⁴⁸ Enforcement, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
<http://www.deq.virginia.gov/Programs/Enforcement.aspx>.

¹⁴⁹ Public Notices, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
<http://www.deq.virginia.gov/Programs/Enforcement/PublicNotices.aspx>.

¹⁵⁰ Final Orders, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
<http://www.deq.virginia.gov/Programs/Enforcement/FinalOrders.aspx>.

¹⁵¹ Citizen Boards, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY,
<http://www.deq.virginia.gov/ConnectWithDEQ/CitizenBoards.aspx>.

¹⁵² Enforcement in the NPDES Program, U.S. ENVIRONMENTAL PROTECTION AGENCY,
<https://www3.epa.gov/reg3wapd/npdes/enforcement.html?panel=00&tab1=2>.

¹⁵³ Enforcement and Compliance History Online, U.S. ENVIRONMENTAL PROTECTION AGENCY,
<https://echo.epa.gov/?redirect=echo>.

Virginia FOIA

The Virginia FOIA is found in statute at Section 2.2-3700 *et seq.* This Act starts with a broad presumption in favor of public access to government meetings and records:

By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.¹⁵⁴

Highlights of the Virginia FOIA include a requirement to respond to records requests within five business days.¹⁵⁵ The Act does not include an explicit fee waiver provision that would apply for records requests that serve broad public interests.

For more information about Virginia FOIA requests, see the Citizen Guide from the Virginia Coalition for Open Government.¹⁵⁶ This guide contains useful discussion of both public records and public meetings. A similar publication from the Virginia Municipal League is more targeted toward local officials but can help residents understand whether local governments are complying with public records and meetings laws.¹⁵⁷ Finally, the Virginia Freedom of Information Advisory Council publishes sample letters, summary documents, and other resources.¹⁵⁸

¹⁵⁴ VA. CODE ANN. § 2.2-3700(B).

¹⁵⁵ VA. CODE ANN. § 2.2-3704(B).

¹⁵⁶ FOI Citizens' Guide, VIRGINIA COALITION FOR OPEN GOVERNMENT, <http://www.opengovva.org/virginias-foia-resources>.

¹⁵⁷ Virginia FOIA, VA Conflict of Interest Act and the Virginia Public Records Act: 2015-2016 Edition Guide for Local Government Leaders, VIRGINIA MUNICIPAL LEAGUE, <http://www.vml.org/sites/default/files/15-16FOIACOIAFinal.pdf>.

¹⁵⁸ Services of the Council, VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL, <http://foiacouncil.dls.virginia.gov/>.

VDEQ has a publicly available FOIA policy.¹⁵⁹ Information for the Department's primary FOIA contacts is below, but see [VDEQ's website](#) for the most up-to-date information.¹⁶⁰

Counties & Cities	Regional Offices	FOIA Contact	Phone Number
FOIA Officer	Central Office	Natalie Driver Womack at natalie.womack@deq.virginia.gov	(804) 698-4085
Counties of Arlington, Culpeper, Fairfax, Fauquier, King George, Loudoun, Madison, Orange, Prince William, Rappahannock, Spotsylvania, Stafford, and Louisa; Cities of Alexandria, Falls Church, Fairfax, Fredericksburg, Manassas and Manassas Park	Northern Regional Office	NROfoia@deq.virginia.gov	(703) 583-3937
Counties of Amelia, Brunswick, Buckingham, Charles City, Chesterfield, Cumberland, Dinwiddie, Essex, Gloucester, Goochland, Greenville, Hanover, Henrico, King and Queen, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince George, Richmond, Surry, Sussex, and Westmoreland; Cities of Colonial Heights, Emporia, Hopewell, Petersburg, and Richmond	Piedmont Regional Office	PROFOIA@deq.virginia.gov	(804) 527-5020

¹⁵⁹ Agency Policy Statement No. 6-2014, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <http://www.deq.virginia.gov/Portals/0/DEQ/ConnectwithDEQ/FreedomofInformationAct/DEQFOIAPolicy.pdf>.

¹⁶⁰ Regional FOIA Contacts, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, <https://www.deq.virginia.gov/ConnectWithDEQ/FreedomofInformationAct/RegionalFOIAContacts.aspx>.

Counties of Albemarle, Augusta, Bath, Clarke, Fluvanna, Frederick, Greene, Highland, Nelson, Page, Rockbridge, Rockingham, Shenandoah and Warren; Cities of Buena Vista, Charlottesville, Harrisonburg, Lexington, Staunton, Waynesboro, and Winchester	Valley Regional Office	Diana Adams at vrofoia@deq.virginia.gov	(540) 574-7886
Counties of Bland, Buchanan, Carroll, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe; Cities of Bristol, Galax and Norton	Southwest Regional Office	swrofoias@deq.virginia.gov	(276) 676-4870
Counties of Alleghany, Amherst, Appomattox, Botetourt, Campbell, Charlotte, Craig, Floyd, Franklin, Giles, Halifax, Henry, Montgomery, Patrick, Pittsylvania, Pulaski, and Roanoke; Cities of Bedford, Danville, Covington, Lynchburg, Martinsville, Radford, Roanoke and Salem	Blue Ridge Regional Office	FOIARoanoke@deq.virginia.gov	(540) 562-6748
Counties of Accomack, Isle of Wight, James City, Northampton, Southampton and York; Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Poquoson, Suffolk, Virginia Beach and Williamsburg	Tidewater Regional Office	trofoias@deq.virginia.gov	(757) 518-2000 ext. 0

Public Records

Public Records Directory

It's a good idea to learn as much as possible about the operation you seek to challenge—size, property value, number of employees, land records, etc. Many Virginia counties make property and other public records information searchable on

county government websites, and the interested public can search many of Virginia's public records using [Virginia's Free Public Records Directory](#).¹⁶¹

EPA Region 3

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for FOIA Requests. Contact information for the EPA Region 3 FOIA Officer is as follows:

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street (3CG00)
Philadelphia, PA 19103
(215) 814-2050

See the Federal Guide for more information on FOIA. Several EPA websites contain useful summaries of the FOIA request process, response time guidance, and other information.¹⁶² Note that residents are potentially entitled to a waiver of fees if requesting information that is "likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester."¹⁶³ EPA will only consider waiver requests that are submitted at the same time as the corresponding FOIA request.¹⁶⁴

Additionally, maps, reports, and databases are available from EPA to find information and documents about regulated facilities. For example, EPA's [MyPropertyInfo](#) database can provide information about a facility without having to file a FOIA request for the same records. While EPA's websites may be helpful, state or federal FOIAs will likely produce more records and information.

¹⁶¹ VIRGINIA FREE PUBLIC RECORDS DIRECTORY, <http://publicrecords.onlinesearches.com/Virginia.htm>.

¹⁶² FOIA Request Process, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process>.

¹⁶³ Fee Waivers, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/foia/foia-request-process#waivers>.

¹⁶⁴ See *id.*

PROPERTY TAX APPEALS

CAFO Property Tax Appeals

Neighbors of CAFOs may also be harmed if the detrimental effects of a nearby CAFO aren't accounted for when the tax assessor calculates the fair market value of local properties for tax purposes. Without knowing how to challenge an uninformed assessment, individuals may find themselves paying too much in property taxes.

However, the Virginia Code prescribes an avenue of relief under § 58.1-3350, which states that Virginia's property owners may apply for relief when they believe that the assessment does not reflect the fair market value of the property or is inequitable when compared to surrounding properties.¹⁶⁵ An aggrieved individual may appeal to the board of assessors, to the board of equalization, or to the appropriate circuit court.

Appeals to the Board of Assessors

The Virginia Code allows, though does not require, the creation of a three-member Board of Tax Assessors¹⁶⁶ to aid in the tax assessment process, including the hearing of complaints and appeals. Often, filing a complaint with the board of assessors is the first (and least formal) step in the process of filing a property tax appeal. If you live in a county or city that does not have a board of assessors, the board of equalization or the circuit court may hear your appeal instead.

Appeals to the Board of Equalization

The Virginia Code mandates that every city or county in Virginia has a Board of Equalization of Real Estate Assessments,¹⁶⁷ which is responsible for hearing property tax assessment appeals and complaints.¹⁶⁸ The process for filing an appeal with the board of equalization varies depending on the county or city, and often local rules require the taxpayer to take preliminary action (such as appealing to the board of assessors, if available) before appealing to the board of equalization. Once you've determined that an appeal to the board of equalization is appropriate, an appeal application form is often available on the city or county's website.¹⁶⁹

¹⁶⁵ VA. CODE ANN. § 58.1-3201 (2014).

¹⁶⁶ VA. CODE ANN. § 58.1-3271.

¹⁶⁷ VA. CODE ANN. § 58.1-3370.

¹⁶⁸ VA. CODE ANN. § 58.1-3379.

¹⁶⁹ See Real Estate Assessment Appeal Application, COUNTY OF FAIRFAX, VIRGINIA, http://www.fairfaxcounty.gov/dta/pdf_files/2016_appeal_application.pdf; see also Richmond Board of

When hearing appeals, the board of equalization presumes that the original tax assessment is correct, and therefore requires the taxpayer to demonstrate otherwise by a preponderance (or greater weight) of the evidence.¹⁷⁰ This can be demonstrated by showing that either the property was valued at more than its fair market value or that “the assessment is not uniform in its application and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards...”¹⁷¹

Appeals to the Circuit Court

Local rules govern when and how an aggrieved individual may appeal to the appropriate circuit court in their county or city. Often, an individual must first appeal to the previously mentioned boards before filing an appeal with the circuit court.¹⁷²

If the circuit court does not rule in your favor, circuit court decisions may be appealed at the appellate level, and further up to the Supreme Court.

Note that Virginia’s state constitution requires property tax assessments to be conducted at the local level.¹⁷³ For this reason, the property tax assessment appeal process varies depending on the locality—so be sure to confirm the process in your specific city or county.

For additional help with taxes, the Virginia Department of Taxation maintains the Taxpayer Rights Advocate. This program works to promptly resolve any tax-related concerns that are unable to be resolved via the traditional administrative process. Find instructions for contacting the Taxpayer Rights Advocate [here](#).¹⁷⁴

Equalization Application, RICHMOND, VIRGINIA, http://www.richmondgov.com/Assessor/forms/Form_BoardOfEqualization.pdf; see also Single-Family Residential Board Equalization Assessment Appeal, ARLINGTON, VIRGINIA, <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/21/2016/01/APPEAL-FROM-RESIDENTIAL-REAL-ESTATE-ASSESSMENTS-2016.pdf>.

¹⁷⁰ VA. CODE ANN. § 58.1-3379.

¹⁷¹ VA. CODE ANN. § 58.1-3379.

¹⁷² VA. CODE ANN. § 58.1-3350.

¹⁷³ Va. Const. Art. X, § 4.

¹⁷⁴ Taxpayer Rights, VIRGINIA DEPARTMENT OF TAXATION, <http://www.tax.virginia.gov/content/taxpayer-rights>.

OTHER RESOURCES FOR COMMUNITIES

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, and contact SRAP for support at 503-632-8303 or through our [website](#).¹⁷⁵

State Organizations

- [Center for Progressive Reform](#)¹⁷⁶
- [Chesapeake Legal Alliance](#)¹⁷⁷
- [Mapping Virginia CAFOs Project](#)¹⁷⁸
- [Piedmont Environmental Council](#)¹⁷⁹
- [Virginia Conservation Network](#)¹⁸⁰
- [Waterkeepers Chesapeake](#)¹⁸¹

State Pro-Bono Clinics

William & Mary Law School

The William & Mary Law School does not have a specific environmental law clinic, but does host the Virginia Coastal Policy Center, which may serve as a useful contact for low-cost or pro-bono environmental legal services.¹⁸²

¹⁷⁵ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

¹⁷⁶ CENTER FOR PROGRESSIVE REFORM, <http://www.progressivereform.org/>.

¹⁷⁷ CHESAPEAKE LEGAL ALLIANCE, <http://www.chesapeakelegal.org/>.

¹⁷⁸ MAPPING VIRGINIA CAFOs PROJECT, <http://mappingvacafos.wixsite.com/mapping-va-cafos>.

¹⁷⁹ PIEDMONT ENVIRONMENTAL COUNCIL, <https://www.pecva.org/>.

¹⁸⁰ VIRGINIA CONSERVATION NETWORK, <http://www.vcnva.org/>.

¹⁸¹ WATERKEEPERS CHESAPEAKE, <http://www.waterkeeperschesapeake.com/>.

¹⁸² Virginia Coastal Policy Center, WILLIAM & MARY LAW SCHOOL, <http://law.wm.edu/academics/programs/jd/electives/clinics/vacoastal/index.php>.

LIST OF STATUTES & REGULATIONS

Below is a list of relevant statutes and regulations, most of which are discussed in this Guide. This list serves as a starting reference point for additional research about environmental authority in Virginia.

Note that the full code, or statutes, of Virginia are available [here](http://law.lis.virginia.gov/vacode).¹⁸³ Regulations in State administrative code are available [here](http://law.lis.virginia.gov/admincode).¹⁸⁴

Statute	Subject
VA. CODE ANN. § 2.2-3700-3714	Virginia Freedom of Information Act
VA. CODE ANN. § 3.2-300-302	Right to Farm
VA. CODE ANN. §§ 10.1-2117 to 2134	Water Quality improvement Act
VA. CODE ANN. §§ 28.2-1200 to 28.2-1213	Submerged lands
VA. CODE ANN. §§ 28.2-1300 to 28.2-1320	Wetlands
VA. CODE ANN. §§ 58.1-3200 to 3389	Real Property Tax
VA. CODE ANN. § 62.1	Waters of the State, Port, and Harbor
Regulation (Administrative Code)	Subject
9 VA. ADMIN. CODE § 5-80	Permits for Stationary Sources
9 VA. ADMIN. CODE § 25-31	VPDES permitting regulations
9 VA. ADMIN. CODE § 25-32-10.I.A	Definition of Animal Feeding Operation (AFO)
9 VA. ADMIN. CODE § 25-192	General permit Regulations for AFOs
9 VA. ADMIN. CODE § 25-230	Formal and Public Hearing Procedures
9 VA. ADMIN. CODE § 25-260	Water Quality Standards, Generally
9 VA. ADMIN. CODE § 25-260-10	Water Quality Standards, Designated Uses
9 VA. ADMIN. CODE § 25-260-20	Water Quality Standards, Criteria

¹⁸³ Code of Virginia, VIRGINIA LEGISLATIVE INFORMATION SYSTEM, <http://law.lis.virginia.gov/vacode>.

¹⁸⁴ Administrative Code of Virginia, VIRGINIA LEGISLATIVE INFORMATION SYSTEM, <http://law.lis.virginia.gov/admincode>.

9 VA. ADMIN. CODE § 25-260-30	Water quality Standards, Anti-degradation
9 VA. ADMIN. CODE § 25-630	General permit regulations for poultry AFOs
9 VA. ADMIN. CODE § 25-870	Stormwater Management Program Regulation