



SRAP
Socially Responsible
Agriculture Project

Guide to Confronting Concentrated Animal Feeding Operations in

WASHINGTON



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**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.sraproject.org.

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Date of publication: February 2019

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

Washington boasts a robust agricultural economy that totaled \$10.6 billion in 2017.¹ Agriculture is certainly a part of the fabric and cultural identity of the state. Its top commodities are apples and milk products, and its livestock industry is dominated by dairy operations. The 2012 U.S. Department of Agriculture census data ranks the state's dairy industry 10th nationally. Cattle and poultry rank 17th and 26th respectively.² The prevalence of dairy operations in the state is not without its own set of challenges. Dairy production is a very water- and resource-intensive industry that also produces considerable waste and emissions. The decline of small dairy farms and the rise of industrial livestock production have created water quality issues. Over-application of waste onto surrounding lands, leeching lagoons, and nutrient runoff have contributed to unsafe levels of nitrates for those living nearby. Regions like Yakima and Whatcom struggle with water and air quality issues and there is a strong correlation between levels of nitrates and concentration of cows in the region. The pollution from dairies was so injurious that residents and environmental groups have successfully litigated claims against some of the more egregious operations that repeatedly violated state and federal pollution control laws.

Washington recently updated its CAFO permit program to better protect the states surface and groundwater from manure pollution. Its new state permitting program goes beyond federal requirements and expands the number of animal feeding operations that will require permits. It's one of the few states that regulates discharges to both groundwater and surface waters. It also enacted a lagoon depth from high water table requirement. The program utilizes a collaborative approach between the State Department of Ecology and Department of Agriculture regarding implementation duties. In addition to expanding the requirements for CAFOs in the state, Washington imposes manure management practices for dairy operations that do not meet the threshold for CAFO permitting. So even small dairies that claim they do not discharge to surface or groundwater must still agree to abide by a nutrient management plan. Washington is working toward addressing the environmental and health issues caused by the state's CAFO industry, but the state still has progress to make.

¹ Value of Washington's 2017 Agricultural Production Totaled \$10.6 Billion, United States Department of Agriculture National Agricultural Statistics Service, October 2018, https://www.nass.usda.gov/Statistics_by_State/Washington/Publications/Current_News_Release/2018/WA_vop.pdf.

² 2018 State Agricultural Overview, USDA National Agricultural Statistics Service, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WASHINGTON.

CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

What is a CAFO?

Washington's definition of a CAFO was recently updated in its new discharge permits. The state used to follow the federal definition 40 Code of Federal Regulations § 122.23. However, states can establish stronger requirements than those imposed by the Clean Water Act and Washington joined the ranks of "going beyond the minimum required under federal law." Washington lowered the number of animals required to trigger permitting and established a groundwater discharge permit as well as a surface water discharge permit.

A CAFO

- Animals are or will be stabled, confined, or fed and maintained for a total of 45 days or more in any 12-month period; and
- Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility where the animals are confined; and
- There is a discharge to surface or groundwater; and
- Confines equal to or greater than the following number of animals:
 - Dairy Cows: 200
 - Veal Calves: 300
 - Other Cattle³: 300
 - Swine (55 lb. or more): 750
 - Swine (less than 55 lb.): 3,000
 - Horses: 150
 - Sheep and Lambs: 3,000
 - Turkeys: 16,500 or more
 - Laying Hens or Broilers with liquid waste system: 9,000
 - Chickens other than Layers with dry waste system: 37,500
 - Laying Hens with dry waste system: 25,000
 - Ducks with liquid waste system: 10,000
 - Ducks with dry waste system: 1,500

A Small CAFO

³ Including but not limited to heifers, steer, bulls, cow/calf pairs.

- Animals are or will be stabled, confined, or fed and maintained for a total of 45 days or more in any 12-month period; and
- Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility where the animals are confined;
- The operation is designated by the Washington State Department of Ecology to be a significant contributor of pollutants to surface or groundwater; and
- Confines less than the following number of animals:
 - Dairy Cows: 200
 - Veal Calves: 300
 - Other Cattle⁴: 300
 - Swine (55 lb. or more): 750
 - Swine (less than 55 lb.): 3,000
 - Horses: 150
 - Sheep and Lambs: 3,000
 - Turkeys: 16,500 or more
 - Laying Hens or Broilers with liquid waste system: 9,000
 - Chickens other than Layers with dry waste system: 37,500
 - Laying Hens with dry waste system: 25,000
 - Ducks with liquid waste system: 10,000
 - Ducks with dry waste system: 1,500

For the purposes of the Dairy Manure Management Act discussed later in this guide, a concentrated dairy animal feeding operation is a dairy animal feeding operation that (a) has more than 700 dairy cows or (b) has more than 200 dairy cattle and pollutants are discharged to surface or groundwaters.⁵

Note: Two or more CAFOs under common ownership that adjoin one another or use a common area or system for handling waste and wastewater are considered a single CAFO for permitting purposes.

Responsible Regulatory Agencies

State agencies and local government play an important role in CAFO operation, oversight, information-gathering, education, permitting, zoning, public participation,

⁴ Including but not limited to heifers, steer, bulls, cow/calf pairs.

⁵ RCW §90.64.010

and enforcement. The following state agencies regulate or have the potential to influence CAFO operations in Washington.

WSDE and WSDA

Washington is unique because it is one of the states that shares authority of livestock permitting between two agencies. The Washington Department of Ecology and Department of Agriculture have a memorandum of understanding where they either split or coordinate the duties and responsibilities of regulating animal agriculture. This may change as the agencies iron out duties regarding the new CAFO permitting system, so be sure to check with the agency to see if they still regulate the types of information you seek. Here are a few of their current spheres of authority.

Washington State Department of Ecology (WSDE)

- Responsible to EPA for Clean Water Act compliance and administers the state Water Pollution Control Program.
- Implements State Environmental Policy Act review.
- Responsible for compliance actions against livestock operations for damage that occurs due to discharges of pollutants.
- Monitors air quality.
- Oversees groundwater management and water rights.
- Responsible for compliance actions for manure spreading operations if the manure was not applied by a dairy—that falls within WSDA's purview.
- Approves Best Management Practices.

Washington State Department of Agriculture (WSDA)

- Administers the Dairy Nutrient Management Program.
- Responsible for all compliance actions against non-permitted dairies.
- Responsible for inspections and complaint response permitted CAFOs.
- Coordinates with WSDE regarding compliance actions for all animal feeding operations.

Local Conservation Districts

While the conservation districts do not have much of a role in CAFO regulation, consider contacting conservation district employees for their knowledge and expertise on local environmental issues.

U.S. EPA Region 10

The majority of states, including Washington, have authority to issue water pollution permits to regulated industries in their respective states; however, the U.S. EPA retains

oversight authority to take enforcement and related action when states fail to meet federal requirements like those outlined in the Clean Water Act. For this reason, EPA CAFO contacts are important for residents who are tracking specific large-scale livestock operations or have questions about a state CAFO program's compliance with federal laws. See the Federal Guide for more information on the interplay between states and the U.S. EPA. Also here is EPA's [Regional Animal Feeding Operation Contact List](#).⁶

Local Government

Washington counties, municipalities, and local boards are granted considerable authority to pass their own ordinances and regulations that may impact livestock siting and operation within their jurisdiction. Check local codes in addition to state and federal regulations. Local health departments can establish their own water quality standards.⁷

WATER

Discharge Permits

Washington has two discharge permits for CAFOs and Small CAFOs in the state: one for operations that solely discharge to groundwater, and another for operations that discharge to surface and groundwater. They developed these permits to comply with both state⁸ and federal⁹ water pollution control acts.

CAFO State Waste Discharge General Permit (Groundwater)

The state permit conditionally authorizes the discharge of pollutants to groundwater from the production area and land application fields. CAFO owners or operators required to apply for a permit must submit [notice of intent](#).¹⁰ Facilities that were already in operation when the most recent permits went into effect do not have to publish a public notice, but new operations do have to go through public notice.

⁶ US Environmental Protection Agency, Contact Us: Animal Feeding Operations (AFOs), <https://www.epa.gov/npdes/contact-us-animal-feeding-operations-afos#afosRegional>.

⁷ RCW § 70.142.040.

⁸ RCW § 90.48 (Water Pollution Control Act); WAC § 173-226-100.

⁹ 33 U.S.C. § 1251 et seq. (Water Pollution Control Act aka Clean Water Act).

¹⁰ Application for Coverage Notice of Intent to Apply for Coverage Under A Concentrated Animal Feeding Operation General Permit, Washington Department of Ecology, <https://fortress.wa.gov/ecy/publications/SummaryPages/ECY070564.html>.

- The permit requires manure pollution prevention strategies to control runoff and to prevent discharge to surface waters. The strategies include:
 - Keeping manure from being tracked onto public roadways.
 - Having adequate storage space for waste.
 - Storing runoff from manure, litter, feed, or composting facilities.
 - Limiting the permeability of lagoons.
 - Separating the bottom of the lagoon at least two feet from the seasonal high water table.
 - Keeping livestock out of surface waters.
 - Mortality management that minimizes opportunity to contaminate surface or groundwater.
- The CAFO is required to submit samples of the waste it plans to apply to land as well as soil samples of the land where they intend to apply the waste.
- The CAFO must develop a yearly field-specific nutrient budget prior to the first land application of the year. They cannot apply more nutrients to a field than what is budgeted.
- The CAFO cannot apply waste to frozen or snow-covered ground, if the water table is within 12 inches of the surface, after October 1, or if it's going to rain within 24 hours of land application.
- The CAFO must adapt waste management practices to keep fall soil nitrate risk levels at medium or less.
 - Low Field Risk Level: < 15 ppm, < 55 lb./acre
 - Medium Field Risk Level: 15-30 ppm, 55-110 lb./acre
 - High Field Risk Level: 31-45 ppm, 111-165 lb./acre
 - Very High Field Risk Level: >45 ppm, >165 lb./acre
- The CAFO must develop and implement a Manure Pollution Prevention Plan within six months of permit coverage. They should also submit it to WSDE.
- The CAFO may be required to implement a groundwater monitoring plan.
- Record the export of manure.
- Record details of land application.
- Record results of visual inspections.
- Submit an annual report.
- Keep the records for at least five years.
- Assess their lagoon within two years of permit coverage. If it is risk category 3A, 3B, 3C, or 4, they have six months to develop a plan to address it and then an additional 18 months to begin implementing the plan.
- The CAFO must allow a WSDE representative access to the property, records, or equipment at any time.

See the [CAFO State Waste Discharge General Permit](#) for more details.¹¹

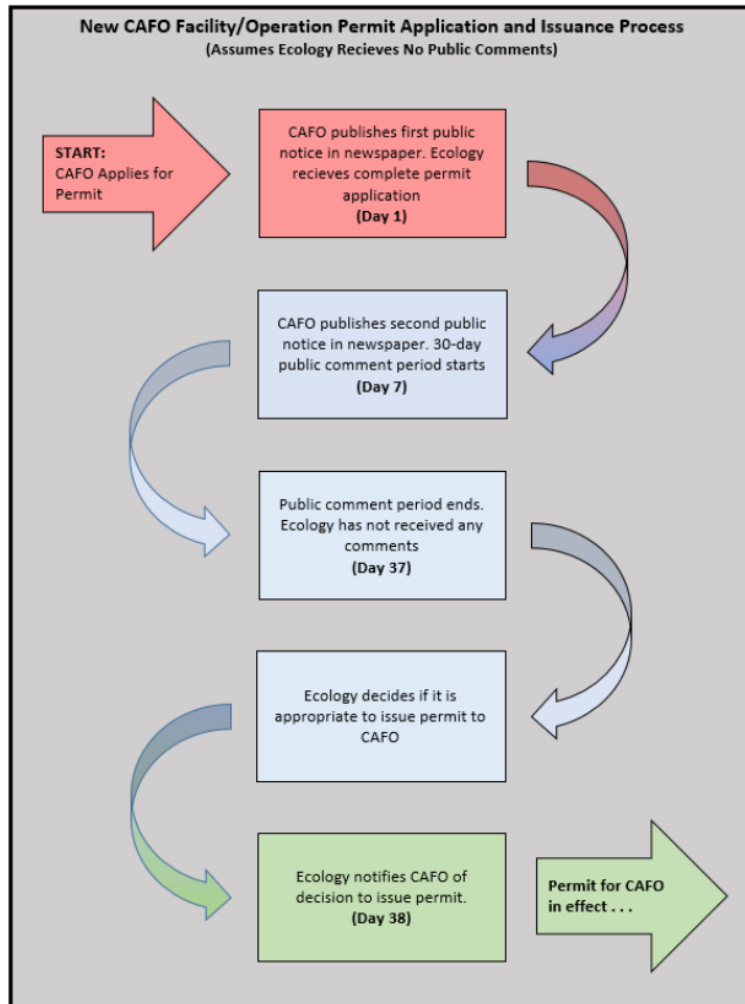
CAFO NPDES and State Waste Discharge General Permit (Surface water & Groundwater)

The CAFO NPDES and state permit is a general permit that conditionally authorizes the discharge of pollutants to both surface and groundwater from the production area and land application fields. It is a combination of the state permit discussed above and a few additional requirements pertaining to pollution control of surface waters. Below are the requirements that must be met in addition to the permit requirements above.

- Any CAFO seeking coverage under this permit must go through public notice.
 - Public notice must be published in a newspaper of general publication where the operation is located once a week for two weeks. After the second publication in the newspaper, a 30-day public comment period begins.
- If the CAFO is discharging into a waterbody with a Total Maximum Daily Load (TMDL), the discharge shall not exceed the load allocation for the pollutant.
- If the CAFO discharges into an impaired water body, the discharge cannot contain the pollutant that the water body is impaired for. If the stream is already impaired and on the 303(d) list for fecal coliform, a discharge from the CAFO must not include any fecal coliform.
- The CAFO must employ field discharge management practices, such as 100-ft. setbacks, 35-ft. vegetated buffers, constructing berms, or employing alternative methods as effective as a 100-ft. setback.

¹¹ CAFO State Waste Discharge General Permit, State of Washington Department of Ecology, <https://ecology.wa.gov/DOE/files/45/453aff0c-051e-4129-982e-ea59660c2db3.pdf>.

Figure 1 Dept of Ecology Flowchart¹²



See the [CAFO NPDES and State Waste Discharge General Permit](#) for more details.¹³

Nutrient Management

¹² Fact Sheet for the CAFO NPDES and State Waste Discharge General Permit, Washington State Department of Ecology.

¹³ CAFO NPDES and State Waste Discharge General Permit, State of Washington Department of Ecology, <https://ecology.wa.gov/DOE/files/c8/c8a7577c-059a-4816-84ef-143e8faa5134.pdf>.

Manure Pollution Prevention Plan

The Manure Pollution Prevention Plan (MPPP) documents how the CAFO is meeting permit conditions regarding effluent limitations. It is an adaptive document that may be periodically updated to reflect changes being made. It also requires the maintenance and availability of records for at least five years. Below is a list of the components of MPPPs.

- Production Area Run-off Controls
- Manure, Litter, Process Wastewater, Other Organic By-Product, and Feed Storage
- Above and Below Ground Infrastructures
- Diversion of Clean Water
- Prevent Direct Animal Contact with Water
- Chemical Handling
- Livestock Mortality Management
- Manure, Litter, Process Wastewater, Other Organic By-Products Sampling and Nutrient Analysis
- Soil Sampling and Nutrient Analysis
- Land Application
- Adaptive Management

Residents should be aware of potential hazards and work with experts to monitor manure application in suspect areas. Nutrient management can be a highly technical field and an expert may be the best way to understand how manure spreading is affecting different watersheds in a region.

Dairy Nutrient Management Act

The Dairy Nutrient Management Act is a component of Washington's water quality program requiring all licensed dairies to develop and implement nutrient management plans. The full act is available at RCW § 90.64. Dairy operations that qualify as CAFOs must develop Manure Pollution Prevention Plans under the terms of the permit. The dairy nutrient management act applies to the non-CAFO dairies in the state. The Washington Department of Agriculture is the primary agency for administering the program and conducting inspections.

The public is not informed of or involved in this program. Plans are approved by local conservation districts. However, it is useful for neighbors to understand what is and is not allowed under the dairy

nutrient management plan and state discharge regulations. If an operation is discharging pollutants to surface or groundwater, it may be subject to an inspection, investigation, and possibly enforcement actions.¹⁴ Penalties for first time offenses are waived but if a neighboring operation continues to evade compliance with water quality laws, enforcement actions may be necessary.

Wetlands

Depending on the project details of a new or expanding CAFO, wetlands impacts may provide another way for residents to review, comment on, and potentially decrease the environmental impacts of large-scale livestock operations. Wetlands in Washington may be subject to local, state, and federal regulation.

As discussed in the Federal Guide, Section 404 of the Clean Water Act requires permits for the discharge of dredge and fill material into streams, wetlands, and waters of the U.S. The U.S. Army Corps of Engineers (USACE) is the primary federal agency responsible for issuing 404 permits. Section 401 also requires federal or authorized state agencies to oversee projects that will discharge into waters of the U.S., including wetlands. So a project that will discharge or impact wetlands may need approval from the USACE or WSDE under federal law.

If CAFO construction, expansion, or operation will modify or impact wetlands, the CAFO may also need additional local and state approvals in addition to the federal 401 or 404 permits. For example, Washington state law regulates impacts to isolated wetlands that are not covered by federal law. RCW § 90.48 prohibits pollution such as fill material from getting into waters of the state, including wetlands. A project that could impact any wetlands in the state must submit a Joint Aquatic Resources Permit Application.

Actions affecting wetlands may also be regulated by local government. For example, many local governments regulate environmentally critical areas, and wetlands are almost always included.

For more information about the various permits and processes, consult the [Washington State Governor's Office of Regulatory Innovation and Assistance](#).¹⁵

¹⁴ RCW § 90.64.030.

¹⁵ Permitting, Office of Regulatory Innovation and Assistance, https://www.oria.wa.gov/site/alias__oria/347/Permitting.aspx

Water Quantity

Washington CAFOs may also need to comply with water use regulations in addition to the surface water pollution requirements discussed above. Water quantity reporting and permitting provide another way for residents to direct questions and violations to appropriate state authorities.

Animal agriculture can be very resource-intensive—particularly dairy operations. Washington code makes it illegal to withdraw groundwater without a valid permit or water claim. Ownership of property does not automatically provide a right to water on the property. It requires that non-exempt public water users obtain a permit from the Department of Ecology. Permitting requirements for water withdrawal for beneficial use is outlined in RCW § 90.44.050. However, a few key categories of water users are exempt from needing a state permit: stock watering, domestic purposes using < 5,000 gallons per day, industrial purposes using < 5,000 gallons per day, or watering a lawn. Based on this language, it appears that a significant portion of CAFO water usage would likely be exempt as stock watering. However, if the CAFO is using more than 5,000 gallons a day on other aspects of its operations apart from watering stock, it may need a permit from the Department of Ecology. Additionally, even exempt uses are subject to water law. WSDE has the authority to decide to regulate exempt groundwater withdrawals and has exercised this authority in some situations.

Washington is a water-rich state, particularly west of the Cascade mountain range, but water is a limited resource and is subject to water rights and regulations. Many of Washington's agricultural communities are located in the more arid parts of the state east of the Cascades. If you're concerned about water availability, get to know your watershed. You can locate your watershed by searching WSDE's [Water Resources Inventory Area \(WRIA\) Finder Map](#).¹⁶ See also the Water Resources Act (RCW § 90.54) and Water Resources Management Program (WAC § 173-500) for more detail about water resource regulation in Washington.

Water Quality

The federal Clean Water Act and state Water Pollution Control Act require the development and implementation of water quality protection measures to maintain

¹⁶ State Wide WRIA Finder, Washington Department of Ecology, <https://waecy.maps.arcgis.com/apps/webappviewer/index.html?id=996e6b21ae394cc3a3b63c6da0c3aa0a>.

or achieve the highest possible water quality standards. Broadly speaking, the purpose is to keep clean waters clean and improve the quality of polluted or impaired waters.

Impaired Waters

States are required to keep an accounting of impaired surface waters and submit it to the Environmental Protection Agency every two years. You can access databases and mapping tools that allow them to see if a water body is impaired, and the likely source of impairment; use the [Washington State Water Quality Assessment](#) tool to find the most current water assessment data.¹⁷ You can narrow the search to particular waterbodies or regions or access it all at once. To limit your search to only impaired data, under “Water Quality Status,” and “CURRENT CATEGORIES,” select “5” and then click “Search.”

See the [Water Quality Atlas](#) to search nearby waters based on an address or particular location.¹⁸

Identifying impaired waters in your community is valuable because it triggers pollution control measures that could apply to CAFOs that are discharging into the waterbody. CAFOs that are improperly designed, constructed, operated, or maintained can pose a risk to water quality because of the potential for animal waste to enter receiving waters. CAFO proximity to impaired waters is a common concern to raise during public comments and meetings regarding CAFO siting and permitting decisions.

Total Maximum Daily Load

The state must develop a Total Maximum Daily Load (TMDL) for impaired water bodies in order to bring them into compliance with water quality standards. A TMDL sets the maximum amount of pollutants that a surface water can handle without violating water quality criteria.

Some Washington TMDLs identify runoff from agricultural operations as a source of pollutants and cause for impairment. Unfortunately, although CAFOs are considered

¹⁷ Current Water Quality Assessment, Washington Department of Ecology, <https://fortress.wa.gov/ecy/approvedwqa/ApprovedSearch.aspx>.

¹⁸ Map Water Quality Data, Washington Department of Ecology, <https://fortress.wa.gov/ecy/waterqualityatlas/StartPage.aspx>.

a point source, the pollutant load of discharge is difficult to measure. Additionally, a significant portion of CAFO water pollution is caused by runoff from land application of waste, which is a nonpoint source. Since the pollution load is difficult to measure and control, Washington's CAFO permits use technology based and narrative effluent limitations. Basically, no numeric limits are imposed. If the operation is following its Nutrient Management Plan, Best Management Practices, and permit conditions, that is considered sufficient.

Water Quality Standards

Surface Water Quality

Washington's surface water quality standards are found in WAC § 173-201A. There are numeric as well as narrative criteria that specify the levels of pollutants allowed in a waterbody while still protecting water uses and public health. Narrative criteria encompass things like odor and color that are harder to measure.

Groundwater Quality

In addition to surface water quality standards, Washington has groundwater quality standards, found in WAC § 173-200. The WSDE is prohibited from issuing permits or taking actions that would result in a violation of groundwater quality standards unless (a) it is an overriding public interest and (b) pollutants are treated prior to entering groundwater.

Groundwater standards are particularly important because they should, at a minimum, protect safe drinking water and Washington does not have the best track record in this regard. Over the last decade, agricultural regions of the state like Yakima Valley have struggled to achieve safe drinking water standards, and large agricultural operations have been identified as a primary source of contamination. A series of lawsuits, several scientific studies, and mounting public pressure have brought this issue to the forefront of state and national discourse about the impact of industrial agriculture on the health of rural communities.

Antidegradation Plan

Federal and state law requires Washington to develop an antidegradation plan to protect existing uses, limit when high-quality waters can be degraded, and protect the very best waters from degradation. Since CAFOs have "the potential to cause measurable change in the physical, chemical, or biological quality of a waterbody," WSDE has a Tier 2 Antidegradation Plan for CAFOs, which basically means that if they

comply with the permit, the state and CAFO are in compliance.¹⁹ However, CAFO permits must be reissued every five years, and if water quality has degraded due to CAFO operations, WSDE may deny reissuance or incorporate more stringent requirements. While permit denial is unlikely, the imposition of more stringent requirements is possible with enough pressure from residents affected by decreased water quality.

The quality of the water into which a CAFO discharges is important because the Clean Water Act requires water pollution permits to include limits that incorporate and protect water quality standards.²⁰ These considerations are complex, so residents who are reviewing a water pollution permit and have specific concerns about water quality standards should consider contacting scientific experts for help. Consider seeking advice from organizations listed at the end of this guide.

Groundwater Management Areas

Washington state law RCW 90.44.400 provides for the establishment of Groundwater Management Areas in coordination with other agencies, local government, and user groups. These groups form a Groundwater Advisory Committee to develop groundwater management programs to protect water quality, assure water quantity, and efficiently manage water resources. A groundwater management area should consist of one of the following:

- Aquifers declining due to restricted recharge and over-utilization
- Aquifers where over-appropriation may have occurred
- Aquifers being considered for water supply reservation for future beneficial uses
- Aquifers that are the primary source of public water supply
- Sole source aquifers
- Geographical areas where land use may result in contamination or degradation of the groundwater quality.

In short, if there is an aquifer or area in need of protection or management, a group of interested parties, local government, and agency officials can designate the area a groundwater management area, form a committee, and try to develop solutions everyone can agree on. While this seems like reasonable approach to regional concerns, when many different agencies, governments, and local groups are involved, arriving at a consensus can be a challenge. For example, in 2011 the Lower

¹⁹ WAC § 173-210A-320.

²⁰ See 33 U.S.C. §§ 1311(a), 1342(a); see also 40 C.F.R. § 131.10(b).

Yakima Valley Groundwater Area and advisory committee was formed to reduce nitrate contamination and the violation of safe water drinking standards in the region. An official plan is still forthcoming. The groundwater advisory committee voted to approve—although not unanimously—a draft groundwater management program in December 2018, but it still must go through comment period, public hearing, and adoption.

CAFO Construction

Stormwater runoff from construction activities has the potential to carry debris, contaminated water, and chemicals into nearby surface waters. Therefore, any construction activity that disturbs one or more acres of land must develop a stormwater pollution prevention plan; implement sediment, erosion, and pollution prevention control measures; and obtain a Construction Stormwater General Permit.

The operator must submit a Notice of Intent/complete permit application to WSDE at least 60 days before construction. The operator seeking the permit must publish public notice at least one time each week in a local newspaper for two consecutive weeks. The date of the second notice begins a 30-day public comment period. The permittee must also prepare and implement a Stormwater Pollution Prevention Plan.

This process provides additional opportunity for public notice and comment, protecting water quality, and oversight of CAFOs trying to wedge their way into a community before the community and appropriate agencies have weighed in. A CAFO that disturbs more than one acre and starts construction before securing its CAFO permit or Construction Stormwater General Permit is violating the state water pollution control laws and may be subject to penalties.

Find more details about permit requirements and procedures in the most recent version of the [Construction Stormwater General Permit](#).

WATER

Animal agriculture is a significant source of air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds and other contaminants. In theory, emissions and odors from animal agriculture may be regulated. CAFOs 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 claims it should not be regulated due to monitoring difficulties, variable climates, data collection methods, and so on. In order to respect industry concerns while also working to protect air quality, the EPA has entered into agreements with animal agriculture allowing CAFOs to 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 more information.)

However, states may develop their own regulations for CAFO emissions or odors. For example, Minnesota regulates hydrogen sulfide emissions. Washington has a few laws and regulations that could apply to animal feeding operations, but agriculture is offered a few key exemptions.

An AFO appears to fall within the definition of a “source” under Washington’s Clean Air Act and the state allows for considerable local and agency authority to establish rules, regulations, or ordinances to classify air contaminant sources based on levels and types of emissions.²¹ An air contaminant source may require registration or reporting. A person should also report emissions of greenhouse gases if the facility produces 10,000 metric tons or more of carbon dioxide annually.²² However, the department can make exceptions and exempt people from reporting their greenhouse gas emissions.²³ Additionally, WSDE may not regulate ammonia emissions from the storage or application of ammonia for use as an agricultural fertilizer.²⁴

Washington does not currently do much in the way of air-quality or odor-based requirements for animal feeding operations. In fact, it makes sure to exempt agriculture. The Revised Code of Washington states:

odors or fugitive dust caused by agricultural activities consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority

²¹ RCW § 70.94.152.

²² RCW § 70.94.152 (5)

²³ RCW § 70.94.152 (5)(b)(iii).

²⁴ RCW § 70.94.645.

shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.²⁵

According to the statute, “good agricultural practices” means “economically feasible practices” for the type and area of the farm and any guidelines were “mutually agreed to” by WSDE and the Washington cattle feeders association.

The agricultural exemption for odors and fugitive dust applies to cattle feedlots with 1,000 or more cattle that are already complying with applicable requirements in the state implementation plan for air quality. And if the cattle feedlot is located in an area that is not in attainment of national ambient air quality standards for particulate matter, the state may impose additional requirements to achieve attainment.²⁶

Therefore, while some regulations could apply to CAFOs, there are ample exemptions and protections for agricultural operations. The inapplicability of some air pollution and odor laws for many CAFOs is understandably concerning for those who are impacted by air pollution and related nuisances from these operations. The silver lining is that Washington laws allow for considerable local regulation. You may want to speak with local regulators to explore the possibility of developing local odor or emission rules or ordinances. Media and public opinion are also powerful tools to address odor and other air quality impacts from CAFOs.

See Washington’s Clean Air Act, RCW § 70.94 for more details.

Use the [WSDE’s Air Monitoring Network](#) to find air quality at your nearest monitoring location.²⁷

²⁵ RCW §70.94.640.

²⁶ RCW §70.94.640(6).

²⁷ Washington State Dept. of Ecology Air Quality Monitoring Website, Washington State Department of Ecology, <https://fortress.wa.gov/ecy/enviwa/>.

ENVIRONMENTAL REVIEW

State Environmental Policy Act

Washington requires State Environmental Policy Act (SEPA) review for any projects that involve state or local permitting, licensing, or funding. This includes the adoption of regulations, policies, and plans. The purpose of the act is to gather information and better understand how government actions will affect the environment. CAFOs frequently require permits, licenses, and land use decisions from state and local governments, so SEPA provides another way to obtain information and environmental review of CAFO-related decisions. Depending on the type of project and its impacts, there can be an opportunity for public comment and appealing agency decisions.

SEPA is codified at RCW §43.21C and regulations are available at WAC § 197-11.

- Numerous activities are exempt from SEPA review. See WAC §§ 197-11-800-890 for a full list.
- A lead agency (usually the local permitting agency) is responsible for conducting the review. SEPA gives the agency the authority to deny a proposal based on the impacts of the action.
- Most permits require the applicant to submit an Environmental Checklist to assist the agency in conducting its SEPA review.

See [WSDE's SEPA Register](#) website for projects undergoing SEPA review and corresponding documentation.²⁸

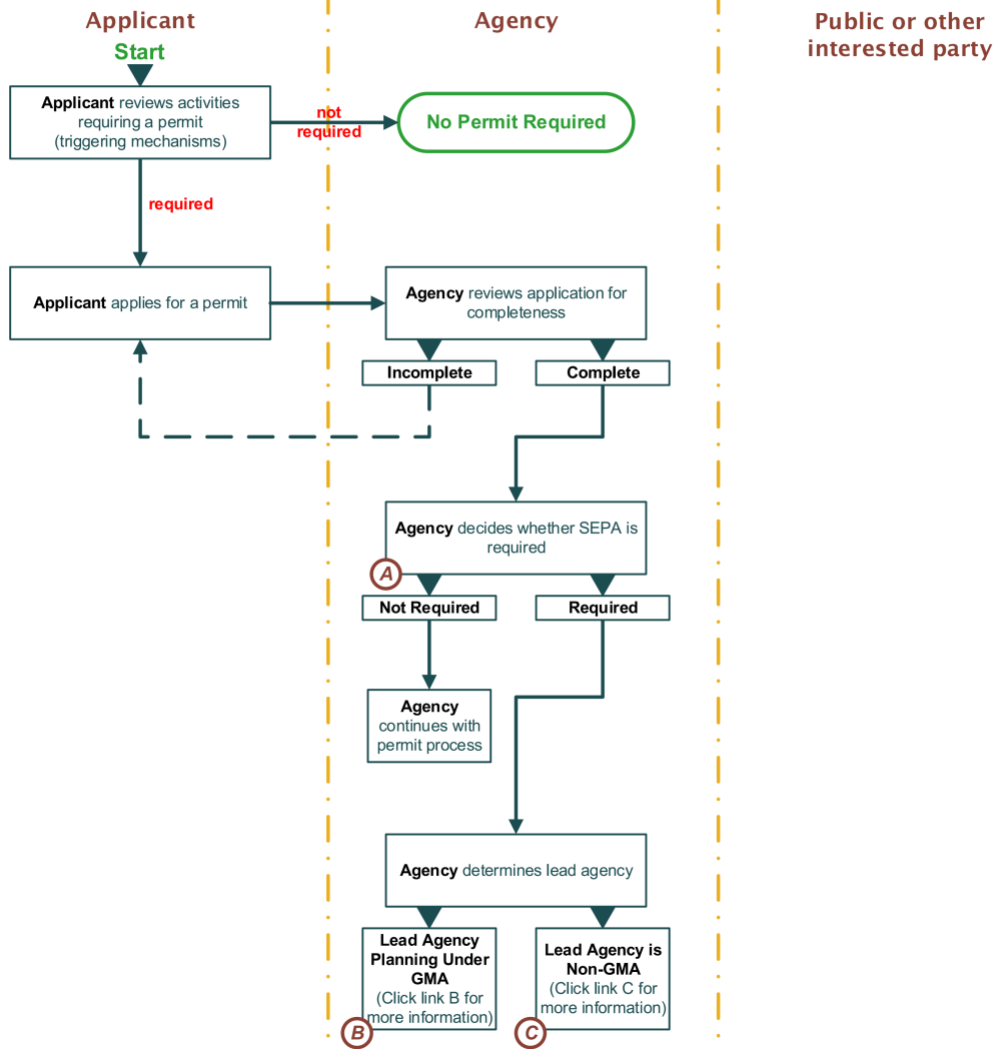
Below are flowcharts developed by the Governor's Office for Regulatory Innovation and Assistance that provide an overview of the SEPA process as of April 2014. See the [online version](#) for clickable links.²⁹

²⁸ State Environmental Policy Act Register, Washington State Dept. of Ecology, <https://fortress.wa.gov/ecy/separ/Main/SEPA/Search.aspx>.

²⁹ State Environmental Policy Act Schematics, Governor's Office for Regulatory Innovation and Assistance, https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/Schematics_N-Z/State-Environmental-Policy-Act-Schematics.pdf.

State Environmental Policy Act (SEPA)

Application Phase



State Environmental Policy Act (SEPA) (For GMA Agencies)

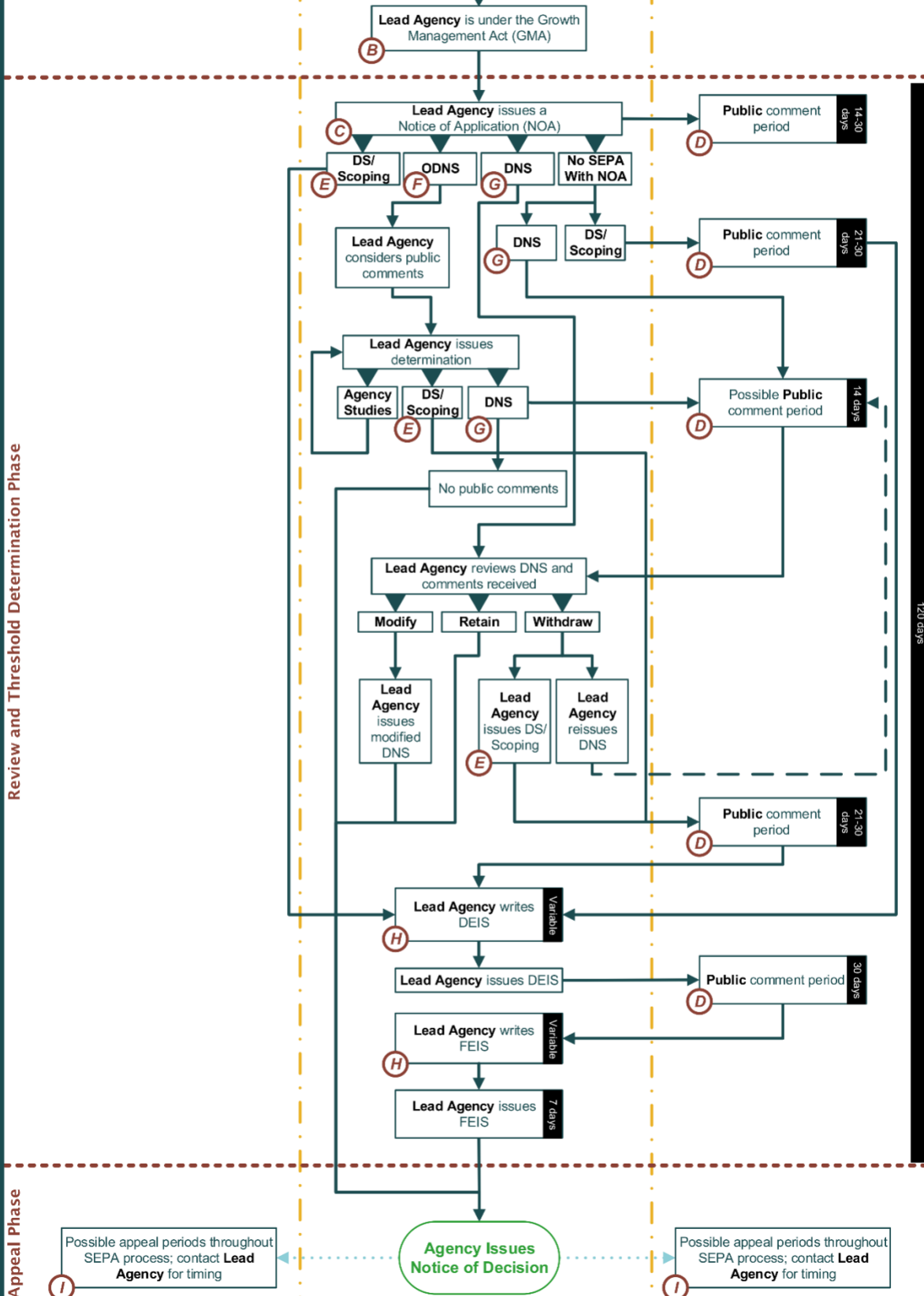
Applicant

Lead Agency
Start

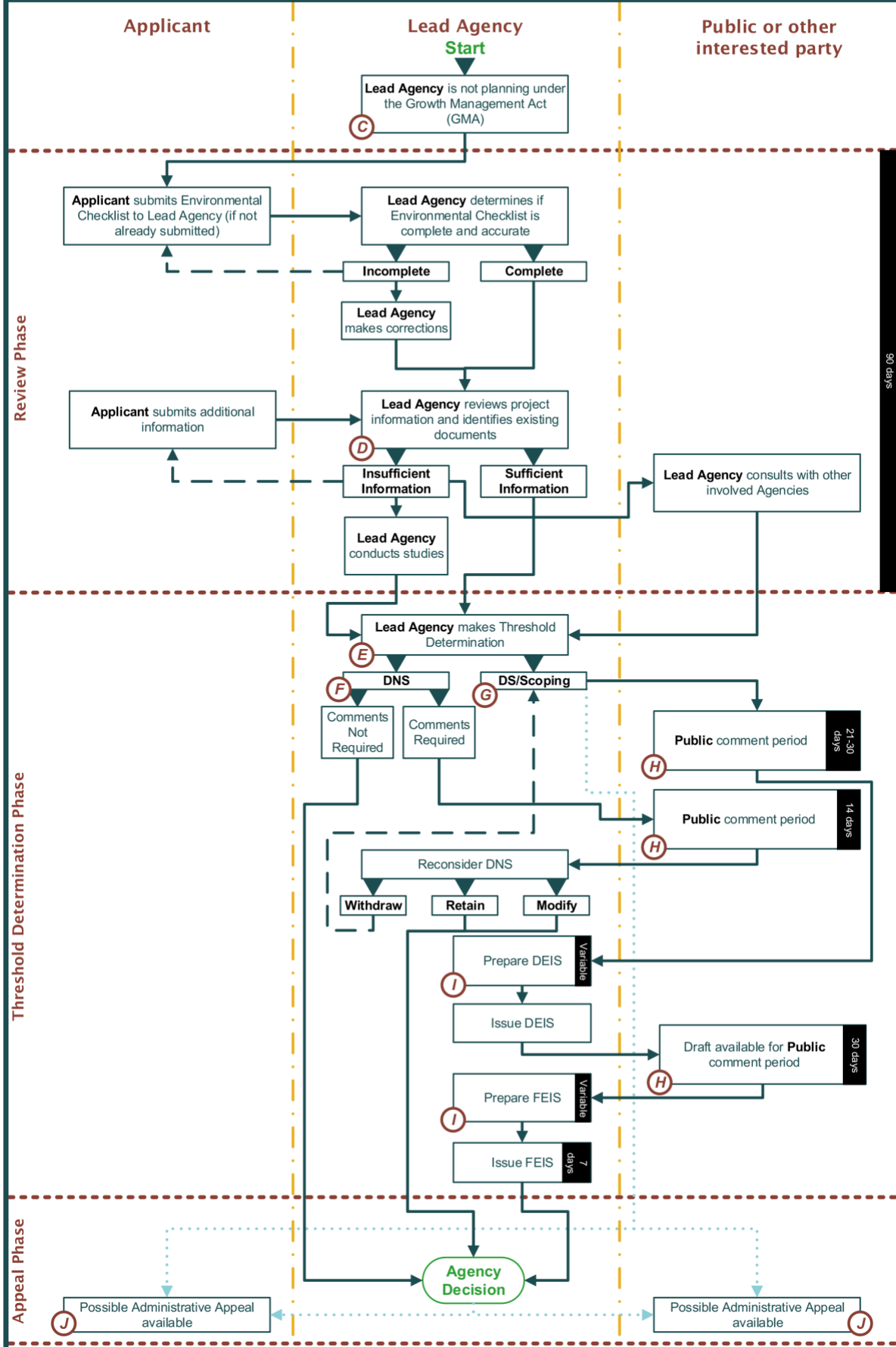
Public or other
interested party

Review and Threshold Determination Phase

Appeal Phase



State Environmental Policy Act (SEPA) (For Non-GMA Agencies)



ZONING & LOCAL CONTROL

Zoning provides an opportunity for the public to participate in AFO siting and construction decisions. Local governments are often the first to know of a proposal for a livestock operation to locate or expand in a community. It's crucial to know who your local elected officials are and to establish a working relationship with them when possible to facilitate an efficient exchange of information.

Local, state, and tribal governments have the authority to regulate land use in Washington. In fact, the state grants considerable authority to local governments. This is unique since many other states restrict the power and authority of local governments—particularly with respect to agriculture. Washington has robust local control but remains protective of agriculture.

Washington State Growth Management Act

A primary feature of Washington's zoning and land use is the state's Growth Management act, which requires large or fast-growing cities and counties to develop a comprehensive plan to manage growth.³⁰ The Washington State Growth Management Act finds that:

[U]ncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.³¹

However, the law quickly follows this up with a call to protect rural lands and "permit the operation of rural-based agricultural [] businesses that are consistent with existing and planned land use patterns," wildlife, habitat, land stewardship,

³⁰ RCW § 36.70A.040.

³¹ RCW § 36.70A.010.

preservation of open space, and “enhance the rural sense of community and quality of life.”³² The protection of agricultural lands is prominent throughout the statute.

The Washington State Department of Commerce is the main state-level contact for Growth Management Act issues and the Growth Management Hearings Board resolves disputes that arise under GMA.

Comprehensive Plans

Counties or cities of certain sizes must develop comprehensive plans,³³ which are the foundations of local planning decisions. They lay out a roadmap of goals, objectives, policies, actions, and standards that guide the promulgation and implementation of county and local land use ordinances. See Revised Code of Washington §§ 36.70A.070–80 for the mandatory and optional elements of a comprehensive plan.

Public Participation in Comprehensive Plans

Public participation in comprehensive plans and zoning is encouraged. Procedures are in place to “provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective public notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.”³⁴

Agricultural Lands

The statute does not expressly prohibit zoning approaches that would interfere with agriculture—as many other states do—but it does express the importance of preserving agricultural lands and includes a variety of zoning techniques to encourage the agricultural economy in a city or county. See RCW § 36.70A.177 for suggested agriculture-related zoning techniques and land uses.

However, Washington state and local laws stress the importance of protecting habitat, wildlife, sensitive species, and critical areas. All counties are required to adopt critical areas regulations.³⁵ Therefore, if the proposed site plan of a CAFO is on

³² RCW § 36.70A.001.

³³ RCW § 36.70A.070.

³⁴ RCW § 36.70A.140

³⁵ RCW § 36.70A.030.

or near streams, lake, wetlands, critical areas, or setback areas, or floodplains, that is something to point out in zoning or permitting discussions.

Residents looking to challenge a potential CAFO should consult with local officials first to determine whether any local ordinances are in place or whether it would be feasible to begin the process of adopting animal agriculture ordinances at the county level. For example, counties across the U.S. are passing zoning ordinances for increased setbacks between CAFOs or feedlots and neighbors, churches, schools, parks, businesses, wells, surface waters, sinkholes, etc. While there does not appear to be anything in Washington's laws prohibiting this, passing that kind of ordinance in an agricultural region can be a hard sell.

As there are numerous counties and branches of local government in Washington, this guide does not provide specific zoning regulations for each local governing body. Get to know your local government, find their ordinances, and participate in discussions and decisions that will impact your community.

RIGHT TO FARM & NUISANCE LAWS

Each state in the U.S. has a right-to-farm law designed to protect agricultural operations from nuisance suits. A nuisance is a type of tort and is generally defined as actions that cause a substantial interference with a person's use and enjoyment of their property. It can be a private nuisance or a public nuisance claim depending on the scope of the nuisance and the people impacted. For example, if a factory locates near someone's home and emits foul odors that keep them from opening their windows or going outside, they would be able to file a nuisance suit to seek damages. However, across the nation, agriculture has secured exemptions from these types of lawsuits—often subject to some conditions.

The idea behind right-to-farm laws is that as areas develop and people move into agricultural communities, they will not be able to bring a nuisance claim for the typical smells and odors associated with farming. While farming production methods have changed, this protection stays intact. Recent trends in agricultural production, consumption, and market forces have contributed to the disappearance of the small family farm, and the rise of livestock operations that seem more factory than farm. A factory could be subject to nuisance lawsuit, but a factory farm is not.

Washington's Right to Farm law protects two of the state's most lucrative and often nuisance-causing activities—agriculture and forest practices. The relevant law can be found at RCW § 7.48.300–320. Below are the important agricultural provisions:

- The state has found that agricultural activities in “urbanizing areas” encourage the “premature removal of the lands from agricultural uses,” so the purpose of the law is “to provide that agricultural activities conducted on farmland and forest practices be protected from nuisance lawsuits.”³⁶
- Agriculture “consistent with good agricultural practices” will not be considered a nuisance, unless it has a substantial adverse effect on public health and safety.³⁷
- Agricultural activities “in conformity with all applicable laws and rules are presumed to be good agricultural [] practices not adversely affecting the public health and safety.”³⁸
- People may still sue for damages.³⁹
- The definition of “agricultural activity” is quite expansive.⁴⁰
- There is a farmer-friendly fee shifting provision⁴¹
 - If the farmer prevails in the action alleging nuisance, violation of laws, rules, or ordinances, the farmer may recover their full costs (including attorney's fees, lost revenue, and replacement value of crops or livestock that could not be harvested or sold because of the lawsuit).
 - The farmer may also recover “exemplary damages if the claim was malicious or without probable cause.

³⁶ RCW § 7.48.300

³⁷ RCW § 7.48.305(1).

³⁸ RCW § 7.48.305(2).

³⁹ RCW § 7.48.305(4).

⁴⁰ RCW § 7.48.310(1). “Agricultural activity” means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of stream banks and watercourses; and conversion from one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

⁴¹ RCW § 7.48.315.

- The farmer cannot recover costs and expenses from a state or local agency that investigated or pursued an enforcement action in response to a complaint—but the state or agency can! If a complaint was malicious or without probable cause, the agency can recover its investigative costs and expenses.

The effect of Washington’s right-to-farm law is to protect agriculture and discourage residents from bringing claims against operations impacting their communities. The fee-shifting provision is certainly a deterrent to potential claimants. It even discourages submitting complaints about an operation because the agency can recover expenses if the complaint was unfounded. However, do not let this keep you from submitting valid complaints about possible violations at a facility because the protection from nuisance claims is lifted when the operation is not in compliance with all applicable laws and rules. A history of founded complaints and violations is critical to success in any action against agriculture in Washington. When submitting complaints or informing the agency of possible violations, include as much detail as you can and submit accompanying pictures whenever possible to avoid being considered “malicious” or “without probable cause.”

PROPERTY TAX APPEAL

Neighbors of CAFOs may also be harmed if government fails to account for the CAFO’s harmful impacts when assessing properties for tax purposes. Without knowing how to challenge an uninformed assessment, individuals can pay too much in property taxes.

If you live near a CAFO and believe it negatively impacted your property’s value and wasn’t reflected in your property tax assessment, you can challenge your assessment. For details on this process, see WAC § 458-14-056 and the Washington State Department of Revenue’s overview document for [Appealing Your Property Assessment to the County Board of Equalization](#).⁴²

INSPECTIONS, COMPLAINTS, AND ENFORCEMENT

⁴² Appealing Your Property Assessment to the County Board of Equalization, Washington State Department of Revenue, May 2018, https://dor.wa.gov/sites/default/files/legacy/Docs/pubs/prop_tax/appealprop.pdf.

Monitoring & Inspections

Monitoring is an important part of the current CAFO permit. The current CAFO permits require a schedule of self-monitoring for the operators to assess compliance with the permit. They are instructed to conduct inspections of things like equipment, waste storage levels, waste handling infrastructure, discharges, field discharge prevention, cleaning wastewater lines, and waste and soil sampling. This is a CAFO-operator-friendly approach since they must report their own violations. However, CAFO operators must keep records of their monitoring records for at least five years and periodically report results to the WSDE. Additionally, WSDE must be granted access to the property and records upon request.

An operation found guilty of willfully violating the terms and conditions of the permit may be subject to fines, penalties, or imprisonment.

Submitting Complaints

Washington Department of Ecology allows the public to report an environmental issue by phone, email, or online.⁴³ (Each regional office has online reporting forms.)

Washington Department of Agriculture has an online form to [Request an Inspection](#).⁴⁴ You can also contact WSDA's [Nutrient Management Contacts](#) to report violations.⁴⁵ According to the memorandum of agreement between WSDE and WSDA, WSDA is responsible for inspection and compliance actions for all dairies. They may provide initial complaint response for non-dairy AFOs and CAFOs as well, and will coordinate with WSDE regarding compliance actions.

Finding Permit and Enforcement Data

The Washington Department of Ecology maintains a database of [Water Quality Permitting and Reporting Information System](#).⁴⁶ It has a wealth of information about permitted operations within the state. Before submitting a public record request about an operation (discussed below), see what you can find in this database first.

⁴³ Report an environmental issue, Washington Department of Ecology, <https://ecology.wa.gov/About-us/Get-involved/Report-an-environmental-issue>.

⁴⁴ Request for Inspection, Washington Department of Agriculture, <https://fortress.wa.gov/agr/apps/CIRM/InspectionRequest/Add/>.

⁴⁵ Nutrient Management Contacts, Washington Department of Agriculture, <https://agr.wa.gov/foodanimal/livestock-nutrient/contactinformation.aspx>.

⁴⁶ Water Quality Permitting and Reporting Information System, Washington Department of Ecology, <https://apps.ecology.wa.gov/paris/PermitLookup.aspx>.

PUBLIC INFORMATION & OPEN MEETING LAWS

Public Records Act

When confronted with a new, expanding, or problematic CAFO in your community, access to information about the facility can be valuable. One of the first steps in CAFO disputes is a public record request to get accurate and current information about the operation that is in the government's possession. It is the cornerstone of open government to know how, when, and why they are making decisions that impact the public. The federal government is subject to the Freedom of Information Act, but this only applies to federal agencies; each state has its own laws regarding access to public records. Washington's public information law is called the Public Records Act and is codified at RCW § 42.56. Here are the basics:

- A public record is any writing relating to the conduct of the government that is prepared, owned, used, or retained by any state or local agency.
- People have the right to remain informed so that "they may maintain control over the instruments they have created."
- Each state agency must publish its own procedures in the Washington Administrative Code. For CAFO- and feedlot-related inquiries, people will likely request records from the following agencies (the agency's corresponding section of the WAC is included):
 - Washington State Department of Ecology: WAC § 173-03
 - Washington State Department of Agriculture: WAC § 16-06
 - Washington State Department of Health: WAC § 246-08-390
- Since the agency may charge fees to fulfill a records request, it's wise to request a fee waiver if applicable, request that records be transmitted electronically, be specific in your record request to get only the documents you need, or visit the local agency office and request to inspect records in person. A phone scanning app or scanning wand can be useful for in-person record requests to avoid copying and printing fees. No fees are charged to inspect public records.
- A 13-member public records exemptions accountability committee reviews exemptions from public disclosure.
- Certain categories of records may be exempt but the agency must provide the exemption that applies to a record that is requested and denied in a record request. Most exemptions have to do with financial information, personal information, religious affiliation, employment information, investigations, law enforcement actions, crime victims, real estate

transactions, proprietary information, preliminary drafts, intra-agency memorandums, archeological sites, educational information, insurance information, fish and wildlife locations, and health records.

- Interestingly, Washington's Public Record Act exempts the following types of agriculture and livestock records from disclosure: fertilizer reports, business information, production or sales records, and animal disease testing results.
- If the record does not fall within one of the MANY exemptions, the agency has a duty to disclose it.
- Record request responses should be made promptly—within five business days.
- It's advised to put any record request in writing and to follow up on requests if the agency isn't responding.

Before submitting a record request, determine which types of records you're looking for and which agency would have them. Sending a request to the wrong agency will delay the process. Also, see what information is available online. For example, there's a [register](#) of actions undergoing a State Environmental Policy Act review and often project documents are included online.⁴⁷

For more details about the Public Record Act, see the Washington State Attorney General's website [Obtaining Records](#).⁴⁸ The National Freedom of Information Coalition also has resources for Washington, including contacts and useful publications.⁴⁹

Note that although public entities like municipalities must comply with the Public Record Act, each local government may have a unique way of accepting and providing public records. Contact government officers for more information, keeping in mind that absent a specific exception, the presumption of almost all open records laws is to provide information and provide reasonable accommodations when doing so. If the information is in the control of a federal agency, you may need to do a FOIA request.

⁴⁷ State Environmental Policy Act Register, Washington State Dept. of Ecology, <https://fortress.wa.gov/ecy/separ/Main/SEPA/Search.aspx>.

⁴⁸ Obtaining Records, Washington State Office of the Attorney General, <http://www.atg.wa.gov/obtaining-records>.

⁴⁹ National Freedom of Information Coalition, Washington FOI Resources, <https://www.nfoic.org/washington-foi-resources>.

EPA Region 10

Each EPA Regional Office has a FOIA officer who acts as a first point of contact for FOIA Requests.⁵⁰ Contact information for the EPA Region 10 FOIA Officer:

Region 10 (States: AK, ID, OR, WA)

Regional Freedom of Information Officer
U.S. EPA, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101
(206) 553-8665⁵¹

See the Federal Guide for more information on FOIA. Several [EPA websites](#) have useful summaries of the FOIA request process, response time guidance, and other information.⁵² Note that you're entitled to a waiver of fees if requesting information that is "likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester."⁵³ EPA will only consider waiver requests submitted at the same time as the FOIA request.⁵⁴ Make sure to check that the information you're requesting isn't already available online. The EPA has a FOIA library with resources specific to region 10 that might be useful.⁵⁵

Open Meeting Law

Another way to get information about a proposed project, land use decision, ordinance change, or other action that could relate to CAFOs in your community is to attend public meetings. Washington's Open Public Meetings Act (OPMA) requires that all meetings of government or agency officials gathered to discuss government

⁵⁰ U.S. Environmental Protection Agency, Organization Chart for EPA's Region 10 Office, <https://www.epa.gov/aboutepa/organization-chart-epas-region-10-office>.

⁵¹ U.S. Environmental Protection Agency, Regional FOIA Contact Information, <https://www.epa.gov/foia/forms/contact-us-about-freedom-information-act-and-foia-requests#Regional>.

⁵² See, e.g., U.S. Environmental Protection Agency, The FOIA Request Process, <https://www.epa.gov/foia/foia-request-process>.

⁵³ U.S. Environmental Protection Agency, Fee Waivers, <https://www.epa.gov/foia/foia-request-process#wivers>.

⁵⁴ See *id.*

⁵⁵ FOIA Library: Information that is Specific to EPA Region 10, <https://www.epa.gov/foia/foia-library-information-specific-epa-region-10>.

business be open to the public. Actions taken in meetings that do not comply with OPMA are null and void. For more detail, see OPMA at RCW § 42.30. Below are the main provisions.

- OPMA applies to all “public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of the state and subdivisions thereof exist to aid in the conduct of the people’s business.”⁵⁶ This includes school districts, planning commissions, library or park boards, policy group of publicly owned utilities, or rule-making body.⁵⁷
- Minutes of all regular and special meetings must be recorded and available for public inspection.
- They cannot adopt an ordinance, resolution, rule, regulation, order, or directive without a public meeting.
 - Agencies that hold regular meetings throughout the year must be publish the year schedule by January and if there’s a change in the schedule, they must publish notice in the state register at least 20 days before the rescheduled meeting date.
- Agendas of the meetings should be made available to the public at least 24 hours before the meeting starts.⁵⁸
- Special meetings require that 24-hour notice is delivered to local newspaper of general circulation and a local radio or tv station, and the notice is posted on the agency’s website (if they have one) and prominently displayed at the main entrance of the agency’s location and meeting site.
- Secret voting is not permitted.
- There are situations when a governing body can hold an executive session during a regular or special meeting.⁵⁹
- In addition to voiding provisions or actions taken in violation of OPMA, both the agencies and meeting personnel are subject to liability for the violation.
- Agency officials have to complete OPMA training before taking office.

Since public meetings are often the main way for residents to learn about decisions affecting their community, adherence to OPMA is essential. If government officials are making important decisions without properly allowing the public in on the process, voice those concerns. Actions taken in violation of OPMA are null and void. OPMA states:

⁵⁶ RCW § 42.30.010.

⁵⁷ RCW § 42.30.020.

⁵⁸ RCW § 42.30.077.

⁵⁹ RCW § 42.30.110.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

For more thorough details about Washington's Public Records Act and Open Meetings Act, see the statutes and Washington State Attorney General's resources on [Open Government Training](#).⁶⁰

OTHER RESOURCES

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](#).⁶¹

State Organizations

Dealing with an AFO in your community can often feel like a lonely uphill battle. You may want to contact organizations working on these issues or other community groups in the state that have gone through similar battles. Below are a few organizations:

Friend of Toppenish Creek: <http://www.friendsoftoppenishcreek.org/>

Western Environmental Law Center: <https://westernlaw.org/>

Sierra Club Washington State: <https://www.sierraclub.org/washington>

Washington Environmental Council: <https://wecprotects.org/programs/>

⁶⁰ Open Government Training, Washington State Office of the Attorney General, <http://www.atg.wa.gov/open-government-training>.

⁶¹ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

LIST OF STATUTES & REGULATIONS

Below is a list of relevant statutes and regulations, most of which are discussed in this Guide. This list is a starting reference point for additional research or in-depth analysis of environmental authority in Washington.

Statutes

Statute	Topic
RWC § 7.48.300	Right to Farm Law
RWC § 36.70A	Growth Management Act
RWC § 42.30	Open Public Meetings Act
RWC § 42.56	Public Records Act
RWC § 43.21C	State Environmental Policy Act
RWC § 70.142.040	Local Board of Health
RWC § 90.44	Regulation of Public Groundwaters—beneficial uses
RWC § 90.48	Water Pollution Control
RWC § 90.54	Water Resources Act
RWC Chapter 90.64	Dairy Nutrient Management Act
RWC § 70.94	Clean Air Act

Regulations

Regulation	Topic
WAC § 173-200	Water Quality Standards for Ground Waters
WAC § 173-201A	Water Quality Standards for Surface Waters
WAC § 173-216	State Waste Discharge Permit Program (facilities not covered under NPDES)
WAC § 173-220	National Pollutant Discharge Elimination System Program (
WAC § 173-226	Waste Discharge General Permit Program
WAC § 173-400-040	General Standards for Maximum Emissions
WAC § 173-500	Water Resources Management Program
WAC § 197-11	State Environmental Policy Act
WAC § 458-14-056	Property Tax Assessment Appeal