

**Guide to Confronting Concentrated Animal
Feeding Operations in**

WEST VIRGINIA



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A PROJECT BY SOCIALLY RESPONSIBLE AGRICULTURE PROJECT

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

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Date of publication: June 2019



CAFO Guide Overview

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

EDUCATE YOURSELF

Learn how CAFOs harm communities at sraproject.org. 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 WEST VIRGINIA

Animal agriculture in West Virginia is dominated by poultry and cattle operations. While it's a relatively small state,¹ it ranks 16th and 18th out of all 50 states for turkey and broiler production.² Poultry and egg sales account for approximately 55 percent of all agricultural sales in West Virginia.³ According to the most recent 2012 census data, West Virginia had 12,752 farms with livestock and poultry and approximately 2,637 of those livestock and poultry operations were located within the impaired Chesapeake Bay watershed.⁴ The state prides itself on the fact that around 95 percent of the farms in the state are family-owned, but the state still has its share of large scale industrial animal agriculture. According to the U.S. Environmental Protection Agency (EPA), West Virginia has 21 concentrated animal feeding operations (CAFOs) that require discharge permits⁵ and approximately 573 unpermitted large CAFOs that have Nutrient Management Plans.⁶ The state splits authority over these operations between the West Virginia Department of Environmental Protection (WVDEP) and the West Virginia Department of Agriculture (WVDA); WVDEP oversees implementation of the WV/NPDES permits and WVDA oversees implementation of the Nutrient Management Program. This system of joint agency responsibility and voluntary compliance often makes it difficult to get answers and identify points of contact when dealing with a proposed or existing animal feeding operation.

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.)

¹ West Virginia is comprised of 24,230 square miles, making it the 10th smallest state in the U.S.

² 2018 State Agriculture Overview. USDA NATIONAL AGRICULTURAL STATISTICS SERVICE VIRGINIA FIELD OFFICE, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WEST%20VIRGINIA.

³ Poultry, West Virginia Department of Agriculture, <https://agriculture.wv.gov/divisions/regulatoryandenvironmental/Moorefield/Pages/Poultry.aspx>.

⁴ West Virginia Animal Agriculture Program Assessment, U.S. Environmental Protection Agency, at 9 (2015) <https://www.epa.gov/sites/production/files/2015-09/documents/westvirginiaanimalagricultureprogramassessment.pdf>.

⁵ NPDES CAFO Permitting Status Report , U.S. Environmental Protection Agency, (2017) https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf.

⁶ West Virginia Animal Agriculture Program Assessment, *supra* note 5 at 10.

Agencies

West Virginia Department of Environmental Protection (WVDEP)

WVDEP is the primary state agency that develops, implements, and enforces state and federally authorized environmental laws and regulations that may apply to livestock operations. WVDEP is composed of several administrations or sub-departments that help implement the environmental laws and programs that regulate AFOs in West Virginia.

For more information, see [WVDEP's website](#).⁷

West Virginia Departments of Agriculture (WVDA)

WVDA is the primary agency for development and oversight of NMPs, and is involved in annual reporting, recordkeeping, and inspections. They also facilitate litter and manure sample analysis and encourage best management practices (BMPs) to reduce the adverse impacts of agricultural waste on the state and its watersheds as part of the multi-state, multi-agency Chesapeake Bay Program Water Quality Initiative and Watershed Implementation Plan (WIP).

For more information, see [WVDA's website](#).⁸

West Virginia Conservation Agency (WVCA)

WVCA is comprised of 14 districts, whose mission is to “provide for and promote the protection and conservation of West Virginia's soil, land, water and related resources for the health, safety and general welfare of the state's citizens.”⁹ WVCA does not regulate animal agricultural operations but is involved in several programs that intersect with animal agriculture. Their Ag Enhancement Program offers technical and financial assistance to help agricultural operations implement BMPs. Their Non-Point Source Program assesses programs relating to nonpoint source pollution, such as agriculture. Their Poultry Litter Program facilitates the buying and selling of poultry litter in the state. So, while they may not help stop a developing AFO, district

⁷ WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.dep.wv.gov/Pages/default.aspx>.

⁸ WEST VIRGINIA DEPARTMENT OF AGRICULTURE, <http://www.agriculture.wv.gov/Pages/default.aspx>.

⁹ WVCA Mission and History, WEST VIRGINIA CONSERVATION AGENCY, <http://www.wvca.us/Mission.cfm>.

employees can be valuable sources for local environmental information. Find an interactive map and contact information for the 14 districts [here](#).¹⁰

For more information, see [WVCA's website](#).¹¹

US EPA Region 3

West Virginia is part of the U.S. EPA Region 3, the Mid-Atlantic, which also includes Delaware, District of Columbia, Maryland, Pennsylvania, and Virginia. While most AFO regulation—if there is any—happens at the state level, the EPA has some oversight authority regarding the state's implementation of federal laws.

For more information about EPA Region 3 and its involvement in West Virginia, see their [website](#).¹²

Definitions

Animal Feeding Operation (AFO)

47 WV CSR 10-13.1.b.1 (2012)

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

AFO/CAFO Size Chart

Animal	Large	Medium	Small
Cattle (bull, steer, heifer, or calf)	≥ 1,000	300–999	< 300
Dairy cow	≥ 700	200–699	< 200
Horses	≥ 500	150–499	< 150
Veal	≥ 1,000	300–999	< 300
Swine (≥ 55 pounds)	≥ 2,000	750–2,499	< 750
Swine (< 55 pounds)	≥ 10,000	3,000–9,999	< 3,000
Sheep/lambs	≥ 10,000	3,000–9,999	< 3,000

¹⁰ Districts Map, WEST VIRGINIA CONSERVATION AGENCY, <http://www.wvca.us/map.cfm>.

¹¹ WEST VIRGINIA CONSERVATION AGENCY, <http://www.wvca.us/>.

¹² EPA Region 3 (Mid-Atlantic), U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/aboutepa/epa-region-3-mid-atlantic>.

Ducks (with liquid manure handling)	≥ 5,000	1,500–4,999	< 1,500
Ducks (with dry manure handling)	≥ 30,000	10,000–29,999	< 10,000
Chickens (with liquid manure handling)	≥ 30,000	9,000–29,999	< 9,000
Laying hens (with dry manure handling)	≥ 82,000	25,000–81,999	< 25,000
Chickens (other than laying hens) with dry manure handling	≥ 125,000	37,500–124,999	< 37,500
Turkeys	≥ 55,000	16,500–54,999	< 16,500

Concentrated Feeding Operation (CAFO)

47 WV CSR 10-13.1.b

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

WATER

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

West Virginia National Pollutant Discharge Elimination System (WV/NPDES)

47 WV CSR 10-13

A CAFO must apply for a WV NPDES water pollution control permit if the CAFO discharges or proposes to discharge into waters of the state.¹³ They must also include an NMP with their NPDES permit application. Unsurprisingly, most operations assert that they do not discharge and therefore do not need a permit. Be sure to point out if that’s not actually the case if you observe an operation discharging. As of 2017, only three CAFOs in West Virginia had NPDES permits.

¹³ 47 WV CSR 10-13.1.d.1.

For more information about the WV NPDES program and permit requirements, see WVDEP's [NPDES website](#)¹⁴ and the applicable regulations.¹⁵

Any NPDES permit application is subject to state public notice requirements. Notice must be published in a local newspaper or periodical and mailed to anyone on the WVDEP mailing list. From the date of the notice, you have 30 days to submit written comments on the permit application and request a public hearing. A hearing is not automatic—**request one**. WVDEP will only hold a hearing if “significant interest” is received. For more information on public participation in the permitting process see the [WVDEP's Citizen's Guide](#).¹⁶

West Virginia Nutrient Management Program (WV NMP)

47 WV CSR 10-13.1.h.1

WVDA developed the WV NMP to “help farmers efficiently manage manure, biosolids, and chemical fertilizers to minimize water contamination and maximize financial returns.”¹⁷ Under this program, all permitted CAFOs and unpermitted large CAFOs are required to follow an NMP—for all other operations, it's voluntary. The NMP is developed by a certified nutrient management planner and should include the following:¹⁸

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

¹⁴ National Pollutant Discharge Elimination System (NPDES) Individual Permits, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://dep.wv.gov/wwe/permit/individual/pages/default.aspx#CAFO>.

¹⁵ 47 WV CSR 10-13.

¹⁶ Citizens Guide, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.dep.wv.gov/environmental-advocate/Documents/DEP2008CitizensGuide.pdf>.

¹⁷ Nutrient Management, WEST VIRGINIA DEPARTMENT OF AGRICULTURE, <http://www.agriculture.wv.gov/divisions/regulatoryandenvironmental/moorefield/pages/nutrient-management.aspx>.

¹⁸ 47 WV CSR 10-13.1.h.1 (2012).

- Records that must be maintained
- New soil and manure analyses every three years
- Annual reporting requirements.

Note: West Virginia does not appear to have any land application setbacks.

For more information on NMPs, see [WVDA's NMP website](#)¹⁹ and the applicable regulations.²⁰

Wetlands

WV Code § 22-11, 47 CSR 5A

Wetlands are a critically important resource that require strong governmental protections. Wetlands comprise less than 1% of West Virginia's total land area and are therefore considered a scarce resource.²¹ To this end, the West Virginia Code requires the maintenance of "reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; [and] (2) the propagation and protection of animal, bird, fish, aquatic, and plant life..."²² West Virginia has not enacted specific state wetland protection laws and relies primarily on the federal Clean Water Act (CWA) to protect the its wetlands.²³

Generally, any modification to wetlands, including depositing fill, excavating, or draining, will require a federal 404 permit from the U.S. Army Corps of Engineers (US ACoE). However, Section 401 of the CWA prevents a federal agency from issuing a permit for any activity that may result in a discharge to water (including wetlands) until the state where the discharge would occur has granted or waived Section 401 certification. Denying 401 certification prevents the federal permit or license from being issued. This process ensures that the issuance of federal permits will not

¹⁹ Nutrient Management Program, WEST VIRGINIA DEPARTMENT OF AGRICULTURE, <https://agriculture.wv.gov/divisions/regulatoryandenvironmental/Moorefield/Pages/Nutrient-Management.aspx>.

²⁰ 47 WV CSR 10-13 (2012).

²¹ West Virginia's Wetlands, Uncommon, Valuable Wildlands, U.S. FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/Documents%5CWest-Virginias-Wetlands-Uncommon-Valuable-Wildlands.pdf>, at 7.

²² West Virginia Code Chapter 22-11.

²³ West Virginia's Wetlands, Uncommon, Valuable Wildlands, US FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/Documents%5CWest-Virginias-Wetlands-Uncommon-Valuable-Wildlands.pdf>, at 15.

violate state water quality standards.²⁴ If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue. See if the operation has sought the appropriate permits. If they haven't, submit a complaint to the appropriate agency.

For more information about the U.S. ACoE role in 404 wetland permitting, see [USACE's Regulatory website](#).²⁵

For more information about state water quality certification, see [WVDEP's 401 Certification website](#).²⁶

To locate wetlands in your area, see U.S. Fish & Wildlife Service's [Wetlands Mapper](#).²⁷

Water Quality

Water Quality Standards²⁸

See 47 CSR 2

Impaired Water Bodies

Section 303(d) of the Clean Water Act requires states to perform annual water quality assessments²⁹ and identify waters not meeting the state's water quality standards.³⁰ Since states are supposed to protect waters from further degradation, it may be important to note if a CAFO or large AFO is seeking to discharge into or near an already impaired water of the state. You can find this information in [WVDEP's Integrated Report \(IR\) Water Quality Assessment Report](#)³¹ or [EPA's West Virginia Water Quality Assessment Report](#).³²

²⁴ 401 Certification, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.dep.wv.gov/WWE/Programs/Pages/401Certification.aspx>.

²⁵ Regulatory, U.S. ARMY CORPS OF ENGINEERS HUNTINGTON DISTRICT, <https://www.lrh.usace.army.mil/Missions/Regulatory.aspx>

²⁶ 401 Certification, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://dep.wv.gov/WWE/Programs/Pages/401Certification.aspx>

²⁷ Wetland Mapper, US FISH AND WILDLIFE SERVICE, <https://www.fws.gov/wetlands/data/Mapper.html>

²⁸ 47 CSR 2.

²⁹ CWA § 305(b).

³⁰ CWA § 303(d).

³¹ Integrated Water Quality Monitoring and Assessment Report, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, http://www.dep.wv.gov/WWE/watershed/IR/Pages/303d_305b.aspx.

³² West Virginia water Quality Assessment Report, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, https://ofmpub.epa.gov/waters10/attains_state.control?p_state=WV.

Groundwater

WV Code § 22-12

The Clean Water Act calls for the regulation of discharges to surface waters, but states have varying degrees of protection for groundwater. West Virginia's primary groundwater legislation is the Groundwater Protection Act.³³ The state acknowledges that over 90 percent of its rural population depends on groundwater for drinking water and that many activities can impair groundwater. The Act calls for the establishment of groundwater quality standards and protection programs.

Groundwater Remediation Program: 47 CSR 12

Groundwater Protection Plans: 47 CSR 58

Groundwater Variances: 47 CSR 57

Underground Injection Control: 47 CSR 13

Construction & Stormwater

While an AFO may not need an NPDES permit to operate, its construction may require an NPDES permit. The federal Clean Water Act calls for the control of pollution generated by runoff from construction activity.³⁴ WVDEP administers stormwater construction permits for the state and anyone planning a construction project that will disturb more than one acre of earth must obtain a NPDES Construction Stormwater General Permit, prepare a Storm Water Pollution Prevention Plan (SWPPP), and implement BMPs to minimize runoff.³⁵

For more information, see [WVDEP's Construction Stormwater website](#)³⁶ or the [2019 Construction Stormwater Permit](#).³⁷

Karst

³³ WV Code § 22-12.

³⁴ CWA § 402; 40 C.F.R. §§ 122.26, 450.

³⁵ See Erosion and Sediment Control Best Management Practice Manual (2015), WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/ESC_BMP.aspx.

³⁶ Construction Stormwater, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION <https://dep.wv.gov/WWE/Programs/stormwater/csw/Pages/home.aspx>

³⁷ Construction Stormwater Permit (2019), WV Department of Environmental Protection, <https://dep.wv.gov/WWE/Programs/stormwater/csw/Documents/Reissued%20permit%20WV0115924%201-10-19%20signed.pdf>

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

West Virginia has a considerable amount of karst terrain—particularly in the southeastern portion of the state—but the state does not have any laws or regulations on the subject. The only requirement is that projects located in the following counties must submit a Karst Mitigation Plan with their application for a Construction Stormwater General Permit: Berkley, Fayette (south of CR 25), Grant, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Mineral, Monroe, Morgan, Monongalia (east of I-79), Pendleton, Pocahontas, Randolph, Summers, and Tucker.

AIR

Some states regulate AFO air pollution or odor more than others. Unfortunately, West Virginia is not one of them.

Air Quality & Odors

45 CSR 13, 45 CSR 4, WV Code § 22-5

Industrial livestock operations are a significant source of odors and air pollutants like ammonia, hydrogen sulfide, particulate matter, volatile organic compounds, and other contaminants. In theory, animal agriculture may be regulated, but the industry has largely evaded meaningful regulation. While federal air-related laws and regulations do not require much from CAFOs, states may develop their own regulations for CAFO emissions. Unfortunately, West Virginia does little to regulate air pollution or odors from AFOs. The existing regulations to “prevent and control the discharge of pollutants into the open air which causes or contributes to an objectionable odor or odors” specifically exempts odors from agricultural operations.³⁸

³⁸ 45 CSR 4-1, 4-7.

One minor AFO-related air regulation in West Virginia is that some poultry operations that use incinerators to dispose of dead animals must apply for a Rule 13 minor source air permit from the WVDEP's Division of Air Quality.³⁹ Unfortunately, most operations are exempt. For more information, see 45 CSR 13 or [WVDEP's Rule 13 Guidance for Poultry Incinerators](#).⁴⁰

ZONING & LAND USE

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

Zoning

WV Code § 8A

A municipality or county may regulate land use in its jurisdiction and enact zoning ordinances that promote the general public welfare, health, safety, comfort, and morals as well as the preservation of agricultural land.⁴¹ West Virginia has broad authority to regulate land use absent an explicit prohibition. Some states have used similar authority to pass ordinances such as increased setbacks or moratoriums to help protect communities from the impacts of industrial livestock operations. However, West Virginia limits the enactment of zoning ordinances that could impact agricultural operations. WV Code § 8A-7-5 states:

“No zoning ordinance may prohibit alterations or additions to or replacements of buildings or structures owned by any farm [], or the use of land presently owned by any farm [] but not used for agricultural [] purposes, or the use or acquisition of additional land which may be required for the continuing development or expansion of any agricultural [] present or future agricultural [] use.”

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

³⁹ 45 CSR 13.

⁴⁰ Rule 13 Guidance for Poultry Incinerators, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://dep.wv.gov/daq/permitting/Documents/Policies/GuidanceForPoultry.pdf>.

⁴¹ WV Code § 8A-7.

Setbacks

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

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

PUBLIC PARTICIPATION

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

Public Notice

Depending on the type of permit, WVDEP may be required to issue public notice. In this case, public notice will be published in the community where the proposed permit will take effect, generally in a local newspaper. You can also subscribe to [WVDEP's public notice email list](#) to receive public notices,⁴² and can review WVDEP's public notices [here](#).⁴³

For more information on public participation in the permitting process see [WVDEP's Citizen's Guide](#).⁴⁴

Note: Nutrient Management Plans are not subject to public notice.

Comments and Requesting a Public Hearing⁴⁵

Concerned community members have limited time to submit comments after publication of notice. This process moves very quickly, so it's important to submit

⁴² DEP Enhanced Mailing List – Public Archive for DEP Public Notice, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://apps.dep.wv.gov/MLists2/Archive/index.cfm?listID=1>.

⁴³ Public Notice Archives, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://apps.dep.wv.gov/MLists2/Archive/index.cfm?listID=1>.

⁴⁴ Citizens Guide, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <http://www.dep.wv.gov/environmental-advocate/Documents/DEP2008CitizensGuide.pdf>.

⁴⁵ Citizens Guide, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, at 14, <http://www.dep.wv.gov/environmental-advocate/Documents/DEP2008CitizensGuide.pdf>.

written comments on time and to the correct contact person. Deadlines and contact information will be included in the public notice. When submitting written comments, review the draft permit as well as the permit fact sheet in order to provide an informed comment. Instructions for obtaining copies of these documents will be included in the public notice. During the public comment period, you should also request a public hearing. These requests should be directed to the Public Information Office as soon as possible to demonstrate “significant interest” in the permit decision.

Permit Appeals

The Environmental Quality Board hears appeals regarding permits issued or denied by WVDEP. Appeals must be filed within 30 days of the issuance of the permit or order.⁴⁶ For more information, see WV Department of Environmental Quality Board’s website [The Appeal Process](#).⁴⁷

NUISANCE & RIGHT TO FARM LAW

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

Nuisance Claims

A nuisance is something that interferes with the right to use and enjoy real property. Noise, odors, dust, smoke, pollution, pests, illness, or light could be considered nuisances. Many individuals and communities describe CAFOs as nuisances. CAFOs can decrease local property values, prevent people from using and enjoying their homes or yards, and can impair human health. While this sounds like a perfect example of a nuisance, many states—including West Virginia—have enacted laws to shield livestock operations from nuisance liability.

State Right-to-Farm Laws

WV Code § 19-19-4

⁴⁶ West Virginia Environmental Quality Board, <http://www.wveqb.org/appeal.asp>.

⁴⁷ Id.

Right to farm laws exist in most states and seek to protect farmers from nuisance suits brought by neighbors and communities experiencing unpleasant effects of agricultural production. West Virginia's right to farm law states:

The conduct of agriculture upon agricultural land shall not be deemed adverse to other use or uses of adjoining or neighboring land, whether such other land be used or occupied for residential, commercial, business or for governmental, or any uses other than agricultural. No complaint or right of action shall be maintained in any court of this state against the owner or operator of agricultural lands adverse to the conduct of agriculture upon agricultural lands, unless:

- (1) The complainant's use and occupancy of land of the complainant has existed upon his adjoining or neighboring land before the agricultural operation complained of upon the agricultural land; and
- (2) The conduct of such agricultural operation complained of has caused or will cause actual physical damage to the person or property of the owner or occupant of such adjoining or neighboring lands.⁴⁸

ENFORCEMENT

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

[Submitting Complaints & Reporting Violations](#)

If an AFO is violating its permit, NMP, or any other regulation, you can submit a complaint to the WVDEP via the agency's electronic [Environmental Enforcement](#)

⁴⁸ WV Code § 19-19-4.

[Complaint Form](#).⁴⁹ If an operation is discharging waste, the agency's spill hotline is 1-800-642-3074.⁵⁰

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

Note: Any complaints are public record.

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

Inspections

Environmental Enforcement (EE), a subgroup of the WVDEP, is responsible for enforcing WV/NPDES permits.⁵¹ WVDEP's policy is to inspect registered CAFOs at least once during the five-year permit period.⁵² However, since only three CAFOs have NPDES permits in West Virginia, proactive CAFO inspection is uncommon. This highlights the importance of understanding AFO regulations and submitting complaints when the operation is not in compliance.

See [Environmental Enforcement Compliance Monitoring Staff Contacts](#).⁵³

PUBLIC INFORMATION LAWS

One of the first steps when dealing with a new, expanding, or problematic industrial livestock operation is gathering information. It can entail finding information online, submitting record requests, and attending public meetings. Fortunately, there are

⁴⁹ File an Electronic Complaint, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://dep.wv.gov/WWE/ee/geninfo/Pages/complaints.aspx>

⁵⁰ Report a Spill or Accidental Discharge, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, <https://dep.wv.gov/WWE/ee/geninfo/Pages/spillnotification.aspx>.

⁵¹ Permitting for Environmental Results, NPDES Profile: West Virginia, U.S. ENVIRONMENTAL PROTECTION AGENCY, at 22, https://www3.epa.gov/npdes/pubs/westvirginia_final_profile.pdf.

⁵² West Virginia Animal agriculture Program Assessment, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/sites/production/files/2015-09/documents/westvirginiaanimalagricultureprogramassessment.pdf>, at 4-5 (2015).

⁵³ <https://dep.wv.gov/WWE/ee/ww/Pages/ComplianceMonitoringStaffContacts.aspx>.

state laws that are intended to increase government transparency and provide public access to certain types of information.

Freedom of Information Act

5 U.S.C. § 552

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.

West Virginia Freedom of Information Act (WV FOIA)

WV Code § 29B-1

The WV FOIA is intended to provide access to information about the workings of the government, and applies to all state, county, and municipal officers, governing bodies, agencies, departments, boards, commissions, and any other entities created or funded by state or local authority.

For more information, see the state [Attorney General's WV FOIA handbook](#).⁵⁴ [The National Freedom of Information Coalition](#) also provides West Virginia FOIA resources, including governmental contacts and sample letters.⁵⁵

FOIA requests can be submitted by mail or electronically. Although no specific form is required to make a FOIA request, a sample West Virginia FOIA request is available [here](#).⁵⁶ West Virginia's State Treasurer's Office also produced a FOIA request form, available [here](#).⁵⁷ Agencies are required to respond to records requests within five business days.⁵⁸ The WV FOIA does not include an explicit fee waiver provision.

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

⁵⁴ The West Virginia Freedom of Information Act, STATE OF WEST VIRGINIA OFFICE OF THE ATTORNEY GENERAL, <http://www.ago.wv.gov/Documents/FOIA%20Handbook%20PDF.pdf>.

⁵⁵ West Virginia FOI Resources, NATIONAL FREEDOM OF INFORMATION COALITION, <http://www.nfoic.org/west-virginia-foi-resources>.

⁵⁶ West Virginia Sample FOIA Request, NATIONAL FREEDOM OF INFORMATION COALITION, <http://www.nfoic.org/west-virginia-sample-foia-request>.

⁵⁷ West Virginia State Treasurer's Office FOIA Request, http://www.wvtreasury.com/portals/wvtreasury/content/Legal/FOIA/WVSTO_FOIA_Request_Form.pdf.

⁵⁸ WV Code § 29-B-1-3(d).

West Virginia Open Governmental Proceedings Act (WVOGPA)

WV Code § 6-9A

The WVOGPA legislates how public meetings are conducted. It declares that:

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.⁵⁹

It states that all meetings of any governing body shall be open to the public—with a few exceptions—and outlines adequate notice of the meetings. For more about exemptions, notice, meeting minute requirements, and enforcement of the act, see WV Code § 9-9A.

PROPERTY TAX APPEAL

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

Property Tax Appeal

WV Code § 11-1A, 1C, 10A, WV Constitution Art. X

West Virginia property owners may file an appeal when they believe that their property assessment does not reflect the market value of the property. Every West Virginia county has a tax assessor who determines the fair market value of all real

⁵⁹ WV Code § 9-9A-1.

estate property on an annual basis.⁶⁰ Property owners wishing to appeal their assessment must appear before their county's Board of Equalization. Hearings for tax assessment appeals are only conducted in February and appeals must be submitted within eight days of receiving your notice. Be sure to review your county's specific procedures and policies; if you fail to accurately apply for relief, you waive your right to relief for that year.

For more information about assessment processes and West Virginia's property taxes, see the [Guide for County Assessors](#).⁶¹

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](#).⁶²

[State and Nonprofit Organizations](#)

The Center for Progressive Reform

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

Phone: (202) 747-0698

West Virginia Rivers Coalition

<http://www.wvrivers.org/home>

Phone: (304) 637-7201

West Virginia Environmental Council

<http://wvecouncil.org/>

⁶⁰ WV Const., Art. X, S. 1.

⁶¹ Guide for County Assessors, West Virginia, STATE TAX DEPARTMENT, <https://tax.wv.gov/Documents/TaxForms/CountyAssessorsGuide.pdf>

⁶² Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

Phone: (304) 414-0143

Appalachian Mountain Advocates

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

Phone: (304) 645-9006

Chesapeake Legal Alliance

<http://www.chesapeakelegal.org/home>

Phone: (410) 216-9441

Land Use and Sustainable Development Law Clinic

West Virginia University's College of Law

<http://landuse.law.wvu.edu/>

Phone: (304) 293-4633