



**SRAP**  
Socially Responsible  
Agriculture Project

## Guide to Confronting Concentrated Animal Feeding Operations in

# WYOMING



# Guide to Confronting Concentrated Animal Feeding Operations in WYOMING

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

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

### **SRAP HELP HOTLINE**

Facing a factory farm? Contact SRAP for support.

[www.sraproject.org/help](http://www.sraproject.org/help)

(503) 362-8303

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# CAFO Guide Overview

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

## EDUCATE YOURSELF

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

## LOOK FOR PUBLIC NOTICES

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

## REQUEST AND REVIEW PUBLIC RECORDS

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

## NEW OR EXPANDING CAFOS

### REVIEW ZONING ORDINANCES

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

### REVIEW PERMIT APPLICATIONS

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

### COLLECT DATA

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

## EXISTING CAFOS

### REVIEW CAFO DOCUMENTS

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

### COLLECT DATA

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

### MONITOR CAFOS AND BUILD A RECORD

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

### FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

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

### ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

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

### SEEK LEGAL ADVICE

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

### IDENTIFY IMPAIRED WATER BODIES

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

### CONTACT STATE OR LOCAL HEALTH DEPARTMENT

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

### CHECK FOR PUBLIC FINANCING

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

### TRACK PUBLIC NOTICES

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

### REVIEW STATE RIGHT-TO-FARM LAW

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

### AGENCIES & STATE DEFINITIONS

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

### SEEK PROPERTY TAX ADJUSTMENT

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

### ENGAGE IN RULEMAKING PROCESSES

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

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## INTRODUCTION: CAFOs IN WYOMING

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Animal agriculture in Wyoming is dominated by cattle and sheep operations. According to 2012 U.S. Census data, Wyoming is home to over 1.3 million cattle and calves and over 350,000 sheep and lambs, ranking 14<sup>th</sup> and 4<sup>th</sup>, respectively, in cattle and sheep inventory amongst the 50 states.<sup>1</sup> The state ranks 30<sup>th</sup> for hog production, 46<sup>th</sup> for milk production, and 49<sup>th</sup> for poultry and eggs. Agriculture plays a prominent role in the state's economy and identity. There are almost 12,000 farm operations in the state and Wyoming has the largest average size of farms and ranches nationwide.<sup>2</sup> Agriculture is consistently one of the top three industries in the state, along with minerals and tourism, and the majority of revenues generated are from livestock production.<sup>3</sup>

Much of central Wyoming is free from concentrated animal feeding operation (CAFO) impacts; most of the state's factory farms are densely clustered in southeast Wyoming, near Laramie and Cheyenne, and northwest Wyoming, near Yellowstone National Park in Park County.<sup>4</sup> According to the U.S. Environmental Protection Agency (EPA), Wyoming has 49 CAFOs, 40 of which have Wyoming Pollution Discharge Elimination System (WYPDES) permits under the National Pollutant Discharge Elimination System (NPDES) required by the Clean Water Act.<sup>5</sup> The state requires that all large CAFOs obtain a WYPDES permit or receive a "no potential to discharge" determination by the state. Large CAFOs are also required to submit a Nutrient Management Plan (NMP) and provide public notice when they apply for a WYPDES permit. The state is also one of a handful of states that have passed legislation specific to swine facilities.

The Wyoming Department of Environmental Quality (WDEQ) is the primary agency responsible for regulating CAFOs and administering the WYPDES program in the

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<sup>1</sup> National Agricultural Statistics Service, 2018 State Agriculture Overview, [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=WYOMING](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WYOMING).

<sup>2</sup> USDA's National Agricultural Statistics Service Wyoming Field Office, [https://www.nass.usda.gov/Statistics\\_by\\_State/Wyoming/About\\_Us/index.php](https://www.nass.usda.gov/Statistics_by_State/Wyoming/About_Us/index.php).

<sup>3</sup> Id.; National Agricultural Statistics Service, 2018 State Agriculture Overview, [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=WYOMING](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WYOMING).

<sup>4</sup> Food & Water Watch, Factory Farm Map, <https://factoryfarmmap.org/#animal:all;location:cvvvvvvWY;year:2012>

<sup>5</sup> NPDES CAFO Permitting Status Report, U.S. Environmental Protection Agency, [https://www.epa.gov/sites/production/files/2018-05/documents/tracksum\\_endyear\\_2017.pdf](https://www.epa.gov/sites/production/files/2018-05/documents/tracksum_endyear_2017.pdf).

state. However, the Wyoming Department of Agriculture (WDA) Natural Resource Division is the primary agency for voluntary programs that encourage CAFOs to minimize pollution of natural resources. This system of joint agency responsibility and voluntary compliance makes it difficult to get answers and find points of contact when dealing with a proposed or existing livestock operation.

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## AGENCIES & STATE DEFINITIONS

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

### Agencies

#### **Wyoming Department of Environmental Quality (WDEQ)**

WDEQ oversees CAFO permitting in Wyoming to ensure that large livestock operations do not negatively impact waters of the state and that animal waste is properly treated.<sup>6</sup> The agency works with CAFOs under three regulatory programs: WYPDES, the Water and Wastewater Construction Permitting Program, and the Air Quality Permitting Program.<sup>7</sup> WDEQ's website lists three primary contacts for CAFO permits<sup>8</sup>:

- WYPDES permit questions: contact Roland Peterson at 307-777-7090 or [roland.peterson@wyo.gov](mailto:roland.peterson@wyo.gov).
- Nutrient management plan questions: contact Jon Deutscher at 307-675-5635 or [jon.deutscher@wyo.gov](mailto:jon.deutscher@wyo.gov).
- Construction permit questions: contact James Brough at 307-335-6961 or [james.brough@wyo.gov](mailto:james.brough@wyo.gov).

#### **Wyoming Department of Agriculture (WDA)**

WDA "assists the citizens of Wyoming to live safe and healthy lives, promote and preserve [the] agricultural community, be responsible stewards of [the state's]

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<sup>6</sup> CAFOs, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/cafos/>.

<sup>7</sup> *Id.*

<sup>8</sup> Program Contacts, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/cafos/resources/program-contacts/>.

natural resources, and achieve integrity in the marketplace.”<sup>9</sup> Although WDA is heavily involved in Wyoming’s agricultural industry, the agency does not handle CAFO permitting or regulation—WDEQ retains control over CAFO issues.

### **Conservation Districts**

There are 34 local conservation districts in Wyoming that “assist landowners and resource users with conservation practices and provide leadership in natural resource management issues and efforts.”<sup>10</sup> Even though conservation districts do not have regulatory or enforcement authority on CAFO issues, residents may consider contacting their district given their expertise in local soil and water quality. Learn more about Wyoming’s local conservation districts on [Wyoming’s Association of Conservation District’s website](#).<sup>11</sup>

### **U.S. EPA Region 3**

Wyoming is in EPA Region 8, which also has authority over Colorado, Montana, Utah, North Dakota, South Dakota, and 27 tribal nations.<sup>12</sup> Most states have authority to issue their own water pollution permits under federally-delegated NPDES programs, including Wyoming and its WYPDES permitting program.<sup>13</sup> While most CAFO regulation—if there is any—happens at the state level, the EPA has some oversight authority regarding the state’s implementation of federal laws. Thus, EPA regional contacts are important reference points for those who are tracking specific large-scale livestock operations or have other questions about a state CAFO program’s compliance with federal law. See the Federal Guide for information on the interplay between states and the U.S. EPA.

Learn more about EPA Region 8 and its involvement in Wyoming on its [website](#).<sup>14</sup>

### **Definitions & Designations**

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<sup>9</sup> About Us, Wyoming Department of Agriculture, <http://wyagric.state.wy.us/about-us/general-information/about-us>.

<sup>10</sup> Conservation Districts, Wyoming Association of Conservation Districts, <http://www.conservewy.com/DISTRICTS.html>.

<sup>11</sup> *Id.*

<sup>12</sup> EPA Region 8 (Mountains and Plains), U.S. Environmental Protection Agency, <https://www.epa.gov/aboutepa/epa-region-8-mountains-and-plains>.

<sup>13</sup> NPDES State Program Information, U.S. Environmental Protection Agency, <https://www.epa.gov/npdes/npdes-state-program-information>.

<sup>14</sup> EPA in Wyoming, U.S. Environmental Protection Agency, <https://www.epa.gov/wy>.



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

*2 Wyo. Code R., Appendix G (b)(iii)*

In Wyoming, an AFO is defined as a lot or facility where “animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.”<sup>15</sup> In addition, two or more AFOs under common ownership are considered a single AFO if they adjoin each other or use a common area or system for waste disposal.<sup>16</sup>

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

*2 Wyo. Code R., Appendix G (a)–(c)*

Wyoming differentiates AFOs from CAFOs based on the number of animals at the facility and whether the operation is a significant contributor of pollutants to surface waters of the state.<sup>17</sup> Surface waters of the state “means all perennial, intermittent and ephemeral defined drainages, lakes, reservoirs and wetlands which are not man-made retention ponds used for the treatment of municipal, agricultural or industrial waste; and all other bodies of surface water, either public or private which are wholly or partially within the boundaries of the state.”<sup>18</sup>

WDEQ also uses the number of animals at a facility to determine whether an operation is a CAFO and if so, the type of CAFO. Wyoming defines CAFOs as medium or large. An AFO is a medium CAFO if it stables or confines the number of animals listed in Table 1 and either discharges pollutants “into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device,” or discharges pollutants “directly into surface waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.”<sup>19</sup> An AFO is defined as a large CAFO, on the other hand, if the operation confines or stables at least the numbers of animals listed in Table 1.<sup>20</sup>

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<sup>15</sup> 2 Wyo. Code R. Appendix G (b)(iii).

<sup>16</sup> *Id.*

<sup>17</sup> 2 Wyo. Code R. Appendix G (c).

<sup>18</sup> 1 Wyo. Code R. § 2 (b)(xlvii).

<sup>19</sup> 2 Wyo. Code R., Appendix G (b)(vii).

<sup>20</sup> *Id.* at Appendix G (b)(v).



**Table 1: CAFO Size**

<b>Animal</b>	<b>Medium CAFO</b>	<b>Large CAFO</b>
Dairy cows	200–699	700
Veal calves	300–999	1,000
Buffalo/Bison	450–1,499	1,500
Cattle (heifers, steers, bulls, cow/calf pairs)	300–999	1,000
Swine ≥ 55 pounds	750–2,499	2,500
Swine < 55 pounds	3,000–9,999	10,000
Horses	150–499	500
Sheep or lambs	3,000–9,999	10,000
Turkeys	16,500–54,999	55,000
Laying hens or broilers (if AFO uses liquid manure handling system)	9,000–29,999	30,000
Chickens other than laying hens (if AFO does NOT use liquid manure handling system)	37,500–124,999	125,000
Laying hens (if AFO does NOT use liquid manure handling system)	25,000–81,999	82,000
Ducks (if AFO does NOT use liquid manure handling system)	10,000–29,999	30,000
Ducks (if AFO uses liquid manure handling system)	1,500–4,999	5,000

The director of the Wyoming Department of Environmental Quality (WDEQ) may designate any AFO as a CAFO if he/she determines that the facility is a significant contributor of pollutants to surface waters of the state.<sup>21</sup> The director may also designate an AFO as a CAFO at the request of the EPA Regional Administrator if the administrator determines that “one or more pollutants in the AFOs discharge contributes to an impairment in a downstream or adjacent state water that is impaired for that pollutant.”<sup>22</sup> The director is also required to consider the following factors before designating an AFO as a CAFO:

- The size of the AFO and the amount of wastes reaching surface waters of the

<sup>21</sup> 2 Wyo. Code R., Appendix G(c).

<sup>22</sup> *Id.*

state;

- The location of the AFO relative to surface waters of the state;
- The means of conveyance of animal wastes and process waste waters into surface waters of the state;
- The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into surface waters of the state;
- Other relevant factors.<sup>23</sup>

In either case, WDEQ regulations require that the director or Regional Administrator conduct an on-site inspection of the operation and conclude that the facility can and should be regulated under the WYPDES permit program before making the designation.<sup>24</sup>

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## WATER

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

### **Water Quality**

#### *Chapter 1 of Wyoming's Water Quality Rules and Regulations*

One goal of the Clean Water Act is to improve the quality of impaired waterways. To further this goal, the Act requires states to perform biennial water quality assessments<sup>25</sup> and identify waters that fail to meet the state's water quality standards.<sup>26</sup> A water body is considered impaired if effluent limits outlined in CWA Section 301 are not effective in attaining the water body's designated use.<sup>27</sup> Wyoming's designated uses are drinking water, fisheries, aquatic life other than fish, fish consumption, recreation, wildlife, agriculture, industry, and scenic value.<sup>28</sup>

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<sup>23</sup> *Id.* at Appendix G (c)(i)(A-E).

<sup>24</sup> *Id.* at Appendix G (c)(ii).

<sup>25</sup> CWA § 305(b).

<sup>26</sup> CWA § 303(d).

<sup>27</sup> Wyoming's 2016/2018 Integrated 305(b) and 303(d) Report, [http://sgirt.webfactional.com/media/attachments/Water%20Quality/Water%20Quality%20Assessment/Reports/2016-2018\\_Integrated-305b-and-303d-Report\\_EPA-Submit\\_2018-0815.pdf](http://sgirt.webfactional.com/media/attachments/Water%20Quality/Water%20Quality%20Assessment/Reports/2016-2018_Integrated-305b-and-303d-Report_EPA-Submit_2018-0815.pdf).

<sup>28</sup> *Id.* at 3.

Wyoming's waters are classified using a tiered, 5-class system. Category 1 waters support all their designated uses and have no water quality threats or impairments.<sup>29</sup> Category 2 waters support some designated uses, but the status of others is unknown.<sup>30</sup> Category 3 waters lack sufficient data to make use support determinations, while Category 4 waters have a designated use that is impaired or threatened and either a TMDL has been completed, other pollution control measures are expected, or a non-pollutant is the source of impairment.<sup>31</sup> Finally, Category 5 waters have one or more uses impaired or threatened and require a TMDL.<sup>32</sup> The leading causes of impairment in Wyoming's lakes and streams are bacterial contamination, selenium, sediment, and phosphate.<sup>33</sup>

The impairment status and quality of the water that a CAFO may discharge into or is located near is important because the Clean Water Act requires discharge permits to utilize effluent limits that incorporate and protect water quality standards.<sup>34</sup> Community monitors should be aware of a water body's impairment status when reviewing a nearby CAFO's permit so that comments can advocate for keeping clean water clean and improving impaired waters. You can find this information in [Wyoming's 2016/2018 Integrated 305\(b\) and 303\(d\) Report](#)<sup>35</sup> on [WDEQ's Water Quality Assessment website](#)<sup>36</sup> or [EPA's Wyoming Water Quality Assessment Report](#).<sup>37</sup> However, water quality standards and discharge permits can be complex, so consider seeking advice from organizations or individuals with expertise in the area.

## **Wyoming Pollution Discharge Elimination System (WYPDES)**

### *Chapter 2 of Wyoming's Water Quality Rules and Regulations*

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<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 161.

<sup>34</sup> See 33 U.S.C. §§ 1311(a), 1342(a).

<sup>35</sup> Wyoming's 2016/2018 Integrated 305(b) and 303(d) Report, [http://sgirt.webfactional.com/media/attachments/Water%20Quality/Water%20Quality%20Assessment/Reports/2016-2018\\_Integrated-305b-and-303d-Report\\_EPA-Submit\\_2018-0815.pdf](http://sgirt.webfactional.com/media/attachments/Water%20Quality/Water%20Quality%20Assessment/Reports/2016-2018_Integrated-305b-and-303d-Report_EPA-Submit_2018-0815.pdf).

<sup>36</sup> Water Quality Assessment, Wyoming Department of Environmental Quality, <http://sgirt.webfactional.com/wqd/water-quality-assessment/>.

<sup>37</sup> Wyoming Water Quality Assessment Report, U.S. Environmental Protection Agency, [https://ofmpub.epa.gov/waters10/attains\\_state.control?p\\_state=WY](https://ofmpub.epa.gov/waters10/attains_state.control?p_state=WY).

The U.S. EPA has delegated authority to Wyoming to implement the National Pollutant Discharge Elimination System (NPDES) at the state level under the Clean Water Act. WDEQ is responsible for permitting activities that discharge pollutants into surface waters of the state. WYPDES permits attempt to maintain the quality of healthy waters and improve the quality of impaired waters by specifying the maximum amounts or concentrations of pollutants and wastes that may be discharged into surface waters of the state.<sup>38</sup> Wyoming designates CAFOs as point sources that require WYPDES permit coverage, which applies to all animals in confinement at the operation and all manure, litter, and process wastewater generated by the animals or their production.<sup>39</sup>

Although WDEQ issues general discharge permits to some industries, each CAFO in Wyoming must apply for facility-specific individual permits called WYPDES Discharge Permits.<sup>40</sup> All CAFOs regulated under WYPDES Discharge Permits must comply with the following requirements, along with other requirements that can be found in WDEQ regulations at 2 Wyo. Code R. Appendix G (i).

- Permitted CAFOs must develop and implement a nutrient management plan (NMP) that complies with the requirements in 2 Wyo. Code R. Appendix G (i)(ii), including but not limited to<sup>41</sup>:
  - Ensuring adequate storage of manure, litter, and process wastewater.
  - Ensuring proper management of mortalities.
  - Identifying appropriate conservation practices and protocols to apply manure, litter, or process wastewater.
- CAFOs must satisfy recordkeeping requirements for inspections, manure and wastewater storage and application, mortalities, compliance with regulations, and testing procedures and results.<sup>42</sup>
- CAFOs must submit annual reports containing information on number and type of animals; manure, litter, and wastewater discharge and land application; and estimates of total manure generated and transferred.<sup>43</sup>
- CAFOs must implement best management practices (BMPs) for land application of manure, litter, and process wastewater.<sup>44</sup>
- CAFOs must comply with effluent limitations, which differ for horses and

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<sup>38</sup> 2 Wyo. Code R. § 1 (c).

<sup>39</sup> 2 Wyo. Code R. Appendix G (a).

<sup>40</sup> *Id.* at Appendix G (d)(i).

<sup>41</sup> *Id.* at Appendix G (i)(ii).

<sup>42</sup> *Id.* at Appendix G (i)(iii).

<sup>43</sup> *Id.* at Appendix G (i)(v).

<sup>44</sup> *Id.* at Appendix G (i)(j)(ii).



sheep; ducks; buffalo, dairy cows, and cattle other than veal calves; swine, poultry, and veal calves.<sup>45</sup>

Note: While WYPDES permits require an NMP as part of the application process, the state follows a narrative rate approach and does not appear to require that NMPs be developed or reviewed by a certified planner.

### **Setbacks**

Manure, litter, and process wastewater may not be stockpiled or applied within 100 feet of any downgradient surface water, open tile line intake structure, sinkhole, agricultural well head, or conduit to surface waters unless there is a 35-foot buffer or the operator can demonstrate the setback or buffer is not necessary.

### **No Potential to Discharge Determination for Large CAFOs**

*Chapter 2, Appendix G (d)(ii)*

Upon request from a CAFO owner, the Director of WDEQ may “make a case-specific determination that a large CAFO has no potential to discharge pollutants to surface waters of the state.”<sup>46</sup> “No potential to discharge” means there is no potential for CAFO manure, litter, or process wastewater to be added to surface waters of the state under any circumstances or climatic conditions.<sup>47</sup> A CAFO that receives a no potential to discharge determination does not require WYPDES permit coverage,<sup>48</sup> but is still liable for the consequences of an actual discharge.<sup>49</sup> According to WDEQ, “any unpermitted CAFO that discharges pollutants into surface waters of the state is in violation of the CWA, the Environmental Quality Act,” and WDEQ regulations.<sup>50</sup> If a CAFO receives a no potential to discharge determination, the WDEQ Director retains authority to subsequently require WYPDES coverage if circumstances at the facility change, new information is available, or if there is other reason to determine that the CAFO has potential to discharge.<sup>51</sup>

WDEQ regulations establish a process for the Director to make no potential to discharge determinations. First, the Director must issue a public notice stating that a

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<sup>45</sup> *Id.* at Appendix G (i)(k-n).

<sup>46</sup> *Id.* at Appendix G (f)(i).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at Appendix G (g)(vi).

<sup>49</sup> *Id.* at Appendix G (f)(vi).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at Appendix G (f)(vii).

no potential to discharge request has been received.<sup>52</sup> The notice must include a fact sheet that describes the type of facility or activity at issue, summarizes the factual basis that the request is based on, and describes the procedures for reaching a final decision on the request.<sup>53</sup> Next, the Director must consider the potential for discharges from the CAFO's production and land application areas based on all information submitted to the administrative record.<sup>54</sup> He or she also must consider the CAFO's record of prior discharges, and the CAFO may not receive a no potential to discharge determination if it has had a discharge within five years prior to the date of the request.<sup>55</sup> Finally, the Director must notify any CAFO seeking a no potential to discharge determination of his or her final decision within 90 days of receiving the request.<sup>56</sup>

## Wetlands

Wetlands are critically important environmental resources that are susceptible to impairment from CAFO pollution and require strong federal and state protections. Depending on the details of a new or expanding livestock operation, residents may have an opportunity to review, comment on, and challenge the harmful impacts of CAFOs on wetlands. Generally, any modification to wetlands, including depositing fill, excavating, or draining, will require a federal 404 permit from the U.S. Army Corps of Engineers (US ACoE). However, Section 401 of the CWA prevents a federal agency from issuing a permit for any activity that may result in a discharge to water (including wetlands) until the state where the discharge would occur has granted or waived Section 401 certification. Denying 401 certification prevents the federal permit or license from being issued. This process ensures that the issuance of federal permits will not violate state water quality standards. If a new or existing facility is engaging in or will engage in activities that will impact wetlands, raise the issue.

Water quality certification under Section 401 of the CWA is required for any activity or project that may result in a discharge into waters of the United States.<sup>57</sup> 401 Certifications typically cover projects involving dredge and fill of wetlands, stream

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<sup>52</sup> *Id.* at Appendix G (f)(iii).

<sup>53</sup> *Id.* at Appendix G (f)(iii)(A-C).

<sup>54</sup> *Id.* at Appendix G (f)(iv).

<sup>55</sup> *Id.* at Appendix G (f)(i).

<sup>56</sup> *Id.* at Appendix G (f)(iv).

<sup>57</sup> 33 U.S.C. § 1341.

bank alteration, bridge construction, and detention basin and pond construction.<sup>58</sup> WDEQ issues 401 Certifications if the proposed discharge will be in compliance with surface water quality standards contained in Chapter 1 of the Wyoming Water Quality Rules and Regulations.<sup>59</sup> Before issuance of the 401 Certification, however, the public is given an opportunity to review and comment on the proposed activity.<sup>60</sup> If you're concerned that a CAFO's 401 Certification project will negatively impact a wetland, you should raise the issue via comment and encourage others to do the same. Expressing concerns about harmful wetland impacts in comments increases the chance that WDEQ will impose conditions on the 401 Certification that protect the wetland and mitigate negative impacts.

Learn more about the U.S. ACoE role in 404 wetland permitting on [USACE's Regulatory Website](#).<sup>61</sup>

Learn more about state water quality certification on the [WDEQ's 401 Certification website](#).<sup>62</sup>

Locate wetlands in your area using U.S. Fish & Wildlife Service's [Wetlands Mapper](#).<sup>63</sup>

## **[Groundwater](#)**

*See Chapter 8 & 9 of Wyoming's Water Quality Rules and Regulations*

The Clean Water Act regulates discharges to surface waters, but states have varying degrees of protection for groundwater. Wyoming's primary groundwater legislation is Chapter 8 and 9 of Wyoming's Water Quality Rules and Regulations. The state prescribes groundwater quality standards and regulates activities that could threaten or violate these standards. Chapter 9 sets out permit requirements for the

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<sup>58</sup> 401 Certification, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/401-certification/>.

<sup>59</sup> *Id.*

<sup>60</sup> Wyoming's 401 Certification Process, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/401-certification/resources/wyomings-401-certification-process/>.

<sup>61</sup> Wyoming Regulatory Office, U.S. Army Corps of Engineers, <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Wyoming/>.

<sup>62</sup> 401 Certification, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/401-certification/>.

<sup>63</sup> Wetland Mapper, US Fish and Wildlife Service, <https://www.fws.gov/wetlands/data/Mapper.html>

discharge of waste to the subsurface of the state but the regulation appears to address only commercial, municipal, and industrial wastes—it does not include agricultural waste.

Wyoming's groundwater protections do not appear to impact CAFOs but do provide a basis for groundwater monitoring in sensitive groundwater areas.

### **Construction & Stormwater**

#### *Chapter 3 of Wyoming Water Quality Rules and Regulations*

WDEQ issues two types of general stormwater construction permits: large and small.<sup>64</sup> CAFOs that disturb five or more acres of land during construction require a Large Construction General Permit, which a CAFO operator can obtain by completing a notice of intent, a storm water pollution prevention plan (SWPPP), a permit fee, and a map showing access to the facility from a public road.<sup>65</sup> CAFOs that disturb between one and five acres during construction require a Small Construction General Permit; however, no application is required to obtain the permit as long as the CAFO owner pays the permit fee.<sup>66</sup>

For more details about permit requirements, see the [Large Construction Permit](#)<sup>67</sup> and the [Small Construction Permit](#).<sup>68</sup>

In addition to the general stormwater construction permits, CAFOs require a WQRR

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<sup>64</sup> Construction General Permits, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/storm-water-permitting/resources/construction-general-permits/>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Large Construction General Permit to Discharge Storm Water Associated with Large Construction Activity under the Wyoming Pollutant Discharge Elimination System, WYPDES Permit WYR10-0000, [http://deq.wyoming.gov/media/attachments/Water%20Quality/Storm%20Water%20Permitting%20Construction%20General%20Permits/2016LCGP\\_final\\_with\\_sig\\_with\\_TOC\\_links.pdf](http://deq.wyoming.gov/media/attachments/Water%20Quality/Storm%20Water%20Permitting%20Construction%20General%20Permits/2016LCGP_final_with_sig_with_TOC_links.pdf).

<sup>68</sup> General Permit to Discharge Stormwater Associated with Small Construction Activity under the Wyoming Pollutant Discharge Elimination System, WYPDES Permit WYR10-A000, [http://sgirt.webfactional.com/filesearch/content/Water%20Quality%20Division/Programs/WYPDES/sub/Discharge%20Permitting/Storm%20Water%20Permitting-Construction%20General%20Permits/WQD-WYPDES-Stormwater\\_Small-construction-general-permit%20\\_2013-06.pdf](http://sgirt.webfactional.com/filesearch/content/Water%20Quality%20Division/Programs/WYPDES/sub/Discharge%20Permitting/Storm%20Water%20Permitting-Construction%20General%20Permits/WQD-WYPDES-Stormwater_Small-construction-general-permit%20_2013-06.pdf).



Chapter 3 Permit to Construct if the facility will include a wastewater retention system.<sup>69</sup> “The retention system includes the retention basin, any earthwork necessary to create the retention basin and the collection ditches necessary to collect the wastewater to the retention basin. The Chapter 3 Permit to Construct Application must be signed by the owner of the facility and submitted to WDEQ’s WQD. The application must be accompanied by three copies of the design report, plans and specifications prepared by the NRCS in compliance with the requirements of Chapter 11, WQD Rules and Regulations, Policy 13.29.4 and NRCS Practice Standard 313.”<sup>70</sup>

### **Swine-Specific Regulations**

*Chapter 20 of Wyoming Water Quality Rules and Regulations*  
*Wyoming Statutes § 35-11-302*

Wyoming has placed additional requirements on swine CAFOs in the state. To apply for a swine CAFO permit, the applicant must develop a construction plan, operation plan, animal waste management plan, and financial assurance plan in accordance with Chapter 20, Sections 7– 11.<sup>71</sup> The applicant must file a notice of intent with WDEQ, allow the public to comment on the proposed permit, and WDEQ will hold a public hearing if the agency finds significant public interest in the issue.<sup>72</sup> The Chapter also imposes additional setback requirements prohibiting swine CAFOs and their waste storage facilities from being sited within one mile of an occupied dwelling, school, or incorporated municipality boundary without the consent of the respective home owner, school board, and governing body.<sup>73</sup> Additionally, swine confinement areas and their waste storage and treatment facilities may not be within ¼ mile of a water well permitted for current domestic purposes without consent of the well owner or within ¼ mile of a perennial stream unless the operator proves that potential adverse water quality effects can be avoided.<sup>74</sup>

For more details about swine specific requirements in Wyoming, see Chapter 20 of

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<sup>69</sup> Memorandum for Water and Wastewater Section Policy Manual, Wyoming Department of Environmental Quality,  
[http://deq.wyoming.gov/media/attachments/Water%20Quality/CAFOS%20/Rules%20%26%20Regulations/Policy-05\\_07\\_02.pdf](http://deq.wyoming.gov/media/attachments/Water%20Quality/CAFOS%20/Rules%20%26%20Regulations/Policy-05_07_02.pdf).

<sup>70</sup> *Id.*

<sup>71</sup> 20 Wyo. Code R. §§ 7–11.

<sup>72</sup> *Id.* at § 13(a–c).

<sup>73</sup> *Id.* at § 24(a–c).

<sup>74</sup> *Id.* at § 24(d–e).

the state's Water Quality Rules and Regulations.

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## AIR

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

*Chapter 2, Section 11 of Wyoming Air Quality Standards and Regulations*

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.

Wyoming does not have specific air quality permits for CAFOs. While CAFOs are not subject to state level air quality permitting, they are subject to the state's Ambient Standards for Odors which requires that odor emissions at a property line must be undetectable by the scentometer at a dilution of seven. For more details, see Chapter 2, Section 11 of Wyoming's Air Quality Standards and Regulations.

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## ZONING & LAND USE

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

### [Zoning](#)

Cities and counties enact zoning ordinances to control where certain land uses can take place and the conditions under which those land uses can operate. Local governments solicit public participation in zoning actions, which allows residents to advocate for restrictions against CAFOs and separation of agricultural zones from residential and business zones. Most city and county websites describe applicable zoning ordinances and proposed zoning actions.

Local governments in Wyoming have considerable authority to regulate and restrict

different types of land uses because Wyoming is a “home rule” state.<sup>75</sup> Unlike other states, home rule states delegate significant power from state government to local governments, giving local government wide latitude in handling local affairs.<sup>76</sup> Thus, Wyoming localities can enact measures to restrict conditions under which a CAFOs can locate or expand in their jurisdictions. However, any state law uniformly applicable to all cities and towns cannot be changed or ignored by localities under home rule.<sup>77</sup> Consequently, if a local ordinance conflicts with a state statute, the state law preempts and voids the local ordinance.<sup>78</sup> For example, Wyoming’s Right-to-Farm Law—discussed in the following section—prohibits private nuisance claims against agricultural operations that satisfy certain conditions, regardless of what local ordinances say about agricultural nuisances.

The Wyoming Association of Municipalities provides a useful [home rule handbook](#)<sup>79</sup> that provides details about the limits of home rule, powers of municipalities, and the constitutional basis for home rule in Wyoming.

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## PUBLIC PARTICIPATION

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

### **[Public Notice](#)**

*Chapter 2, Sections 15 & 16 of Wyoming Water Quality Rules and Regulations*

Wyoming requires that WYPDES permits undergo public notice for at least 30 days prior to coverage so that residents may participate in the process and voice their concerns about issuing or denying the permit. The public notice must take one or more of the following forms:

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<sup>75</sup> Home Rule in Wyoming: A Municipal Official’s Guide, Wyoming Association of Municipalities, at Page 5, <http://wyomuni.org/wp-content/uploads/2017/01/Home-Rule.pdf>.

<sup>76</sup> *Id.* at 3.

<sup>77</sup> *Id.* at 7.

<sup>78</sup> *Id.*

<sup>79</sup> Wyoming Association of Municipalities, Home Rule in Wyoming: A Municipal Official’s Guide, <http://wyomuni.org/wp-content/uploads/2017/01/Home-Rule.pdf>.

- Published in a newspaper for the county where the operation is located;
- Published in a statewide newspaper;
- Posted at the post office or other municipal public places near the proposed operation; or
- Posted at the entrance of the facility.

WYDEQ also publishes WYPDES permit public notices on its [website](#).<sup>80</sup> During the notice period, the public may submit comments on the draft permit and request a public meeting.

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## NUISANCE & RIGHT-TO-FARM LAW

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*When state and federal regulations fail to protect people from the harmful impacts of industrial livestock facilities, these individuals may consider filing a nuisance lawsuit. Unfortunately, Wyoming'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 since they can decrease local property values, prevent people from using and enjoying their homes or yards, and can impair human health. While this sounds like a perfect example of a nuisance, many states—including Wyoming—have enacted laws to shield livestock operations from nuisance liability.

### State Right-to-Farm Laws

*Wyo. Stat. Ann. § 11-44-104*

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.

Wyoming, along with most other states, has a right-to-farm law that prohibits public and private nuisance lawsuits against agricultural operations in certain

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<sup>80</sup> Water – WYPDES, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/public-notices/water-wypdes/>.



circumstances. The purpose of the law is to “protect agriculture as a vital part of the economy of Wyoming.”<sup>81</sup> The Wyoming Right to Farm and Ranch Act provides that “a farm or ranch operation shall not be found to be a public or private nuisance by reason of that operation if” the farm or ranch:

- “Conforms to generally accepted agricultural management practices; and
- Existed before a change in the land use adjacent to the farm or ranch land and the farm or ranch would not have been a nuisance before the change in land use or occupancy occurred.”<sup>82</sup>

Thus, the law protects Wyoming CAFOs against public and private nuisance claims as long as it satisfies two conditions: first, the operation must utilize generally accepted agricultural management practices like berms and waste treatment systems; second, the operation must have existed before adjacent changes in land use that led to nuisance conditions. The second condition prevents individuals from coming to the nuisance. Consequently, individuals and communities suffering CAFO impacts are unlikely to bring successful nuisance claims unless the CAFO’s management practices are inadequate or the CAFO began operating after neighbors began using their properties. This demonstrates the importance of reporting CAFO violations as soon as they occur in order to give residents a chance at a nuisance claim.

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## ENFORCEMENT

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*Since CAFOs are rarely eager to self-report violations of local, state, or federal law, it’s often up to citizens to report violations and push for enforcement. A record of compliance issues demonstrates that penalties or enforcement actions are necessary.*

### Enforcement

Wyoming authorizes WDEQ to penalize facilities that violate permit conditions and water quality regulations. According to Wyo. Stat. Ann. § 35-11-901, any person who violates any provision of the Environmental Quality Act, or any rule, regulation, standard or permit adopted thereunder, is subject to a maximum penalty of \$10,000, a temporary or permanent injunction, or both.<sup>83</sup> However, WDEQ typically issues a

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<sup>81</sup> Wyo. Stat. Ann. § 11-44-104.

<sup>82</sup> Wyo. Stat. Ann. § 11-44-103.

<sup>83</sup> Wyo. Stat. Ann. § 35-11-901(a).

notice of violation (NOV) with the opportunity to correct the violation before penalizing the violator.<sup>84</sup> A court of competent jurisdiction determines penalty amounts and whether injunctive relief is warranted when violations occur.<sup>85</sup>

### **Where to Find Data**

The Wyoming Department of Environmental Quality provides a list of enforcement actions on its website and users can apply a filter that displays enforcement actions related to water quality.<sup>86</sup> However, the site does not allow users to filter for CAFO enforcement actions and the action titles contain permit holder names, but not the type of permit or facility. With thousands of enforcement actions listed, those interested in researching CAFOs' permit violations may find the tool difficult to use. Unfortunately, WDEQ does not provide any other information about enforcement of CAFO regulations on its website.

### **Inspections**

WDEQ inspects permits for large CAFOs on a three-year cycle, except facilities that have the potential to be major contributors of wastes to state waters and facilities that WDEQ has received complaints about, which should be inspected more frequently.<sup>87</sup> WYPDES Inspectors typically schedule inspections two to three days ahead of time, but notice of inspection is not required.<sup>88</sup> Once on site, WYPDES Inspectors perform a records review and site evaluation.<sup>89</sup> Inspectors review records by examining the WYPDES permit materials, NMP, Certification of Containment, and operator-generated data logs to ensure compliance with the permit and WQRR requirements.<sup>90</sup> The site evaluation, on the other hand, is an examination of the production area, manure and waste water application area, and mortality disposal area to ensure compliance with permit conditions, the NMP, and WQRR requirements.<sup>91</sup> Failure to pass the inspection can result in revocation of the facility's

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<sup>84</sup> Enforcement Actions, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/resources/enforcement-actions/>.

<sup>85</sup> Wyo. Stat. Ann. § 35-11-901(a)(ii).

<sup>86</sup> Enforcement Actions, Wyoming Department of Environmental Quality, <http://deq.wyoming.gov/wqd/resources/enforcement-actions/>.

<sup>87</sup> WYPDES CAFO Inspection, Wyoming Department of Environmental Quality, [http://deq.wyoming.gov/media/attachments/Water%20Quality/WYPDES/Discharge%20Permitting/Inspection%20Information/WYPDES\\_CAFO\\_Inspection\\_Outreach\\_Doc.pdf](http://deq.wyoming.gov/media/attachments/Water%20Quality/WYPDES/Discharge%20Permitting/Inspection%20Information/WYPDES_CAFO_Inspection_Outreach_Doc.pdf).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

WYPDES permit.<sup>92</sup>

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## PUBLIC INFORMATION LAWS

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*One of the first steps when dealing with a new, expanding, or problematic industrial livestock operation is gathering information, which can entail finding information online, submitting record requests, and attending public meetings. Fortunately, state laws increase government transparency and provide public access to certain types of information.*

### **Freedom of Information Act**

5 U.S.C. § 552

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

### **Wyoming Public Record Law**

Wyo. Stat. § 16-4-202

Wyoming's open records law requires public records to be open for inspection by any person during business hours of the state entity or political subdivision.<sup>93</sup> A public record includes any information or communications "in a physical form created, accepted, or obtained by the state or any agency, institution or political subdivision of the state in furtherance of its official function and transaction of public business which is not privileged or confidential by law."<sup>94</sup> The custodian of public records may deny a resident the right to inspect records listed under Wyo. Stat. Ann. § 16-4-203(b-d) or inspections that would be contrary to any state statute, any federal statute or regulation, or a court order.<sup>95</sup> Finally, the party making the request must bear the reasonable costs of producing a copy of the public record.<sup>96</sup>

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<sup>92</sup> *Id.*

<sup>93</sup> Wyo. Stat. Ann. § 16-4-202(a).

<sup>94</sup> Wyo. Stat. Ann. § 16-4-201(v).

<sup>95</sup> Wyo. Stat. Ann. § 16-4-203.

<sup>96</sup> *Id.* at § 16-4-202(d)(i).

## Wyoming Open Meeting Law

*Wyo. Stat. § 16-4-403*

Wyoming's open meetings law states:

All meetings of the governing body of an agency are public meetings, open to the public at all times, except as otherwise provided. No action of a governing body of an agency shall be taken except during a public meeting following notice of the meeting in accordance with this act. Action taken at a meeting not in conformity with this act is null and void and not merely voidable.

The law also stipulates that agency actions can only be taken in public meetings and that minutes detailing the action and meeting must be recorded and published.<sup>97</sup> Residents should try to attend meetings about CAFO matters in their community and remain vigilant regarding the governing body's adherence to the state's open meeting law.

The National Freedom of Information Coalition provides state-specific resources for Wyoming, including summaries of Wyoming's open meetings and records laws, a Wyoming FOIA hotline, and contact information for Wyoming FOIA resources.<sup>98</sup> In addition, the Reporters Committee for Freedom of the Press provides a guide to open government law in Wyoming that contains detailed information on the open government statute, exemptions and limitations, and procedures for utilizing the law.<sup>99</sup> Although public entities like municipalities, counties, and agencies must comply with FOIA, local government bodies may have different ways of accepting and providing public records. Residents interested in obtaining public records should contact local government officers or check government websites for more detailed information on record request procedures.

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<sup>97</sup> Wyo. Stat. Ann. § 16-4-403(a-c).

<sup>98</sup> Wyoming FOIA Resources, National Freedom of Information Coalition, <http://www.nfoic.org/wyoming-foi-resources>.

<sup>99</sup> Wyoming – Open Government Guide, Reporters Committee for Freedom of the Press, <https://www.rcfp.org/wyoming-open-government-guide>.



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## OTHER RESOURCES

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*Protecting your community from factory farms is difficult. Avoid working alone by building relationships in your community, consulting with experts, and collaborating with groups working on similar issues.*

### **Socially Responsible Agriculture Project (SRAP)**

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at [www.sraproject.org](http://www.sraproject.org), and contact SRAP for support at 503-632-8303 or through our [website](#).<sup>100</sup>

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<sup>100</sup> Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>