

# COMBATTING FACTORY FARMS IN YOUR COMMUNITY

PUBLIC JUSTICE  

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FOOD PROJECT



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# INTRODUCTION

Industrial-scale animal agriculture continues to expand across the United States resulting in more communities who suffer existing factory farms or face industry proposals to site a new or expand an existing slaughterhouse, processing plant, feeding operation, or other factory farm facility in or near their community. This guide is an introduction to steps you can take to combat the harms of factory farms in your community. It is meant to provide information on what your options are when facilities and government officials fail to protect your community. Consider these best practices for how



to preserve your rights and deal with a facility that has threatened to operate or has been operating in a manner that adversely affects your health, well-being, property value, and the enjoyment of your home and community.

**Note: This guide is for informational purposes only and not for the purpose of providing legal advice. Because the law changes and can vary from state to state, this information is not guaranteed to be up to date or applicable to your exact situation.**

Community groups are essential advocates for preventing and reducing the harms stemming from factory farms. Despite federal, state, and local laws and regulations across the country aimed at protecting public health and the environment, government agencies and elected officials often turn a blind eye in favor of industry profits, or else are underfunded and lack training. Therefore, it often falls to impacted communities to engage in the political process and otherwise protect themselves through the legal system. In addition to helping you preserve your legal rights, this guide discusses ways to enhance your community's advocacy and provides resources for how to engage the legal system to protect your health and the environment.

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## PRESERVE YOUR RIGHTS

When facing the threat of harm from a new or expanding facility, documenting what you and your community is experiencing, participating in hearings and other public platforms, and commenting on decisions relevant to the operation of a factory farm or other facility in your community can both prove effective for your advocacy and critical to preserve your rights should litigation become necessary. Thus, regardless of whether the harms you or your community face ultimately are resolved in or out of court, taking the following steps are essential to ensuring your best chances of obtaining your desired outcome.

## DOCUMENT

**Gathering as much information as possible about the harms you and your community face is the necessary first step to addressing your situation.** Collect as much data as possible by taking pictures from your property or public property of any actions by the facility that you believe cause harm. **Remember to put safety first if you are photographing in a hostile environment.** Create a log with dates, times, and descriptions of the activities of the factory farm. Make note of any impacts on your quality of life and the quality of the environment. For example, describe any odors, air and water contamination, decreased presence of wildlife (or wildlife habitat), and any other harms stemming from the factory farm. Also note whether the changes coincide with activities at the facility, such as disposing or applying waste onto land. As a starting point, if you or members of your community utilize private well water, have it sampled for nitrates and bacteria, which are common pollutants resulting from factory farming. This will set a baseline and allow for periodic monitoring. If you live near a body of water and resources allow, work with local or state-based organizations to learn how to best take and utilize water samples. Groups like the Waterkeeper Alliance and the Sierra Club are excellent for this.

**Any information you can gather to show the severe, pervasive, and continual nature of the harms you face should be documented in order to support your advocacy and preserve your rights.** The more you are able to document, the greater your ability to convey your story and the harms you face from the new or expanding facility. In addition, this process may result in some of your best evidence to show any violations of law should they exist. By extension, this information can help an attorney assist you in navigating the universe of laws and regulations that, if enforced, could help alleviate the harms that your community face. Tailor your documentation process to the needs of your community based on the types of factory farming operations present.



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## ADVOCATE IN PUBLIC FORUMS

Use what you have learned through your research and documentation to lodge formal complaints to relevant regulatory agencies and elected officials. Continue to do so every time you document new and continued activities that create harmful conditions you suspect may be violations of law or that harm your property values or quality of life. As soon as possible from the time you learn of a new or expanding facility, begin utilizing the information you have gathered to engage in the political process. Identify at the local, state, and federal level which governmental entities have the authority over the funding or approval of the factory farm at issue and engage those decision-makers through phone calls, meetings, emails, and letters to the editor.

Most critically, utilize the information you have researched and documented to inform and accompany your public comments when opportunities arise to engage with and influence decision-makers considering whether to approve a new or expanding facility in your community. As discussed in the legal overview below, public comment periods arise at the local, state, and federal level when facilities come into place or expand. These public comment periods present opportunities to state your concerns, present reasons to deny or modify the proposal, and ask decision-makers to prioritize community health and the environment. It is crucial that you engage in



this process. If you do not comment on proposed decisions, the harms you face may go unnoticed and unaddressed. Critically, a court will not consider these issues later because—according to legal standards—you have not given the decision-makers the opportunity to consider your concerns.

Similarly, there may be public hearings that you should attend in order to state your concerns, provide the facts that support you, and ask the governmental body to do what you want them to do. Meeting with elected or appointed decision-makers before the hearing can be an effective tool to persuade them to see things your way. Similarly, without attending and commenting at a public hearing, a court may not consider these issues later.

## COMMUNICATE EFFECTIVELY WITH GOVERNMENT OFFICIALS

When communicating with government officials, always document the communication in writing and confirm the content of phone calls and in-person conversations with a follow-up letter or email.

Undeniably, engaging in advocacy to alleviate the harms facing your community may prove frustrating at times. However, communications that could even appear rude or threatening to a government official—or an outside observer—can prove disastrous for your ability to obtain the relief you need. When communicating with government officials, consider carefully the fact that a rude email, letter, or phone call may not only make it harder for them to work with you, but may also be read in court in front a judge or jury who may lose sympathy for your cause. While you should always engage in passionate advocacy, be careful to speak with government officials how you would want them to speak to you. Indeed, government staff can often be overworked and underpaid, so at all times engage with them in a courteous and respectful manner. Always keeping this in mind will help you achieve the best results in your advocacy as well as preserve the possibility of the best outcome in a potential lawsuit.

## ENHANCE YOUR ADVOCACY

### ORGANIZE

Advocating as a group of like-minded neighbors and allies is one of the best ways to achieve the relief you desire. An organized group can help demonstrate to government decision-makers that the problem of the factory farm or other facility is not one of personalized grievances, but a real threat to the health of the community and the environment at large. Organizing as a group provides an atmosphere of mutual support and division of labor, shows decision-makers they should support their community (i.e. voters) by acting in the community's interest, and helps preserve your rights by supporting the argument that the threat of harm is significant under applicable legal standards. Factory farm decisions are often about power and who wields it; you can maximize your power by organizing as a community that is stronger together.



Organizing by working with pre-existing community-based organizations in your region or state can enhance your advocacy by providing support, training, and experience with the issues you face. There are many groups working on addressing the harms that stem from factory farms throughout the country that may be able to provide support to your community. Contacting organizations that focus on issues in your state or region will typically lead to the best results. Depending on where you are, the following organizations may be able to provide you and your community assistance in organizing:

- Land Stewardship Project (Minnesota)
- Iowa Citizens for Community Improvement
- Missouri Rural Crisis Center
- North Carolina Environmental Justice Network
- Center on Race Poverty and the Environment (California)
- Leadership Counsel for Justice & Accountability (California)
- Friends of Family Farmers (Oregon)
- Dakota Rural Action
- Midwest Environmental Advocates (Wisconsin)
- Ohio Organizing Collaborative

In addition, there may be national organizations that have a regional or local chapter in your area, such as the Socially Responsible Agriculture Project, Waterkeeper Alliance, the Sierra Club, Western Organization of Resource Councils, or local or state-based organizations that may be able to either support you or connect you with a group who can.



## ACCESS INFORMATION

To enhance your ability to document the factory farm, submit comments, and speak at public hearings, you may be able to access public documents under state and federal transparency laws (open-records laws). These laws vary significantly from state to state, however, they generally provide a means to obtain records of government decision-making surrounding a new or expanding factory farm. These laws can help you access documents providing important information on inspections, violations, and other information that may exist due to the legal obligations that result from the siting or expansion of a facility. This information can inform your advocacy and should be utilized in your public comments on government decisions pertaining to the factory farm in your community. For more information, organizations like the National Freedom of Information Coalition and Public Citizen provide resources on how to utilize these laws, including template information requests.

For federal public records, the Freedom of Information Act applies. Federal records pertaining to factory farms can exist when the federal government is involved in the approval or funding of the facility. The National Freedom of Information Coalition has sample templates. When submitting a request for documents under the Freedom of Information Act, some things that may be useful to ask for include the following:

- Records of government-backed loans and the documents demonstrating the agency's decision-making in funding the construction, operation, or expansion of the factory farm.
- Records of any environmental assessments or other documents demonstrating environmental review of the construction, operation, or expansion of the factory farm.
- Records of violations or enforcement actions taken against the factory farm.
- Records of permit applications or other documents submitted by the factory farm to the government in furtherance of its construction, operation, or expansion.
- Records of government approval of the construction, operation, or expansion of the factory farm, including documents demonstrating the government's decision-making.

In addition to using these records in your advocacy, reviewing these records may provide ideas for other information to ask for that will help demonstrate that the factory farm or other facility is not in the interests of your community. There is more information on how to make a FOIA request at [www.foia.gov/how-to.html](http://www.foia.gov/how-to.html) and on the individual agency websites.

Records requests are most successful when you engage in a back and forth with the applicable government agency to tailor the request narrowly. For a community facing the threat of a factory farm, however, this generally can be accomplished by tailoring the records request to the particular facilities at issue. Nevertheless, the government may deny your request or produce documents so thoroughly redacted as to be useless to you. In this instance, many open-records laws (including the Freedom of Information Act) have a way to appeal the denial or redactions administratively, or at the very least, force the government to justify its position. Retaining an attorney may be useful for this process as an attorney may be helpful in drafting the request, appealing any denial of the request, or representing you in court should you decide to litigate the government's response to your request. This may be a particularly compelling option if you are also seeking to combat the proposed or expanding factory farm in court under other laws.

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## RETAIN AN ATTORNEY

You and your community may want to consider retaining a local attorney who can provide you advice and representation. Discussing the issues you face with an attorney early on may help guide you through what to look for in your process of documentation and what to highlight in your public comments. An attorney may also be able to bring litigation on behalf of your community to try to remedy the harms of the factory farm through the legal system. If you would like Public Justice to help connect you with a local attorney who is licensed to practice in your state, [please click on this link](#) to provide information and a Public Justice staff member will contact you.

# UNDERSTAND THE LEGAL LANDSCAPE

This overview is meant to give individuals and communities a general understanding of typical laws and requirements that factory farms and government entities must abide by when a facility is proposed to be sited or expand. **However, this introduction is for informational purposes only and not for the purpose of providing legal advice.** It is designed to give you information on what your options may be when facilities and government officials don't do enough to protect your community. [A more extensive guide is available](#) to help attorneys screen and evaluate cases against potential harms from both new and expanding facilities.



## SITING & PERMITS

Most factory farms and other facilities are required to operate under state or federal pollution control permits and state and local land use permits. The laws covering these permits when issued and renewed present excellent opportunities to comment on the impacts and offer evidence to request additional analysis and changes to the permit that could help solve your problem. Often times, citizens have the right to challenge the adequacy of the permit in court. Local construction permit laws, municipal and county zoning regulations and ordinances, and each state (and often each county) address factory farming differently. Find out how your state and county refer to animal agriculture in their laws and what they require on the part of the factory farm.

## ENVIRONMENTAL REVIEW

Environmental review requirements are often triggered by local permitting decisions under state or federal law. Generally speaking, these laws require analysis of project-level and cumulative environmental and health impacts, and some impose a duty to mitigate or avoid impacts. Federal review occurs under the National Environmental Policy Act if there is federal approval or funding of a factory farm or other facility. Many states have a similar or equivalent statute. These laws present opportunities to comment on the impacts and offer evidence to request additional analysis and mitigation. Typically, citizens have the right to challenge the adequacy of the environmental review in court. In addition, it is possible that an endangered or threatened species lives within the area of a new or expanding facility. If so, there may be additional environmental review requirements and opportunities for comment under the Endangered Species Act (at the federal level) or its state equivalent (for most states). [Find out if there are any federally-listed species in your state or county here](#) and determine if species or habitat are present near the facility.

## AIR & WATER QUALITY

Depending on the circumstances of the new or expanding facility, federal or state level permits may be required under statutes such as the Clean Air Act, Clean Water Act, or their state equivalents. These may provide further opportunity for public comment and the terms of the permit, or even the issuance of the permit itself, may be challengeable in court. In addition, when facilities store waste in unlined lagoons or apply waste to land application fields, groundwater can become contaminated with nitrates and other pollutants. In such instances, the Resource Conservation and Recovery Act or its state equivalents can be a strong tool for communities seeking to use litigation to stop a facility to remedy their harms. Request information about proposed or existing facilities through open-records laws. If resources allow, use an Environmental Protection Agency-approved lab to test well water and other groundwater sources to help determine if violations of these statutes are present.

## NUISANCE

A nuisance occurs when a property owner's activities unreasonably interfere with another's use and enjoyment of their property. A nuisance lawsuit against an existing factory farm has the potential to correct odor, flies, pollution, and other impacts. A property owner can also obtain monetary damages for reduced property value and harm to property use and enjoyment.

Almost all states and local governments, however, have passed so-called "Right to Farm" laws and ordinances to help factory farms and take away residents' property rights, but some courts have declared these laws unconstitutional. Generally, the property owner suing for nuisance must have lived in the home before the facility began the operations that cause the nuisance. Find out if there is a "Right to Farm" law in your state or locality and consult with an attorney to determine whether a potential nuisance suit against the factory farm facility is viable.

## TAKEAWAYS

Consulting an experienced attorney early on about the issues that your community face due to a polluting factory farm or the proposed or expanding presence of a factory farm can help direct your advocacy efforts and facilitate the potential for the best outcome if litigation becomes necessary. Legal actions in court, however, are not always the best solution. Individuals and communities can do a lot on their own to try to influence decision-makers and promote a safe and healthy environment. Organizing as a community to maximize your power is often times the most effective way to stop a proposed and expanding factory farm. You and your community should use their opportunities to preserve their rights and enhance their advocacy regardless of whether litigation is ultimately necessary to protect health and the environment. **If you and your community are in need of additional resources and information, or would like Public Justice to help connect you with a local attorney who is licensed to practice in your state, please click on this link to provide information and a Public Justice staff member will contact you.**

