

**MINUTES
LIVESTOCK FACILITY SITING TECHNICAL EXPERT COMMITTEE**

**May 17, 2023
2811 Agriculture Drive and
ZoomGov Meeting**

Item #1 Call to Order—Roll Call, Open Meeting Notice, Introductions

Call to Order

The Livestock Facility Siting Technical Expert Committee (Committee) met in person and via videoconference on **May 17, 2023**. The meeting was preceded by public notice as required by Wis. Stat. § 19.84. The meeting was called to order at **9:00 am**.

Members Present

Members: Scott Frank, Nikki Wagner, Travis Drier, Emily Micolichek, Curtis Hedman, Mike Koles, Matt Zangl and Gaylord Olson were present. AV Roth and Jay Heeg were absent.

Staff: Tim Jackson, Lisa Trumble, Alex Elias, and Katy Smith of DATCP were present.

The Committee reviewed the minutes of the April 11, 2023 meeting of the Committee and offered no revisions.

Item #2 Review ATCP 51 general standards

Tim Jackson, DATCP, reviewed [ATCP 51.34\(3\) & \(4\), Wis. Admin Rule](#), and [ATCP 51.10\(3\), Wis. Admin Rule](#) with the Committee. Jackson also read the ATCP 51 items identified in the DATCP Biennial Report Reviewing Administrative Rules dated March 31st, 2021 for 2017 Wisconsin Act 108 conflicts. The report is available within the [May 17th Meeting Materials](#) on the Livestock Facility Siting Technical Expert Committee's [webpage](#).

Jackson reviewed historical recommendations of previously convened Technical Expert Committees and facilitated a discussion on the livestock facility siting general standards. The Committee discussion guide is available within the [May 17th Meeting Materials](#) which are accessible on the Committee's [webpage](#).

The Committee and Livestock Facility Siting Program Staff discussed the following:

- 1. Does the language for records of decision in ATCP 51.34(3), 51.34(5) and 51.36 clearly lay out how local permitting authorities should construct their record of decision?**
 - a. Could a template provided by DATCP upon request, or as an appendix to ATCP 51, help keep a consistent expectation for this record?**

The Committee discussed that an adequate record of decision should be of benefit to both producers and livestock facility operators. An adequate record of decision contains clear statements of how a local decision was made using evidence in the record. Adequate records of decision are particularly important in the event of an appeal. A DATCP template and/or example would assist permitting authorities in crafting their records of decision.

2. How can ATCP 51 clarify the use and procedure for permit modifications?

The Committee concluded that permit modifications should be defined and a process by which to implement them locally needs to be clarified in the rule. Currently, permitting authorities must interpret for themselves how to handle modifications to a permit, which can lead to inconsistencies both with other permitting authorities and within a single permitting jurisdiction. Procedurally, the Committee advised that requiring review of entire applications for minor changes to a facility's operation are neither an efficient nor favorable option for permitting authorities or facility operators. The Committee discussed previous TEC recommendations which included minor expansions, less than 20% increases in animal units, as permit modifications. Previous TECs cited to minor expansions needing only nutrient management updates and not changes or additions to engineered structures. Previously proposed legislative updates to s. 93.90, Wis. Stats. echoed the need to define and establish a procedure for permit modifications. The Committee identified that WPDES permitted CAFOs have an allowance for planned expansions during their permit term, which may have factored into previous TEC discussions.

3. Is the language in ATCP 51.34(4)(a) sufficient for supporting the monitoring efforts of local permitting authorities?

a. Should DATCP provide a monitoring checklist upon request, or as an appendix to ATCP 51, to give consistency to monitoring efforts?

The Committee discussed that the language in ATCP 51.34(4)(a) leaves monitoring for compliance with standards as an option for permitting authorities. Establishing monitoring as an option, as opposed to a requirement, accommodates smaller permitting authorities who may not have the capacity to conduct regular monitoring activities. Consequently, this allows for different frequencies of monitoring activities amongst permitting authorities and facilities. The Committee identified that this may lead to some facilities being monitored more often than others, even within the same jurisdiction. However, other factors reflect the need to monitor more frequently such as topography, location and historic compliance. The Committee agreed that department should provide guidance for local permitting authorities on how to conduct compliance monitoring for permitted facilities.

4. Should ATCP 51 further clarify the procedure for adopting more stringent local standards under ATCP 51.10(3)?

a. If yes, what can ATCP 51 achieve while maintaining the intent of statute?

The Committee expressed that the current authority in statute is already clarified, to an extent, in ATCP 51. The nature of more stringent local standards and especially the qualification for the findings of fact are intrinsically difficult for the department to assist with. The Committee discussed that the department cannot reasonably provide distinctive guidance on this issue without case law to cite as they are not administering a local ordinance, nor accountable if it is challenged. If case law is ever established for more stringent local standards, the department could summarize and share it.

5. Do members of the TEC have any other general standards that they would like to discuss?

The Committee discussed the ATCP 51 items identified in the DATCP Biennial Report Reviewing Administrative Rules dated March 31st, 2021 for 2017 Wisconsin Act 108 conflicts. The Committee asked when the department intended to act on their identified rulemaking plans. Jackson and Smith were not able to identify of a formalized schedule for acting as stated in the report. The Committee discussed making a recommendation to show support for the department acting on their plans soon.

The Committee also discussed the department's model ordinance which was created shortly after the promulgation of ATCP 51. The model may be outdated as a result of other legislative changes, including but not limited to 2017 Act 67.

The Committee identified areas of the application form in Appendix A of ATCP 51 which could use refinement. Both the larger area map and smaller site map require labels for all livestock structures. This duplicate requirement to identify those structures on both maps is not necessary and it can be difficult for an operator or consultant to fit the labels legibly on the larger area map. The Committee also raised a concern that the applicant certification which qualifies their application complies with other local ordinances is easily overlooked. It should require an additional acknowledgement, such as a checkbox or initials, so the applicant is more likely to see it and check all other local ordinance requirements. This will also more adequately represent the applicant's efforts to the local permitting authority.

The Committee offered the following recommendations:

The Committee, as a consensus, recommends the department clarify how local permitting authorities should construct their record of decision, including a template or example.

The Committee, as a consensus, recommends the department define "permit modification" and provide both clarity in rule and guidance for processing permit modifications.

The Committee, as a consensus, recommends the definition of "permit modification" established by the department not include increases in animal units above the previously approved number.

The Committee, as a consensus, recommends the department provide guidance for local permitting authorities to monitor for compliance after a local approval is given.

The Committee, as a consensus, recommends the department follow through with its plans to align ATCP 51 with statute and code as identified in its Biennial Report Reviewing Administrative Rules dated March 31, 2021.

The Committee, as a consensus, recommends the department revisit and revise model ordinances for both licensing and zoning.

The Committee, as a consensus, recommends that the requirement for structure labels on the Area Map, item #9 in the application, be removed.

The Committee, as a consensus, recommends that the department add a required acknowledgement from the applicant that the application complies with all other local ordinances.

Item #3 Review and finalize all TEC recommendations

The Committee was provided with a copy of all their previous recommendations (made during official meetings between December of 2022 and May of 2023) before the meeting. Jackson asked the Committee if they had any revisions to propose. The committee offered no revisions.

Item #4 Planning for the next TEC meeting

Jackson informed the Committee that the next meeting would be the final one and will be for the Committee to propose edits to a draft of the Committee final report. In the next few days, the Committee can expect a draft of this meeting's minutes to review. Afterwards, the Committee should expect a survey of their availability for the week of June 12th along with a draft of the final report to review.

The meeting was adjourned at 11:45 am.