State of Wisconsin
Livestock Facility Siting Review Board

Meeting Agenda

State of Wisconsin
Livestock Facility Siting Review Board Meeting

12:00 PM
February 27, 2015
DATCP Board Room
2811 Agriculture Drive, Madison

12:00 p.m. CALL TO ORDER— Andy Johnson, LFSRB Chair
- Open meeting notice
- Approval of agenda
- Approval of May 16, 2014 minutes

12:10 ELECTION OF OFFICERS – Cheryl Daniels, Board Attorney

12:25 DEPARTMENT UPDATE ON SITING INCLUDING REVIEW OF LIVESTOCK SITING STANDARDS – DATCP Staff

12:40 TENTATIVE BOARD SCHEDULE FOR 2015 MEETINGS – No set meetings, although we will look to Fridays when requesting meeting dates.

12:45 p.m. ADJOURN

State of Wisconsin

Livestock Facility Siting Review Board

Draft May 16, 2014 Meeting Minutes

DATCP Conference Room 212
811 Agriculture Drive, Madison, WI

I. Call to order and preliminary matters

The meeting was called to order by Chairman Andy Johnson at 12:03 p.m. Diederich, Engelbrecht, Gaska, Johnson, Topel, Selk and Daniels participated via teleconference. Vosburg and Castelnuovo were present at DATCP. Joan Sandstadt was present for Agri-View.

Vosburg confirmed that the meeting was publicly noticed as required. Topel moved to approve the agenda as presented. Gaska seconded. The motion carried. Diederich moved to approve the April 11, 2014 minutes as prepared. Engelbrecht seconded. The minutes were approved as presented.

II. Finalize board recommendations for submission to Secretary for review of ATCP 51

The Board reviewed the memo dated May 16, 2014, which was distributed in the meeting materials. Daniels indicated the memorandum was drafted with the intention of coherently linking the LFSRB case history with the recommendations that the Board formulated at the April 11, 2014 meeting. The Board recognized that the recommendations in its memorandum take a broader perspective regarding ATCP 51 revision

Following review of the memorandum, Selk requested that the first recommendation linked to *Larson Acres v. Town of Magnolia, Case No. 06-L-01 (October 20, 2006)* be amended to read:

> "While the Board believes it can only accept cases in which the decision has been made by the political subdivision, the Department should consider rule revisions that could address gaps in the current process that will give some finality for all parties as to a completeness determination for a siting application."

Subsequent discussion yielded no other revisions to the memorandum. Diederich moved to submit the Memorandum "Request for Recommendations on ch. ATCP 51 revisions" with the aforementioned edit (The memorandum, as modified, is attached to these minutes). Gaska seconded. There was no further discussion of the matter. The motion carried.

III. Adjourn

Diederich moved to adjourn the meeting. Selk seconded. The meeting was adjourned at 12:43 p.m.

_____

Bob Selk Secretary, Date

Recorder: KV

State of Wisconsin

Livestock Facility Siting Review Board

PO Box 8911
Madison, WI 53708-8911
livestocksiting.wi.gov

DATE: **May 16, 2014**

TO: **DATCP Secretary Ben Brancel**

FROM: **Livestock Facility Siting Review Board**

SUBJECT: **Request for Recommendations on ch. ATCP 51 revisions**

At the February 28, 2014 meeting of this Board, you requested our Board to make recommendations for issues to be considered when the Department of Agriculture, Trade and Consumer Protection ("Department") begins its work evaluating changes to ch. ATCP 51, Wis. Adm. Code (Livestock Facility Siting). On April 11, 2014, this Board undertook a review of the cases brought before the Board and issues it considered in those cases. The following recommendations are ones that this Board believes should be evaluated for possible changes to ch. ATCP 51, Wis. Adm. Code.

1. In *Larson Acres v. Town of Magnolia, Case No. 06-L-01 (October 20, 2006)*, the Board denied the request for review on grounds that Board does not have authority to make the determination of the application's completeness and that the Board can only review a local decision made on an application.

   The Board's jurisdiction to review a completeness determination is limited by s. 93.90(5)(b), Wis. Stats., which requires "the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards.

   RECOMMENDATION: While the Board believes it can only accept cases in which the final decision has been made by the political subdivision, the Department should consider rule revisions that could address gaps in the current process that will give some finality for all parties as to a completeness determination for a siting application.

2. In *Larson Acres v. Town of Magnolia, Case No. 07-L-01 (August 27, 2007)*, the Board upheld a challenge that a political subdivision may not impose conditions on a livestock siting permit which are not required or allowed under s. 93.90, Wis. Stats. The Board then upheld certain conditions as required or allowed under the statute and reversed certain conditions as not required or permitted, pursuant to the statute and administrative rule. In *Adams v. Wisconsin Livestock Facility Review Board, 2009AP608 (July 11, 2012),* the Wisconsin Supreme Court

affirmed a lower court decision, which found in favor of the Board's decision, reversing and remanding the permit to the Board.

RECOMMENDATION: The Department should consider a rule revision clarifying that a local government may attach conditions to local approvals as authorized by law, that any conditions attached by a local government must be described in the final written decision granting the application, and par. 5 of the note to ATCP 51.34(3) should be modified to reflect that the LFSRB may review individual conditions attached to local approvals to determine compliance with the statute and rule.

RECOMMENDATION: The Board had a discussion that many of the impermissible conditions found in this case could be dealt with by monitoring performance of the plan by the permitted operation. The Department could consider if the rule should clarify local government options for permit monitoring and enforcement. Specific areas for consideration might include options related to graduated enforcement monitoring, especially where there are no options for achieving compliance other than permit withdrawal. The Department could consider a rule revision which includes guidance on the scope of monitoring or issues that a political subdivision may address. The revision might clarify the fees that could be charged for monitoring purposes and authorize a political subdivision to request a DNR report as a form of monitoring.

RECOMMENDATION: The Department should consider any revisions that can clarify the conditions that can be included in an approved permit and the authority of the Board to determine which conditions in a permit are reviewable. The rule could also specify and permit enforceable terms of an agreement made between a municipality and applicant for permit conditions outside the scope of siting standards.

3. In *Ronald S. Stadler v. Crawford County, Case No. 08-L-01 (April 18, 2008)*, the Board initially upheld a challenge to the permit on the grounds that the nutrient management plan, as a part of the application, was not complete, credible and internally consistent because it did not account for nutrient management for the maximum number of animal units granted by the permit. After remand to the political subdivision, a new application and approved permit, upon reconsideration, the Board denied the challenge on the grounds that the applicant had had properly calculated the amount of land available to spread the manure volumes calculated based on the maximum number of animals, as established by additional submissions, and had met the standards for nutrient management in ch. ATCP 51, Wis. Adm. Code.

   RECOMMENDATION: The Department should consider revisions to clarify that an applicant's plan must reflect meeting nutrient management standards for the maximum number of animal units anticipated under the permit. Specific considerations under the purview of this issue could include reconciling the differences between the DNR permitting and siting frameworks and guidance for using technologies to negotiate the difference between land available for spreading and the maximum number of animal units for nutrient management planning. Also, the Department should consider establishing requirements for showing ownership of, or having rental agreements in place for, sufficient acres to manage the maximum number of animal units anticipated.

4. In *Audrey Van Dyke v. Racine County, Case No. 08-L-02 (August 18, 2008)*, the Board again initially upheld a challenge involving an applicant's plan meeting nutrient management standards for the maximum number of animal units under the permit. (See above recommendation) However, there were some other issues which, while not addressed by the Board could be the basis for additional rule consideration.

   RECOMMENDATION: The revision could evaluate the need for a standard to better manage large farm nuisance impacts (noise, light, dust) that are not addressed through setback standards. Although not specific to any one case, there are a few other recommendations which might assist the Board in their work.

   RECOMMENDATION: There are differences between CAFO and siting standards with regards to permit modifications and requirements for a new permit. The rule could provide clarification on the conditions that are necessary to substitute a CAFO permit for siting worksheets. The rule also could provide clarification on the appropriate use of permit modification procedures as a tool to manage changes in permitted livestock operations. It may be prudent to clarify situations where a new permit application must be filed.

   RECOMMENDATION: Definitions in the rule appear in multiple locations. The Department might consider rule revisions that either move all definitions in one location or adding notes to the definitions sections providing where people should look for additional definitions.

   RECOMMENDATION: The Department could consider rule revisions which insert a framework into the permitting process in which farmers or facility operators who have multiple reporting requirements could submit a single set of documents for monitoring purposes to avoid unnecessary duplication of effort.

Livestock Facility Siting

Richard Castenluovo– DATCP

Eight years of Livestock Facility Siting

- Local implementation of ATCP 51 since 2006
- 2014 mandatory rule review
  - Stakeholder input
  - Technical expert committee

Local regulatory activity 2006-2014

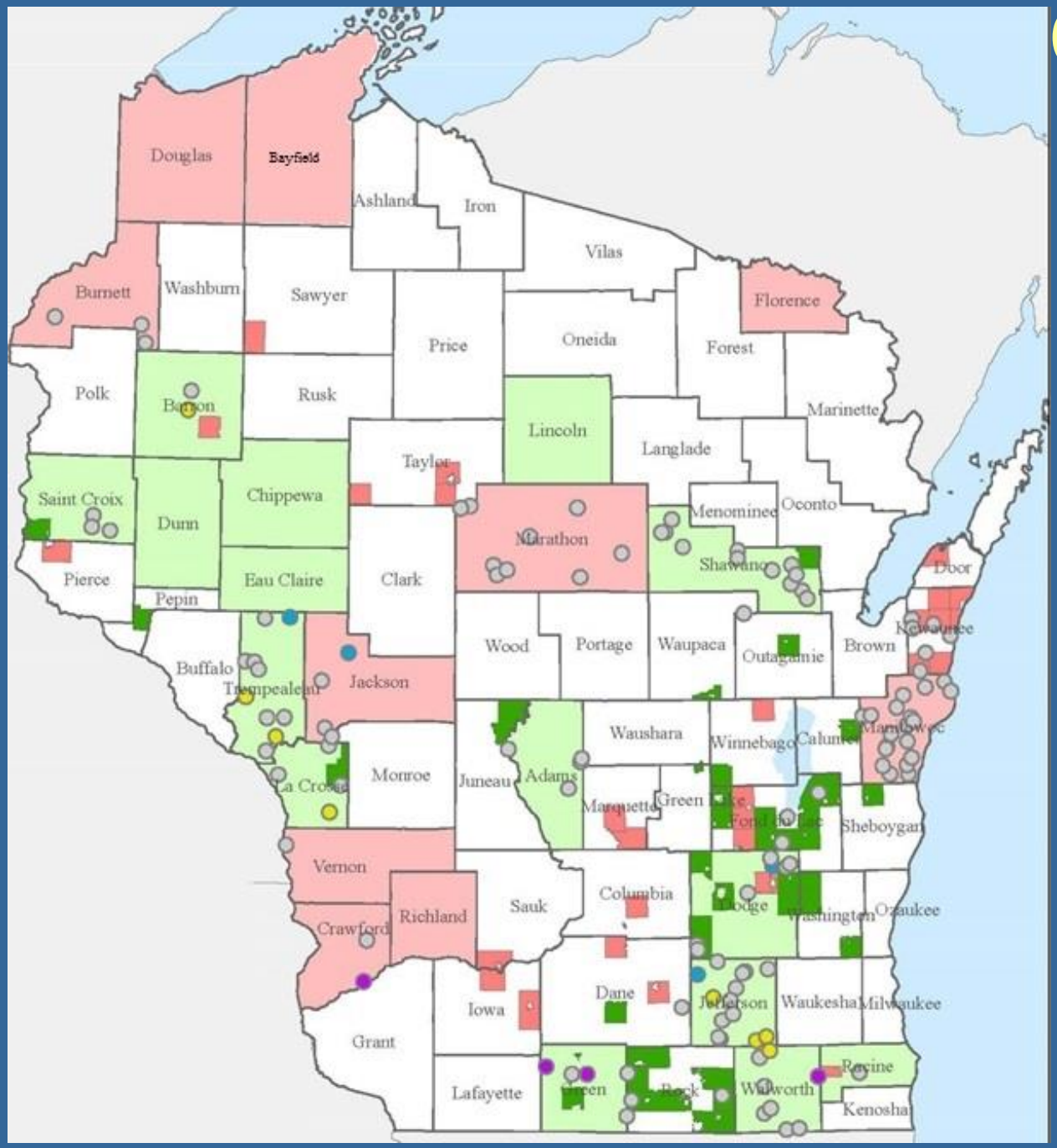
102 Ordinances

- 25 counties, 71 towns, two cities (Berlin and Fitchburg), and four villages (Germantown, Richfield, Rochester and New Glarus)
- 63 zoning and 38 licensing

124 Permits

- 8 < 500 AU
- 64 between 500 and 1,000 AU
- 52 > 1,000 AU

Ordinances and permits



2014 Four Year Review

- Submitted implementation report to ATCP Board

  http://datcp.wi.gov/uploads/Environment/pdf/LivestockSitingRuleFourYearReviewFeb2014.pdf

- Collected input from farm, government and environmental stakeholders

AGRI-VIEW

Opinions Differ on Effectiveness of Livestock Siting Law

BY RON JOHNSON, DAIRY EDITOR

Is the rule that governs Wisconsin's livestock siting law working?

It depends on who you listen to.

A handful of people were critical of the rule during the public comment perio
Agriculture Board meeting. More supported the law and its rule, while one l
the broad economic impacts of the law need to be investigated.

Last week's meeting marked the beginning of a review of the law's admin
required once the siting law has been in force four years. The agriculture
the livestock siting rule. (See the accompanying article).

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HOME OPINION LAW AND ORDER BUSINESS POLITICS EDUCATION COMMUNITY

BLOG: LAPTOP CITY HALL ELECTION MATTERS BLOG: CAPITOL REPORT

Let facts prevail on livestock siting rules

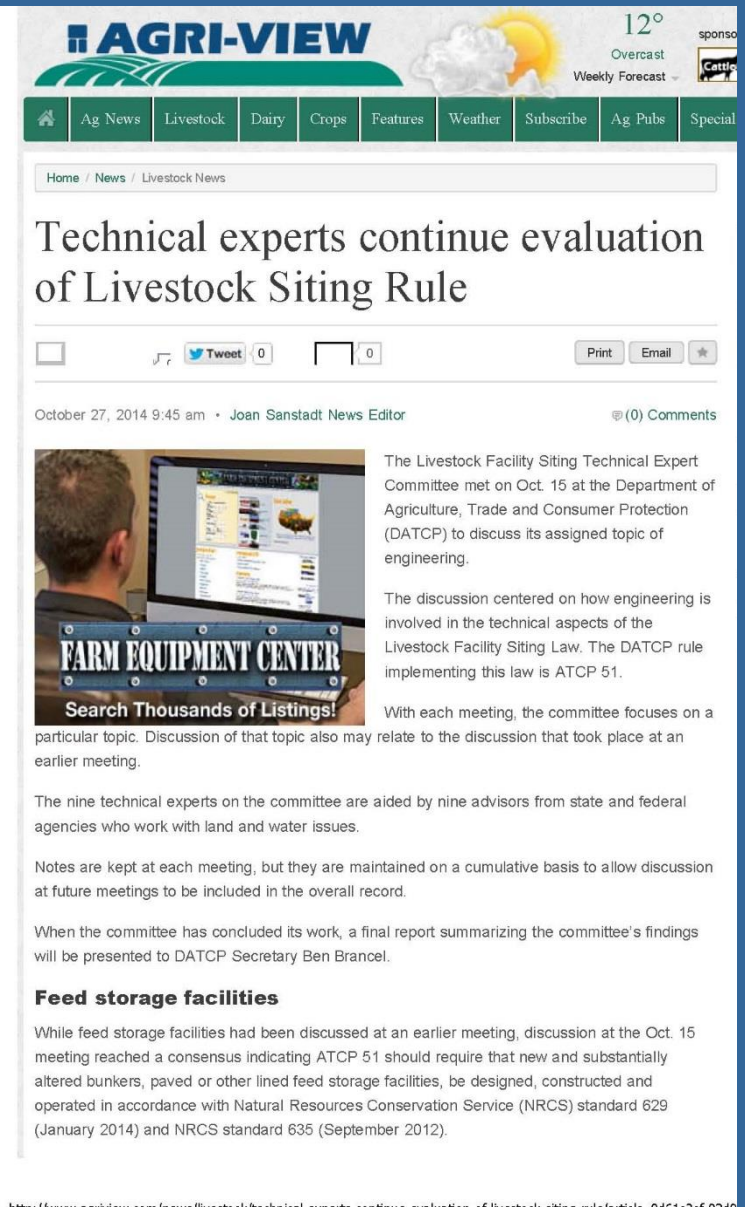
Story Discussion

Bill Berry | state columnist | Posted: Monday, March 1, 2010 5:00 am | (3) Comments

Font Size:

STEVENS POINT – One of the most contentious issues in rural Wisconsin today involves large livestock facilities. Unfortunatel
such matters, em

Advice from expert panel



AGRI-VIEW

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Technical experts continue evaluation of Livestock Siting Rule

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October 27, 2014 9:45 am • Joan Sanstadt News Editor (0) Comments

The Livestock Facility Siting Technical Expert Committee met on Oct. 15 at the Department of Agriculture, Trade and Consumer Protection (DATCP) to discuss its assigned topic of engineering.

The discussion centered on how engineering is involved in the technical aspects of the Livestock Facility Siting Law. The DATCP rule implementing this law is ATCP 51.

With each meeting, the committee focuses on a particular topic. Discussion of that topic also may relate to the discussion that took place at an earlier meeting.

The nine technical experts on the committee are aided by nine advisors from state and federal agencies who work with land and water issues.

Notes are kept at each meeting, but they are maintained on a cumulative basis to allow discussion at future meetings to be included in the overall record.

When the committee has concluded its work, a final report summarizing the committee's findings will be presented to DATCP Secretary Ben Brancel.

Feed storage facilities

While feed storage facilities had been discussed at an earlier meeting, discussion at the Oct. 15 meeting reached a consensus indicating ATCP 51 should require that new and substantially altered bunkers, paved or other lined feed storage facilities, be designed, constructed and operated in accordance with Natural Resources Conservation Service (NRCS) standard 629 (January 2014) and NRCS standard 635 (September 2012).

- Required part of four year review
- 18 public & private sector members and advisors
- Assignment focuses on technical aspects of siting standards
  - Engineering
  - Nutrient Management
  - Odor/Setbacks

Standards must strike a balance

- Protect public health and safety
- Be practical and workable
- Be cost effective
- Be objective
- Use peer-reviewed science
- Promote growth of animal agriculture
- Balance farm viability with other interests
- Be useable by local officials

Expert Committee Timeline

September 2014

- 1st meeting: ATCP 50/NR 151 incorporation

October

- 2nd meeting: Engineering

November

- 3rd meeting: Nutrient management

December and January 2015

- 4th and 5th meetings: Odor/Setbacks

March -- April 2015

- Wrap-up

NR 151/ATCP 50 Standards

- Incorporate newest standards related process wastewater discharges, Phosphorus Index, tillage setback, and pastures
- Follow NRCS standards for new and altered feed storage (e.g. bunkers, paved) except in low risk settings that do not necessitate collection systems or vegetative treatment areas

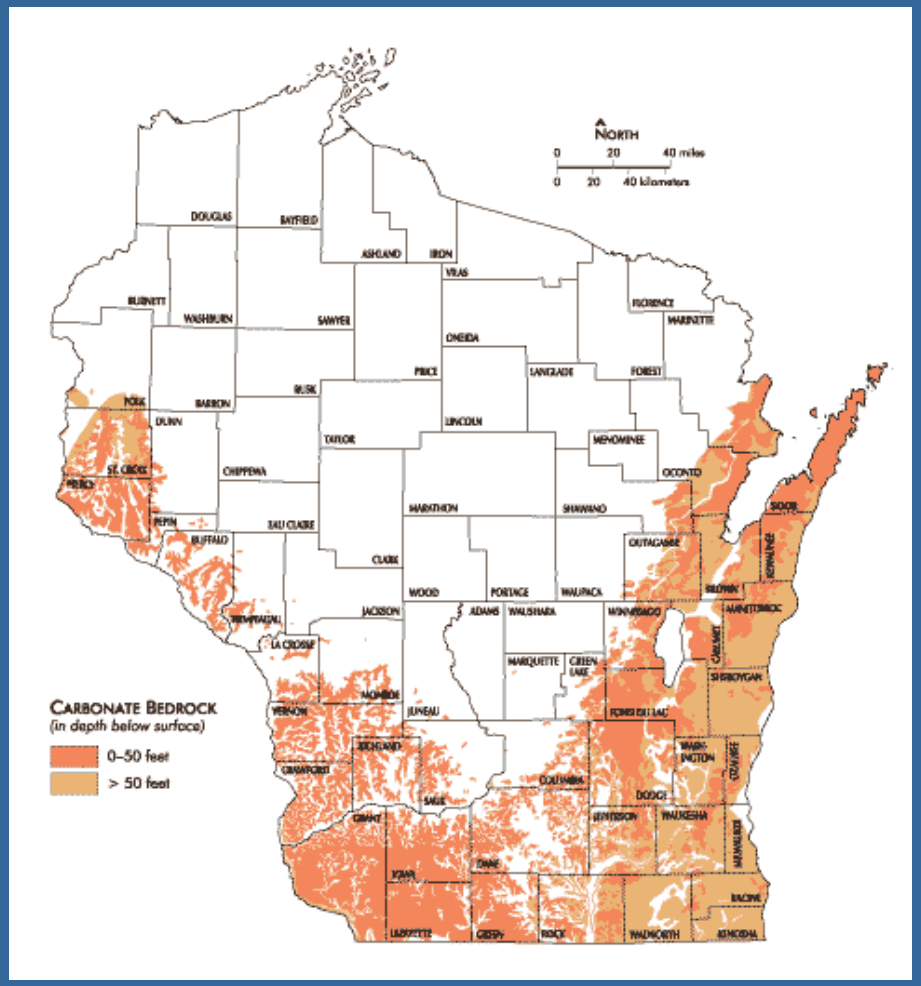
Engineering highligts

- Allow minor alterations of a animal lots without meeting NRCS 635 with additional accountability measures
- Evaluate existing feed storage should for condition and discharge risks

Nutrient management highlights

- Ensure local government access to NM plan documentation regardless of facility size
- Require that NM plans include owned or rented land adequate to spread manure from "the maximum number of animal units authorized under a facility's permit."
  - Clarify permit modification process to facilitate use for expansions

Nutrient management highlights



- Incorporate the revised 590 NM standard to better protect water quality (e.g. winter spreading prohibitions and winter spreading plans)
- Consider whether new NRCS 590 adequately address manure spreading risks in sensitive areas

Odor Highlights Generation Numbers

- Retain numbers for manure storage but base on surface area, not duration of storage
- Change number for dairy and beef flush systems from 10 to 20
- Assign new number for
  - Layers with belt system of 1
  - Sand and Solids Separation Systems of 40 for treatment area and 2 for holding area

Odor Highlights
Housing Control Practices

- Retain numbers for diet manipulation, biofilters air dams and windbreaks but make adjustments.
- Refine treatment options for flush systems to eliminate fresh water and add recirculated flush
- Recognize wet scrubber with a credit of 30% (water) and 90% (chemical)

Odor Highlights
Storage Control Practices

- Reduce anaerobic digestion credit from 80% to 50%, and modify specification for off-farm feedstock and other issues
- Reduce solids separation and reduction credit from 40% to 20%, and revise specification
- Eliminate pre-set aeration credit, and have applicants obtain innovative practice approval
- Increase geotextile cover credit from 50% to 60%

DATCP Contacts

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