

A G E N D A

Livestock Siting Technical Expert Committee

Friday, December 21, 2018

9:30 a.m. to 1:30 p.m.

DATCP
Board Room 106
2811 Agriculture Drive
Madison WI 53718

- 9:30 a.m. **Call to Order**
- 9:35 a.m. **Welcome:** Secretary's Office
- 9:40 a.m. **Review Meeting Agenda**
- 9:45 a.m. **Getting Reacquainted:** Committee Members, Advisors, and DATCP Support Staff
- Your professional background and expertise including recent activities
 - Your experience with the livestock siting standards
- 10:15 a.m. **Background:** Implementation of siting law and rule including the four year review process presented by DATCP Staff
- 10:30 a.m. **Overview of Committee Framework, Procedures and Assignment:** Presented by DATCP Staff
- Committee structure, logistics, and expected work products
 - Tentative identification of issues based on your 2015 recommendations, changes proposed to ATCP 51 in 2017, and new developments in standards
- 11:30 a.m. **Working Lunch:** 15-minute break during which lunch will be provided
- 11:45 a.m. **New Developments in NRCS Technical Standards:** Presented by DATCP Staff
- NRCS engineering standards – 313 and 635
- 12:30 p.m. **Moving Forward:** Clarifying the issues, identifying needed participants, and scheduling meetings – Discussion by Members and Advisors
- 1:15 p.m. **Wrap Up and Future Meetings:** Presented by DATCP Staff
- Summary of progress
 - Discussion of future meetings and use of a Doodle Poll for scheduling
- 1:30 p.m. **Adjourn**

Livestock Facility Siting Overview

A. State implementation

The siting legislation was the product of a compromise intended to balance local control, community oversight, environmental protection and the need for a predictable permitting process. When enacted in 2004, s. 93.90 established a statewide framework for local regulation of livestock facilities, including limitations on the exclusion of livestock facilities in agricultural zones and requirements for issuing conditional use or other permits for siting livestock facilities. It also created the Livestock Facility Siting Review Board (LFSRB) to hear appeals concerning local permit decisions.

Implementation of the law was delayed until DATCP developed rules to establish uniform procedures and standards for issuing permits. The new rule, ch. ATCP 51 became effective on May 1, 2006. As required by law, DATCP's rule was developed with advice from a technical expert committee convened in 2004. In subsequent years, DATCP has convened three technical expert committees in 2010, 2014 and 2018 to provide advice on updates to ATCP 51.

The 2004 statute and 2006 rule have not been revised since their adoption. Revisions of ATCP 51 were initiated in 2010 and 2015 but on each occasion the revision was placed on hold. The current scope statement is set to expire February 2020.

B. Local ordinance and standards

Under the siting law, local governments are not required to adopt an ordinance to regulate the siting of livestock facilities; however, if a local government elects to require a permit, they must follow the requirements of the siting rule for approving new or expanding livestock facilities. Local ordinances can require either a zoning or licensing permit.

Historically, local governments relied on zoning tools such as a conditional use permit to regulate the siting of livestock facilities. ATCP 51 also recognizes that local governments may issue licenses to grant approval, an option that allows permitting livestock facilities in unzoned areas.

Through December 2018, 133 siting ordinances have been adopted: 28 by counties, 96 by towns, two cities (Berlin and Fitchburg), and 7 by villages (Germantown, Richfield, Rochester, New Glarus, Bloomfield, Fox Crossing and Bristol). Of the 131 ordinances, 85 are zoning ordinances requiring conditional use permits and 48 are licensing ordinances.

Most local ordinances require permits for facilities that exceed 500 animal units (AUs) of cattle, swine, poultry, sheep or goats. Eighteen local governments have ordinances with lower permit thresholds. The siting law provided a limited window in 2006 for local governments to grandfather permit thresholds below 500 AUs into their ordinances. Seven have permit thresholds that range from 650 AUs to 1,000 AUs.

Whether a local government administers a licensing or zoning ordinance, it must follow state-prescribed requirements to issue permits for new and expanding livestock facilities. Every local government must apply the ATCP 51 standards when deciding on a permit application. In addition, a local government may only apply a more stringent standard if its ordinance includes scientifically defensible findings of fact demonstrating that the more stringent standard is

necessary to protect public health and safety. State approval is not required unless the requirement is more stringent than state water quality standards. See, s. 92.15(3), Stats.

Local authority to implement more stringent standards has been addressed in a number of cases recently decided by the Livestock Facility Siting Review Board (LFSRB). In the case of an expanding dairy in the Town of Ledgeview, the Board found that the town could not enforce a 1320 foot property line setback for manure storage based its failure to adopt adequate public health or safety findings. Three recent decisions clarified the extent to which local governments can impose conditions without adopting local standards in accordance with state law. The LFSRB determined that a local government can impose conditions reasonably related to monitoring compliance with applicable standards as long as conditions do not create new standards. However, the Board determined that the following conditions were not enforceable because they improperly implemented new local standards:

- Requiring manure storage and limiting the period when the structure can be emptied.
- Imposing requirements on the timing and transport of manure on roadways.
- Requiring operations to obtain manure storage or other permits before a siting permit is valid.
- Allowing future compliance with a requirement that must be met to issue a siting permit.

C. Local permitting of livestock facilities

Through December 2018, local governments reported 176 active permits. As a point of comparison, DATCP in its 2010 report listed 55 siting permits. To date, nine counties have issued over 74 percent of the 176 permits, with Dodge (10), Green (6), Jackson (6), Jefferson (17), Manitowoc (27), Marathon (13), Shawano (17), Trempealeau (24), and Walworth (10) counties as the primary issuers of permits. Nearly 85 percent or 148 of the permitted facilities are dairy operations. Of the non-dairy operations permitted under local ordinances, 19 are predominately poultry operations, 5 are predominately swine, and 4 are predominately beef. A map of siting ordinances and permits is included on page 4.

Size of Permitted Facility	Number of Permitted Facilities
< 500 AU	9
500 – 749 AU	22
750– 999 AU	78
> 1,000 AU	67
	176

D. Characteristics of permitted facilities

Of the permitted facilities, 81 percent of the facilities are approaching or exceeding 1000 AUs, requiring them to obtain a WPDES permit from DNR under NR 243. Of the 67 facilities over 1,000 AUs, 37 operators relied on their WPDES permits to demonstrate compliance with water quality standards under the siting law related to manure storage, nutrient management, and runoff management.

All applicants for a siting permit, including DNR-permitted operations, are subject to setback and odor control standards, the two standards in ATCP 51 not related to water quality and not covered by WPDES permit. In fact, the setback requirements for livestock structures (excluding manure storage) are greater for operations over 1,000 AUs than the requirements for smaller-sized facilities. Instead of meeting 100-foot setbacks from roads and property lines, CAFO-

sized operations must comply with setbacks at least 200 feet from any property line, and at least 150 feet from any roads.

As noted above, facility size is a factor in determining whether a permitted operation is exempt from the odor standard. Of the 176 permitted facilities, 54 did not submit odor scores, most of them claiming the exemption for existing facilities less than 1,000 AUs.

Of the 122 facilities that completed odor standard worksheet, these facilities had odor scores ranging from 477 to 1415 points. A passing score is generally 500 or more points, but a local government may award discretionary points to pass facilities that score 470 or more points. Twenty-three facilities prepared advanced odor management plans to earn 20 additional points toward a passing odor score.

About 98 of the 122 facilities relied on one or more odor control practices to obtain a passing score, with nearly all of these facilities claiming more than one odor control practice. Of the 260 documented odor control practices, the following is a list of the practices claimed, along with the odor reduction credit for each practice, and the total number of times the practice was claimed:

- Housing
 - Diet manipulation: 20% credit, 52 claims
 - Frequent cleaning of animal housing area: 10% credit, 56 claims
 - Treated water flush, 30% credit, 6 claims
 - Windbreaks, 10% credit, 6 claims

- Animal Lots
 - Frequent cleaning of animal lot: 60% credit, 27 claims
 - Moisture control: 20% credit, 8 claims

- Waste Storage
 - Bottom fill: 10% credit, 28 claims
 - Natural crust: 70% credit, 26 claims
 - Impermeable cover: 90% credit, 8 claims
 - Anaerobic digestion: 80% credit, 5 claims
 - Chemical and biological additives: 20% credit, 8 claims
 - Solids separation and reduction: 40% credit, 17 claims
 - Windbreaks, 10% credit, 8 claims
 - Aeration: 70% credit, 2 claims
 - Compost, 80% credit, 2 claims

Nearly every permitted facility submitted a nutrient management checklist, except for those that relied on their CAFO permit to secure a local approval of their siting application. Most permitted facilities have waste storage structures, with 176 permitted facilities having 125 existing structures and 80 new structures. Of the 118 permitted facilities with animal lots, 112 facilities have existing lots. Permitted facilities have 93 existing feed storage structures and 30 new feed storage structures.

Livestock Facility Siting Technical Expert Committee

Committee Structure and Logistics

The Technical Expert Committee will operate according to the committee structure and logistics summarized in this document. This framework is intended to facilitate participation, enhance discussions, build consensus, and generate a comprehensive and responsive set of recommendations.

Committee Structure and Logistics

1. The DATCP staff will chair the committee, and will serve as spokesperson for the group.
2. All meetings will be publicly noticed under the Open Meetings Law. The public may attend meetings to listen however meeting agendas will not include a public involvement component. Public comment will be accepted strictly at the discretion of the chair.
3. All meetings will run between 9:00 a.m. and 3:00 p.m. In advance of a scheduled meeting members may agree to modify the agenda, e.g. starting earlier and/or ending later. Likewise, members have the flexibility to schedule additional meetings necessary to develop their recommendations.
4. The committee assignment will be provided in the form of a detailed issues list and specific topics identified in each meeting's agenda and accompanying materials. Committee members and advisors are not responsible for addressing matters outside the specific issues and questions presented to them. The committee may request the advice of other technical experts if necessary to complete any assignment.
5. The committee assignments are designed to allow members and advisors to complete their work as a group. The committee members and advisors will develop recommendations using a consensus process. It is not expected that the committee will make decisions by voting.
6. Committee recommendations made during each meeting will be assembled into a final document for review and approval by the committee members and advisors.
7. DATCP staff will handle the logistics associated with meetings, including the preparation of agendas and meeting materials, electronic distribution of meeting materials and information (usually 7-14 days in advance of each meeting), and preparation of meeting notes.
8. Members will be reimbursed for necessary out-of-pocket expenses associated with attending the meetings. DATCP staff will work with members to obtain reimbursement.

Expectations for Participation

9. Members and advisors are expected to take individual responsibility for contributing. They are expected to review materials necessary to complete their assignment, help the group with meeting its objectives, and support the group in completing its assignment.

10. Every meeting participant's contribution is valuable:

- Actively listen and encourage others to contribute
- State ideas clearly and concisely
- Ask questions
- Be constructive
- Be factual, focus on the issue or problem.

11. Members should place a priority on attending meetings. If a member cannot attend a meeting, no other person will be permitted to take their place. Members who miss meetings are responsible for reviewing notes of the meeting and may contact the appropriate DATCP staff for additional assistance. An advisor can designate another person to attend the meeting in their place.

Proposed Issues for Consideration by Technical Committee

Standard	Committee recommendation ¹	Draft rule ²	Issues for consideration based on draft rule or recent developments
Setbacks - Main Application	<ul style="list-style-type: none"> • Require a greater road and property line setback than 350 feet for new or substantially modified manure storage structures located on livestock facilities over 1,000 animal units • Require greater setbacks for livestock structures on livestock facilities under 1,000 AUs, unless these facilities use established methods to document how they will manage odor to secure a passing odor score. • To provide greater protection for neighbors, increase the property line/road setback distance for structures (such as feed storage) that may have nuisance impacts, applying increased setbacks to occupied buildings in addition to property line setbacks, and accounting for schools and other high density uses in establishing a setback. 	<ul style="list-style-type: none"> • Requires that new and expanded manure storage and high odor housing meet larger setbacks (600 to 2,500 feet) based on animal units, with distances based on the same model (OFFSET) that was the foundation of the original odor standard. • Allows livestock facilities to consider separate clusters when calculating setbacks. • For new or expanded manure storage structures and certain types of livestock housing, the new odor standard provides operators credit for odor control practices in the form of a reductions to setback requirements. • Requires compliance with more detailed specifications to obtain a reduction in setbacks. • Does not add new sources of odor that generate low levels of odor (e.g., sand and solid separation v. manure storage) • Retains DATCP process to approve innovative odor control practices and the concept of clusters. 	<ul style="list-style-type: none"> • Is there sufficient technical and other justification to support the proposed system for odor management that focuses on setbacks? <ul style="list-style-type: none"> ○ Is the method for setting the setback distances proposed in the rule based on sound science (e.g. the OFFSET model)? ○ Is there a sufficient basis in the research to support the reduction of setbacks based on odor control practices and are the reductions provided in the draft rule appropriate based on that research?

¹ <https://datcp.wi.gov/Documents/LivestockTechComReport2015.pdf>

² <https://datcp.wi.gov/Documents/07202017.10.ATCP51HearingDraft.pdf>

Proposed Issues for Consideration by Technical Committee

Standard	Committee recommendation ¹	Draft rule ²	Issues for consideration based on draft rule or recent developments
Odor Management-Worksheet 2	<ul style="list-style-type: none"> • Retain the exemptions to odor standard. • Make adjustments to odor generation numbers and odor control practices based on the most current science-based information. In certain cases, new odor control practices or documented sources of odor should be added, and other cases the credits for odor control practices should be reduced or eliminated. • Develop more detailed specification, consistent with available NRCS standards, for odor control practices such as diet manipulation, chemical and biological additives, compost, solids separation and reduction, and natural crust. 	<ul style="list-style-type: none"> • Replaces the Worksheet 2 odor standard with increased setbacks and expanded odor management plans • Requires expanded odor management plans if property line setback are less than 600 feet for existing manure storage and 400 feet for housing 	<ul style="list-style-type: none"> • From a technical standpoint, is replacement of the odor warranted based on the following: <ul style="list-style-type: none"> ○ The lack of active and robust research and testing related to the OFFSET model including evaluation of new technologies? ○ Limitations in adapting OFFSET to model odor from a whole farm? ○ The relative effectiveness of the odor standard in managing odor impacts, compared other approaches (setbacks, odor management plans)?
Management Plans – Main Application and Worksheet 2	<ul style="list-style-type: none"> • Require all applicants to complete plans related to incident response, employee training, and odor management. 	<ul style="list-style-type: none"> • Redesigns odor management plans and make them mandatory in certain situations. • Expands the content of odor management plans to include odor control practices for existing and low odor sources, and implement a new system for documenting and retaining records concerning the operation and maintenance of odor control practices 	<ul style="list-style-type: none"> • How can odor management plans be improved to be a more effective tool in managing odor (e.g. additional requirements)? • What kind of documentation should operators prepare to show that management plans are being followed?

Proposed Issues for Consideration by Technical Committee

Standard	Committee recommendation ¹	Draft rule ²	Issues for consideration based on draft rule or recent developments
Nutrient management - Worksheet 3	<ul style="list-style-type: none"> • Incorporate the revised NRCS 590 upon adoption. • Simplify the permit modification process to enable permitted livestock facilities to secure streamlined approval of nutrient management plans if they add animals after they are permitted. • Require an applicant to identify rented and owned land spreading acres on Waste and Nutrient Management Worksheet 3. 	<ul style="list-style-type: none"> • Adopts NRCS 590 (2015) • Simplifies the permit modification process to allow expansions not more than 30 percent of maximum animal units from the most recent permit. • Allows local governments to require operators to verify that rental land is available. 	<ul style="list-style-type: none"> • Should additional requirements such as manure spreading restrictions be imposed on sub-CAFOs over 750 AUs to more closely reflect the federal requirements (federal 2018 NRCS 590, CAFOs including those medium AFOs with discharges)? • How should ATCP 51 better protect groundwater (e.g. issues related to manure spreading in Karst areas)?
Waste Storage -Worksheet 4	<ul style="list-style-type: none"> • Upgrade to the latest NRCS 313 standard. • Improve the criteria for evaluating the safety of existing storage structures including criteria for emptying storage structures and requirements for test pits or borings. 	<ul style="list-style-type: none"> • Adopts NRCS Technical Guide Standards: Standard 313 (January, 2014) for storage and Standard 634 (January, 2014) for transfer systems. • Adds requirements regarding the evaluation of existing storage for emptying storage to perform inspections and higher level investigation, if no reliable construction documentation exists. • Requires closure of storage facilities that cannot be shown to be safe. 	<ul style="list-style-type: none"> • How is the draft rule impacted by the current NRCS 313 standard adopted in 2017? <ul style="list-style-type: none"> ○ If the current 313 standard incorporated into the rule, how do the increased protections compare to increased costs for investigation and liners required by other updated NRCS standards? • Should the siting rule require manure storage for livestock facilities over certain size (e.g. 750 animal units)? • How should the rule cover the increasing use of transfer systems including transport of manure for field applications?

Proposed Issues for Consideration by Technical Committee

Standard	Committee recommendation ¹	Draft rule ²	Issues for consideration based on draft rule or recent developments
<p>Runoff Management: Animal lots – Worksheet 5</p>	<ul style="list-style-type: none"> • Retain the “BARNY” model as the tool for predicting runoff from animal lots. • Require a livestock facility to submit documentation (e.g. a printout of the BARNY model inputs and outputs) as part of its siting application to verify compliance. • Require applicants to document management or structural practices proposed as “minor alterations” to achieve compliance with ATCP 51.20(2) runoff thresholds for animal lots. The applicant must submit a design for the practice that meets the applicable NRCS or other technical standard. • The rule should specify the changes that are minor alterations including lot cleaning, changes to provide laminar flow (e.g., shaping, seeding), roof gutters, diversions, underground outlets, and sediment basins. • Modify the rule to require installation of “minor alterations” within one year of a permit approval, and authorize a local government to shorten that time if the unmanaged runoff presents an unacceptable risk of contamination to surface or groundwater. 	<ul style="list-style-type: none"> • Incorporates most current NRCS technical standard for waste treatment (NRCS 635) for new and substantially altered lots. • Allows option for collection and transfer of runoff to storage for all lots. • Retains the BARNY model that recognizes the use of VTAs to manage runoff on existing animal lots. • Better defines minor alteration consistent with committee recommendation. • Creates exception to provision that allows 2 years for construction requiring that the operator construct within 6 months any structure needed to control a discharge. 	<ul style="list-style-type: none"> • Do the more demanding requirements for vegetated treatment areas (VTAs) in NRCS 635 change how we determine allowable discharges (modeled using BARNY) for existing lots? For example, the current 635 standard requires collection and storage of runoff during non-growing season. • Should the ATCP 51 siting standards be graduated to reflect the size of the facility in terms of animal units? For example, all runoff would need to be collected for all lots on facilities over a 750 AUs?

Proposed Issues for Consideration by Technical Committee

Standard	Committee recommendation ¹	Draft rule ²	Issues for consideration based on draft rule or recent developments
<p>Runoff Management: Feed Storage – Worksheet 5</p>	<ul style="list-style-type: none"> • Require livestock facilities with 500 or more animal units to meet NRCS waste treatment standard 629 (January 2014) for the design, construction and maintenance of new or substantially altered bunker silos, paved or other lined structures that store feed with as low as 40 percent moisture. • Allow livestock facilities under 1,000 animal units to design and construct new or expanded feed storage structures smaller than one acre in accordance with the appropriate Table 1, 2, or 3 in NRCS 629 (January 2014) if the proposed storage structures present low environmental risks not requiring a collection system or vegetative treatment areas (VTAs). A clean water diversion would be required, if applicable. • Require applicants to evaluate existing bunker silos, paved or other lined feed storage structures from ½ to ¾ acre in size to determine if the structures are in good condition and do not present risks of discharging leachate or contaminated runoff to waters of the state. • Make operators follow increased management requirements for existing storage structures. 	<ul style="list-style-type: none"> • Requires new and substantially altered facilities to be designed according to NRCS 629 (2017), and manage leachate and contaminated runoff by collecting and storing for future land application or treating the runoff in accordance with standard 635 (2016), with this exception: <ul style="list-style-type: none"> ○ New and substantially altered facilities less than one (1) acre may meet less demanding standards designed to prevent significant discharges. • Develop procedures for evaluation of the condition of existing feed storage structures to ensure that they do not pose environmental risk. • Include maintenance requirements such as clean water diversion and collection of first flush. 	<ul style="list-style-type: none"> • Should we make changes in rule requirements based on the current NRCS 629 (2017) and NRCS 635 (2016)? • Do current requirements for VTAs in NRCS 635 change whether to have an exception for storage less than one acre or how we might define that exception? • What requirements should apply for storage structures designed solely for the purpose of collecting leachate and runoff? • Do we need to make adjustments to the operation and maintenance requirements for different types of storage structures?

Proposed Issues for Consideration by Technical Committee

Standard	Committee recommendation ¹	Draft rule ²	Issues for consideration based on draft rule or recent developments
Runoff Management: Milking Center Waste – Worksheet 5	<ul style="list-style-type: none"> • Require that milking center wastewater be discharged to waste storage or other structure designed according to NRCS waste storage facility standard 313 (January 2014). • Create an exception to the storage requirement to allow a livestock facility to manage wastewater using the treatment practices in NRCS 629 (January 2014) if the livestock facility produces less than 500 gallons of wastewater daily and does not store the wastewater for an extended period. 	<ul style="list-style-type: none"> • Divert to storage structure meeting NRCS 313 standard with an exception for treatment systems handling less than 500 gallons of wastewater daily, which is allowed to follow NRCS 629. 	<ul style="list-style-type: none"> • Should the rule continue to support the alternative treatment method authorized under NRCS 629 (2017)?
Runoff management: Nonpoint standards – Worksheets 3 and 5	<ul style="list-style-type: none"> • Be consistent with the state standards in chs. NR 151 Runoff Management (NR 151) and ATCP 50 Soil and Water Resource Management Program (ATCP 50), Wis. Admin. Codes. • Include requirement for livestock operators to manage their operations to avoid significant discharges of process wastewater to waters of the state. • Incorporate the following standards: <ol style="list-style-type: none"> a) a pasture must be managed to control erosion and be covered by a nutrient management plan if they have certain stocking rates, and b) a requirement that tillage not be conducted within a 5-20 foot setback between cropped fields and surface water. 	<ul style="list-style-type: none"> • Incorporates NR 151 cropland performance standards including <ul style="list-style-type: none"> ○ Phosphorus index (Must have PI of 6 over a rotation and annual PI that does not exceed 12) ○ Tillage setback (minimum of 5 feet) • Incorporate NR 151 standards related to process wastewater discharges, and closure of unused manure storage facilities. 	<ul style="list-style-type: none"> • How should the rule treat the adoption of the new targeted performance standards in s. NR 151.075 for Silurian bedrock?

Proposed Issues for Consideration by Technical Committee

Standard	Committee recommendation ¹	Draft rule ²	Issues for consideration based on draft rule or recent developments
<p>Siting procedures such as permit modification and monitoring compliance</p>	<ul style="list-style-type: none"> • Provide support and guidance for local government efforts to monitor permit compliance by developing checklists and providing other support to facilitate local review. • Simplify the permit modification process to enable permitted livestock facilities to secure streamlined approval of nutrient management plans if they add animals after they are permitted. 	<ul style="list-style-type: none"> • Modifies the procedures that local governments must follow to determine completeness of siting applications. • Better defines procedures for monitoring facility compliance: <ul style="list-style-type: none"> ○ Identifies option for annual certification ○ Requires the use of a standard checklist ○ Provides for inspections • Defines in more detail the process for modifying siting permits. <ul style="list-style-type: none"> ○ Sets a maximum fee of \$500 for permit modifications. 	<ul style="list-style-type: none"> • What additional recommendations are appropriate for improving the monitoring of facilities including checklists and evaluation tools for feed and manure storage structures? • Does the permit modification process in the draft rule achieve the goals set by the committee? • Do the proposed permit modification procedures create unintended loopholes for livestock operators to avoid meeting siting requirements?