

**A G E N D A**

**Livestock Siting Technical Expert Committee**

Thursday, September 18, 2014

9:00 a.m. to 3:00 p.m.

DATCP

Board Room 106

2811 Agriculture Drive

Madison WI 53718

- 9:00 a.m. Call to Order
- 9:05 Welcome: Jeff Lyon, DATCP Deputy Secretary
- 9:10 Review Meeting Agenda
- 9:15 Introductions: Committee Members, Advisors, and DATCP Support Staff
- Your professional background and expertise
  - Your experience with the livestock siting standards
- 9:45 Overview of committee framework and procedures – Jeff Lyon
- Committee Structure and logistics
  - Topics for future meetings, meeting schedule and anticipated work products
- 10:15 Background for First Committee Assignment – DATCP Staff
- Background on the siting law and rule including the four year review process
  - Issues within and outside the scope of the committee
- 10:45 Break – Coffee provided
- 10:55 Discussion of First Committee Assignment – Members
- Questions regarding incorporation of ATCP 50 and NR 151 updates into ATCP 51
- 12:00 p.m. Lunch – Provided
- 12:45 Continue Discussion of First Committee Assignment – Members
- 1:45 Break
- 1:55 Continue Discussion of First Committee Assignment – Members
- 2:45 Wrap Up and Future Meetings – Jeff Lyon
- Summary of progress on assignment and decision on need for additional discussion
  - Discussion of future meetings and use of a Doodle Poll for scheduling
- 3:00 Adjourn

# **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. The goal is to facilitate participation, enhance discussions and complete the task of developing of a comprehensive set of recommendations.

### **Committee Structure and Logistics**

1. The chair of the Committee will be Jeff Lyon and he 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 will be provided detailed assignments distributed before each meeting. Committee members are not responsible for addressing issues outside the specific 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 will develop recommendations using a consensus process. It is not expected that decisions will be made by voting.
6. Advisors may be called upon to make presentations, answer questions and contribute in other ways during the deliberations of the committee.
7. Committee recommendations during each meeting will be assembled into a final document for review and approval by the committee.
8. 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.
9. Members and advisors may be reimbursed for necessary out-of-pocket expenses associated with attending the meetings. Interested persons must contact DATCP staff to obtain reimbursement.

### **Expectations for Participation**

10. Members and advisors are expected to take individual responsibility for contributing. They are expected to complete assignments between meetings, help the group with meeting its objectives, and support the group in completing its assignment.
11. 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.

12. 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.

Issue	Current treatment under the Siting Law	Technical in nature
Address definition of livestock facility subject to regulation	Under ATCP 51.01(18), "livestock" includes cattle, swine, poultry, sheep and goats and does not include equine animals, bison, farm-raised deer, fish, captive game birds, raities, camelids or mink. Also the term facility includes both the location where animals are housed and the structures connected with the facility.	No
Address definition of related facilities	The current definition of related facilities applies a concept of connectivity tied to ownership or management by the same person if the operation has one of three characteristics (e.g. adjacency of parcels). This definition differs in key respects from NR 243 which simply references common ownership and common management. Also DNR includes reference to common land- spreading equipment. DNR's code is more expansive in defining commonly stored wastes. Separate entities are now increasingly involved in the building and operation of digesters, and it is not clear how a local government should treat such facilities owned by a third party.	No
Tracking compliance with storage standard	Operators must indicate how they will comply with standards including a commitment to build structures to specifications. Permits under ATCP 51 are approved only with the promise to construct structures according to standards. There is no process for certifying that structures are built to standards.	No
Submission of new and modified ordinances and permit decisions	ATCP 51.10(4) requires that a local government provide DATCP copies of a new or modified ordinance within 30 days after they enact an ordinance. ATCP 51.34(5) (a) requires that a local government provide DATCP a permit decision within 30 days of its decision.	No
Add a waiver provision	ATCP 50 authorizes DATCP to waive rule provisions if the waiver is consistent with the rule's purpose and does not violate statutes.	No
Definition of residence	The siting rule does not define a residence for purposes of determining the odor score.	No
Permit modifications vs. new permits	ATCP 51.34(4)(b)2 provides that a "political subdivision may not withhold authorization, under this subdivision, for reasonable changes that maintain compliance with the standards" This is the extent to which permit modifications are discussed in the rule.	No
Cap on fees	Rule sets a \$1,000 maximum application fee. See ATCP 51.30(4). The rule does not address fees for follow-up inspections.	No
Financial responsibility for abandoned facilities	Local governments cannot require bonds or other financial assurances to pay for remediation of abandoned sites.	No
Substitution of WPDES permit for worksheets	An applicant for a siting permit may rely on a WPDES permit in lieu of submitting three of the required worksheets: #3 (waste and nutrient management), #4 (manure storage), and #5 (runoff management). Applicants can only submit a WPDES permit if it covers the same livestock facility, including authorization for a number of animal units equal to or greater than the number for which the operator seeks a local siting permit.	No
Broader enforcement of ATCP 51	Siting requirements are only enforced if local governments adopt ordinances. Chapter 93 compels this result.	No

Issue	Current treatment under the Siting Law	Technical in nature
Two year timeframe to populate and start construction	ATCP 51.08(2) authorizes a political subdivision to withdraw a local approval if a permitted facility fails to start populating or construction within two years.	No
Clarify process for granting variances	ATCP 51.12(2)(a) allows ordinances to specify a shorter setback but does not address the use of variances.	No
Submission of multiple odor worksheets with an application	Table A of the application provides instructions if there are multiple nearest neighbors. If the nearest neighbor is not the same for all livestock structures, the applicant needs to complete the spreadsheet once for each neighbor. The worksheet should only include the neighbor with the lowest weighted average distance. No other information should be submitted.	No
Farms with multiple production areas or remote storage facilities	Under the siting rule, structures are considered part of a facility if they are co-owned or co-managed and are commonly used. When applied to remote facilities, the odor score is calculated separately from structures in the main production area.	No
Consolidate definitions	Definitions in the rule appear in multiple locations, and should be consolidated to simplify use.	No
Building before issuance of a siting permit	No provision in the rule addresses this question. Local communities retain the authority and discretion to authorize construction before issuing a permit.	No
Monitoring of permits	The siting rule does not address the appropriate scope of monitoring and enforcement. In the case of NM plan and other compliance monitoring, the siting law does not define or limit local authority to request updates or monitor compliance. See Note to ATCP 51.16(3).	No
Attaching conditions to permits and challenges to those conditions.	The Supreme Court in the Larson Acres case concluded that the siting law withdrew a local government's power to impose unlimited conditions when it grants siting permits and limited them to imposing conditions only in relation to state standards or properly adopted local standards.	No
Ensure no discrepancy between permits	ATCP 51 has permit requirements related to manure storage. Sixty counties require permits for new or altered storage under s. 92.16. Sec. 93.90(2)(a) requires that standards under the siting rule be consistent with those under s. 92.16 (Manure storage)	No
Completeness determination	A local government has 45 days to make a completeness determination and notify an applicant of missing materials. Within 14 days of receiving a complete application, the local government must notify the applicant that the application is complete.	No
Greater flexibility to adopt new technologies	ATCP 51.14(5)(d) allows the department to approve a credit for an new odor control practice if there is adequate scientific evidence to show that the practice will result in odor reduction deserving of a credit.	No
Completion of four page coversheet for application	Local governments must use the application provided in the rule. The four page coversheet certifies compliance with key requirements and is signed by the applicant.	No
Submission of maps where manure will be spread	Worksheet 3 requires the submission of spreading maps but does specify what the maps should include.	No

Issue	Current treatment under the Siting Law	Technical in nature
Conditional issuance of a siting permit	The siting rule does not currently address the ability of a local government to issue a siting permit “conditioned” on meeting certain requirements.	No
Enforcement of permits	The rule says little regarding enforcement except in a note to ATCP 51.34(4)(b) that urges local governments to exercise sound judgment in taking enforcement actions. The only enforcement action referenced is withdrawal of the local approval.	No
A new 590 may be adopted by NRCS within the next year	The siting rule uses the 2005 590 Standard with several exceptions. S. ATCP s. 51.16(1). The revised ATCP 50 uses the 2005 standard.	No
Coordination with manure storage permits	The note to ATCP 51.18(6) establishes this relationship between siting and manure storage ordinances: “This chapter does not limit the application of local waste storage ordinances, except in connection with the approval of a new or expanded livestock facility.”	No
Worksheet 5 runoff	Local governments must use the worksheet provided in the rule. Landowners and their engineers complete and sign this worksheet.	No
NM plan updates as applied to CAFOs	An applicant can submit a CAFO permit in lieu of worksheet 3 and the nutrient management checklist. CAFO spreading plans only cover manure generated by the permitted facilities. It is not clear if a local government can request NM plan updates if an applicant relies on their WPDES permit in lieu of a checklist.	No
Use of DNR air emission recs.	ATCP 51.14 refers to odor and air emissions, but there are no standards related to air emissions.	Yes
New NR 151 performance standards	The siting rule incorporated NR 151 performance standards and prohibitions, requiring compliance by permit holders without cost-sharing. The current rule incorporates modified versions of the following standards as requirements for a siting permit: clean water diversions for structures near waterways, no unconfined manure piles near waterways, no manure storage overflow, and no overgrazing of streambanks.	Yes
Mandate minimum 180 days of storage	ATCP 51 does not require that applicants have storage or compel a minimum number of days of storage capacity. NR 243 includes this requirement.	Yes
Variation from NRCS 590 standard	Under ATCP 51.16(1)(a)1, all land applications of waste from a livestock facility approved under ATCP 51 shall comply with the NRCS 590 standard (Sept., 2005), except for certain exceptions.	Yes
More stringent standards	Local governments may apply more stringent standards if their ordinances include scientifically defensible findings of fact to show that the more stringent standard is necessary to protect public health and safety. State approval is only required under s. 92.15 Wis. Stats. if the local standard is more stringent than a state water quality standard.	Yes
New standards to fully address the impacts of proposed facilities	The siting law authorizes DATCP to develop and maintain standards for siting new and expanded facilities. Under this initial authority, ATCP 51 adopted the standards in subchapter II. In addition to revising existing standards, DATCP could adopt new standards.	Yes

Issue	Current treatment under the Siting Law	Technical in nature
Exemption for facilities 2,500 feet from neighbors	New operations over 500 AU and expansions over 1,000 AU must have an odor score of 500 or higher, but s. ATCP 51.14(2)(c) allows an exemption for a livestock facility in which all livestock structures will be located at least 2,500 ft. from the nearest affected neighbor.	Yes
Adjustment of the reduction factors for odor control practices	For each odor reduction practice defined in the rule, DATCP assigned credits based on their predicted reduction in odor. DATCP used the best available science and other factors to assign these credits.	Yes
New odor control practices and associated credits	The siting rule does not recognize these odor control practices: 1) immediate return of flush water and 2) poultry litter dryer belt systems.	Yes
Content of required and optional plans and odor score points awarded for these plans	The siting law requires all applicants to submit training and incident response plans. Applicants can take credit for these mandatory plans in calculating a passing odor score. Applicants can improve their odor score by agreeing to an optional odor management plan.	Yes
Tracking compliance with the odor standard (see monitoring above)	Operators must indicate how they will manage odor in their initial application, including a commitment to practices that reduce odor. Local governments may inspect farms for compliance or require that operators submit proof of compliance.	Yes
Evidence of rented land available for spreading	The note for ATCP 51.16(2) indicates a complete application must include a waste and nutrient management worksheet (Appendix A, worksheet 3) that identifies the acreage currently available for landspreading and provides a land spreading map.	Yes
Feed storage runoff	The current rule exempts feed storage from detailed requirements if the structure will store feed with less than 70 percent moisture. This applies differently to existing vs. new and substantially altered facilities. ATCP 51.20 (3).	Yes
Milking Center Waste	The siting rule does not specifically address milking center waste.	Yes
Odor from stored feed and leachate	The current siting law does not include an odor generation number for feed stored in bunkers. For stored leachate, applicants must use the odor generation number for stored manure to calculate their odor score.	Yes
Documentation that may be requested by local governments	The current rule recognizes the ability for local governments to request supporting documentation related to manure management.	Yes
Clarification of appropriate technical standards for design of structures	While the siting rule is clear on the technical standards for the proper design of manure storage structures and transfer systems, there are issues with the technical standards for the design of certain structures. These issues were not addressed by the NRCS technical standards incorporated into the rule; however, newer NRCS technical standards may have resolved the questions.	Yes
Application requirements for manure management systems	Under current law a siting application does not require a narrative describing how the facility is designed and how the various components of the farm will operate. These narratives are part of NR 243 applications.	Yes

Issue	Current treatment under the Siting Law	Technical in nature
Update model for predicting feedlot runoff	BARNY model is the standard for evaluating animal lot runoff. This model has not been updated.	Yes
Road and property line setbacks	The current rule requires that most structures meet road and property line setbacks of 100-150 feet depending on the facility's size, and imposes a 350 foot setback for manure storage structures with exceptions to allow for expansion and new construction.	Yes
Modification of odor generation numbers for production area sources	The current law sets odor generation numbers for dairy housing, poultry housing and waste storage. Numbers were set based on the best available research in 2006.	Yes
Creation of new odor generation numbers for sources	There are currently no odor generation numbers for these sources: 1) sheep/goat housing and 2) sand/manure solids separation systems.	Yes
Odor from field application of manure	The siting rule does not regulate odors from field applications of manure. There are no minimum setbacks for certain applications. The siting rule does not identify acceptable practices apply manure through irrigation systems. (see spray irrigation of manure)	Yes
Local spreading restrictions involving nutrient applications on frozen and snow covered ground	The siting rule does not incorporate Section V.A.2.b(2) of the 590 Standard, which allows for local restriction of nutrient applications on frozen and snow covered ground in "areas delineated in a conservation plan as contributing nutrients to direct conduits to groundwater or surface water as a result of runoff."	Yes
Evaluation and monitoring of existing manure and other storage facilities	Applicants are required as part of Worksheet 4 to provide engineering certification regarding the condition of existing manure storage facilities. Evaluation is not required for transfer systems and feed storage. There are no provisions related to monitoring for leaks.	Yes
Manure irrigation	Currently the siting law and rule do not address this issue, except through nutrient management. The siting rule imposes no standards or restrictions on local regulation. Local governments may regulate this practice outside of sting if they apply the restrictions to all farms in their jurisdiction.	Yes
Minimum technical requirements for odor control practices	In the 2006, DATCP identified odor control practices that landowners could use to offset their odor generation score. For each odor control practice, DATCP defined the minimum requirements necessary for an operation to qualify for a credit.	Yes
Plan submission requirements, including planning for the maximum animal units	The siting rule requires that an operator prepare a plan in compliance with NRCS 590 and document compliance with the checklist. In the siting board case of Van Dyke v. Racine County the Board required applicants to submit NIM plans that "reflect that the amount of land available to spread the manure volumes calculated to be generated by the maximum number of animal units.	Yes



**Assignment**  
**Livestock Facility Siting Technical Expert Committee**  
September 18, 2014

**Scope of Assignment and Desired Outcome**

The committee is charged with recommending options for adjusting the existing siting standards and related rule provisions to ensure that the standards keep pace with changing agricultural practices and remain environmentally protective. The standards in the siting rule must be practical for producers to achieve and for local governments to implement, while continuing to meet the objectives of the siting law.

The scope of this committee is limited to technical issues related primarily to water quality and odors are the focal point. The committee will not evaluate broader policy areas such as social acceptance of large livestock farms, animal husbandry practices, or other related issues. Specific issues, such as manure irrigation, may not be covered in detail by the committee since a UW-Extension workgroup is currently evaluating research in that area. However, the committee may make a recommendation following the release of the workgroup's report.

Before each committee meeting, members will be provided questions to answer for that meeting. While assignments are tailored to be completed during a scheduled meeting, the committee can carry over an assignment into its next meeting. Notes will be prepared by DATCP staff reflecting the committee discussions. Future assignments will be organized by the following topics: 1) engineering, 2) nutrient management, 3) odor and setbacks. A separate document entitled *Committee Structure and Logistics* describes the process members will use to develop recommendations.

Your assignment for the first meeting will be to address the following questions:

**Incorporation of NR 151 and ATCP 50 Standards**

1. Both NR 151 and ATCP 50 adopted a prohibition against significant discharges of process wastewater.

**Background:** [NR 151.055](#) prohibits the significant discharge of process wastewater, and defines the criteria for determining if a discharge is significant. [NR 243.03\(53\)](#) defines "process wastewater" as any wastewater from the production area including water that comes into contact with any raw materials or animal byproducts including manure, feed, milk, eggs or bedding. [ATCP 50.04](#) requires that all farm landowners implement conservation practices that achieve compliance with this and other performance standards. This prohibition against significant discharges applies to existing facilities as well as new or modified facilities. The current siting rule has no requirements related to process wastewater discharges other than those involving feed storage, see [ATCP 51.20\(3\)](#), and therefore is not consistent with the current nonpoint rules.

What is the best way to accomplish incorporation of this standard into ATCP 51?

2. Consistent with NR 151 performance standards, ATCP 50 adopted NRCS 629 as the technical standard for the design, construction and maintenance of new and substantially altered feed storage runoff control systems.

**Background:** [ATCP 50.705](#) establishes the practice standard for the design, construction and maintenance of feed storage runoff control systems. [NRCS technical guide waste treatment standard 629 \(January, 2014\)](#) and [NRCS technical guide vegetated treatment area standard 635 \(September, 2012\)](#) are critical technical standards referenced in ATCP 50.705. The current siting rule, [ATCP 51.20\(3\)\(c\)](#), uses practice standards for new and substantially altered feed storage that are not consistent with the most current version of ATCP 50 and the latest NRCS technical standards. With other siting standards, such as nutrient management and odor, the siting rule applies different requirements for facilities under 500 animal units. For example, smaller facilities are not required to submit a nutrient management plan if they have an adequate land base as defined in Worksheet 3B.

Would the following proposed recommendation to modify ATCP 51 achieve consistency with the nonpoint rules, or is there other language that the committee should consider?

“ATCP 51 should require compliance with NRCS 629 (January 2014) for all new and substantially altered feed storage facilities. Feed storage requirements should apply to all of the commonly stored feeds, consistent with NRCS Standard 629, not just feed over 70 percent moisture (cannery, brewers and distillers byproduct feeds). Requirements for existing feed storage (Worksheet 5, Feed Storage, 2. (b)) should use 500 AU as the threshold for applying this requirement.”

3. ATCP 50 adopted NRCS technical standard 629 as the technical standard for control of milking center wastewater.

**Background:** [ATCP 50.77](#) establishes the practice standard for the design, construction and maintenance of milking center waste control systems. [NRCS technical guide waste treatment standard 629 \(January, 2014\)](#) and [NRCS technical guide vegetated treatment area standard 635 \(September, 2012\)](#) are critical technical standards referenced in ATCP 50.77. The current siting rule does not address the control of milking center waste.

Would the following proposed recommendation to modify ATCP 51 achieve consistency with the nonpoint rules?

“ATCP 51 should require that all permitted farms manage milking center wastewater in accordance with NRCS technical guide waste treatment standard 629 (January 2014). Most dairy farms with manure storage may comply with this standard by directing this wastewater to storage.”

4. Both NR 151 and ATCP 50 adopted a phosphorous management tool for croplands. What is the best way to accomplish incorporation of this component into ATCP 51?

**Background:** [NR 151.04](#) requires that cropland have an average Phosphorus Index (PI) of 6 over a rotation and annual PI not to exceed 12. [ATCP 50.04\(3\)\(a\)](#) provides that an ATCP 50 compliant nutrient management plan, if it includes an appropriate phosphorus index (PI) calculation value, may be used to demonstrate compliance with s. NR 151.04. [NRCS technical guide nutrient management standard 590 \(September, 2005\)](#) requires a phosphorus management strategy using either an approach based on the PI or soil test phosphorus. The PI strategy in the 590 standard requires average PI values for up to an 8-year rotation in each field to be 6 or lower. The current siting rule, [ATCP 51.16\(1\)](#) incorporates the requirements of the NRCS 590 standard, but does not include the full requirements in the nonpoint rules related to phosphorus management.

5. Both NR 151 and ATCP 50 adopted the following standards:
  - a. A requirement that pastures be managed to control erosion and be covered by a nutrient management plan if they have certain stocking rates.
  - b. A requirement that tillage not be conducted within a 5-20 foot setback between cropped fields and surface water.

**Background:** The following DNR requirements apply to pastures as well as cropland: [NR 151.02](#) requires that pastures be managed to achieve tolerable soil erosion rates, [NR 151.04](#) requires that pastures have an average Phosphorus Index (PI) of 6 over a rotation and annual PI not to exceed 12. DNR rules [see [NR 151.015\(15m\)](#)] determine if farmland with animals is a pasture or a feedlot subject to separate runoff control requirements. [ATCP 50.04\(3\)\(b\)](#) defines which pastures must be included in a nutrient management plan for purposes of meeting NR 151 requirements. A nutrient management plan is required for pastures stocked at an average stocking rate of more than one animal unit per acre at all times during the grazing season. This [fact sheet](#) provides additional information, [NRCS technical guide nutrient management standard 590 \(September, 2005\)](#) provides the technical standards for developing NM plans for pastures. The current nutrient management standard in the siting rule, [ATCP 51.16\(1\)](#) does not include nutrients applied to pastures. [NR 151.03](#) establishes a tillage setback requirement for cropland. [ATCP 50.04\(4\)](#) establishes the procedures for implementing the standard including the method for determining the setback distance and documentation requirements for setbacks greater than 5 feet. ATCP 50 does not specify NRCS or other technical standards for determining an appropriate setback, nor does it require cost-sharing for implementation. The current siting rule does not address a tillage setback.

Should these requirements be included as a standard that must be implemented as condition of a siting permit?

6. Regarding recommendations for questions No. 1-5, what, if any, adjustments should be made if full incorporation of NR 151 and ATCP 50 standards subjects livestock facilities permitted under ATCP 51 to requirements greater than those imposed on CAFOs under NR 243?

**Background:** DNR will be available to provide guidance on the extent to which the NR 151 standards have been or will be made part of WPDES permit requirements for CAFOs. With this information, the committee could evaluate any recommendations to determine whether these standards should be enforced through permit requirements, rather than through NR 151 compliance efforts that are linked to cost-share requirements.

7. To be consistent with ATCP 50, should ATCP 51 references be updated to reflect the following NRCS technical standards?
  - a. [NRCS technical guide waste storage facility standard 313 \(January, 2014\).](#)
  - b. [NRCS technical guide, closure of waste impoundments standard 360 \(March, 2013\).](#)
  - c. [NRCS technical guide waste treatment standard 629 \(January, 2014\).](#)
  - d. [NRCS technical guide waste transfer standard 634 \(January, 2014\).](#)
  - e. [NRCS technical guide vegetated treatment area standard 635 \(September, 2012\).](#)

**Background:** The practice standards in [Subchapter VIII of ATCP 50](#) have or will be updated to reflect the latest technical standards listed above. In addition to the most recent revision of ATCP 50 in 2014, which updated NRCS standards, DATCP is pursuing agency-wide technical rule changes that will result in further updates. Follow this link for more information on the technical rule change, <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=16543>