

**Livestock Siting Technical Expert Committee
Meeting Notes
December 16, 2010**

Attendance: All members and advisors were present except John Ramsden. Chuck McGinley and Larry Jacobson joined via teleconference for the discussion of the odor recommendations. DATCP staff participating in the meeting included Richard Castelnovo, Ed Odgers, Jim VandenBrook, Steve Struss, Mike Murray and Cheryl Daniels.

The meeting was called to order at 9:35 am.

DATCP Deputy Secretary Paul Dietmann thanked the committee for their work and recapped how the final recommendation report integrates into the next steps of department's rule revision process. The four year review of the siting rule highlighted key recommendations related to the siting standards as well as a myriad of related issues, some of which fall outside the scope of ATCP 51. Moving forward DATCP will consider the committee's report within the scope of the rule revision.

The review of the draft report began with an overview of the co-chair transmittal letter, executive summary and committee process sections of the report. There was additional discussion of the relationship of the committee's report to rulemaking, and a memorandum from the DATCP Secretary to the ATCP Board was shared regarding this issue.

At the onset of discussing the subcommittee recommendations a document of dissenting comments, signed by four of the committee members, was distributed (see attached). The Co-Chairs asked that the concerns expressed in the document be taken up during the discussion of the draft report and to discuss the disposition of the document at the end of the meeting.

The remainder of the day was spent reviewing and approving modifications to the draft recommendation report concerning assignment questions for the Engineering, Odor, Setback, and Nutrient Management subcommittees, and included discussions related to the assessment of existing manure storage facilities, odor credits for digesters and manure separation technologies, utilizing conservation planning to document nutrient management restrictions, and the use of best available science. A legal opinion from DATCP was presented and discussed related to best available science.

Committee members reached a consensus concerning the final report. Specific modifications agreed to by the full committee will be incorporated in the final report of the technical expert committee.

At the close of the meeting the authors of the dissenting comments indicated that many of the concerns within their document had been resolved by modifications to the draft report and clarifications made during the meeting. After the committee agreed that comments on the report should not be attached to the report, the authors of the dissenting comments agreed to withdraw their document while reserving the option of submitting a revision to the document. Consistent with this resolution, all committee members were invited to submit comments to the Department, along with the public, and all comments will be made part of the rulemaking record. This process was a compromise accepted by the committee after numerous committee members voiced strong

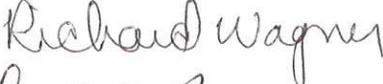
objection to incorporating any attached document into the report, stating that such an attachment would not be the product of the committee and therefore would violate the ground rules set forth for a consensus process.

The meeting concluded with a summary of next steps:

- DATCP staff will prepare the final committee report by incorporating the agreed upon changes to the recommendations.
- The report will be sent to the DATCP Secretary next week.
- Comments about the report will be accepted from committee members, and the public, and made part of the rulemaking record.

The meeting adjourned at 3:05 pm.

Date: December 16, 2010
To: Richard Castelnovo, Co-Chair
Ed Odgers, Co-Chair

From: John Roach, Member 
Richard Wagner, Member 
Dave Buss, Member 
Jeff Endres, Member 

2010 Livestock Facility Siting Technical Committee Report – Dissenting Comments

The purpose of this document is to provide a written record of our concerns with the 2010 Livestock Facility Siting Technical Committee Report. Since the Technical Expert Committee utilized a consensus process to develop recommendations, the committee did not resolve every difference of opinion among members. This report outlines our concerns and differences of opinion from the proposed recommendations in the Draft report of the Livestock Facility Siting Technical Expert Committee Recommendations dated December 16, 2010.

This document represents the collective concerns and dissenting comments of the authors. The reader should not presume each author holds independent expertise in all of the subject matter; rather the expertise of each author should be inferred from participation in the specific subcommittee to which he was assigned. We respectfully request this document be included in its entirety as an appendix to the final committee report.

We have concerns about the process used to develop the report. We believe that the process should have focused on making suggestions for changes based upon the performance of the approximately 60 farms currently in the program. To our knowledge there have been no documented failures at any of the current program farms. We believe that the committee focus should have been to make corrections to what we can document is not working. In order to effectively make reasonable recommendations the committee needs to review data collected from the farms currently in the program and documentation of any failures. As data from the program farms has not been collected, the committee was issued questions that were developed by DATCP staff based upon perceived problems. As a result, this report consists of addition requirements, reporting, restrictions and monitoring to fix problems that cannot be documented exist. The result is that if adopted, these recommendations will add additional cost, time and burden to the farms that are required to implement the Livestock Siting Law.

We have several general concerns about the draft technical report and a list of specific objections to the draft report.

First, the draft cover letter from the Co-Chairs does not accurately reflect the statutory requirements of Wis. Stat. § 93.90. Specifically, the second paragraph states that the “committee focused on the best

available science and field research...”; however, the statutory charge of this technical committee is to rely upon peer-reviewed science, not best available science and not field research that has not been published or subject to peer review. Several committee members have repeatedly asked for the peer-reviewed scientific data used to support a number of the recommendations, but the data has not been produced. The second paragraph of the cover letter also provides that the “committee considered whether proposed changes are practicable and workable”; however, we recall very little discussion of practicability and workability in our subcommittee meetings.

Second, the Executive Summary (pages 5 - 6) and the body of the draft report fail to acknowledge the significance of the technical recommendations. We understood this process to be one aimed at identifying problems with the standards and developing solutions. Instead it seems like “solutions” were developed without the identification of actual problems with the existing standards. This approach to technical standard revisions may have potentially devastating economic consequences on the production, growth, and modernization of Wisconsin’s livestock farms.

Third, the Review Scope and Criteria section states that the technical committee was required to “respond to local experiences with permitted and non-permitted farms” (page 9). However, despite requests, the committee was provided no performance or failure data from the 60 or so farms participating in this program. As such, we have been unable to develop recommendations based on past performance of the program or the success or failure of existing technical standards. We believe this committee could have developed a more credible set of recommendations if actual program data was used to help formulate recommended changes to ATCP 51.

Fourth, throughout the document, the Rationale statements tend to ramble, mislead, and overstate the committees’ reasoning, in most cases without any data to back these statements up. Consequently, it is our view the document needs significant revisions and editing if it is to be used as a blueprint for revising ATCP 51.

Fifth, compliance monitoring is the responsibility of the local government, and is conditioned in part on locally adopted ordinance. We do not agree that the additional self-reporting compliance monitoring recommendations outlined in the report will result in additional resource protection. In reality, it will result in nothing more than additional paperwork. Currently most counties lack the personnel to manage the existing mandated reporting data require from animal agriculture operations.

We also have the following specific objections:

- 1) Draw down of the waste storage facilities to two feet from the bottom and visual inspection of certain storage liners should not be arbitrarily mandated, but should be left to the discretion of the professional engineer that certifies the condition of manure storage facility (page 14).
- 2) The facility closure and financial responsibility discussion needs to be removed from this report as the committee has concluded that the topic is beyond the technical expertise of committee members and beyond the scope of the technical standard review (page 18). This issue will be addressed, as requested by the ATCP Board on October 27, 2010, by the Department Secretary.
- 3) No program data was used to conduct the review of the odor index, and yet sweeping changes are being proposed such as elimination of the 2,500-foot exemption from the index. Efforts to validate the existing odor index on program farms should have occurred during the last four

years and the resulting data presented to the committee before the recommended changes were offered (page 19).

- 4) The list of changes to the odor index is without peer reviewed scientific data to back- up the changes; these changes should be discarded in their entirety (pages 19 through 28).
- 5) Imposition of new structure-to-structure setbacks in areas that have been planned and zoned for agriculture is unnecessary, and contrary to the working lands initiative (page 29).
- 6) Harmonizing the different rules pertaining to nutrient management (ATCP 50, ATCP 51, and NR 151) is an important goal, but any such harmonizing must be done with proper due process, including adequate public notice and opportunity for public comment (page 31). We note that the Rationale statement for Recommendation 2 for Question 1 on page 31 is inconsistent with the recommendation – we object to harmonizing ATCP 50, ATCP 51, NR 151 and NR 243, as it may likely lead to all farms, regardless of size, being required to comply with the NR 243 requirements.
- 7) We reject deletion of the title of A2809, or for that matter any titles of any publications or standards that are incorporated by reference in ATCP 51. All dates for these standards must also be retained so that the regulated community understands which publication or technical standard has become part of the administrative rule and is therefore enforceable (page 32). We also note that several recommendations on page 31-32 (and referenced in #6 above) seem to seek the same goal – to allow standards and documents to be vaguely incorporated into ATCP 51, so as those standards and documents are updated at a later date, the update might automatically be imposed upon the regulated community without being properly incorporated by referenced through the statutory rulemaking process in Wis. Stat. ch. 227. We object, as the regulated community needs certainty – farmers cannot plan or run a business if standards are constantly changing without first being vetted through the rulemaking process
- 8) We reject the recommendation to require producers to provide a breakdown of acres owned, rented and under other land spreading agreements (page 32). Producers are required to develop and implement nutrient management plans that contain adequate acreage to properly manage their nutrients. The current version of ATCP 51 already allows local government to ask for this information if they think its necessary. This recommendation is unnecessary and is above and beyond that required by NRCS 590 and NR 243..
- 9) “Ongoing identification of features” should not be added to a separate livestock siting checklist as it would be duplicative of existing NRCS 590 nutrient management planning requirements (page 33).
- 10) We reject any recommendation that is based on the technical expert committee’s presumption that licensed professionals and consultants’ work product is somehow invalid, subpar or otherwise untrustworthy.
- 11) No farmer should have to submit their “fertilizer license number” or any other license or permit numbers as part of a livestock siting application (page 33).
- 12) The final recommendation on page 34 – 35 of the draft report must be deleted as ATCP 51 already allows local government to implement more stringent standards, provided the technical

and procedural requirements are met. This recommendation, if adopted, would be in direct conflict with the plain language of the livestock siting statute and the legislative intent of the law. Livestock siting was developed to ensure applicants would be subject to consistent statewide standards for livestock siting. Allowing applicants to be subject to an unknown set of spreading restrictions developed on a case-by-case basis is unacceptable.