

Livestock Siting Technical Expert Committee
Nutrient Management Subcommittee
Meeting Notes September 8, 2010
DATCP Room 172
2811 Agriculture Drive
Madison, WI 53718

All Nutrient Management (NM) Subcommittee members attended. Mike Murray was present.

The meeting was called to order at 9:30 a.m. followed by roll call, preliminary business matters and review of matters from first organizational meeting on July 21, 2010.

The NM Subcommittee discussed the scope of their evaluation of NM issues and related background information. The NM subcommittee is focused on NM technical issues. Water quantity, land use policy, social impacts, hazardous air emissions are outside the scope of this committee. Public comments were nearly evenly split for and against changes to the current rule during the listening sessions. Some of the issues were related to setbacks from the facility, adequacy of application documentation, and whether uniform standards were adequate. It was noted that few town or other local officials provided comments on the Siting rule, and those that did mostly suggested minor changes or indicated that they should be free to regulate as they did before the law was adopted. Special interests on both sides commented. It was noted that the changing makeup and small size of town boards could potentially create an unpredictable business environment without standards.

The subcommittee will consider: public health and safety issues; practical, cost effective practices; peer-reviewed science; economic viability; protection of natural resources; compliance monitoring; and, consistency with current rules. Rule changes, if deemed necessary by the department, typically take at least 2 years to complete. Compliance with the Siting rules does not require that cost share funds be provided to a farmer applying for a Siting permit. It was noted that producers should not view approval of the permit as an authorization to pollute. If a permitted farm has a significant runoff problem, the operator can still get a citation for deleterious discharge.

It was agreed that for uniformity and predictability, the Siting rule should follow the most current NM regulations. Currently, for those operations above 1,000 animal units, NR 243 (CAFO NM rules) apply. For operations under 1,000 animal units, the Siting rule references the statewide 2005 NRCS 590 nutrient management standard with the exclusion of Criteria D, and E, and locally identified winter spreading restrictions. Adding the locally identified winter spreading restriction option back into the siting rules was discussed. Currently, some local governments have attempted to add additional NM restrictions to Siting permit applications. Applicants have in some cases appealed these decisions through the Livestock Facility Siting Review Board, however appeals can be onerous on both sides. As an alternative, local governments may enact NM restrictions that exceed state standards through adoption of an ordinance, rather than identifying restrictions through individual NM plans. The Siting rule is intended to provide an organized and predictable process, yet development of more restrictive local ordinances is allowed. To be allowed local governments must demonstrate a response to public health and safety threats. Local ordinances incorporating more restrictive practices such as additional winter spreading restrictions must undergo a public process during their development, including public notice and likely public hearings. Requirements above the 590 standard must also be approved by DATCP or DNR. The

ordinance development process is viewed as daunting and not many local governments have pursued the option. It was suggested that the process of ordinance development be reviewed at the next meeting.

It may be difficult to reflect changes in underlying runoff models (RUSLE2, P-index) during rule development. It is desirable to have as few differences between standards in the state as possible, but the constant improvement of models with better science is difficult to reconcile with the desire to limit the frequency of rule changes. DATCP legal counsel prefer to have model versions codified in the rule.

The subcommittee addressed the following questions and developed possible recommendations or actions to learn more. The assignment questions referenced below are available at: http://www.datcp.state.wi.us/arm/agriculture/land-water/livestock_siting/technical_expert_committee.jsp

Question 1 *Does a checklist ensure that a nutrient management plan exists and meets standards?*

The current process is workable because the local authority can ask for supporting information used to complete the checklist. However, many local governments, neighbors or environmentalists want to see more information than the checklist, typically the complete nutrient management plan. If all the information, e.g. soil test data, is not available at the time of a siting application, the plan projections must be based on default values.

The concept of using something between a checklist and full plan like the 590 EZ form with a siting application was considered. It is difficult to know if a 590 EZ projection will meet the standard. Many counties would not be comfortable with the 590 EZ concept because they review the NM plan itself. However, not all towns have the ability to conduct plan reviews.

County staff are a good source of expertise to draw from because they typically know the farmer and the land base. We cannot assume that town and county government work together, nor can we compel counties to work with the towns. To review a plan the local municipality may work with public (county LCD, NRCS, DNR staff) or private sector (consultants) or they can do the review themselves. Jefferson County LCD reviews about two siting applications a year and the amount of review time varies tremendously. There is an educational continuum and as all parties become better acquainted with the requirements approvals have sped up.

Consultants sometimes appear not to be credible because they are being paid by the applicant to develop the NM plan, yet the consultant's reputation is on the line and are taking on liability. Out of 60 approved applications, seven appeals concerning five facilities were heard by the Livestock Facility Siting Review Board. Appeals concerned both county and town issued permits. An application must be determined to either meet the standards or not.

Possible Recommendations: While discussed as possibly adding more credibility to a checklist, no additional county sign off on the checklist should be required as it cannot be compelled and some counties do not have the expertise to sign off. The information requested under Worksheet 3 Part C the Checklist item 4 needs greater clarity however.

Action Item: The group requested more information on related rules and regulations including the impact of the new non-point rule changes (NR 151), and the new USDA-NRCS changes in soil attributes for tolerable soil loss and soil erodibility factors on:

CAFO rules (NR 243); Conservation Standards (ATCP 50); Siting rules (ATCP 51); and, conservation compliance for the Farmland Preservation Program.

Question 2A *What documentation is needed to ensure rented land will be available for manure spreading according to the nutrient management plan?*

The siting permit must confirm that farms have enough land to complying with their 590 plan. Annual updates will show how much land gets nutrients. Many people do not like to sign contracts and rental agreements are only as good as the person being renting from. NRCS contract requires producers to demonstrate control of land, this can be done in a statement. NR243 requires a form to be submitted showing the number of acres owned and rented land by landowner in the annual report and plan update. It is a nice middle ground to show what land is rented versus owned and it satisfies many neighbors. If the public asks for more, DNR can get the actual rental agreements. **Action Item: Get the NR 243 rental form to the subcommittee for review as a possible siting requirement.**

Question 3A *How should methods of manure disposal (other than land application) be documented?*

The NM plan needs to explain where all the manure and nutrients are going. If only some of the manure is land applied, it needs to be described in the plan. The intent Worksheet 3 Part B is to explain the disposition of all the manure. NM planning helps allow proper nutrient distribution; we should encourage more NM planning that meets the standard. If manure goes to another county the regulating county can still require a NM plan be developed. This happens with the Farmland Preservation Program (FPP). The siting application forms should be expanded, and an explanation in the plan narrative must show the disposition of manure and nutrients whether through field application, use as bedding, or other ways of disposal such as commercial sale of manure as fertilizer with nutrient content claims. A DATCP issued fertilizer license is required if off-farm sales of nutrients occurs, and should be noted.

Possible Recommendation: Expand Worksheet 3 Part B,2.c. to allow more space to describe methods. Expand the narrative Checklist question by adding to Worksheet 3 Part C, 9 “manure allocation other than that accounted for in the nutrient management plan.”

Question 3B *How should nutrients other than manure be accounted for?*

590 requires all mechanically applied nutrients to be accounted for in each field. This means biosolid applications must be accounted for in the NM plan and in the siting application Part C.4.

Possible Recommendation: On Worksheet 3 Part C add “Are any fields approved to receive biosolids, septage, or industrial waste?” Also add a note that these applications may not occur every year.

Question 2B *How should environmentally sensitive features (karst, tile lines, direct conduits to groundwater) be determined and documented?*

To the maximum extent possible inlets and outlet of tiles are required on maps for NR 243. 590 requires to the maximum extent possible any conduits to groundwater to have a winter spreading prohibition because applications within 200’ must be incorporated. These features can be identified by the producer or conservation staff in a conservation plan. NR 243 requires a verification log, where features are when they were found, who verified them, and actions taken. Many people comment to DATCP that the winter set backs from these areas

are not large enough. On what would we base changing the distances? The environmentally sensitive features should be shown on the NM plan map.

590 defines Direct Conduits to Groundwater (V.A.2.a.(4)) -Wells, sinkholes, swallets (a sinkhole or rock hole that intercepts a stream, diverting all or a portion of it to the groundwater), fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater quarries, or depressional groundwater recharge areas over shallow fractured bedrock. For the purpose of nutrient management planning, these features will be identified on the NRCS soil survey and/or USGS 1:24,000 scale topographic map, or otherwise determined through on-site evaluation and documented in a conservation plan.

Possible Recommendation: As currently required, the NM planner is required to identify these groundwater conduits and update maps as features are found by the farmer or conservation professionals.

Question 4 *How do we determine compliance with a nutrient management plan?*

NR 243 requires annual reports and other record keeping. Also more record checks and field compliance. 590 has much the same annual documentation. FPP requires on-farm compliance checks every four years.

Action Items: Provide the subcommittee with the FPP status review form to show what we expect. Go through compliance options given new manure storage, odor practices, and the need for amended permit applications.

Action Item: How will the DATCP rule reflect model changes so users know the requirements for the next 7 years or so?

Question 5 *What conditions, if any, form the basis for local government to impose more stringent restrictions on land spreading practices?*

Local ordinances must show a public health and safety risk when adopting restrictions beyond those in the siting rule/590 standard. Determining what constitutes health and safety risks from landspreading of manure on lands of varying vulnerability is difficult. Groundwater contaminants of concern, such as nitrate, originate from many sources and are difficult to trace and/or control. Pathogens may be a different story.

Action Item: Next meeting - Describe the process of ordinance development and include a discussion of public health and safety definitions, perhaps include someone from Health Services who works with this issue.

The next meeting is Sept. 29, 2010 9:30-3:00 at DATCP in Room 172, also scheduled are an Oct. 13 subcommittee meeting and the Nov. 11 meeting with the full committee.

Meeting was adjourned at 3 pm.