

## Appendix T. CAC BMP Verification Related Correspondence



### Citizens Advisory Committee TO THE CHESAPEAKE EXECUTIVE COUNCIL

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January 3, 2012

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Maryland

Dear Principals' Staff Committee:

As your citizen advisors, we respectfully offer our recommendations for action that you can take now to increase public trust in your process of expending scarce public resources on restoring our national treasure, the Chesapeake Bay Watershed. Having been deeply involved with the Program deliberations since the initial discussions of the value of Independent Evaluation, we believe that we have credibility and perspective to offer these recommendations.

We understand that there has been some resistance to the idea of external evaluation.

However, we agree with those that recognize its importance and acknowledge that accountability is a critical issue right now. During our meeting discussions we often ask "Why is the bay not getting better?" It seems as though we are merely holding the line in some areas while losing ground in others. CAC believes there are three possible answers: 1) We are not doing what we say we are, 2) we are doing the wrong things, or 3) we are not doing enough. Herein lies the importance of independent evaluation as opposed to only relying on adaptive management. While we are still unsure what the Chesapeake Bay Program (Program) specifically means by adaptive management and how it will occur, the practice still implies *internal assessment* and correction of actions. These are certainly critical components to program implementation, but by its nature, internal adaptive management can inhibit new thinking, new ideas and potential innovations that could ignite an acceleration of progress that the twenty-plus years of the restoration effort honestly requires to finally meet the clean-up goals.

Analysis of Bay progress cannot be fully conducted without being able to determine whether practices are being implemented as reported. When that can be determined within a reasonable standard, then management actions can be adapted to adjust the type and volume of practices necessary to accelerate progress and more effectively utilize scarce funding. In sum, external review can identify needed improvements with a discipline and mandate that saves tax payers' money and improves program performance in the long term.

Furthermore, it is our belief that the Chesapeake Bay Program cannot afford to be seen by the public, Congress or the state legislatures as unwilling to adopt recommended measures from a well respected independent scientific body, the National Academy of Sciences (NAS), to improve its accountability through adoption of a mechanism of external review.

Jessica M. Blackburn, CAC Coordinator

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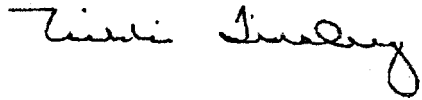
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The NAS study identified some very critical actions that must be taken to allow the Program to identify how funding could be better targeted and areas that lack accountability that must be addressed in order to gain the full effect of the dollars expended on restoration activities.

The Citizens Advisory Committee recommends that the Program begin implementation of the NAS recommendations by identifying short and long term actions including directing the Program to accelerate action to implement the provision in the Regional Administrator's November 3, 2011 memo to "...bring forward through the Partnership a set of integrated recommendations for a comprehensive BMP tracking; verification and reporting system (#11).

In conclusion, we believe that the Program cannot afford to be without an independent means to evaluate its progress and urge the PSC to continue to advance the discussion on how best to institutionalize independent, external evaluation of the Bay Program. We offer our assistance in whatever way best serves the Partnership's efforts in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikki Tinsley". The signature is written in a cursive style. To the right of the signature, there is a faint, rectangular stamp or watermark, but its text is illegible.

Nikki L. Tinsley  
Chair, Citizens Advisory Committee

CC: Nick DiPasquale

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### Citizens Advisory Committee TO THE CHESAPEAKE EXECUTIVE COUNCIL

*CHAIR*  
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Pennsylvania

December 17, 2012

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Nick DiPasquale  
Director, Chesapeake Bay Program  
Environmental Protection Agency  
410 Severn Ave  
Suite 109  
Annapolis, MD 21403

Dear Mr. DiPasquale,

The Citizens Advisory Committee heard a presentation from Mark Dubin on the Agriculture Workgroup's verification efforts at our quarterly meeting on November 30, 2012. We have also received a copy of the letter sent by several members of the workgroup; reviewed the principles adopted by the BMP Verification Committee; and considered recent correspondence from Rich Batiuk to the chairs of the source sector workgroups.

It is our understanding that this current verification process looks to fundamentally change, for the better, the way in which the CBP verifies the implementation of practices designed to reduce nutrient and sediment pollution. In this way, the CBP will significantly improve the accounting for reductions in the Watershed Model.

What remains unclear to us is the "who" and the "how" of the final decisions on any verification protocols. To have such decisions made by the PSC may not be prudent, given the state partners' repeated cries of inadequate funds and repeated defense of existing evaluative practices. EPA must strengthen its role in providing guidance, direction and feedback on the level of verification it anticipates as sufficient to meet the reasonable assurance standard. Currently, it remains unclear exactly who will determine the sufficiency of any proposed verification protocol. However, since the level of verification is directly linked to any finding of reasonable assurance, and since any credit given in the Model is directly tied to a determination of jurisdictional accomplishment of its TMDL pollution reduction goals, it is clear to us that the final decision-maker must be EPA.

The Verification Principles established by the BMP Verification Committee are broad principles crafted at the 10,000 foot level. There is a need for EPA to provide explicit implementation guidance to the source sector workgroups providing more specificity on how the Verification Principles must be utilized as they develop their

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protocols. Of particular interest to us is the need for guidance delineating what is and is not sufficient transparency as required in the “Public Confidence” principle. Absent a significant level of heightened transparency in the verification process itself and the underlying data to support any conclusions; we will not meet the public confidence standard envisioned in the principle. Also to be included in the guidance, for example, should be an EPA implementation directive establishing that the level of “scientific rigor” will necessitate relational levels of credit application in the model and that every protocol needs to recognize this “sliding scale” approach. In addition, EPA should use the findings of the BMP Verification Review Panel—the only wholly nonpolitical and scientific group engaged in the verification process—as weighted guidance in making its determination.

We also remain concerned with many specifics relating to the verification process. We have attached a list of these specifics.

- 1) Reliance on use of the existing state verification protocols, the status quo, is not acceptable although it appears that many on the Agriculture workgroup support this approach.
- 2) Different levels of credit should be given in the model for different levels of verification.
  - a. As it is inevitable that achievement of a high level of certainty will prove difficult when applied to certain BMPs, the workgroup should endorse the concept of providing different levels of credit based on different levels of certainty. A sliding scale certainty/credit ratio system would allow for greater flexibility and greater accuracy.
  - b. It is not possible to pass the test of public credibility or the legal scrutiny of “reasonable assurance” by adoption of a procedure that allows BMPs verified by “self-certification” to be given the same credit in the model for pollution reduction as the same practice that has been verified by more stringent measures.
  - c. Verification can include technical and qualitative measures.
  - d. The process for transparency must be clearly explained.
- 3) The new protocols must solve the problem of accounting for expired practices. How to remedy the existing situation where reductions from a BMP are included in the model after a contract period (for federal/state payment for implementation) has expired.
- 4) The new protocols must solve the problem of double counting of existing practices. While there is the need to count all that is implemented, it must be clear that they are not counted twice.
- 5) The verification concept under discussion by the Agriculture Workgroup involves a complex and not-yet transparent approach relating to “certainty”; the process for selecting any numerical certainty level must be transparent, clearly defined, and based on technically defensible information.
- 6) The ongoing complaint from the states that there is insufficient funding to implement new, more robust verification protocols should not be an excuse for lack of verification.
  - a. Currently, the states receive Chesapeake Bay Regulatory and Accountability funding from EPA. These grants provide dollars for verification. It is unclear whether states have dollars unspent and available under these grants.

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- b. Additionally, implementation should, by definition, include verification. Targeting of funding to critical areas should be employed.

Lastly, verification for the most important and the least important practices appear to be receiving the same degree of focus and development. The CBP needs to target the most important practices and direct the workgroups to pay particular attention to them. We understand that bringing BMP verification to the level which satisfies the “Public Confidence” principle mentioned above, as well as addressing concerns in the National Academy of Science’s evaluation will require some significant upgrading of the partnership’s programs. There is a long list of BMPs and it isn’t feasible to do everything at once. Therefore, it is critical to focus on those BMPs which are most important for meeting the TMDL.

We respectfully request a formal response to this letter. In order to assist you, knowing your schedule is a full one, we would be glad to receive a verbal response via a meeting among you and your staff with available members of CAC at a time convenient for you.

Sincerely,

A handwritten signature in cursive script that reads "John Dawes".

John Dawes  
Chair, Citizens Advisory Committee



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### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 3  
CHESAPEAKE BAY PROGRAM OFFICE  
410 SEVERN AVENUE  
ANNAPOLIS, MD 21403

February 4, 2013

Mr. John Dawes, Chair  
Citizens Advisory Committee  
Chesapeake Bay Program Partnership  
c/o Alliance for Chesapeake Bay  
P.O. Box 1981  
Richmond, Virginia 23218

Dear Mr. Dawes:

Thank you and the members of the Chesapeake Bay Program Partnership's Citizens Advisory Committee (CAC) for your letter of December 17, 2012. Given the detailed nature of your letter and the important points and concerns you raised, I wanted to first respond in writing, as well as take you up on your offer for a follow up meeting with a group of CAC members. Finally, I would like to ask you for an opportunity to speak with the full membership of CAC at its February 2013 meeting.

I am responding to your letter in both my role as the Director of the Chesapeake Bay Program Office and as the chair of the Chesapeake Bay Program Partnership's Management Board. A draft of this letter was shared in advance with the members of the Partnership's BMP Verification Committee for review and comment during their January 22 conference call. Though I was not seeking their approval, I have incorporated elements of their feedback in this final letter. Given the diversity of important topics and concerns raised, I wanted to ensure I was communicating on behalf of the larger Partnership.

Within the body of this letter, I have included excerpts from your original letter, in the italicized text, followed by detailed responses to each of the points and concerns you raised. Given the critical importance of best management practice or BMP verification to the integrity of the Partnership's accountability system, I wanted to clearly communicate where the Partnership is heading in working through these many challenges, especially since there are no national examples of similar breath and complexity to serve as models.

*The Citizens Advisory Committee heard a presentation from Mark Dubin on the Agriculture Workgroup's verification efforts at our quarterly meeting on November 30, 2012. We have also received a copy of the letter sent by several members of the workgroup; reviewed the principles adopted by the BMP Verification Committee; and considered recent correspondence from Rich Batiuk to the chairs of the source sector workgroups.*

Thank for continuing to put a focus on verification, transparency, and accountability on your quarterly meeting agendas and follow through actions between your meetings. The CAC membership will find even more information on the Partnership's development of a basinwide

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verification framework on-line through the BMP Verification Committee's web page at [http://www.chesapeakebay.net/groups/group/best\\_management\\_practices\\_bmp\\_verification\\_committee](http://www.chesapeakebay.net/groups/group/best_management_practices_bmp_verification_committee). This web page provides links to ongoing work of the Partnership's independent BMP Verification Review Panel, as well as the latest protocols under development by the Partnership's source sector and habitat restoration workgroups.

*It is our understanding that this current verification process looks to fundamentally change, for the better, the way in which the CBP verifies the implementation of practices designed to reduce nutrient and sediment pollution. In this way, the CBP will significantly improve the accounting for reductions in the Watershed Model.*

I reiterate for you past statements I have made publicly that the Partnership's work on BMP verification is a foundational element that is absolutely essential to the success of the Partnership's Bay restoration efforts.

We must be fully responsive to calls by the Citizens Advisory Committee, the National Academy of Sciences, the President's Executive Order, and others to make improvements in the transparency and scientific rigor of our efforts to verify the implementation of nutrient and sediment pollutant reducing technologies, treatment techniques, and practices. BMP verification is fundamental to ensuring increased public confidence in our accounting for implementation under the 2-year milestones and estimated load reductions using the Partnership's models and other decision support tools. Our scientific experts are continuing to interpret the trends in the decades of monitored observations of water quality in local streams, larger rivers and the tidal waters throughout the watershed of the Chesapeake Bay. We must have trust that these reported practices are actually being implemented and reducing pollutant loads as we use them in explaining the observed water quality trends.

We all must view verification not as a bean counting burden, but as the means to strengthen our confidence in local implementation efforts to ensure they are designed to help land owners, municipalities, and facility managers take the actions necessary to protect their local streams and riparian habitats. We must also recognize that there are currently successful state and federal verification programs currently operating that meet high standards. Our challenge is to improve tracking and reporting programs that need verification improvement while not harming successful programs.

*What remains unclear to us is the "who" and the "how" of the final decisions on any verification protocols. To have such decisions made by the PSC may not be prudent, given the state partners' repeated cries of inadequate funds and repeated defense of existing evaluative practices.*

The Partnership must and will continue to be the decision makers on the development and implementation of the verification process. The jurisdictional partners, who will be principally responsible for verifying practices implemented within their portions of the watershed, must embrace effective verification. EPA will continue in its Bay TMDL accountability role and ensure each jurisdiction's verification program meets the measure of

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reasonable assurance well established during the two rounds of watershed implementation plan development and evaluation.

I believe the “cries” from the states are real—state budgets are under significant pressure. State agency managers and staff want to make sure funds are used wisely given the Partnership’s focus on implementation on the jurisdiction’s watershed implementation plans.

Given these concerns and considerations, we have built into the decision making process the following series of checks and balances to ensure the Partnership as a whole is fully responsive to the documented calls for verification of implemented practices.

- The Citizen Advisory Committee will continue to play a critical advisory role in calling attention to where they view the Partnership has fallen short of stated expectations and prior commitments.
- The Partnership has publically committed to responding in full to the findings and recommendations of the National Academy of Science’s report entitled *Achieving Nutrient and Sediment Reduction Goals in the Chesapeake Bay*.
- The Federal Partners are publically committed to carrying out the actions necessary to meet the commitments within Executive Order 13508 Strategy for Protecting and Restoring the Chesapeake Bay Watershed.
- The set of five BMP Verification Principles, adopted by the Principals’ Staff Committee at their December 5, 2012 meeting, stand as a public commitment and as a set of clear expectations to be achieved in all aspects of our individual and collective verification efforts.
- The Partnership has established an independent BMP Verification Review Panel. The Panel is charged with responsibility for using “the verification principles as criteria for assessing the strengths and possible vulnerabilities in the state verification programs, providing written feedback and recommendations...” and to “...evaluate whether the level of verification rigor is consistent across source sectors and across all seven watershed jurisdictions.”
- Within the Principals’ Staff Committee, beyond the cabinet level secretaries for the seven watershed jurisdictions, and with the input of the advisory committees, EPA, its principal federal partners, and the Chesapeake Bay Commission will all be at the table. These agencies and the Commission will part of all decisions regarding verification of practice implementation, thereby, ensuring a balanced and objective review and evaluation of the Panel’s recommendations and advice.
- EPA will review and approve each of the seven jurisdictions’ quality assurance plans where each jurisdiction will document their verification program in detail.

The Principals’ Staff Committee will be responsible for adoption of the BMP Verification Principles, approval of the initial suite of source sector and habitat specific BMP verification protocols, and approval of other key components of the overarching BMP verification framework—procedures for eliminating double counting, basinwide agreements to ensuring full access to federal cost share practice data, and procedures for the clean-up of historical BMP databases. The Principals’ Staff Committee will, in response to the feedback and recommendations from the independent BMP Verification Review Panel, act to approve or



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request further changes prior to approval of each watershed jurisdiction's recommended BMP verification program.

EPA will review and approve of each of the seven jurisdictions' quality assurance plans, which are required for award of their Chesapeake Bay Implementation Grants and Chesapeake Bay Regulatory and Accountability Grants. It is within these quality assurance plans where each jurisdiction will document, in detail, their verification program. As clearly described in EPA's Chesapeake Bay Grants Guidance, approval of these quality assurance plans are required for successful award and use of federal funding involving environmental data collection and evaluation activities. In the case of these grants, it's the tracking, verification, and reporting of practices, treatment and technologies which reduce nutrient and sediment pollutant loads which triggers the requirements for a quality assurance plan. EPA review will focus on whether the jurisdictions have provided reasonable assurance for ensuring the implementation of the reported practices, treatments, and technologies and supporting programmatic activities funded through these grants and the states' matching fund programs.

EPA has already started conversations with the Scientific and Technical Advisory Committee about how to put in place a long term evaluation process to ensure periodic assessment of the effectiveness of the collective verification protocols and procedures put in place. We would welcome the Citizen Advisory Committee's ideas and inputs on this topic in the coming months.

Among the options we would request you consider are:

- Making the BMP Verification Review Panel a permanent CBP Partnership mechanism for ongoing verification protocol review.
- Enhancing the membership make-up of and charge to the existing BMP expert panels sufficiently to incorporate both verification expertise and responsibility into the ongoing and future work of these panels. Currently, these expert panels deal with development, review, and recommendation adoption of new or revised BMPs. If this is done, we recognize we will need to amend the Partnership's existing *Protocol for the Development, Review, and Approval of Loading and Effectiveness Estimates for Nutrient and Sediment Controls in the Chesapeake Bay Watershed Model*, adopted by the Water Quality Goal Implementation Team on March 15, 2010, to specifically address BMP verification.
- Offering some alternative valuation mechanism for review and approval of future verification protocols and procedures not yet adopted by the Partnership through the current process underway. Given the current BMP expert panels' charges for determination of BMP efficiencies and load reduction effectiveness is different from the accounting necessary to verify BMP implementation, a different document or approach may be required.

*EPA must strengthen its role in providing guidance, direction and feedback on the level of verification it anticipates as sufficient to meet the reasonable assurance standard.*

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EPA already is an active participant in all phases of development and decision making on the BMP verification framework, helping shape the BMP Verification Principles recently adopted by the Partnership through the Principals' Staff Committee. However, EPA cannot act unilaterally on verification—we must build the foundation for what we collectively consider as verification up through the Partnership as a whole, working closely with all who are responsible for implementation of pollution reduction actions. Otherwise, we will have no hope for making verification an integral component of program implementation and the delivery of technical and technological assistance supporting practice implementation.

EPA believes the adopted set of five BMP Verification Principles embody reasonable assurance. The challenges before all of us is to further define verification and how it will be carried out as an integral component of our long standing programs promoting implementation of technologies, treatment techniques and practices which reduce or prevent nutrient and sediment pollutant loads. EPA will stand firm in ensuring the BMP Verification Principles are upheld in spirit and in action.

*Currently, it remains unclear exactly who will determine the sufficiency of any proposed verification protocol.*

The Principals' Staff Committee will approve the initial suite of source sector and habitat specific BMP verification protocols. The process for future evaluation of new verification protocols and procedures has yet to be determined, as noted above, and I welcome your input on how the Partnership should proceed forward.

*However, since the level of verification is directly linked to any finding of reasonable assurance, and since any credit given in the Model is directly tied to a determination of jurisdictional accomplishment of its TMDL pollution reduction goals, it is clear to us that the final decision-maker must be EPA.*

EPA has clearly and frequently communicated its expectations for accountability under the Chesapeake Bay TMDL beginning in 2008. BMP verification is an integral component of accountability under the Bay TMDL.

EPA retains responsibility for ensuring full jurisdictional accountability to achievement of the nutrient and sediment load allocations embodied within the Chesapeake Bay TMDL through implementation of the jurisdictions' Watershed Implementation Plans and their 2-year milestones.

The Agency also retains responsibility for assessing reasonable assurance of the jurisdictions' verification programs through review and approval of the jurisdiction's quality assurance plans as required by the jurisdictions' Chesapeake Bay Implementation Grants and Chesapeake Bay Regulatory and Accountability Grants.

Verification is another, though extremely important, component of a larger accountability system. The Partnership and the public at large, not EPA alone, must have confidence in scientific rigor and transparency of the accountability system. Therefore, we must build this

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rigor and transparency for verification up through the Partnership and out through our many partners with implementation responsibilities.

*The Verification Principles established by the BMP Verification Committee are broad principles crafted at the 10,000 foot level. There is a need for EPA to provide explicit implementation guidance to the source sector workgroups providing more specificity on how the Verification Principles must be utilized as they develop their protocols.*

The BMP Verification Principles were developed and adopted by the Partnership prior to final consideration of the verification protocols so that the principles would help form and drive development of the protocols. As stated previously, there is no playbook, no existing example to follow, or precedent to adhere to regarding the size and complexity of the task before us.

Through the Partnership, we are developing the necessary insights for how to frame our verification efforts as we move forward. We are building on decades of shared experience supporting widespread implementation of pollutant load reduction actions and the subsequent tracking and reporting of those actions. We are soliciting the expertise of independent experts from around the watershed and across the country to help ensure we are setting the bar appropriately and adhering to our established principles.

It would be of value to me if, when we meet, you share with me some specific examples of the concepts or details that you would suggest EPA include in the requested guidance which have not been addressed to date.

*Of particular interest to us is the need for guidance delineating what is and is not sufficient transparency as required in the “Public Confidence” principle. Absent a significant level of heightened transparency in the verification process itself and the underlying data to support any conclusions; we will not meet the public confidence standard envisioned in the principle.*

This is an issue on which the Citizens Advisory Committee must advise the Partnership—help us collectively define what we mean by transparency and how that transparency can be achieved. The Committee should share specific examples which can be applied across source sector and jurisdiction as is the intent behind the Partnership’s adopted public confidence principle.

*Also to be included in the guidance, for example, should be an EPA implementation directive establishing that the level of “scientific rigor” will necessitate relational levels of credit application in the model and that every protocol needs to recognize this “sliding scale” approach.*

The Partnership has a long history of defining ‘scientific rigor’ by establishing panels of recognized experts and seeking independent scientific peer review to advise the partners on what stands as scientifically rigorous given the current state of knowledge and scientific understanding. As we develop and employ verification as an integral component of our varied implementation programs, the Partnership will continue to use both expert panels and

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independent scientific peer reviews to help define and re-enforce scientific rigor in our shared decision making.

Building from BMP Verification Review Panel, we are considering whether the Partnership could charge the BMP expert review panels to include the review of new verification protocols and the continued adaptation of existing protocols to factor in new insights and scientific understandings and technological developments. Regardless of the final process the Partnership selects for these future evaluations, the Partnership will need to establish a new level of commitment to verification oversight and review. We must make verification an integral component of our long standing, shared decision-making on BMP definitions, estimated pollutant reduction effectiveness, tracking, reporting, and public accountability.

*In addition, EPA should use the findings of the BMP Verification Review Panel—the only wholly nonpolitical and scientific group engaged in the verification process—as weighted guidance in making its determination.*

The BMP Verification Review Panel was established and charged to provide the Partnership with independent findings and recommendations on the verification principles, the workgroup's verification protocols, and the jurisdictions' verification programs. In convening the Panel, the Partnership has publically committed to full consideration of the Panel's findings and recommendations at each decision point in the implementation of a rigorous, transparent system of practice verification.

The professional staff in our state, regional, and federal agencies and academic institutions, along with the many other partners represented on our technical workgroups, our goal implementation teams, and our BMP Verification Committee, have also brought important contributions and insights to this entire process. EPA and its partners will consider all the available recommendations and input from both the independent Panel and our professional staff.

*We also remain concerned with many specifics relating to the verification process. We have attached a list of these specifics.*

We welcome and greatly appreciate the time and attention the Citizen Advisory Committee has devoted to verification, recognizing you were one of the early and major drivers behind the efforts now underway within the Partnership. Your current and continued identification of specific concerns are critical to the ultimate success and credibility of the Partnership's verification framework.

*1) Reliance on use of the existing state verification protocols, the status quo, is not acceptable although it appears that many on the Agriculture workgroup support this approach.*

The five BMP Verification Principles recognize the need for changes and enhancements and the opportunity to build from existing jurisdictional tracking and reporting programs. There are state and federal programs with strong verification programs in place and working effectively in carrying out the principles. However, we recognize none of our seven jurisdictions' existing BMP tracking, verification and reporting programs, across all

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sectors and habitats, fully achieves all five principles. The National Academy of Science's in-depth evaluation of the Partnership's existing practice accountability systems made that very clear even prior to development of the principles.

The National Academy of Science's report did also note the rigor of the jurisdictions' existing NPDES verification programs. We should not presume, a priori, that all existing programs are not operating effectively. The task before us is to ensure that each jurisdiction's comprehensive verification program, across all sectors and habitats, achieves the adopted principles.

*2) Different levels of credit should be given in the model for different levels of verification.*  
*a. As it is inevitable that achievement of a high level of certainty will prove difficult when applied to certain BMPs, the workgroup should endorse the concept of providing different levels of credit based on different levels of certainty. A sliding scale certainty/credit ratio system would allow for greater flexibility and greater accuracy.*

The Partnership's two principal source sector workgroups—Urban Stormwater and Agriculture—both evaluated and then rejected recommending a sliding scale approach due to a lack of sufficient scientific data and information on which to establish such a scale.

While the Urban Stormwater Workgroup investigated the concept of a sliding scale, it could find no definitive research to define a scientifically rigorous or defensible way to quantify how the scale would actually work in practice. Any discounts associated with a sliding scale would necessarily be arbitrary. The Urban Stormwater Workgroup elected to take a more stringent approach whereby each urban BMP would have a defined expiration date, which can only be extended based upon an on-site inspection that utilizes visual indicators to determine practice function and performance.

The Agriculture Workgroup identified the need early in 2012 to research the available scientific literature and collect pertinent information from identified experts on a national basis to support the development of verification protocols and associated pollution reduction credits. This research, being conducted by Tetra Tech under the oversight of the Agriculture Workgroup, has resulted in a comprehensive synthesis of information on existing agricultural verification examples. Unfortunately, a creditable level of scientific data to support the establishment of varying pollution reduction crediting via separate verification methods and BMPs has not been identified to date. Consequently, the Agriculture Workgroup has decided not to pursue this verification protocol process originally proposed by the workgroup itself. Instead, the Agriculture Workgroup has identified an alternative verification process which establishes a minimum threshold level of data certainty across all verification methods and practices; a process which can be more adequately supported by the limited available scientific data.

*b. It is not possible to pass the test of public credibility or the legal scrutiny of "reasonable assurance" by adoption of a procedure that allows BMPs verified by "self-certification" to be given the same credit in the model for pollution reduction as the same practice that has been verified by more stringent measures.*

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The Partnership's two principal source sector workgroups—Urban Stormwater and Agriculture—are addressing self certification in different ways, reflective of their source sector and available means for ensuring verification. I concur that self-certification, standing alone, is unlikely to meet the EPA's reasonable assurance measure. However, in combination with an effective auditing program, self-certification could be considered a viable verification protocol. Self-certification can serve as an important first step—but certainly not the final step—in the verification process for BMPs in the urban stormwater sector. The vast majority of urban BMPs are reported under legally enforceable MS4 stormwater permits or construction general permits. The Urban Stormwater Workgroup has recommended numerous oversight and sampling procedures at the local, state, and federal level to ensure the reporting is accurate and verifiable.

The current draft agricultural verification protocol being developed by the Agriculture Workgroup encompasses as many partnership-identified verification methods as possible, including self-certification. Self-certification is presently utilized by a number of federal and nationally recognized agricultural databases, including the USDA-NASS Agriculture Census, which has served in the past and currently as the basis for numerous agricultural calculations in the suite of Chesapeake Bay Program models. Rather than eliminating self-certification as a potential method for the verification of data, the Agriculture Workgroup draft agricultural verification protocol recognizes the importance and potential limitations of self certification. The draft verification protocol places the same minimum level of data confidence on self-reported data as that obtained from other methods such as field-level assessments by trained and certified professionals. Only when this same minimum level of data certainty is obtained, perhaps through independent auditing of a percentage of the practices, will any self-certified agricultural data be credited for pollutant load reductions.

*c. Verification can include technical and qualitative measures.*

The Partnership's two principal source sector workgroups—Urban Stormwater and Agriculture—are taking different approaches to using both technical and qualitative measures of verification.

While the Urban Stormwater Workgroup agreed in its recommended protocols that verification requires clear visual indicators to assess practice condition and performance, it also noted that many of these indicators do not currently exist. Consequently, the Urban Stormwater Workgroup has asked both its convened and future BMP expert review panels and the Chesapeake Bay Program Partnership's stormwater coordinator (Tom Schueler, Chesapeake Stormwater Network) to develop templates for such indicators as a very high priority in 2013. The Chesapeake Stormwater Network, through a separate grant, will devise visual indicators for low impact development or LID practices in the first quarter of 2013.

The present Agriculture Workgroup draft verification protocol recognizes not only the diversity of potential verification methods, but also the diversity of BMPs that are being verified. The workgroup has identified four major categories of practices including annual, structural, management plans and management practices. Each verification method is being

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evaluated against each BMP category to identify where particular methods may or may not adequately attain the expected minimum level of data certainty. Structural BMPs such as a waste storage facility will require a technical engineering evaluation compared to an annual practice such as cover crops which will be qualitative. Thus, implementing a qualitative verification method would not be recommended for structural category practices, for example.

*d. The process for transparency must be clearly explained.*

As the Partnership collectively defines transparency within the overall verification process, including the Citizen Advisory Committee's assistance in the development of this definition, we will act to embed the specific actions and commitments within all relevant components of the basinwide BMP verification framework.

*3) The new protocols must solve the problem of accounting for expired practices. How to remedy the existing situation where reductions from a BMP are included in the model after a contract period (for federal/state payment for implementation) has expired.*

Each of the six source sector workgroups and habitat workgroups are actively addressing the issue of enforcing life spans for best management practices, treatment processes, and reduction technologies. One of the more notable accomplishments of the Urban Stormwater Workgroup's work on verification has been the shift from perpetual BMPs to BMPs with defined expiration dates. The expiration dates are being defined by the expert BMP review panels and range from 3 to 9 years depending on the longevity of the particular BMP. After that date, pollutant removal credits also expire, unless verifiable evidence indicates that the practice still exists, is operating as originally designed, and is being adequately maintained, all of which can only be done through an on-site inspection performed by a qualified evaluator.

The draft verification protocol being developed by the Agriculture Workgroup recognizes that BMPs being verified under permitting, regulatory, and financial incentive programs which may have inherent obligatory life spans. For example, the BMPs implemented under a financial incentive program can only obtain the required threshold of data certainty under that verification method as long as the practice is under contract. Once the contractual lifespan between the program entity and the implementing entity has expired, the associated BMPs will need to be verified into the future under alternative methods to obtain pollution reduction credits. The alternative verification method employed will require meeting the minimum level of data certainty as with any source of agricultural BMP data.

*4) The new protocols must solve the problem of double counting of existing practices. While there is the need to count all that is implemented, it must be clear that they are not counted twice.*

The opportunity for double counting practices is most prevalent in the agricultural sector, given producers are receiving cost share funding from state agencies, federal agencies, and non-governmental organizations. Led by the efforts of Dr. Dean Hively and Olivia

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Devereux, the U.S. Geological Survey has been actively working with Natural Resources Conservation Service, the Farm Services Administration, and the lead state agricultural departments and conservation agencies across the six states to develop state-specific procedures for eliminating double counting. The state-specific procedures will be an integral component of the larger BMP verification framework presented to the Partnership's Principals' Staff Committee for review and adoption.

*5) The verification concept under discussion by the Agriculture Workgroup involves a complex and not-yet transparent approach relating to "certainty"; the process for selecting any numerical certainty level must be transparent, clearly defined, and based on technically defensible information.*

The verification protocol proposal currently being developed by the Agriculture Workgroup is based on the concept of applying a minimum threshold of data certainty across all verification methods and BMPs. The proposed threshold of 80 percent data certainty has been derived as a mid-point value based on the range of values identified through the workgroup commissioned research on agricultural verification by Tetra Tech. It is my understanding that the Agriculture Workgroup plans to have the completed research report serve as a key technical support element of a more extensive protocol recommendation package that will provide a more clearly and technically defined protocol. The Agriculture Workgroup has discussed having the completed verification recommendation package also include a recommendation for a transparent and technically defensible review and approval process. All of this is currently under discussion by the Agricultural Workgroup with no final decisions made by the Partnership. Incorporating effective auditing programs could be another means of providing both more transparency and certainty in all the forthcoming verification protocols. The forthcoming recommendations of the Agriculture Workgroup will be presented up through the CBP Partnership's management structure, including all three advisory committees, for review and discussion over the course of the coming winter and spring.

*6) The ongoing complaint from the states that there is insufficient funding to implement new, more robust verification protocols should not be an excuse for lack of verification.*

EPA agrees that funding cannot be used as an excuse for lack of verification. However, the Partnership's 'adaptive management' verification principle recognizes that funding does play a critical role in decisions on how to best structure the jurisdictions' verification programs:

*Verification protocols will recognize existing funding and allow for reasonable levels of flexibility in the allocation or targeting of those funds. Funding shortfalls and process improvements will be identified and acted upon when feasible.*

EPA established the Chesapeake Bay Regulatory and Accountability Program (CBRAP) Grants to provide the seven watershed jurisdictions with the funds needed to establish, strengthen and expand existing BMP tracking, verification, and reporting programs among other jurisdictional regulatory and accountability programs. Within its



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recently released 2013 *Chesapeake Bay Program Grant and Cooperative Agreement Guidance*, EPA took extra steps to clearly spell out that these CBRAP grants can be used to fund BMP verification programs (please see pages 13, 30, and 31 within the 2013 grant guidance document).

*a. Currently, the states receive Chesapeake Bay Regulatory and Accountability funding from EPA. These grants provide dollars for verification. It is unclear whether states have dollars unspent and available under these grants.*

All seven jurisdictions have some level of unspent funds under their existing and past CBRAP grant awards. EPA is actively working with each jurisdiction to ensure timely expenditure of all funds consistent with the Agency's grant guidance. EPA's 2013 *Chesapeake Bay Program Grant and Cooperative Agreement Guidance* spells out the Agency's expectations regarding past unexpended funding and actions it could take to ensure these funds are fully expended. It is the Agency's goal that each of the jurisdictions fully utilize their awarded CBRAP grant funds to make important, long lasting investments in each jurisdiction's regulatory and accountability programs and infrastructure.

*b. Additionally, implementation should, by definition, include verification. Targeting of funding to critical areas should be employed.*

The Partnership's 'adaptive management' verification principle acknowledges that "verification protocols will recognize existing funding and allow for reasonable levels of flexibility in the allocation or targeting of those funds." EPA's 2013 *Chesapeake Bay Program Grant and Cooperative Agreement Guidance* spells out the Agency's expectations with respect to application of EPA grant and cooperative agreement funding towards specific targeted practices and geographies.

*Lastly, verification for the most important and the least important practices appear to be receiving the same degree of focus and development.*

Yes, the verification protocols currently under development by the Partnership's source sector and habitat restoration workgroups are essentially 'blind' to the relative importance a jurisdiction may place on a specific practice. While the Partnership's 'sector equity' principle does not mandate 'equality' among each and every protocol, the six workgroups are looking at all practices with similar levels of scrutiny. The BMP Verification Committee, in turn, is looking across the six workgroup's proposed protocols to ensure equity across sectors and habitats.

*The CBP needs to target the most important practices and direct the workgroups to pay particular attention to them. We understand that bringing BMP verification to the level which satisfies the "Public Confidence" principle mentioned above, as well as addressing concerns in the National Academy of Science's evaluation will require some significant upgrading of the partnership's programs. There is a long list of BMPs and it isn't feasible to do everything at*

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once. Therefore, it is critical to focus on those BMPs which are most important for meeting the TMDL.

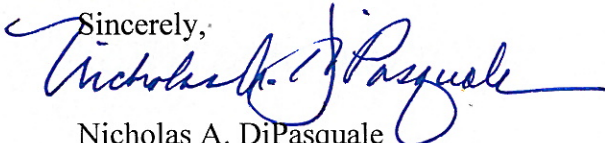
The Citizen Advisory Committee's calls for targeting verification efforts towards the most important practices—those on which the jurisdictions are depending upon providing for the highest level of nutrient and sediment pollutant load reductions—have been strongly echoed by recommendations put forth by the BMP Verification Review Panel during their October 12, 2012 conference call and their December 6, 2012 meeting. The Panel requested specific documentation of the most frequently employed and the most pollutant reduction effective practices which the jurisdictions have committed to implement through their Phase II Watershed Implementation Plans. Chesapeake Bay Program Office staff is actively working on addressing the Panel's request for additional information and documentation.

It is a jurisdictional decision to put more or less verification emphasis on a select set of practices, treatments, or technologies, recognizing they will not receive credit for unverified practices. Based on the above described work underway by Chesapeake Bay Program Office staff, along with their continued application of tools like the Chesapeake Assessment and Scenario Tool or CAST (actively being tailored to individual jurisdictions), the jurisdictions will be well positioned to make such verification targeting decisions.

*We respectfully request a formal response to this letter. In order to assist you, knowing your schedule is a full one, we would be glad to receive a verbal response via a meeting among you and your staff with available members of CAC at a time convenient for you.*

Given the detailed nature of your letter and the important points and concerns you raised, I wanted to first respond in writing, than take you up on your offer for a follow up meeting with a group of CAC members. Finally, I would like to ask you for an opportunity to speak with the full membership of CAC at its February 2013 meeting.

Please extend my personal gratitude and appreciation, as well as that of the Partnership, to your members for their continued dedicated service to the restoration of the Chesapeake Bay ecosystem and its watershed. The Committee's long focus on enhancing transparency and accountability in our individual and collective restoration efforts is fully recognized by the Partnership. I forward to meeting with you.

Sincerely,  
  
Nicholas A. DiPasquale  
Director

cc. CBP Citizen Advisory Committee Members  
CBP Local Government Advisory Committee Members  
CBP Scientific and Technical Advisory Committee Members  
CBP Management Board Members  
CBP BMP Verification Review Panel Members  
CBP BMP Verification Committee Members

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
CHESAPEAKE BAY PROGRAM OFFICE  
410 Severn Avenue, Suite 109  
Annapolis, Maryland

April 24, 2013

Dr. Frank J. Coale, Professor  
Chair, CBP Agricultural Workgroup  
Environmental Science and Technology  
1439 Animal Science/Ag. Engineering Bldg.  
University of Maryland  
College Park, MD 20742

Dear Frank:

Thanks to you and Mark Dubin for your leadership efforts over the past year, working with the Partnership's Agricultural Workgroup and the larger agricultural community on developing a comprehensive set of conservation practice verification protocols. I know that investment of time by the workgroup has taken away from other important issues and challenges facing the workgroup.

As we prepare for taking the entire basinwide BMP verification framework up through the Partnership's independent BMP Verification Review Panel this fall and eventually to the Principals' Staff Committee in the early winter timeframe, we need Agricultural Workgroup to complete its work on its verification protocols by this summer. I know you are focused right now on getting the feedback requested from the Transparency Subgroup, formed by the BMP Verification Committee at its March meeting, in order to move forward with the workgroup's protocols.

There is a growing confidence and comfort level with the overall approach the Agricultural Workgroup is taking to ensuring verification for the numerous and diverse suite of conservation practices implemented by producers. There is a standing request from the BMP Verification Review Panel and the Committee to develop some working examples of application of the 80% threshold. The work underway with the Forestry Workgroup on such a working example will benefit all of the partners and their understanding of exactly what is being proposed by the Agricultural Workgroup.

The one specific set of verification protocols which members of the BMP Verification Committee have continued to express the need for further development are those within the "Management BMPs: Plans" category. I believe most of the Committee members can see the Agricultural Workgroup's recommended path forward for the annual practices, structural practices, and the management BMPs: practices categories as outlined within the Workgroup's evolving matrix. The exact path forward for verification of the management BMPs which take the form of plans is not as clear at this time.

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As work proceeds forward with both developing working examples of application of the 80% threshold and further developing the supporting tools and narrative documentation, I am asking the Agricultural Workgroup to put emphasis on further thinking through verification of the category of agricultural management BMPs which take the form of plans. I recognize you need to redirect the Agricultural Workgroup's attention to a host of other priority topics and tasks, long put on hold to move the development of the verification protocols forward. Thus, could you consider forming a small group of recognized experts, drawn both from within the Agricultural Workgroup and the larger agricultural community, which would further develop verification protocols for this category of practices. If convening such a group of experts requires some resources—staff, travel support, other—please let me know so I can work to help provide such resources.

The BMP Verification Committee specifically requested the Partnership's Management Board for additional time in the BMP verification schedule, in part, to ensure the Agricultural Workgroup had the time it needed to complete its work on its verification protocols. Please use that time extension over the course of the remainder of the spring and into the summer to complete work on the full suite of verification protocols for all four categories of agricultural conservation practices.

Again, thank you for your leadership and efforts to further enhance the level of partnership confidence in the implementation and continued pollutant reduction effectiveness of agricultural conservation practices being put in place and maintained by the Bay region's thousands of producers.

Sincerely,



Richard Batiuk  
CBP Partnership BMP Verification  
Committee Chair

Ec: Chesapeake Bay Program BMP Verification Committee Members  
Nick DiPasquale, Chesapeake Bay Program Management Board Chair

## Appendix T. CAC BMP Verification Related Correspondence

**Memo:** Recommendations of the CAC workgroup on verification and transparency  
**Members:** Verna Harrison, Rebecca Hanmer, Andrew Der and staff Jessica Blackburn  
**To:** Citizens Advisory Committee  
**Date:** May 22, 2013

An action item of the CAC February 21-22, 2013 quarterly meeting was the formation of a CAC workgroup to continue to engage with the Chesapeake Bay Program (CBP or Program) on their work to improve verification and transparency of Best Management Practices (BMPs). The CBP has asked CAC to help the partnership define operational *transparency* and suggest how the partnership can develop protocols for *verification* that meets CAC's continued call for sufficient transparency as required in the "Public Confidence" principles of the BMP Verification Committee.

As Rebecca was part of a group that was asked to provide a definition of "*transparency*" by March 25, she and Verna collaborated on a definition of transparency which was given to the Ag Workgroup. The definition is in part III below of the outlined letter to Nick.

The focus of the draft outline of a letter below is on the issue of verification and transparency in nutrient management of agricultural practices. (See comment on Section V)

The CAC workgroup has talked with colleagues, researched literature and reports, and Rebecca Hanmer has participated in the CBP Verification Committee meetings. The workgroup held a conference call on March 26, 2013 and have exchanged many workgroup emails and phone calls over the course of the last month. On behalf of the CAC workgroup the following recommendations are brought to you as suggested responses to Nick DiPasquale's request for further information from CAC.

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### CAC response to request for recommendations on BMP Verification and Transparency DRAFT OUTLINE

#### I. Introduction

##### A. Previous exchanges on Verification- reference Dec 17, 2012 CAC letter listing concerns with verification process:

"Of particular interest to us is the need for guidance delineating what is and is not sufficient transparency as required in the "public Confidence" principle. Absent a significant level of heightened transparency in the verification process itself and the underlying data to support any conclusions; we will not meet the public confidence standard envisioned by the principle"

## Appendix T. CAC BMP Verification Related Correspondence

B. Nick's Transparency request to CAC- reference Feb 4, 2013 CBP letter to CAC in response to verification concerns and the request to ask CAC help with transparency: "This is an issue on which the Citizens Advisory Committee must advise the Partnership- help us collectively define what we mean by transparency and how that transparency can be achieved. The Committee should share specific examples which can be applied across source sector and jurisdiction as is the intent behind the Partnership's adopted public confidence principle."

### II. Basic definition of "transparency"- answering the specific request from CBP, Given to the Agricultural Workgroup by Rebecca Hanmer

Transparency means operating in a way that is easy for others to see what actions are performed. Thus, when applied to government programs, transparency is a method where decision-making is carried out in a manner readily accessible to the public. Absent a legal constraint, all draft documents, work products, and final decisions or documents, and the decision making process itself, are made public and remain publicly available. Transparency means an outside reviewer can determine what data were used as a basis for a deliberative decision or conclusion to generate a report. Included would be how the data were obtained, what measures are employed to ensure the data is accurate, who is responsible for data generation and collection as well as who is responsible for ensuring data accuracy, and the methods of analysis utilized.

### III. Acknowledgment of decision to create special task force

Welcome recent progress in creating a small "Plan Assessment" workgroup of technical experts to develop quantifiable verification protocol approaches for on-farm application of fertilizer, manure, and bio-solids. CAC's recommendations for what this special group should look in last section of this memo.

### IV. Target practices in WIPs

We recognize that states face many challenges in strengthening verification and transparency for all the BMPs in the WIPs. Therefore, support giving highest priority to making the necessary investments in verification/transparency for those practices which are most significant in the state WIPs in terms of effectiveness and the extent to which state is depending on implementation of these practices to achieve the nutrient and sediment TMDL allocations.

### V. Why focus on nonpoint source agricultural nutrient management

CAC's greatest concern is about the current problems with verification and transparency for agricultural nonpoint sources of nutrients and sediment because of the importance these practices have in achieving the WIP requirements. Although we recognize that there are legal limitations for reporting farm-specific information for BMPs supported under the Farm Bill, and there are practical limitations associated with gathering and reporting information when BMPs are implemented voluntarily, CAC believes that the general standard of transparency for nonpoint sources should be the same as for point sources. (Even for point sources, the NPDES regulations recognize distinctions in reporting between major and minor sources, and protect confidential business

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information.) We also recognize that generally the agricultural management practices are the most cost-effective practices which underscore the importance of verifying them.

- A. **Adaptive Management, a guiding principle of the Bay program, must be employed to address findings from both the extensive external review by the National Academy of Sciences and the USDA's Conservation Effects Assessment Project (CEAP) report.** These reports describe serious flaws in the ability to account and verify implementation of nutrient management plans.

For example, only 9% of cropped acres met the criteria for *both* phosphorus and nitrogen management, if rate, form, time and method of application are considered (CEAP 2011). Results indicate, for example, that only 35% of cropped acres met criteria for application rate for nitrogen and 37% for phosphorus and for "manured" acres only, these percentages drop to 30% and 19%, respectively. These results are in contrast to the high rates of nutrient management implementation reported by the Bay jurisdictions.

The CEAP report (Nov 2012) finds that despite improvements in nitrogen application rates, about 66% of corn acreage does not achieve the rate, timing, and method criteria that minimize environmental losses of nitrogen. As a result, improved nitrogen management on cropland continues to be a major conservation policy goal." In sum, there are significant differences between reported progress from the Bay model and that reported by farmers themselves via the CEAP process.

- B. **Make the verification process and aggregate analyses of the fate of manure available to ensure transparency.** For the purposes of this discussion, the onus is not on the individual farmers to do more than either their permit or their nutrient management plan requires. We are not interested in farm-by-farm information that is protected by the Farm Bill, but we do think aggregate information should be reviewed by a third party, like EPA or USGS to compare with real world modeling data and analyze water quality implications. The review process and results are aggregated at the county level (at a minimum) and should be made available.

There is also the need to know where manure goes as many animal producers do not have land on which it can be appropriately spread. Clean Water Act permitted farms, like CAFOs, are required to have permits for how manure will be handled on the farm's land (although many of these permits have yet to be issued). If a CAFO transports manure from its farm to a non-CAFO farm, then there is no account (chain of custody) of where the manure goes or if it is applied to an area that is already too nutrient rich. A better understanding of the fate of manure will help Bay Program modelers to determine where manure can be spread and whether there is enough appropriate land available for manure application in a region of the watershed.

- C. **The status quo, where there is very limited to almost non-existent transparency for agricultural nonpoint source information, cannot be allowed to continue.** Where state nonpoint source verification protocols cannot achieve the same level of transparency as their protocols for point sources of a similar size, states should document what measures

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they are taking to improve transparency, such as third-party verification. There are some critical questions a state should be able to answer as a way to verify this aspect of nutrient management plans are providing the pollution protection intended.

This third party verification team should seek to answer:

1. Where are the organic and inorganic fertilizers and bio-solids going to be applied?
2. Based on a soil test prior to application, how much nitrogen and phosphorus is currently in the soil? How much fertilizer is being applied and how is it documented?
3. When is the fertilizer applied?
4. If manure is being transported out of state, where is it being applied?

VI. Extensive transparency is built-into point sources, but some improvements can be made  
Also recognize that the Clean Water Act and the implementing regulations for the National Pollutant Discharge Elimination System (NPDES) contain extensive transparency requirements. CAC supports the general position that the states should use the legally-established NPDES verification and transparency mechanisms for those nutrient and sediment sources which are regulated as “point sources”. However, practical limitations on transparency need to be corrected. The MS4 process would lend itself to even better transparency as the annual reporting requirements are already in the public domain and efforts to make them more available and understandable would have a lot more return on the effort investment.

Address backlog of permits- Where NPDES permits with the appropriate Chesapeake Bay TMDL-related requirements have not been completed, then transparency is lacking because the necessary monitoring and reporting are not being done. In particular:

- A. Jurisdictions should make sure that all sewage treatment plant NPDES permits contain the necessary nutrient limits, monitoring and reporting requirements. We understand that some “significant” treatment plants still lack numerical nutrient limits years after the Bay permitting strategy was issued.
- B. Jurisdictions should expedite improvements to NPDES stormwater permitting and implementation, especially by reissuing Phase I MS4 permits and issuing Phase 2 MS4 permits which contain the necessary requirements for achieving the Bay WIP requirements. In addition, EPA should enhance transparency by reconsidering its characterization of all stormwater permits as “minors”, thus limiting electronic reporting of MS4 information (ICIS system).

VII. Current approach by the verification committees- Tetra Tech method

The Agriculture Workgroup has sponsored development of a verification assessment tool by consultant Tetra Tech (Tt method), in lieu of drafting BMP-specific protocols. Although the Tt method may have potential, in its current state it is decreasing rather than adding to transparency. One of our CAC team, Rebecca Hanmer, participated in the only



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practical trial of the method of which we have been informed, for the draft riparian forest buffer (RFB) protocol. Although the method provoked useful discussion, it was complex and very time-consuming to employ. It should not be called a numerical scoring method at all as it relies on the professional judgment of the evaluation teams whose composition is currently unknown.

### VIII. Problems with the current approach (1)- test the method with independent experts

We object to providing this method to the jurisdictions for use in its present form. There should be several more Bay Program-level trials of different types of BMP protocols, using teams who are expert in the selected BMPs but also including some members who are independent of the current agricultural assistance establishment. The results of these trials need to be written up and made publicly available for discussion (e.g. by the BMP Verification Committee).

### Problems with the current approach (2)- use plain English, not codes and insider references

Even with better, more user-friendly guidance, application of the method could still be non-transparent. Because the method depends upon team scoring, the composition of the teams is of prime importance. State scoring teams should also include independent experts. Results of team scoring need to be written up and submitted to the Bay Program along with the BMP verification protocols, with clear information about how potential weaknesses were addressed. The BMP protocols themselves must be written out in plain English, not simply keyed to the spreadsheet which the Agriculture Workgroup has developed.

### IX. Conclusion

Lastly, CAC is committed to preserving healthy agriculture in our communities. Rural landscapes are integral to the fabric of our region's culture. Just as clean water is important to healthy communities, so are healthy, local food sources. We believe responsible agricultural practices are good land uses. The states led the design of their WIPs to accommodate agricultural viability and should also be accountable for the responsible farming practices that seek to credit towards the WIPs congruent with urban stormwater verification requirements. We encourage the EPA to use the Chesapeake Bay Program as a venue to promote and share successful examples across the watershed that demonstrate healthy farm practices, the community ethos that support them and the mechanisms that promote practice verification.

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**Citizens Advisory Committee**  
TO THE CHESAPEAKE EXECUTIVE COUNCIL

*CHAIR*  
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Pennsylvania

*VICE CHAIR*  
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Victor Ukpole  
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Maryland

Nick DiPasquale  
Director, EPA Chesapeake Bay Program  
410 Severn Ave  
Suite 109  
Annapolis, MD 21403

July 25, 2013

Dear Nick,

The Citizens Advisory Committee (CAC) commends the EPA and the other Chesapeake Bay Program (Program) partners for embarking on a process to review and verify the protocols used to evaluate the implementation of best management practices.

As stated in our letter to you on December 17, 2012, CAC sees the need for robust and practicable procedures relating to both "transparency" and "verification."

"Of particular interest to us is the need for guidance delineating what is and is not sufficient transparency as required in the "public confidence" principle. Absent a significant level of heightened transparency in the verification process itself and the underlying data to support any conclusions; we will not meet the public confidence standard envisioned by the principle".

On February 4, 2013 the Program responded in a letter to CAC and requested CAC to help with defining operational transparency:

"This is an issue on which the Citizens Advisory Committee must advise the Partnership- help us collectively define what we mean by transparency and how that transparency can be achieved. The Committee should share specific examples which can be applied across source sector and jurisdiction as is the intent behind the Partnership's adopted public confidence principle."

CAC member, Rebecca Hanmer has been participating on the Verification Committee and provided feedback on behalf of Citizens Advisory Committee.

The focus of this correspondence will be on the relationship between "transparency" and "verification" - with initial emphasis on agricultural non-point sources of nutrients and sediments because of the importance of these practices for achieving Watershed Implementation Plan (WIP) requirements. We recognize there are in some instances, legal limitations for reporting some farm-specific information. Although there may be some practical limitations associated with gathering and reporting information on BMPs



Chesapeake Bay Program  
A Watershed Partnership

Jessica M. Blackburn, CAC Coordinator  
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implemented voluntarily, the BMP Verification Committee's principle re: "sector equity" dictates giving attention to agricultural verification protocols that provide the same level of transparency that occurs with, for example, urban and suburban stormwater. Currently, this does not exist.

For example, several of the jurisdictions reported significant pounds of nutrient pollution reduction based on implementation of management plans. However, in contrast to the high rates of reported nutrient management plan implementation, the 2011 CEAP Report\* found that only 9% of cropped acres met the criteria for both phosphorus and nitrogen management, when rate, form, time, and method of application were considered. Results indicate, for example, that only 35% of cropped acres met criteria for application rate for nitrogen and 37% for phosphorus. For "manured" acres only, these percentages drop to 30% and 19% respectively. The CEAP report concluded that despite improvements in nutrient application rates, about 66% of corn acreage does not achieve the rate, timing, and method criteria that minimize environmental losses of nutrients. As a result, improved nutrient management on cropland and verification of that improvement continues to be a major conservation policy goal.

In sum, there are significant differences between reported progress provided by the jurisdictions and that reported by farmers themselves via the CEAP process. Only a transparent verification protocol that includes the recommendations below can resolve these differences.

### Recommendations:

- (1) Technical assistance: CAC supports the decision to create a workgroup to "dive deeply" into making recommendations for verification protocols for nutrient management plans to ensure transparency of on-farm application of fertilizer, manure and bio-solids. We respectfully ask that you consider the suggested candidates for workgroup appointment that we have listed in the attachment.
- (2) Targeting: We recognize that the jurisdictions and Program face many challenges in strengthening verification and transparency. However, changes are essential to solving the current problems with insufficient verification. Targeting of those practices and geographic areas based on the geographic location of the greatest agricultural loadings should be a significant component of WIP reporting. In sum, targeted implementation frees up funding for verification.
- (3) Third party analysis: Protocols should require review of any aggregate information by a third party as well as a comparison between the aggregated information and real world modeling data (to analyze water quality implications).
- (4) Tracking: There is a basic need to track where manure goes. Many producers have insufficient land for environmentally responsible use of the manure.\*\* Even when there is a permit to guide the handling of manure on a farm, too often once transport of the manure off the farm occurs, there is no accounting (chain of custody) of where the manure goes. A clear and transparent accounting of the fate of the manure will not only have water quality benefits but can also help promote market based solutions that can provide farmer income from alternative off-farm uses.
- (5) Model: If there are to be any early model revisions related to non-point source provisions, they should be accompanied by actions to ensure that other important issues are addressed. For example, phosphorus soil saturation should be taken into account and nutrient reduction credits should only be given when a CAFO permit is implemented, not merely applied for or issued.
- (6) Public understanding: Transparency is an essential element of public understanding and acceptance of any verification program and protocol. The Program needs to ensure that any protocol and any assessment of the protocol can be clearly understood by the public.

In conclusion, we note that several of these recommendations are included in the EPA "Interim Assessment of 2012-13 Milestones and WIP Progress" and look forward to seeing them reflected in the next WIPs issued by the jurisdictions.

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Lastly, CAC is committed to preserving healthy and sustainable agriculture in our communities. Rural landscapes are integral to the fabric of our region's culture. Just as clean water is important to healthy communities, so are healthy local food sources. We believe responsible agricultural practices that seek credit towards the WIPs are as congruent as possible with urban stormwater verification requirements. We encourage the EPA to use the Chesapeake Bay Program as a venue to promote and share successful examples across the watershed that demonstrate healthy farm practices, the community ethos that support them, and the mechanisms that promote verification.

Sincerely,



R. John Dawes  
Chair, Citizens Advisory Committee

cc: Rich Batiuk, Associate Director for Science, Analysis and Implementation, EPA Chesapeake Bay Program

Enclosure: List of candidates that might be invited to participate on a workgroup

\*Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Chesapeake Bay Region; Conservation Effects Assessment Project (CEAP), USDA Natural Resources Conservation Services, February 2011

\*\* Note we have learned of a producer who opted to remove 200 acres of trees from the farm in order to have enough land to spread on-site manure.

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List of candidates that might be invited to participate on a workgroup  
Verification group - land application of manure as part of Nutrient Management Plans  
(It should be noted that they have not been contacted)

Jeffery Allenby  
Conservation Planner  
Chesapeake Conservancy, Inc.  
[jallenby@chesapeakeconservancy.org](mailto:jallenby@chesapeakeconservancy.org)

Jim Baird  
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American Farmland Trust  
[jbaird@farmland.org](mailto:jbaird@farmland.org)

David Burke  
President, Burke Environmental Associates  
[dgburke@verizon.net](mailto:dgburke@verizon.net)

John Dawes, Jr.  
Administrator  
Chesapeake Commons  
[dawes@heinzcenter.org](mailto:dawes@heinzcenter.org)

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## Appendix T. CAC BMP Verification Related Correspondence

### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 3  
CHESAPEAKE BAY PROGRAM OFFICE  
410 SEVERN AVENUE  
ANNAPOLIS, MD 21403

August 8, 2013

Mr. John Dawes, Chair  
Citizens Advisory Committee  
Chesapeake Bay Program Partnership  
c/o Alliance for Chesapeake Bay  
P.O. Box 1981  
Richmond, Virginia 23218

Dear Mr. Dawes:

Thank you and the members of the Chesapeake Bay Program Partnership's Citizens Advisory Committee (CAC) for your letter of July 25, 2013 and for keeping the Partnership's focus on verification, transparency, and accountability. I wanted to first respond in writing to the points and concerns the Committee is raising to keep this open dialogue and issue resolution moving forward. I would then ask you for an opportunity for Rich Batiuk and I to speak with the full membership of CAC at its November 2013 meeting.

I am responding to your letter in both my role as the Director of the Chesapeake Bay Program Office and as the chair of the Chesapeake Bay Program Partnership's Management Board. Within the body of this letter, I have included excerpts from your original letter, in the italicized text, followed by detailed responses to each of the points and concerns you raised.

*As stated in our letter to you on December 17, 2012, CAC sees the need for robust and practicable procedures relating to both "transparency" and "verification."*

*"Of particular interest to us is the need for guidance delineating what is and is not sufficient transparency as required in the "public confidence" principle. Absent a significant level of heightened transparency in the verification process itself and the underlying data to support any conclusions; we will not meet the public confidence standard envisioned by the principle".*

Again, thank you and your Committee members for continuing to raise these critical pillars of a strong ecosystem restoration directed partnership. We must achieve a strong measure of both if we ultimately to be successful in restoring the Chesapeake Bay ecosystem and its surrounding, support watershed. Please continue to communicate clearly and often on your expectations until the Partnership has hit the mark.

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*On February 4, 2013 the Program responded in a letter to CAC and requested CAC to help with defining operational transparency:*

*“This is an issue on which the Citizens Advisory Committee must advise the Partnership- help us collectively define what we mean by transparency and how that transparency can be achieved. The Committee should share specific examples which can be applied across source sector and jurisdiction as is the intent behind the Partnership’s adopted public confidence principle.”*

*CAC member, Rebecca Hanmer has been participating on the Verification Committee and provided feedback on behalf of Citizens Advisory Committee.*

In response to my letter and my request to the Committee, the members rose to the challenge and delivered, thanks to the special efforts of Rebecca Hanmer and Verna Harrison. I want to particularly recognize Rebecca for going well beyond the call of duty. Not only has she continued in her leadership position within the Partnership as chair of the Forestry Workgroup (reminding us trees are the solution to Bay restoration; a point on which I totally agree!) and her membership on the Citizen Advisory Committee (CAC), but she accepted an appointment to the Partnership’s independent BMP Verification Review Panel, joining experts drawn from across the country. And then Rebecca accepted an invitation to participate on a subgroup of the BMP Verification Committee to hammer out an agreement on addressing transparency, a request from both the CAC and the Agriculture Workgroup. Her decades as a federal regulator, her experience as the director of the Chesapeake Bay Program, and her passion for the environment have positioned her well to help guide the Partnership along this road.

*The focus of this correspondence will be on the relationship between "transparency" and "verification" - with initial emphasis on agricultural non-point sources of nutrients and sediments because of the importance of these practices for achieving Watershed Implementation Plan (WIP) requirements. We recognize there are in some instances, legal limitations for reporting some farm-specific information. Although there may be some practical limitations associated with gathering and reporting information on BMPs implemented voluntarily, the BMP Verification Committee’s principle re: "sector equity" dictates giving attention to agricultural verification protocols that provide the same level of transparency that occurs with, for example, urban and suburban stormwater. Currently, this does not exist.*

The BMP Verification Committee’s Transparency Subgroup has drafted up recommended language, provided as an attachment to this letter, for a proposed sixth BMP verification principle for consideration and adoption by the CBP Partnership. Based on further input from the Partnership’s Agriculture Workgroup, there are currently two sets of language up for consideration by the Partnership, indicated in the boldface text within the one page attachment to this letter. Even though the immediate focus has been placed on addressing a request for transparency guidance from the Agriculture Workgroup, the recommended language and, ultimately, the transparency principle, if adopted by the Partnership, would apply across all source sectors and the entire verification process.

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This recommended language, along with the larger issue of ensuring transparency, has been brought forward to the Partnership's BMP Verification Review Panel. The Panel heard a briefing by Mark Dubin, CBP Agriculture Workgroup Coordinator, and Roy Hoagland, BMP Verification Committee and Transparency Subgroup member, on the Subgroup's deliberations and proposed transparency principle language at the Panel's July 31 conference call. The Panel will be discussing the need for transparency in greater detail at its August 28-29 meeting in Annapolis.

The Panel's specific feedback on the recommended language, along with their recommendations on addressing transparency, will be forwarded to the BMP Verification Committee for consideration at the Committee's September 16 meeting. From there, both the Panel's and the Committee's recommendations will be worked up through the Partnership's management structure, first through the Goal Implementation Teams, then the Advisory Committees, followed by the Management Board, and then onto the Principals' Staff Committee for final decisions. I believe this process in the coming months will ensure a full airing of ideas, concerns, and recommendations for ensuring we are both clearly defining transparency and fully describing expectations for ensuring it is carried out as a routine part of the business of restoring and protecting the Bay and its watershed.

*For example, several of the jurisdictions reported significant pounds of nutrient pollution reduction based on implementation of management plans. However, in contrast to the high rates of reported nutrient management plan implementation, the 2011 CEAP Report\* found that only 9% of cropped acres met the criteria for both phosphorus and nitrogen management, when rate, form, time, and method of application were considered. Results indicate, for example, that only 35% of cropped acres met criteria for application rate for nitrogen and 37% for phosphorus. For "manured" acres only, these percentages drop to 30% and 19% respectively. The CEAP report concluded that despite improvements in nutrient application rates, about 66% of corn acreage does not achieve the rate, timing, and method criteria that minimize environmental losses of nutrients. As a result, improved nutrient management on cropland and verification of that improvement continues to be a major conservation policy goal.*

*In sum, there are significant differences between reported progress provided by the jurisdictions and that reported by farmers themselves via the CEAP process. Only a transparent verification protocol that includes the recommendations below can resolve these differences.*

### *Recommendations:*

*(1) Technical assistance: CAC supports the decision to create a workgroup to "dive deeply" into making recommendations for verification protocols for nutrient management plans to ensure transparency of on-farm application of fertilizer, manure and bio-solids. We respectfully ask that you consider the suggested candidates for workgroup appointment that we have listed in the attachment.*

The CEAP report you reference provided clear evidence to the Partnership that more must be done to both verify management practices being reported as practices and change the delivery of technical support to the watershed's thousands of producers. As long called for by your own member, Verna Harrison, and the subject of an April 24, 2103 letter from Rich Batiuk, Chair,



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CBP Verification Committee to Frank Coale, Chair, CBP Agriculture Workgroup (see the second attachment to this letter), the Agriculture Workgroup is convening a group to develop verification protocols for agricultural conservation practices implemented as management plans (e.g., nutrient management plans). Rich Batiuk has been working closely with Verna Harrison, Frank Coale, and Mark Dubin to ensure the membership on the group includes some of the suggested candidates put forth in your letter. Once the Agriculture Workgroup has finalized the membership, charge, and schedule for the work of this group, I will pass that information along to you. Thanks to Verna's steadfast efforts, this issue to coming to the forefront of the Partnership for long overdue discussion and resolution.

*(2) Targeting: We recognize that the jurisdictions and Program face many challenges in strengthening verification and transparency. However, changes are essential to solving the current problems with insufficient verification. Targeting of those practices and geographic areas based on the geographic location of the greatest agricultural loadings should be a significant component of WIP reporting. In sum, targeted implementation frees up funding for verification.*

EPA, our federal partners, particularly NRCS and USGS, and our jurisdictional partners have mutually developed tools and maps and have agreed on specific areas within the Chesapeake Bay watershed which have the greatest agricultural loading contributions to the downstream tidal waters. Those identified priority areas are used in geographically focusing federal cost-share and monitoring resources. EPA's 2013 grant guidance<sup>1</sup>, directed to the watershed jurisdictions and recipients of the Partnership's Small Watershed and Innovative Nutrient and Sediment Reduction (INSR) grants, addresses practices and strategies on pages 22-25, including the below language:

“Consistent with the EO 13508 Strategy, recipients of Chesapeake Bay Implementation grants (CBIG), Headwater grants, and Chesapeake Bay Regulatory and Accountability Program (CBRAP) grants must give preference to priority practices, watersheds, and strategies in their work plans that will result in the greatest benefits to water quality in the Bay. This focus is consistent with the CBP's ongoing efforts to use the most accurate and appropriate science to identify priority practices, watersheds, and activities.”

Based on direct feedback and recommendations from the Partnership's BMP Verification Review Panel, Chesapeake Bay Program Office staff conducted in-depth evaluations of the nutrient and sediment reduction effectiveness of more than 60 different BMPs adopted by the Partnership in the context of practice implementation levels described in the jurisdictions' Phase II Watershed Implementation Plans. The findings from this extensive set of evaluations were presented to the Panel at its June 19 conference call<sup>2</sup>. The Panel is expected to recommend the targeting of verification efforts towards those practices which will provide for the vast majority of the planned nutrient and sediment pollutant load reductions.

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<sup>1</sup> CBP 2013 grant guidance is accessible online at <http://www.epa.gov/region03/chesapeake/grants.htm>.

<sup>2</sup> The briefing presentation to the CBP Partnership's BMP Verification Review Panel is accessible on-line at <http://www.chesapeakebay.net/S=0/calendar/event/19542/>.

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*(3) Third party analysis: Protocols should require review of any aggregate information by a third party as well as a comparison between the aggregated information and real world modeling data (to analyze water quality implications).*

I would appreciate hearing more details about what you specifically have in mind with this recommendation—some clear, working examples would be greatly appreciated—before responding in more detail to this recommendation. I will then work to ensure further discussion within the Partnership, particularly within the BP Verification Review Panel and the BMP Verification Committee as well, as I don't believe this specific topic has come up.

*(4) Tracking: There is a basic need to track where manure goes. Many producers have insufficient land for environmentally responsible use of the manure. \*\* Even when there is a permit to guide the handling of manure on a farm, too often once transport of the manure off the farm occurs, there is no accounting (chain of custody) of where the manure goes. A clear and transparent accounting of the fate of the manure will not only have water quality benefits but can also help promote market based solutions that can provide farmer income from alternative off-farm uses.*

I completely agree with the need for better tracking and accounting of manure use and transport. I recommend we ensure the two groups currently active within the Partnership—the Agriculture Workgroup's Nutrient Management Expert Panel and the conservation practices implemented as management plans verification group—tackle this need from their two different charges. I will reach out to Frank Coale and ask the Agriculture Workgroup to take on this responsibility immediately.

*(5) Model: If there are to be any early model revisions related to non-point source provisions, they should be accompanied by actions to ensure that other important issues are addressed. For example, phosphorus soil saturation should be taken into account and nutrient reduction credits should only be given when a CAFO permit is implemented, not merely applied for or issued.*

Partnership work addressing this recommendation is proceeding down two paths. Some of the issues can be addressed through the existing and planned BMP expert panels being supported and convened under the Partnership's technical workgroups—e.g., the Agriculture Workgroup's Nutrient Management Plans BMP Expert Panel chaired by Chris Brosch, Virginia Tech. Other issues will need to be addressed during the Partnership's development of the Phase 6 Chesapeake Bay Watershed Model. Under the leadership of the Land Use Workgroup, co-chaired by Jenny Tribo, Hampton Road Planning District Commission, and Karl Berger, Metropolitan Washington Council of Governments, work is underway to re-work the land uses and their respective pollutant loading rates through a workshop and then an expert panel. The Partnership's source sector workgroups—Agriculture, Urban Stormwater, Forestry, and Wastewater—and the Watershed Technical Workgroup will be collaborating with the Land Use Workgroup on resolving the issues you reference to above.

## Appendix T. CAC BMP Verification Related Correspondence

*(6) Public understanding: Transparency is an essential element of public understanding and acceptance of any verification program and protocol. The Program needs to ensure that any protocol and any assessment of the protocol can be clearly understood by the public.*

I ask the CAC to carefully consider the recommended transparency BMP verification principle language provided in the first attachment to this letter as the starting point for reaching Partnership agreement on what we mean by transparency. Please provide your collective feedback over the coming weeks and months so that what is recommended to the Principals' Staff Committee this winter reflects your input. Then I ask the CAC to keep focused on transparency and work with the rest of the Partnership on how we carry out what we have committed to do. We need your continued independent voice and advice as we proceed forward with implementation of the basinwide BMP verification framework across all seven watershed jurisdictions and all source sectors.

*In conclusion, we note that several of these recommendations are included in the EPA "Interim Assessment of 2012-13 Milestones and WIP Progress" and look forward to seeing them reflected in the next WIPs issued by the jurisdictions.*

That is exactly one of the intended purposes of EPA's assessment of the jurisdictions' milestones and WIP progress—providing clear, advance signals of forthcoming expectations. EPA has assigned a senior manager as well as a lead staffer to work closely with each of the seven watershed jurisdictions on their work toward implementing their watershed implementation plans and achieving their milestones. We are actively using a combination of regularly scheduled quarterly meetings/conference calls along with our interim and final milestone assessments to keep in close communication with our jurisdictional partners.

*Lastly, CAC is committed to preserving healthy and sustainable agriculture in our communities. Rural landscapes are integral to the fabric of our region's culture. Just as clean water is important to healthy communities, so are healthy local food sources. We believe responsible agricultural practices that seek credit towards the WIPs are as congruent as possible with urban stormwater verification requirements. We encourage the EPA to use the Chesapeake Bay Program as a venue to promote and share successful examples across the watershed that demonstrate healthy farm practices, the community ethos that support them, and the mechanisms that promote verification.*

Not only does our best available science indicate that well-managed agricultural lands are the best land use for ensuring protection of local water quality and stream biological communities next to forest lands, the open-space and scenic vistas provided by our agricultural lands are an integral part of why the mid-Atlantic region is such a special place to live and raise our families. The Partnership is actively taking on the charge you outline above, although we clearly have more work to do and still face challenges to overcome; but we know what we need to do. We must sustain our agricultural lands and those working those lands as they are key to restoring our local streams and our treasured Chesapeake Bay watershed.

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The Committee's continued focus on enhancing transparency and accountability in our individual and collective restoration efforts is fully recognized by the Partnership. Thank you for taking up and acting on the challenges I put forth in my February 2013 letter and helping point the way on transparency. Please extend my personal gratitude and appreciation, as well as that of the Partnership, to your members for their continued dedicated service to the restoration of the Chesapeake Bay ecosystem and its watershed.

Sincerely,



Nicholas A. DiPasquale  
Director

### Attachments

- cc. CBP Citizen Advisory Committee Members
- CBP Local Government Advisory Committee Members
- CBP Scientific and Technical Advisory Committee Members
- CBP Management Board Members
- CBP BMP Verification Review Panel Members
- CBP BMP Verification Committee Members

## Appendix T. CAC BMP Verification Related Correspondence

### Attachment 1

Chesapeake Bay Program Partnership  
BMP Verification Committee  
Ad Hoc Transparency Subgroup  
July 11, 2013/June 12, 2013 Versions

#### Background

The Agriculture Workgroup sought guidance on a particular aspect of the BMP Verification Principles – transparency – described in Principle 3, Public Confidence:

Verification protocols incorporate transparency in both the processes of verification and tracking and reporting of the underlying data. Levels of transparency will vary depending upon source sector, acknowledging existing legal limitations and the need to respect individual confidentiality to ensure access to non-cost shared practice data.

Transparency is incorporated in the Clean Water Act (CWA), and its regulatory and policy framework, which establishes public access and site-specific data transparency requirements for all sources of nutrients and sediments regulated as point sources. The following definition and recommendations are proposed to clarify the concept of transparency across all nonpoint sources.

#### Proposed Addendum to the BMP Verification Principles<sup>3</sup>: Transparency

##### Definition of transparency

Transparency means operating in a way so any outside reviewer can determine what actions were taken, which data were synthesized to generate a report or conclusion, how data was collected and obtained, what measures were employed to ensure data accuracy, who is responsible for data collection and synthesis, who is responsible for ensuring data accuracy, and the methods of data analysis utilized.

##### Recommendations

1. The measure of transparency will be applied to three primary areas of verification: data collection, data synthesis and data reporting.
2. Transparency of the process of data collection must incorporate **clearly defined/independent** QA/QC procedures, which may be implemented by the data-collecting agency or by an independent third party.
3. Transparency of the data reported should be transparent at the **finest possible/most site-specific** scale that conforms with legal and programmatic constraints, and at a scale compatible with data input for the Chesapeake Bay Program partnership modeling tools.
4. It is recognized that transparency of data reported will vary across verification methods and data collection and reporting programs. This variance, however, should not negate the commitment and obligation to ensure transparency at the highest level possible.

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<sup>3</sup> [http://www.chesapeakebay.net/documents/Ches\\_Bay\\_Program\\_Partnership\\_BMP\\_Verification\\_Principles.pdf](http://www.chesapeakebay.net/documents/Ches_Bay_Program_Partnership_BMP_Verification_Principles.pdf)

## Appendix T. CAC BMP Verification Related Correspondence



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
CHESAPEAKE BAY PROGRAM OFFICE  
410 Severn Avenue, Suite 109  
Annapolis, Maryland**

April 24, 2013

Dr. Frank J. Coale, Professor  
Chair, CBP Agricultural Workgroup  
Environmental Science and Technology  
1439 Animal Science/Ag. Engineering Bldg.  
University of Maryland  
College Park, MD 20742

Dear Frank:

Thanks to you and Mark Dubin for your leadership efforts over the past year, working with the Partnership's Agricultural Workgroup and the larger agricultural community on developing a comprehensive set of conservation practice verification protocols. I know that investment of time by the workgroup has taken away from other important issues and challenges facing the workgroup.

As we prepare for taking the entire basinwide BMP verification framework up through the Partnership's independent BMP Verification Review Panel this fall and eventually to the Principals' Staff Committee in the early winter timeframe, we need Agricultural Workgroup to complete its work on its verification protocols by this summer. I know you are focused right now on getting the feedback requested from the Transparency Subgroup, formed by the BMP Verification Committee at its March meeting, in order to move forward with the workgroup's protocols.

There is a growing confidence and comfort level with the overall approach the Agricultural Workgroup is taking to ensuring verification for the numerous and diverse suite of conservation practices implemented by producers. There is a standing request from the BMP Verification Review Panel and the Committee to develop some working examples of application of the 80% threshold. The work underway with the Forestry Workgroup on such a working example will benefit all of the partners and their understanding of exactly what is being proposed by the Agricultural Workgroup.

The one specific set of verification protocols which members of the BMP Verification Committee have continued to express the need for further development are those within the "Management BMPs: Plans" category. I believe most of the Committee members can see the Agricultural Workgroup's recommended path forward for the annual practices, structural practices, and the management BMPs: practices categories as outlined within the Workgroup's evolving matrix. The exact path forward for verification of the management BMPs which take the form of plans is not as clear at this time.

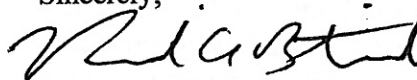
## Appendix T. CAC BMP Verification Related Correspondence

As work proceeds forward with both developing working examples of application of the 80% threshold and further developing the supporting tools and narrative documentation, I am asking the Agricultural Workgroup to put emphasis on further thinking through verification of the category of agricultural management BMPs which take the form of plans. I recognize you need to redirect the Agricultural Workgroup's attention to a host of other priority topics and tasks, long put on hold to move the development of the verification protocols forward. Thus, could you consider forming a small group of recognized experts, drawn both from within the Agricultural Workgroup and the larger agricultural community, which would further develop verification protocols for this category of practices. If convening such a group of experts requires some resources—staff, travel support, other—please let me know so I can work to help provide such resources.

The BMP Verification Committee specifically requested the Partnership's Management Board for additional time in the BMP verification schedule, in part, to ensure the Agricultural Workgroup had the time it needed to complete its work on its verification protocols. Please use that time extension over the course of the remainder of the spring and into the summer to complete work on the full suite of verification protocols for all four categories of agricultural conservation practices.

Again, thank you for your leadership and efforts to further enhance the level of partnership confidence in the implementation and continued pollutant reduction effectiveness of agricultural conservation practices being put in place and maintained by the Bay region's thousands of producers.

Sincerely,



Richard Batiuk  
CBP Partnership BMP Verification  
Committee Chair

Ec: Chesapeake Bay Program BMP Verification Committee Members  
Nick DiPasquale, Chesapeake Bay Program Management Board Chair