



**CHESAPEAKE BAY FOUNDATION**  
*Saving a National Treasure*

Mr. Richard Batiuk  
Associate Director for Science, Analysis and Implementation  
U.S. EPA Chesapeake Bay Program Office  
410 Severn Avenue  
Annapolis, Maryland 21403

February 14, 2013

Dear Rich:

Unfortunately, I am unable to attend the face to face meeting of the BMP Verification Committee. I did want to share, however, the perspectives of the Chesapeake Bay Foundation (CBF) on some of the issues, for the Committee's consideration.

First of all, thanks to you and your Chesapeake Bay Program partners for your efforts developing the draft verification protocols. Once again, the Partnership is on the cutting edge and that, of course, comes with challenges.

We understand and recognize concerns about limited resources and the potential trade-offs between implementation and verification of implemented practices. But, a reasonable, balanced is possible and critical to maintain public confidence in, and support for, Bay cleanup efforts. Through our experience working with the Choose Clean Water Coalition to evaluate the 2011 milestones in Pennsylvania, Maryland and Virginia, we were made keenly aware of some of the inconsistencies in practice reporting. We also found a high level of interest in the tracking and accounting of implemented practices among a variety of stakeholders. Improving this process, providing greater transparency and confidence in reporting, will help garner the necessary political and public support for clean-up efforts.

We agree with the Citizens' Advisory Committee that the Environmental Protection Agency (EPA) needs to set the lower threshold for what defines an acceptable verification program for the various pollutant source sectors. We recognize the need for flexibility among states and source sectors, but EPA needs to establish the "bottom line" for what is, or is not, acceptable to get full credit in the watershed model and to help ensure "reasonable assurance" that pollution reductions are occurring.

To help establish this minimum threshold, we encourage EPA to heavily weigh the recommendations of the Independent Verification Panel, especially their future review of the state verification programs. As you know, much thought went into the composition of the members of this group – we strived for a balance in sector, experience, within and outside, the Bay watershed, etc. As such, we hope that EPA and the Bay jurisdictions will give full consideration to their recommendations.

Below please find our specific comments.

Attachment M - Current Status and Recommended Next Steps for the Chesapeake Bay Basinwide BMP Verification Framework Components

CBF is concerned there isn't sufficient time in the proposed schedule to give the Verification Panel time to review and provide meaningful comments on the draft protocols and for the sector workgroup and the BMP Verification Committee to address these comments. First, it is important that the Verification Panel be given the draft framework/protocols in advance of their March meeting so they have time to review and provide specific feedback at the meeting. Second, if their comments are substantial, then it could take longer than a few weeks before the source sector workgroup and BMP Verification Committee can resolve or address these concerns prior to the Management Board and Principals' Staff Committee meetings. We suggest ensuring flexibility in the schedule so as to avoid the impression that the Panel review is just "pro forma."

Attachment N – Documentation of the Jurisdictions' BMP Verification Programs

The documentation of the verification and reporting processes should be accessible via ChesapeakeStat and/or BayTAS i.e., where there is publicly accessible information regarding implementation. Currently, the BMP implementation status is found in one location on the web page (or via spreadsheets from the EPA) and the only way I was able to find the jurisdictions' quality assurance plans is via the link on this committee's web page! Making this information readily accessible will increase transparency.

Currently, some, but not all, the jurisdictions' quality assurance plans indicate they conduct audits and inspections of BMPs. We expect that in the future, all jurisdictions will include some type of inspection program and it is important that the results of these inspections/audits be reported as part of the jurisdiction's verification program and provided in a place that is easily accessible to the public.

Lastly, we cannot over-emphasize the importance of cleaning up the historical data. We recognize this is a thankless task, but unless that is done, future efforts to improve accuracy of reporting BMPs will be in vain because we will be perpetuating data errors from the past. We encourage EPA to provide the necessary support and resources to the Bay jurisdictions to accomplish this task to ensure there is consistency across the watershed.

Source Sectors:

Our comments are based on the protocol versions contained on the BMP Verification Committee's web page (as of 2/11/2013), as well as any updates we found on the applicable workgroup's web page.

*Urban*

Urban BMPs (draft 11/11/12): The need to do a better job of tracking and verifying urban stormwater BMPs is exemplified by our own experience evaluating the 2011 Milestone progress and a preliminary audit of urban BMPs in the Severn River watershed in Maryland ([http://ceds.org/watershedaudit/SevernRiverPWA\\_Report.pdf](http://ceds.org/watershedaudit/SevernRiverPWA_Report.pdf)). This study found that that a third to nearly all (depending upon BMP type) were no longer functioning properly, though they are probably still being counted in the Chesapeake Bay Watershed Model. We suspect these results are typical

across the watershed and they emphasize the need for better verification and accounting for the effectiveness of these practices.

The Urban Workgroup acknowledges the deficiencies of the existing regulated programs in their draft protocol report. Conceptually, we support their proposal to capitalize on existing MS4 programs, along with adding more audits and oversight by the state and EPA. We are, however, skeptical that the recommendation for BMP “downgrades” will be trackable. That is, the protocols indicate that if “a field inspection indicates that a BMP is not performing to its original design, the localities would have a defined time frame (e.g., one year) to take corrective maintenance or rehabilitation actions to bring it back into compliance. If a facility is not fixed during the defined timeframe, the pollutant reduction rate for the BMP would be eliminated, and the locality would report this to the state in its annual MS4 report. If corrective maintenance actions were verified for the BMP at a later date, the MS4 could take credit for it then.” While theoretically this approach makes sense, we believe it may be difficult to implement in practice, so we encourage the Urban Workgroup to think through how the implementation of this recommendation could be tracked.

Urban Nutrient Management (draft 2/2/13): Verifying non-structural practices, like nutrient management, is probably the most challenging aspect of this initiative and has generated a fair amount of discussion in both the urban and agriculture workgroups. Obviously, the preference is for verification approaches that are tangible and measurable. To this end, we are pleased with the recommendation to look at actual fertilizer sales as one way to verify implementation of urban nutrient management. We also applaud the agriculture and urban workgroups for working together on this issue and recommend they continue their discussions to ensure comparability between verification approaches for urban and agricultural nutrient management.

### *Agriculture*

First, we acknowledge and appreciate the efforts of the Agriculture Workgroup on the development of verification protocols and the decision framework. This is, perhaps, the most challenging of all the protocols to develop. And, in particular, as noted above, practices that involve behavioral change, such as nutrient management, are the most difficult to verify.

As in the urban sector, a recent study has highlighted the need to ensure verification of implemented conservation measures. The USDA’s Conservation Effects Assessment Project report indicated that only 9 percent 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. In all fairness, the issue is just not one of reporting and verification, but could also be related to the technical contents of the nutrient management plans themselves. Nonetheless, it does point to a disconnect between reporting and on-the-ground conservation.

Agricultural Data Verification Protocol (draft 12/3/12): We support the use of the Workgroup’s verification “matrix” as a way to organize and summarize available options by the different BMP types.

We do not have any comments on the matrix as drafted. In addition, we believe the Verification Index approach (presentation dated 12/12/2012) conceptually makes sense. It would, however, be useful to run one or more practices and verification approaches through this tool, by way of example, to facilitate understanding of how this tool would work in practice. In addition, it is not clear how the results will be related to the “80%” statistical confidence threshold.

In terms of process, we believe there needs to be consistency among the states, in scoring the verification approaches for the various BMPs. Consequently, we are not sure that the first step should be an internal assessment by the state with the findings then included in the verification plan submittal package. Instead, inter-jurisdictional consistency should be ensured by the states conducting the initial assessment and then the results should be reviewed by an independent panel (perhaps some form of the Verification Panel) to ensure harmonization across the states. These revised ratings should then be included in the states’ verification plan submittal packages.

Lastly, we encourage continued dialogue regarding verification of nutrient management among the agriculture and urban workgroups as they both face similar challenges.

I apologize for not being able to review all of the draft protocols, but hopefully, these comments will be useful to the Committee for your discussion next week.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth", written over a faint dotted line.

Beth L. McGee, Ph.D.  
Senior Scientist

CEAP 2011. Assessment of Conservation Practices on Cultivated Cropland in the Chesapeake Region.  
USDA NRCS Conservation Effects Assessment Project. February 2011.