



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.

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.

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,

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 is 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 guidance¹, 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 call². 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.

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

² 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/>.

(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.

(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.

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

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 Principles³: 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.

³ http://www.chesapeakebay.net/documents/Ches_Bay_Program_Partnership_BMP_Verification_Principles.pdf



**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.

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