Date: February 3, 2013

To: Urban Nutrient Management Expert Panel
Urban Stormwater Work Group

From: Tom Schueler, Chesapeake Stormwater Network

Re: Summary of Comments Received on UNM Expert Panel Report
And Proposed Options for Resolving Them

Background:

The Expert Panel presented its recommendations on December 18, 2012 joint meeting of the Urban Stormwater Work Group, Agricultural Workgroup, Watershed Technical Work Group and the Stream Group of the Habitat Goal Implementation Team. A followup meeting with the Ag Work Group was held on January 10, 2013.

The decision was made to provide a 45 day general comment period, which expired on January 31, 2013, before commencing the CBP BMP review process to seek official endorsement by CBP. The process will begin by seeking approval from the Urban Stormwater Workgroup at its meeting scheduled for February 19. I have incorporated non-substantive technical comments and edits (in blue type) in the Version 2.0 of the final report, dated 2/03/2013.

As of 1/31/2013, we have received comments from the following groups: Maryland Department of Agriculture, Chesapeake Bay Commission, Agricultural Workgroup, Professional Landscape Network and Agrium Advanced Technologies. In addition, Dr. Gary Felton (panelist) provided some supplemental comments, as well. The entire file of comments received has been posted to the USWG website.

While most of the feedback at the initial meeting and subsequent comments was quite laudatory, there were a few areas of concern:

1. Reluctance about the alternative outreach option credit
2. MD: not getting credit for mandatory N reductions by commercial applicators under the new MD fertilizer law
3. Verification issues associated with urban nutrient management plans
4. Need a definition of Conservation Landscaping
5. Edits to core UNM lawn care practices
6. Concern about efforts to improve state non-farm fertilizer statistics

1. Alternative Outreach Option (Ag Workgroup, Keeling)

Summary of comments: This credit option was recommended by a majority of the panel, but was not unanimous. Concern was expressed by several at the rollout meeting, as well in subsequent written and verbal comments, that this incentive option should be dropped for numerous technical and policy reasons (e.g., BMPs should physically exist

before crediting, sociological research shows ambiguous effect of outreach on behavior change, may not be much of an incentive for local governments, etc.)

*Proposed Resolution**:*** Have USWG choose one of the following three options:

> Option 1: Drop the Alternative Outreach Option Entirely. The sections of the report shaded in yellow will be deleted
>
> Option 2: Drop the Alternative Outreach Credit, But Retain Some of the Discussion on Innovative Outreach Methods in Section 7 (Future Research and Management Needs).
>
> Option 3: Retain the existing language.

2. Not getting full credit for mandatory N reductions by commercial applicators and retailers under the new MD fertilizer law (CBC/MDA/Felton)

Summary of comments: Certain elements of the MD fertilizer law regulate the dose at which homeowners and commercial applicators can apply N, which are verifiable and enforceable. MDA (2013) has released these regulation, which are attached. MDA has requested that certain areas of the state be granted a N credit for UNM due to these provisions (which are unique in the Bay watershed)

Proposed Resolution: CSN has drafted a definition for this MD specific credit and how it might be credited, which can be found in blue font on page 11 of the revised report. Please let us know if it is an acceptable option.

Nitrogen Fertilization Legislation (Maryland Only). This refers to state legislation or regulations that:

> (a) limits the N content and establishes minimum slow release content for DIY fertilizer products sold in retail outlets
> (b) sets an upper limit on the maximum amount of N fertilizer that commercial applicators can apply in any one application (0.9 lbs/acre/year)
> (c) prohibits application on paved surfaces, water features, or during the dormant season, and,
> (d) has verifiable procedures for commercial applicator training, certification, and application record-keeping, including fines for non-compliance.

Maryland's lawn fertilizer legislation is currently the only Bay state that meets criteria (a) - (d), as outlined in MDA (2013). As a result, commercial applicators in Maryland are now required to use at least 7 out of the 10 core UNM practices. Consequently, Maryland is eligible to take the "blended" UNM nitrogen credit (i.e., 9%) for the total acreage of lawns managed by commercial applicators that it can verify as conforming with the new regulations.

Maryland may also receive low risk UNM nitrogen credit (4.5%) for the acreage of home lawns managed by do-it-yourselfer, as influenced by its new retail sales and labeling requirements (i.e., items(a) and (c) in the preceding list). The smaller credit is warranted by the fact that only 4 of the 10 core UNM practices are implemented under this approach (i.e., several practices are still subject to homeowner discretion).

To prevent double counting, Maryland cannot also take credit for the state-wide nitrogen reduction credit described in Section 5.2, although for verification purposes, it will need to cross check its UNM reductions with measured declines in the N content of non-farm fertilizer sales (see Section 6.1). In addition, because the state of Maryland is already taking the credit for fertilized lawns, localities can only take credit for UNM practices if they are applied to non-fertilized lawns.

3. Verification issues associated with sampling on-site urban nutrient management plans (Ag Work Group)

Summary of comments: Need a numerical threshold for sampling/inspection of UNM plans that is at least comparable to that used for agricultural nutrient management practices.

Proposed Resolution: Add the following language to work to address the issue.

The Panel could not agree on what elements of a UNM plan could actually be inspected during an on-site visit, nor a numeric threshold for the intensity of sub-sampling to provide acceptable verification data. The Panel noted that the statistical rigor of any UNM sub-sampling effort should be consistent with the verification protocols being developed for agricultural nutrient management practices, as outlined by the AWG (2012), while at the same time recognizing that limited capacity currently exists in the urban sector to assess what could amount to hundreds of thousands of properties. The Panel felt that creating better UNM sub-sampling procedures should be a major research and implementation priority in the next few years.

4. Need a definition of Conservation Landscaping (Felton/CBC)

Proposed Resolution: See text below

Conservation Landscaping: Creation of mulched beds that contain plantings of perennial herbaceous plants, shrubs and small trees that retain rainfall and adsorb runoff from adjacent turf or impervious cover. Native plants are preferred, but ornamental plants are acceptable if they are adapted to regional climates and are not invasive spreaders.

5. Edits to Core UNM Practices (Felton, Agrium, Professional Landscape Network, CBC, and MDA)

Summary of Comments: Various edits were proposed to lawn care practice 1, 2, 3, 4, 8 and 9, with the most focus on "Choose not to fertilize option" in practice 3, and the length of the buffer zone specified in practice 9.

Proposed Resolution. Most of the suggested edits were incorporated into the text (and are shown in blue font). The Choose not to fertilize option was retained, but a photo of a lawn with poor cover (needing turf management/fertilization is now provided in the text along with a caption to make sure homeowners understand that a poorly maintained lawn can be a source of sediment and nutrients, even if it is not fertilized

6. Concern about efforts to improve state non-farm fertilizer statistics (Felton, MDA, Ag workgroup)

Summary of comments: Several reviewers noted that the quality of current state non-farm fertilizer statistics were inadequate to verify declines in the actual N and P applied to lawns, and that state agencies may lack the staff, authority or methods to improve them. They also noted that the Panel should provide more specific instructions on what would be considered acceptable statistics.

Proposed Resolution: The Panel feels that the three year transition is an adequate time frame to shift to enhanced reporting of state non-farm fertilizer sales statistics, and that such data is critical to verify the substantial Bay-wide reductions provided (roughly estimated at about 250,000 lbs of TP and 1,000,000 lbs of TN.

Some language was added to respond to these issues in Section 6.1 (p. 47), and that USWG/AWG should work together on this issue in the next year.