

SUMMARY OF DECISIONS AND ACTIONS
CBP WQGIT BMP Verification Committee
Conference Call
Tuesday, January 22, 2013, 1:00PM – 3:00PM
<http://www.chesapeakebay.net/calendar/event/18957/>

Objectives of Today's Conference Call – Rich Batiuk

- Rich Batiuk (EPA, Chesapeake Bay Program Office (CBPO)) convened the call at 1:00PM and reviewed the agenda.

Feedback/Outcomes from the December 6th Verification Review Panel Mtg – Rich Batiuk

- Rich Batiuk highlighted some key points discussed during the December 6th Panel meeting and pointed out the associated sections in the meeting summary ([Attachment A](#)) including:
 - 80% confidence level, pages 2-4
 - Regulated vs. non-regulated stormwater, starting p.5
 - Visual inspections and performance sampling, p.6
 - Options for non-MS4 areas, bottom p.6 to p.7
 - Forestry BMPs, p.8
 - On-site treatment systems, p.9
 - Questions from panelists regarding cross-sector overlap for streams and wetlands, p.9-10
 - Discussion of legacy BMPs and historical data clean-up, p.11
 - Panelists' rapid fire input at end of meeting, p.12-13
- Rich Batiuk acknowledged the Committee for putting together such a diverse and insightful group of panelists.
- Jeremy Hanson (Chesapeake Research Consortium, CBPO) described the list of follow-up materials, papers and analyses requested by the BMP Verification Review Panel during its December 6th meeting ([Attachment B](#)).
 - He noted that the information and documentation will be distributed to the Committee along with the Panel. Additionally, the responses and documents will be posted to the [Review Panel's webpage](#) under the Projects & Resources tab.
 - He explained that #3 and #11 will be completed by Matt Johnston (UMD, CBPO) and Jeff Sweeney (EPA, CBPO) in the February 2013 timeframe.

Review of Draft Response to CAC BMP Verification Letter – Rich Batiuk

- Rich Batiuk presented the December 17, 2012 letter from the Partnership's Citizens Advisory Committee (CAC). See [Attachment C](#). He noted that Nick DiPasquale (Director, EPA CBPO) is drafting a response to the CAC's letter. Portions of the existing draft response letter were highlighted for Committee members' feedback (see [Attachment D](#)).
- Highlighted section on the bottom of page 2:
 - Beth McGee (Chesapeake Bay Foundation): Understand that we need buy-in from the partnership, but I think CAC's concern is that the process will fall to lowest-common denominator.

- Andra Popa (EPA CBPO) pointed out the last sentence needs to be revised.
- Russ Baxter (VA DEQ): Would argue that the CAC letter implies there is no verification, which is simply not true. The jurisdictions have existing verification requirements and programs.
- Hank Zygmunt (Resource Dynamics, Inc): Agree with both Russ Baxter and Beth McGee's points. The NAS Chesapeake Bay independent evaluation report does recognize the strengths of the jurisdictions' BMP tracking and reporting programs, as well as some of the gaps. Suggest checking with and incorporating of the NAS report language to help bolster the response to CAC.
- Russ Baxter: Do not understand CAC's suggestion for EPA to take larger role. EPA's oversight role is already clearly described and defined in the context of the Bay TMDL and the implementation of the jurisdictions' Watershed Implementation Plans.
- Roy Hoagland (Hope Impacts, LLC) felt the letter was very well done and it provides an opportunity for EPA to make some important points. However, he did not think the letter clearly explained that EPA is final arbiter to define "reasonable assurance."
- Ann Swanson (Chesapeake Bay Commission): In the past we have never had situation where letters were exchanged between advisory committees and CBP management. Concerned about potentially larger process issues/ramifications.
 - Rich Batiuk understood and will raise Swanson's concern to Nick DiPasquale and the Management Board.
 - Hank Zygmunt pointed out that John Dawes, CAC Chair, requested a written response in CAC's original letter.
- Pat Buckley (PA DEP) asked how much time the Committee has to provide comments on the draft response.
- Rich Batiuk: CBPO staff will provide a Word version of the draft response letter to Committee members following the conference call. Committee members should submit their comments to Rich Batiuk by COB January 29th.
- Highlight section on the bottom of page 3
 - Rich Batiuk explained the Principals' Staff Committee (PSC) will be the decision makers on the verification framework. The CBPO will engage with STAC, CAC, and other partners on how the Partnership might institutionalize verification over the long run.
- Highlighted section on page 4
 - Pat Buckley: Concerned that the protocols are already so extensive to incorporate a BMP into the model. Suggest leaving it up to the states to determine verification for new BMPs approved by the Partnership.
 - Roy Hoagland: Given the call from the NAS report to elevate BMP verification, think it would be best to make the appropriate changes to the BMP panels so that they can address verification issues into the future. Would need to look at the composition of these panels to ensure they have the right expertise in verification.
- First highlighted section on page 5
 - Rich Batiuk described this request for CAC's input to help define transparency.
 - Russ Baxter: Everything we do is public information, so it would help to get clarification on what CAC means by transparency.

- Beth McGee: Have raised this issue before. Part of transparency is not just verifying what is on the ground, but also the whole paper trail. Currently, the documentation of data sources themselves is not as transparent as it could be from an outsider point of view.
 - Pat Buckley: That kind of information is in the jurisdictions' Quality Assurance Plans.
- Roy Hoagland: From personal experience, there are times when transparency is absent for certain BMPs in certain jurisdictions.
- Ann Swanson: Important to understand what CAC means by "transparency." Should ask what kinds of transparency they are specifically looking for. For example, what kinds of transparency are they looking for in the agricultural sector, given confidentiality considerations, or in the stormwater sector outside of regulated MS4 areas.
- Second and third highlighted sections on page 5 regarding the scientific rigor principle
 - Rich Batiuk: Want to make sure the Committee is comfortable with both elements of Nick's response: the Partnership's history of establishing expert panels to advise the partners, and plans to expand the charges of future panels to include the review of new verification protocols.
 - No comments were expressed by Committee members on the highlighted language.
- Bottom of page 6
 - Rich Batiuk explained CAC's suggestion to use a sliding scale for credit. He pointed out that both the Agriculture and Stormwater workgroups had determined there was a lack of scientific information to justify taking that approach.
- Russ Baxter commented on the response to point #1 on page 6. He noted that while not all programs across all sources are perfect, but there are jurisdictional verification programs that meet all of the principles, e.g. reporting and tracking for significant wastewater treatment facilities. Additionally, there are cost-shared agricultural practices in Virginia that meet standards and specs well over 90% of the time based on random spot checks. We do not want to imply that the status quo is unacceptable in all cases, but we need to point out that some excellent jurisdictional verification programs already exist.
 - Roy Hoagland: No problem with citing wastewater treatment facilities as an example. Not familiar with Virginia's cost share program. Perhaps these programs do not meet the transparency expectations.
- Highlighted section on page 7 regarding self-certification
 - Rich Batiuk explained that the Agriculture and Stormwater workgroups are taking different approaches to self-certification.
- Highlighted sections on page 8
 - No comments raised from Committee members.
- Response to #5 on page 9
 - Roy Hoagland pointed out the 80% threshold is a placeholder and the Agriculture Workgroup has not reached agreement yet, so the language in the response letter should reflect that.
- Highlighted sections on page 11 on the subject of priority BMPs

- Rich Batiuk explained the draft sections and asked if the Committee members felt comfortable with the current language.
- Ann Swanson: The first section seems accurate, but may ask a very important policy question. If certain practices account for certain levels of reductions, would EPA then expect a jurisdiction to tackle verification for those practices first? This could be a significant issue, i.e. would EPA expect priority implementation of verification for certain practices?
- Roy Hoagland: Ann Swanson was raising an important practical issue.
- Rich Batiuk: From EPA's perspective, the jurisdictions need to make decisions on any list of priority practices on which to focus their verification efforts.
- Matt Monroe (WV Dept. of Agriculture): If the states rely on certain practices they already know what they need to do, and will probably focus verification on those practices anyway. The states do not need additional guidance or another layer.
- Andy Zemba (PA DEP): Agree that maximum flexibility should be given to the states.
- Hank Zygmunt: CBPO staff are already working to identify the most-relied-upon BMPs, as requested by the BMP Verification Review Panel. Expect that there may be some fine tuning to 2014 grant guidance on this issue.
- Ann Swanson: The Commission would like to see two things: 1) flexibility for the states, and 2) recognition that EPA does not expect or require all verification immediately, that it is a ramp-up process.
- Hank Zygmunt: Believe 2013 was the first time that verification was specifically mentioned in the Chesapeake Bay Program's grant guidance, so it might help to point that out in the response to the CAC.
- Roy Hoagland: Clarified that the BMP Verification Review Panel asked for two things – those practices that are account for most reductions and those that are most relied upon.
- Rich Batiuk thanked the Committee members for all their feedback. He asked that when they receive the Word version of the draft response, please use track changes and insert their comments directly into the draft text.

ACTION: Rich Batiuk will raise the procedural concerns about formal correspondence from the Advisory Committees and written responses from CBP management to the attention of Nick DiPasquale and the CBP's Management Board.

ACTION: CBPO staff will provide a Word version of the draft response letter to Committee members immediately following the conference call.

ACTION: Committee members should provide any additional comments on the draft response to CAC's BMP verification letter to Rich Batiuk by COB January 29th.

Draft Outline of Jurisdictions' BMP Verification Program Documentation

- Rich Batiuk walked through the draft outline of jurisdictions' BMP verification program documentation building from existing quality assurance (QA) plans ([Attachment E](#)).

- Jeremy Hanson briefly explained his findings after reading through the jurisdictions' QA Plans. He felt the jurisdictions' QA plans did an excellent job of describing the data handling and data validation. However, there are some sector- or practice-specific gaps in the existing QA Plans' description of the "paper trail."
- Russ Baxter suggested dating the draft outline and noting that it is subject to change, since it will likely go through multiple revisions.
- Rich Batiuk walked through the expectations for enhanced QA Plans described in the draft outline and asked for Committee input.
 - Roy Hoagland: No opinion or feedback at this time. Noted there was an opportunity to provide written feedback and needed some additional time to think more on it.
 - Russ Baxter asked for a Word version of this draft outline document as well. He also noted that this outline affects agencies in different ways and he needed more time to share the outline with these other state agencies.
 - Russ Baxter: We are all trying to connect this focus on BMP verification with the Bay TMDL and the jurisdictions' WIPs. Suggest we think about how this might be incorporated into development of the jurisdictions' Phase III WIPs and their programmatic 2-year milestones.
 - Roy Hoagland: What is the timeline for completion of the Phase III WIPs?
 - Russ Baxter: Not sure. Probably 2017-2018.
 - Matt Monroe felt a lot of the bullet points are built on assumption that certain things will happen. He asked about situations when those expectations or plans fall through due to decisions, lack of resources, or other situations that may arise.
 - Rich Batiuk felt this would depend on the decisions by the CBP Partnership on the ramp-up and schedule for implementation of the jurisdictions' enhanced verification programs. He noted that Matt Monroe raised an important point on the reality of what might occur, and this issue will need additional discussion within the Partnership prior to final resolution.
 - Hank Zygmunt: Given that it is still a first draft, the document represents a lot of effort and thought. The components in the outline seem to be on track and seem to incorporate the thoughts of the Review Panel. When the states put together their plans based on these proposed components, is it the expectation that they will present those plans to the Review Panel?
 - Rich Batiuk: Yes, the jurisdictions will be expected to present their revised QA plans documenting their BMP verification programs to the Review Panel. Additionally, updating their QA Plans can serve multiple functions within the Partnership, including addressing requirements for the jurisdictions' receipt of their Chesapeake Bay Implementation Grants and Chesapeake Bay Regulatory and Accountability Grants.
 - Hank Zygmunt: Any thought about the potential timeline for such a comprehensive report to be submitted to EPA?
 - Rich Batiuk: Not yet. The Partnership still needs to discuss and agree on the ramp-up and other BMP verification related schedule items to firm up the schedule for development of the revised QA plans and the jurisdictions' presentation of those plans to the BMP Verification Review Panel. The

Partnership will hopefully nail down these expectations and resultant schedule in the coming spring as we work the review and approval of the basinwide BMP framework up through the Partnership's management structure.

- Rich Batiuk: We also want to ensure the jurisdictions' revised QA Plans consider and document their procedures for addressing non cost-shared practices, double-counting, and historical data clean up.
 - He asked Committee members to provide feedback on the draft verification documentation outline by February 12th, in order to revise the outline in preparation for the Committee's February 21st meeting.

ISSUE: Need CBP Partnership discussion of and decisions on the timing for the jurisdictions' developing their revised QA plans incorporating enhanced verification documentation and their presentation to the Partnership's BMP Verification Review Committee.

ISSUE: Need CBP Partnership discussion of and decisions on how to structure/schedule a ramp-up of implementation of enhanced jurisdictional BMP verification programs.

ACTION: CBPO staff will provide a Word version of the draft verification documentation outline to Committee members immediately following the conference call.

ACTION: Committee members should provide comments on the draft verification documentation outline to Rich Batiuk (Batiuk.Richard@epa.gov) and Jeremy Hanson (jhanson@chesapeakebay.net) by COB February 12th.

Next Version of Communications Workgroup Recommendation for Basinwide Communication Strategy – Margaret Enloe

- Margaret Enloe (Alliance for the Chesapeake Bay, CBPO) noted there was no written document available (i.e., no Attachment F as originally listed in the conference call agenda), but a document will be provided in advance of the Committee's February 21st meeting. She described some of the key points from the CBP Partnership's Communication Workgroup's discussion of a communication strategy for verification. The Communication workgroup felt that the partnership cannot use the term "BMP verification" when communicating to the public.
- Russ Baxter expressed concern that agricultural producers may not feel engaged in the process.
- Ann Swanson: Wonder if verification is a subject for public outreach. If it is not perceived as a problem by a specific or smaller audience, may not need an outreach or communication effort on a wider scale.
 - Matt Monroe and Pat Buckley agreed with Ann Swanson.
- Margaret Enloe clarified that it will be up to the jurisdictions and municipalities to determine the details of the communication and messages. It will be up to the jurisdictions' agencies to tailor and communicate the messages.
- Russ Baxter: We have pretty familiar relationships already. Not sure what the exact benefit is of a broader communication effort.

- Roy Hoagland disagreed with the premise that the status quo and existing relationships are already sufficient. There is a need for better documentation and explanation of what's being done differently and why.
- Hank Zygmunt: Suggest we have something more formal to react to and then determine and discuss next steps.
- Margaret Enloe: Would be helpful to have additional clarity on verification and what the communications needs and goals are.
- Roy Hoagland noted that there is a public component related to transparency, as discussed earlier in the meeting.

ACTION: Margaret Enloe will draft a written description of the Communication Workgroup's thoughts and recommendations. CBPO staff will distribute the document to the BMP Verification Committee in preparation for its February 21st meeting.

What's Ahead on the BMP Verification Schedule

- Rich Batiuk reviewed the current verification schedule through summer 2013 ([Attachment G](#)) and the preparation for the Committee's February 21 face to face meeting.

Adjourned 3:00 PM

Next meeting:

Thursday, February 21st, 2013 9AM – 3:30 PM
Chesapeake Bay Program Office
Joe Macknis Memorial Conference Room (Fish Shack)
410 Severn Ave, Annapolis, MD 21403
<http://www.chesapeakebay.net/calendar/event/18958/>

Conference Call Participants

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