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, Virginia23218

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

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. 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

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

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.

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

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

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 <u>all</u>

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.

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

evaluated against each BMP category to identify where particular methods may or may not adequately attain the expected minimum level of data certainly. 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

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

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

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