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Proposed Responses to the Key Comments Received on the May 12, 2014 Revised Draft BMP Verification Framework Document

Subject to Further BMP Verification Committee Review, Modification, and Decisions at the Committee's July 31, 2014 Conference Call

General, Overarching Comments

Comment 1: What is needed is a much shorter, nuts and bolts, basic guidance document that tells us [the jurisdictions] all what needs to be done, when, and by whom. I have taken the liberty of rearranging and editing your original behemoth into such a guidance document....Less than 50 pages. All of the sector/habitat specific guidance is in an appendix. (James Davis-Martin, VA DEQ)

Proposed Response: Restructure the May 12th revised draft as follows incorporating almost all of James' recommended changes:

- Put the acknowledgements into an appendix
- Move the text on pages 4 to the top of page 11 either into a new section 2, into the existing appendices, or delete as duplicative
- Move the existing Section 2—Source Sector/Habitat Specific BMP Verification Guidance—to a new appendix
- Work to remove duplicative text throughout the remaining pages

Comment 2: Explicitly include a discussion of importance of developing cost-effective verification, and include it in the consideration of verification strategies in each of the sections. (Chris Hartley, USDA OCE)

Proposed Response: Highlight where in the existing BMP framework document, the guidance to the jurisdictions, and within the BMP verification principles where there are references to and calls for consideration of cost effectiveness. [Does the Committee want to go further?]

Comment 3: States should not be expected to individually get verification procedures from federal partners. The federal partners should be required to develop, file with the Partnership, and execute an acceptably rigorous common set of procedures such that there is an expectation of universal application. Similarly, we would prefer an approach of common, universal, consistent 1619 agreements for all Partnership jurisdictions rather than expecting each State to negotiate with State USDA agencies. It is not reasonable to expect individual states to accomplish things that are not able to be agreed upon at the federal level. (Dave Montali, WV DEP)

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Proposed Response: In the final framework document, include a commitment by federal partners to provide specific documentable references to/develop new agency specific BMP verification documentation which each jurisdiction can cite/reference/link to within its quality assurance plan documentation.

In terms of “common, universal, consistent 1619 agreements for all Partnership jurisdictions”, that is exactly the intended outcomes of the Partnership’s adoption of the basinwide framework and the consistent 1619 language negotiated with our NRCS and FSA colleagues. The BMP Verification Committee made the decision last year not to pursue a single, multiple jurisdictional 1619 agreement based on NRCS’s advice, instead focusing on common language and addressing issues facing all jurisdictions (e.g., signing 1619 agreements with agencies with both conservation delivery and regulatory responsibilities).

Comment 4: On page 15 under the heading “Consistency Across Pollutant Source Sectors,” the Report states that there should be consistency across pollutant sources when it comes to BMP Verification but encourages jurisdictions to focus verification efforts on those BMPs being relied on the most to achieve nutrient and sediment reduction as called for in Watershed Implementation Plans (WIPs). While this makes sense on the surface, it fails to acknowledge the potential inconsistency between a jurisdiction’s priorities as identified in the WIP and a local government’s priorities as contained within a permit such as the MS4. **Local government’s need for a reliable, efficient and cost effective reporting system must not be overlooked if they are to be held accountable for achieving pollutant reductions in accordance with the state WIPs.** (Shelia Noll, CBP Local Government Advisory Committee Chair)

Proposed Response: [Need feedback from the Committee on how to best address LGAC’s concern.]

Section 2. Source sector/habitat specific BMP Verification Guidance

All the comments included on pages 4 through the top of page 12, Jeremy Hanson has transmitted the workgroup-specific comments to the respective workgroup chair and coordinator. It is the responsibility of each of the workgroups to formally respond to each of the received comments and provide Jeremy with a revised set of the workgroup’s BMP verification guidance.

Section 3. Basinwide Verification Framework Elements

No comments received by 6/30/2014, though comments on other sections may apply to this section

Section 4. Development of Documentation of the Jurisdictional BMP Verification Programs

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Comment 5: How can we best build on existing methods and programs? We have previously suggested using the QAPP agreements as the foundation for verification. (Russ Baxter, VA DEQ)

Proposed Response: The BMP Verification Committee had previously decided that all the jurisdictions would build directly on their existing BMP tracking and reporting programs and their existing quality assurance plan documentation.

Comment 6: We agree that jurisdictions should be aware of how their programs will be reviewed, a more detailed explanation of Table 21 is needed. This table is indicated as the primary format that will be used by the Panel to review programs and report results, but is not immediately clear as to how it will be implemented. We are assuming that a “present” check means we discussed/documented the component, but we cannot know upfront if our discussions will be acceptable. We also can’t determine the BMP scale at which this will be completed. (Dave Montali, WV DEP)

Proposed Response: The BMP Verification Review Panel will use Table 21 as a checklist to confirm the jurisdiction’s BMP tracking, verification, and reporting program contains each listed element. Beyond a check-off, the Panel will also be evaluating whether the jurisdiction has followed the applicable workgroup’s verification guidance or provided a rationale for following an alternative verification approach.

In terms of BMP scale, each jurisdiction will be making its own decisions on how to group BMPs and at what scale verification will take place (see Table 22 and the workgroups’ verification guidance).

Comment 7: We appreciate the concept to target the robustness of protocols to WIP importance, but point out that the initial implementation of verification will occur near the time of transition of watershed models and new WIPs, and the relative importance of some practices may change. We could not determine if jurisdictions could vary verification robustness at the State scale or if this must be done within each sector, and how prioritization decisions will be viewed in relation to jurisdiction and sector equity. (Dave Montali, WV DEP)

Proposed Response: The framework recognizes there will be changes over time—those changes would need to be reflected in the jurisdiction’s quality assurance plan and approved by EPA at that time. For example, if a jurisdiction’s relative importance of practices changes dramatically to change the levels of verification for different groups of BMPs, then, again, those jurisdictional choices would need to be reflected as a change in the jurisdiction’s quality assurance plan and approved by EPA at that time. CBPO staff will revisit the language to ensure this is clearly stated in the final framework document.

The level of verification robustness should reflect the relative importance of the individual or groups of BMPs are to achieving the jurisdiction’s WIP commitments. Jurisdictions can make those choices within and across sectors, they just need to consider the applicable source sector

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verification guidance or provide their separate rationale. CBPO staff will revisit the language to ensure this is clearly stated in the final framework document.

Comment 8: The document could also be improved by including a Gantt chart or similar graphic in Section 4, showing the time between PSC approval of the Framework through the credit cutoff date. Key items to display include the initial program development, the Panel reviews, meetings, and final recommendations, the initial QAP submission with verification considerations, subsequent QAP approvals and the first progress report year when credit cutoff for verification deficiencies might occur. Additionally, the timeframe for the history clean-up schedule for the Phase 6 watershed model development needs to be overlain or displayed separately. (Dave Montali, WV DEP)

Proposed Response: A Gantt chart or similar type of graphic will be incorporated into Section 6 Basinwide BMP Verification Framework Implementation providing the information listed above.

Section 5. Partnership Processes for Evaluation and Oversight

Comment 9: Our interpretation of the evaluation and oversight discussions is that EPA, not the Partnership, will be responsible for approving the individual jurisdiction programs and that their review will be constrained by the Panel recommendations. The Panel decisions may not necessarily be considered as Partnership decisions because the Panel is not constituted with jurisdiction representatives to allow implementation of governance procedures. Note that various discussions of Independent Review by Advisory Groups indicate (incorrectly?) that individual program approval will be made by the PSC. (Dave Montali, WV DEP)

Proposed Response: Correct, EPA will be responsible for approving the individual jurisdiction's verification programs via approval of their quality assurance plans. EPA will certainly consider the BMP Verification Review Panel's reviews of each jurisdiction's verification program in making the Agency's approval decisions. CBPO staff will revisit the language to ensure this is clearly stated in the final framework document.

Comment 10: In the discussions of "Independent Evaluations by the Partnership's Advisory Committees" the inclusion of *individual program* reviews every three years seems like overkill, since there will be an extensive initial review by the Panel, followed by annual QAP reviews. (Dave Montali, WV DEP)

Proposed Response: Please see the proposed edits to the existing language on page 151 of the May 12, 2014 revised draft framework report.

Independent Evaluations. At the **specific** request of the Partnership, the Scientific and Technical Advisory Committee, working with the Citizens and Local Government advisory committees, **could be asked to will sponsor an periodic—every 3-5 years—** independent evaluations of the effectiveness of the basinwide BMP verification

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framework and the individual jurisdictions' BMP verification programs in achieving the five BMP verification principles adopted by the Partnership. Findings and recommendations from **such a Partnership requested** ~~these periodic~~ independent evaluations **would** ~~will~~ be presented directly to the Principals' Staff Committee for consideration and follow-through actions and decisions.

Comment 11: Who is responsible party and how do we ensure they fully understand those responsibilities? We have been frustrated at times by the quality of federal agency data and wish to be sure about who is ultimately responsible for the quality of the data available to submit through NEIEN. (Russ Baxter, VA DEQ)

Proposed Response: Ultimately, each jurisdiction is responsible for ensuring the quality of the data, including verification, submitted via through NEIEN for credit under the annual progress submission. The jurisdictions' quality assurance plans need to reference/cite/provide links to the documentation of submitting agencies or organizations verification programs/procedures. See the response to comment 3 regarding federal agencies providing the needed documentation of the quality of their data which gets ultimately submitted by the seven watershed jurisdictions.

Comment 12: How do we deal with cutoff, lifespan and other model issues that negate the submission of verified practices? This is a big issue and credit should be given to all truly verified practices. (Russ Baxter, VA DEQ)

Proposed Response: The basinwide framework specifically address how the partners will deal with lifespans of the practices. Addressing the cutoff of practices is separately from verification, but linked to clean-up of historical BMP data. The framework document does commit the partnership to crediting all verified practices, signaling we must address in parallel other issues, like cutoffs, which prevent such crediting of all verified practices.

Comment 13: What's it going to cost? We need to place close attention to the fiscal impact of the guidelines. This is also related to the previous comment. (Russ Baxter, VA DEQ)

Proposed Response: [Committee members, not sure what else we need to include in the framework to respond to this comment.]

Comment 14: What's the balance with implementation? Again, this speaks to the issue of best use of resources. Our implementation dollars are currently inadequate and additional costs should be carefully considered only if real value is added to implementation activities by verification requirements. (Russ Baxter, VA DEQ)

Proposed Response: [Committee members, not sure what else we need to include in the framework to respond to this comment.]

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Comment 15: General Training: We recommend EPA training for State and local partners on the overall process as soon as possible. This training would cover the general timeline, the assessment process and the documentation. (Greg Sandi, MDE)

Proposed Response: [Committee members, if you are in agreement, CBPO staff would like your input on exactly what topics to cover in such a training program. Are you ok with using a series of webinars to conduct this training vs. scheduling face to face meetings?]

Comment 16: Sector Training: We recommend EPA training for State and local partners for specific sectors as soon as possible. This training would cover the general timeline, the assessment process and the documentation. (Greg Sandi, MDE)

Proposed Response: [Committee members, if you are in agreement, CBPO staff would like your input on exactly what topics to cover in such a training program. Are you ok with using a series of webinars to conduct this training vs. scheduling face to face meetings?]

Comment 17: The document stated that “An approvable jurisdictional BMP verification program must include clear commitments to and specific plans/schedules for cleaning up their historical BMP databases by a specific date, but not beyond July 2015, the deadline for providing a complete BMP implementation history for use in calibrating the Partnership’s Phase 6 Chesapeake Bay Watershed Model.” **The deadline for inputs to the Model has been related to MD previously as October 2015. The guidance should be updated to have the October date.**

Proposed Response: CBPO staff will make the change to be consistent with the Partnership’s established schedule.

Comment 18: The training and certification expectations may not be immediately accomplishable. Although the staffs of the various agencies contributing to data tracking and reporting have extensive experience in their respective fields and have qualified themselves through experience with the Bay program reporting, we don’t have written training protocols or certification requirements. We can work to develop training procedures in house for staff and or explore training available elsewhere. State certification protocols are only a longer-term possibility. Existing USDA certifications for providing technical assistance would certainly qualify verifiers, but may be more comprehensive than necessary for verification needs. (Dave Montali, WV DEP)

Proposed Response: A jurisdiction’s quality assurance plan documentation of its BMP tracking, verification, and reporting program can describe the plans and schedule for continued, stepwise implementation of its training and certification program over time.

Comment 19: The timeframe for history clean-up needed for calibration of the new watershed model would seem to precede substantive implementation of new verification programs. History decisions will have to be made more generally such that the robustness of verification may be

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lower than that which might be implemented in the future. The history clean-up discussions should be focused on new watershed model needs rather than verification program provisions. After the new model is calibrated, altering the history may not be scientifically defensible. The sun-setting provisions of the Framework should drive BMP crediting decisions post calibration. It may be prudent to accelerate the lifespan definition work of the sector workgroups.

Proposed Response: Historic BMP data clean-up is driven by:

- the development/calibration of the Phase 6 watershed model;
- the need to have a more accurate historical record of implementation to help in explaining observed long term trends in water quality monitoring at hundreds of stations across the watershed and Bay tidal waters;
- to help address the cutoff of reported BMPs raised in an earlier comment; and
- to help establish a firmer baseline for verification efforts (e.g., stormwater).

The timeframe is being driven by the Phase 6 watershed model schedule.

Agree that the sun-setting provisions of the Framework should drive BMP crediting decisions post calibration.

And agree that it is prudent to accelerate the lifespan definition work of the sector workgroups once the Partnership approves and adopts the basinwide framework.

Comment 20: How long do we have? The verification process is not necessarily aligned with state regulatory or budgetary processes and the program should take into account those elements.

Proposed Response: The current draft framework document states “The Partnership will use the two years following Principals’ Staff Committee adoption of the basinwide BMP verification framework as the period within which to ramp up the jurisdictions verification programs and make necessary internal adjustments and adaptations for implementation of the basinwide BMP verification framework.

In the first full annual progress reporting cycle coming two years after the date of adoption of the basinwide BMP verification framework by the Principals’ Staff Committee, those reported practices, treatment, or technologies for which documentation of verification has not been provided for through each jurisdictions’ NEIEN-based report systems will not be credited for nitrogen, phosphorus or sediment pollutant load reductions for that year.” (See page 161)

[Committee members, is further discussion of this topic needed?]

Comment 21: Historical vs New BMPs: We recommend different phase-in periods for historical versus new BMPs. Inventorying and verifying historical BMPs, particularly in the urban stormwater sector, can be an immense workload challenge. We recommend the following schedule:

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- Clock begins on stormwater BMPs losing credit five-years from the adoption of the framework document (Approximately 2020)
- BMPs gradually lose credit over 5-years after the clock starts (Approximately 2025) (Greg Sandi, MDE)

Proposed Response: Only the Urban Stormwater Workgroup outlined a set of procedures for verification of semi-regulated BMPs, stating: “*Option 3: State or third party conducts a sub-sample to verify BMPs reported within several non-MS4 communities, and applies the results to reported BMP data in other comparable non-MS4s in their portion of the Chesapeake Bay watershed.*”

If a local government or federal facility fails to perform verification inspections, it will receive a gradual downgrade in BMP performance over time. Full performance credit will be given for the first five years, followed by a 20% downgrade each year over the next five years, such that entire BMP credits expires after ten years. Hopefully, smaller communities will develop effective verification programs over the next decade to prevent the downgrades from occurring.” (See pages 78-79)

The Workgroup provided separate guidance for verifying legacy BMPs, but without a specific reference to a stepwise downgrade in performance each year.

Comment 22: The ramp-up concept identified in Section 6 suggests that initial programs might not fully achieve principles. In contrast, the process for EPA approval of individual State programs implies that the first effort must be “fully consistent” with principles and if not, grants won’t be awarded. States need to know up front how much latitude will be afforded before grants are in jeopardy. The phrase “fully consistent with and supportive of the Partnership’s adopted BMP verification principles” should be replaced with something like “consistent with or intended over time to be modified to achieve the Partnership’s adopted BMP verification principles” throughout the document. The “Aim high or explain why” is only practical if acceptable minimums for initial programs are defined. Also, the expectation for States to opine on specific protocol adherence to principles is generally unnecessary because, in the end, it’s the reviewers’ recommendations that matter. (Dave Montali, WV DEP)

Proposed Response: CBPO staff will make the following text edit to address the comment:

Approval of Jurisdictions’ Program Based on Meeting BMP Verification Principles. During EPA’s review of each of the seven jurisdictions’ proposed enhanced BMP tracking, verification and reporting programs, EPA will only approve a jurisdiction’s proposed verification protocols, procedures, and processes if they are fully consistent with and supportive of the Partnership’s adopted verification principles *or if the jurisdiction’s quality assurance plan provides a detailed schedule and process for how the proposed verification protocols, procedures, and processes will become fully consistent over time.* (Text from page 151)

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Comment 23: On pages 151 and 159, the Report indicates that LGAC will work with STAC and CAC to sponsor independent evaluations of the effectiveness of the basinwide BMP Verification Framework and the individual jurisdictions BMP Verification programs in achieving the five BMP verification principles adopted by the Partnership. This is outside the bounds of LGAC's current scope of work. Therefore, if the Partnership intends to request this of LGAC, the cooperative agreement and budget will need to be amended to include this task and deliverable. (Shelia Noll, CBP Local Government Advisory Committee Chair)

Proposed Response: If the Partnership determines there is a need in the future for an independent evaluation by its advisory committees, then the appropriate changes to the respective involved advisory committees' supporting cooperative agreement and budget will be made in advance.

Comment 24: On page 160, the Report states that jurisdictions should take full advantage of EPA funding available to support verification. The demands of BMP tracking, reporting and verification on local governments and other local entities must be considered by the jurisdictions as well. Funding and/or technical assistance should be provided to ease the burden on local governments. (Shelia Noll, CBP Local Government Advisory Committee Chair)

Proposed Response: The Chesapeake Bay Regulatory and Accountability Grants provided to each of the seven watershed jurisdictions can be used to fund BMP verification actions and activities. It is up to each individual jurisdiction to determine exactly how those annually awarded funds will be allocated.