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December 17, 2012

Nick DiPasquale
Director, Chesapeake Bay Program
Environmental Protection Agency
410 Severn Ave
Suite 109
Annapolis, MD 21403

Dear Mr. DiPasquale,

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.

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.

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. 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. Currently, it remains unclear exactly who will determine the sufficiency of any proposed verification protocol. 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.

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. 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. 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. 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.

We also remain concerned with many specifics relating to the verification process. We have attached a list of these specifics.

- 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.
- 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.
 - 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.
 - c. Verification can include technical and qualitative measures.
 - d. The process for transparency must be clearly explained.
- 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.
- 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.
- 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.
- 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.
 - 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.

- b. Additionally, implementation should, by definition, include verification. Targeting of funding to critical areas should be employed.

Lastly, verification for the most important and the least important practices appear to be receiving the same degree of focus and development. 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.

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.

Sincerely,

A handwritten signature in cursive script that reads "John Dawes".

John Dawes
Chair, Citizens Advisory Committee