

# Agriculture Workgroup BMP Verification Comments for the BMP Verification Committee

July 25, 2014

The Agriculture Workgroup (AgWG) requests consideration by the BMP Verification Committee of the following items which have been identified by the membership in development of guidance for agricultural BMPs. The AgWG feels that these questions are outside the domain of the workgroup to address, as they are multi-sector partnership concerns or base principles that have been previously developed by the BMP Verification Review Panel and Committee. The AgWG is currently finalizing the agricultural BMP guidance in preparation for partnership review, and requests the attention of the committee to these items to enable the workgroup to complete its task with full membership support. Failure to address these critical items in a timely manner could result in the inability of the workgroup to obtain consensus on a final verification guidance proposal for the partnership.

**1.) "Independent Review:** a review carried out by someone within the same organization having technical expertise in the subject matter to a degree at least equivalent to that needed for the original work, but who was not involved as a participant, supervisor, technical reviewer, or advisor in the development or operations of the program/practice under review."

The workgroup requests the reconsideration of the above language describing Independent Review as currently described by the BMP Verification Review Panel. The present definition will potentially remove entire entities from the possibility of conducting follow-up verification inspections or reviews due to staff resource limitations. The workgroup acknowledges and supports the implementation of the separation of implementation from review process, but the definition as currently defined could exclude some county conservation districts, as well as entire state and federal agency programs.

**Example:**

**a.) County Conservation District:** Many county conservation district offices are small with limited staff resources. The implementation of an agricultural BMP could easily involve the field technician overseeing the implementation of the project, the engineering technician for erosion and sediment control, their supervisor District Manager for signing off on contractual arrangements and project plans, and the Area Manager for overseeing the program itself. It is easily possible for the entity to be unable to complete any follow-up verification inspections on any of the practices implemented by them in the county, which would require another county conservation district, or state agency to conduct all inspections.

**2.) USDA OMB Restrictions:** The AgWG has identified and received numerous comments from the jurisdictional partners and from USDA-NRCS directly of their present OMB restrictions for follow-up verification inspections for contracted practices, which are currently below the minimum recommended

levels being proposed by the workgroup for most BMPs. The opinion of the workgroup is that the OMB restrictions are being applied primarily based on an economic basis for contractual maintenance for FSA programs, and on a technical basis for contractual oversight of NRCS programs, vs. an environmental performance basis, which is the purpose of the partnership's verification guidance. After considerable debate on this subject and the weighing of multiple options, it is the opinion of the workgroup that this is a federal policy issue that requires the attention of US EPA as the lead federal agency for the Chesapeake Bay Program Agreement. The workgroup requests the endorsement of committee in submitting this issue to EPA for resolution with USDA, either in allowing an alternative OMB policy for USDA programs within the Chesapeake Bay region, or identifying an alternative proposal for verification of USDA program practices. The workgroup and the jurisdictional members strongly feel that this is a federal policy matter which is outside of the ability of the workgroup or the states to remedy.

**Example:**

**a.) State Reporting of USDA Practices:** If the state receives a dataset of NRCS practices that represent BMPs which contribute more than five percent of the jurisdiction's agricultural sector reductions for nutrients and/or sediments, and NRCS is required to limit spot check for active contracts to five percent on those priority practices, then a state could potentially not be allowed to submit any NRCS of those practices since they did not meet the appropriate spot check level of 10% being proposed by the AgWG. This could affect the state ability to accurately account of practices that are on the ground and reporting progress to their WIP, therefore affecting any modeling a calibration to Water Quality monitoring data. A conversation initiated by EPA with USDA is needed to see if a larger percentage of practices can be verified based on the jurisdiction's relative reliance of specific practices for reductions, or an alternative method of verification can be implemented by NRCS and the partnership to provide the appropriate certification that the NRCS practices are present and functioning.

**3.) Scheduled Program Review:** The AgWG has identified the critical need to develop a scheduled partnership review of the multi-sector BMP verification guidance and protocols prior to full implementation at the end of the two-year phase-in period. The workgroup believes that despite the ardent efforts of the workgroups and the partnership in developing a balanced equitable approach to BMP verification, there may be unforeseen consequences or limitations which should be addressed prior to full implementation. The workgroup therefore requests the consideration of a program-wide review by the sector workgroups with EPA assistance, of the capacity of the developed guidance's and protocols to achieve their intended purpose, while enabling adequate implementation by the partnership with the available resources and policies in place.

**Example:**

**a.) State Verification Protocol:** A jurisdiction includes an AgWG approved verification process in their EPA approved verification protocol, which during the two-year phase-in period it is discovered that the approved process has lead to significant inequalities of verification between sectors within the jurisdiction, and also between the Bay jurisdictions themselves. Prior to full implementation of the verification protocols, there is a request from the partnership for the AgWG to revisit the agricultural

BMP verification guidance to review the issue and develop a revised guidance document to address the concern.