

## **EPA's Conditional Approval of Pennsylvania's Revised Draft BMP Verification Program Plans**

January 26, 2016

EPA has conditionally approved Pennsylvania's November 14, 2015 revised draft BMP verification program plan. Conditional approval means that the revised draft plan addressed most of the Panel's/workgroup coordinator's/EPA initial feedback but some limited 'holes' in the documentation which EPA feels can be easily addressed by the jurisdiction and that the plan was generally written and presented in a public friendly, easy to understand format/text.

Conditional approval also means that Pennsylvania can apply for 2016 WIP assistance funds. Prior to award of Pennsylvania's 2016 Chesapeake Bay Implementation Grant and Chesapeake Bay Regulatory and Accountability Grant, EPA will need to be in a position to fully approve Delaware's final revised BMP verification program plan.

Pennsylvania's program plan format and context provides an excellent level of transparency into their ongoing and planned BMP verification actions. There was excellent documentation of quantifying their priority BMPs and linking them to Pennsylvania's WIP goals. Pennsylvania added a significant level of additional documentation in their November 14 revised draft plan, addressing many, but not all the received comments. Pennsylvania has outlined commitments for further development of verification protocols for lower priority practices, but there is enough details missing that need to be addressed prior to approval.

Below please find the list of remaining major comments EPA is asking Pennsylvania to respond to within a final revised BMP verification program plan. Please submit to Rich Batiuk, at [batiuk.richard@epa.gov](mailto:batiuk.richard@epa.gov), a final revised BMP verification program plan by Friday, March 4<sup>th</sup>. Please include a copy of the below remaining major comments annotated with the pages numbers where each remaining comment was addressed in Pennsylvania's final revised program plan. This will ensure there is time for final EPA review and approval of Pennsylvania's final revised BMP verification program plan prior to EPA and Pennsylvania working together on the forthcoming award of Pennsylvania's 2016 Chesapeake Bay Implementation Grant and Chesapeake Bay Regulatory and Accountability Grant.

Finally, for your reference and consideration as Pennsylvania works to further enhance its BMP verification program over the coming two years, attached please find a compilation of EPA's reviews of Pennsylvania's November 14, 2015 Revised Draft BMP Verification Program Plan in the form of a series of evaluation forms.

## Remaining Major Comments to be Addressed by Pennsylvania

### Overall

- Although Pennsylvania acknowledges plans to develop additional BMP verification protocols, it does not provide any specific timeframes for doing so. (Pgs 17, 27, 82, 122)
- Pennsylvania documented procedures for re-inspection of BMPs and restarting the clock for some but not all of their sector specific sets of BMP verification protocols and procedures. (Pgs 16, 27, 42, 46, 65, 91, 99)
- Pennsylvania documented procedures for re-inspection of BMPs and removal of BMPs for some but not all of their sector specific sets of BMP verification protocols and procedures. (Pgs 16, 27, 42, 46, 65, 91, 99)
- With the exception of NRCS (ag, wetlands), FSA (ag, buffers), and USFWS (wetlands) cost share programs/technical assistance programs and references to their established BMP verification protocols, there was not documentation of BMP verification procedures for BMPs owned or operated by Federal agencies, facilities and landowners. (pg 124)
- With possible side reference in Chapter X. Next Steps, Pennsylvania did not document estimates for new staff needed and the required level of funding to carry out this additional verification work. (pgs 122-123)

### Agriculture

- Documentation of how Pennsylvania plans translate the findings from the statistical survey into the actual numbers and geographical distribution of practices submitted through NEIEN for crediting through the Partnership's annual progress runs is missing from page 33. (pg 31)
- Pennsylvania has provided additional, detailed documentation on NRCS and state programs, but it is still unclear as to whether and how they have fully addressed gaps in the verification of their animal waste management, manure transport, animal waste management systems, and manure management plans. (Pgs 17, 27, 64-65)
- The Conservation Districts (CDs) are responsible for the annual on-site status review of a CAFO's NMP. Attachment 1 provided the checklist used by the CD's. The current checklist provides simple yes or no options and does not allow for a qualitative review. However, the current review process (i.e., checklist) will need to be improved to document and verify not just if BMPs are being implemented, but whether the BMPs are being properly operated and maintained. In addition, as stated earlier, CD's do not consistently review NMPs at CAFOs annually and are not able to enforce the terms of the NPDES permits. (Pgs 58 – 65)
- PA's verification program could be improved by improving the oversight responsibilities of the Conservation Districts (CDs). The main concerns are the lack of a qualitative review of the operation and maintenance of BMPs by the CD's during the on-site status reviews at CAFOs using the current checklist and the inconsistency of the on-site status reviews being conducted on an annual basis. This may be due to a lack of delegated authority from DEP and staffing at the CD level. If that's the case, the program does not include a plan to delegate authority and increase staffing to ensure all CAFO NMPs are reviewed annually. EPA's Ag. Program Assessment observed "Pennsylvania's reliance on checklists during on-site compliance inspections and annual site status reviews instead of regular and ongoing oversight that includes reviewing facility-submitted annual reports

may lead to delayed compliance and the potential for unidentified water quality concerns, particularly if one or more years of site status reviews are missed.” NMP violations identified by the CD during the on-site status review related both structural and agronomic BMPs are not consistently transferred to DEP’s inspection checklists for enforcement of significant permit non-compliance. (Pgs 58-65)

### Forestry

- Pennsylvania relies on a combination of NRCS, FSA and DEP staff verification protocols. From the documentation provided, all of these protocols are not consistent with the Forestry Workgroup’s guidance nor did Pennsylvania provide an alternative set of protocols and underlying rationale. (Pgs 43, 93)
- No documentation provided for verification of urban forest buffer practices. (Pg 39)
- Pennsylvania provided additional documentation on each of the referenced NRCS and FSA inspection programs, but did not address the concern that each still falls short of the recommended re-inspection of a site 1-4 years post planting to address maintenance needs as called for in the Forestry Workgroup’s verification guidance. (Pg 43)

### Stormwater

- On page 81, Pennsylvania cites these practices as having O&M that will “be a perpetual responsibility, but the details on how to ensure those practices are, in fact, maintained in perpetuity are still be worked out. (Pg 82)
- There were additional broad description of the current status of Pennsylvania’s MS4 implementation (page 72), but not detailed enough to understand the implications for BMP verification. (Pgs 75, 83)

### Stream Restoration

- Inspections are not required two years after the initial construction and once every five years as called for in the Stream Health Workgroup’s verification guidance. (No changes made to the Legacy Sediment and Aquatic Ecosystem Restoration section– See Pages 101-102 for method-- includes an initial inspection, an inspection after the first growing season, and monitoring reports are required to be submitted to the Department annually for review throughout the first five years post-construction; then following the first five years, on-site or remote sensing inspections will occur once every five years)
- The stream restoration verification protocols are specifically written for legacy sediments as the one BMP for stream restoration. The verification protocols should be applicable for should show a wider range of stream restoration practices, not just one. (Stream Restoration protocol added – see pages 96-100)

### Wastewater

- Pennsylvania did not provide any documentation of proposed verification of septic systems/on-site treatment systems. (Pg 112)

### Wetlands

- There is a lack of information on how the Pennsylvania will document the functional success of wetland restoration projects. (Pgs 67-68)