

Maryland Department of Agriculture Comments

June 18, 2014

Chesapeake Bay Program Partnership Agricultural Workgroup's Agricultural BMP Verification Guidance (May 9, 2014 version)

The Maryland Department of Agriculture supports the verification of BMP implementation across all source sectors, including agriculture. A consistent protocol that spans source sectors and jurisdictions is critical in ensuring that all stakeholders are held equally accountable in meeting their respective obligations under the Chesapeake Bay TMDL.

MDA has reviewed written comments by Virginia and Pennsylvania and concur that there is no reasonable basis to demand at least 10% annual follow-up verification of BMPs achieving greater than 5% of the jurisdictions agricultural WIP goal. While MDA has existing guidelines establishing a 10% spot-check on projects funded through the State cost-share program, MDA does not have legal authority to impose additional verification requirements on federal agencies such as NRCS. It is also an unreasonable expectation for MDA to verify NRCS installed BMPs beyond the USDA established 5% threshold. MDA does not currently have staff resources for this additional workload and responsibility ultimately resides with NRCS. While Maryland currently partners at the district level with NRCS we will not prescribe to a greater level of verification and inspection above their current resource ability.

Section 3c: Regulatory Program

Since BMP implementation associated with regulatory programs is overseen “through a legally imposed regulatory program,” initial verification and reoccurring annual verification protocols should be established and maintained by each regulatory program. These requirements are generally established as a result of State law or regulation and may be inconsistent with CBP proposed verification recommendations. In addition, statistical sub-sampling utilizing scientifically accepted procedures should be authorized for the initial inspection of non-visually assessed BMPs that are reported to jurisdictions as a result of legally enforceable reporting requirements. Implementation reporting violations associated with regulatory programs carry greater consequences than non-costshared or publicly funded BMPs.

Section 3d: Permit-Issuing Programs

“The minimum expectation of verification for permit issuing programs BMPs is recommended to be 100 percent of the initial identification of annual or multi-year BMPs and plan implementation by trained and certified technical agency field staff or engineers, or compliance/enforcement staff, with supporting

documentation that it meets the governmental and/or CBP practice standards. During the course of the identified physical lifespan period of multi-year BMPs, a reoccurring annual verification that the BMPs are being maintained and operated consistent with the permitting standards is recommended to be 100 percent of the total number of tracked and reported BMPs.”

MDA is concerned that instituting a 100% verification protocol on initial identification and reoccurring annual verification of agricultural BMPs associated permit issuing programs is inconsistent with those adopted by other source sectors. Specifically, the stormwater verification protocol only calls for inspections of NPDES stormwater facilities every 9 or 10 years. In addition, the 100% recommendation imposes an unrealistic workload on limited permit inspection staff. MDA suggests that consistent verification protocols apply across all source sectors and any recommendation should consider existing verification mechanisms that are currently in place to address permit compliance.

Section 6b: BMP Grouping

As outlined in this section, jurisdictions have the ability to logically group BMPs to “best account for the jurisdiction’s relative Watershed Implementation Plan priority,” will the 5%/10% verification requirement apply to each BMP reported or each “logical group” as defined by each jurisdiction?