

Feedback on BMP Protocol revisions received as of February 18, 2022

George Onyullo, DC DOEE, January 11.

Suggested edits to the documents (fact sheet and protocol), in track-changes.

Norm Goulet, NVRC, February 11.

As I've commented before I don't believe the revisions are going to make things better but in fact worse. The science needs to happen at the Workgroup and EP level and the politics of a BMP needs to happen at the WQGIT and the two should remain separated. The record needs to clearly show when the WQGIT overrides the recommendations of the EP or the WG's. Honestly, from my perspective most of the problems occur on the agric side of the house and often stem from the infighting within the WG and from a lack of good sound science with respect to a proposed BMP and modeling understanding. How many flavors of cover crops do we really need and how realistic are the differences between them, that's something that has always gotten under my skin.

In my opinion the Protocol should be revised to reflect the following:

- There are too many differences between the states with respect to policies regarding tracking and reporting for one representative from the WTWG to fully know or comprehend.
- The EP should be the arbiter of the science and only the science
- The EP should have no concern over how many instances of the BMP under study may or may not be implemented or to have any concern or discussion regarding incentivizing of the proposed BMP.
- The WG should not feel obliged to develop an EP if their screening process of requested Expert Panels results in a determination that there is not sufficient scientific basis to support developing reduction estimates.
- The EP should be the final body to determine if there is sufficient science supporting reduction estimates or the sufficiency of literature/scientifically acceptable evidence to support the use of best professional judgement.
- The EP should be the body to make recommendations for credit durations and verification requirements.
- The EP should be supported by the entire WTWG, sector WG, and CBP modeling team in understanding the existing framework.
- Work collaboratively with the WTWG, sector WG, and CBP modeling team to complete the former last three items.
- CAST is not a model and should be more accurately described as a load estimator.

As the USWG Chair and a At-Large Member of the WTWG I am somewhat concerned about the linkage between the two WG's. One idea that has been floated would be that the official kickoff meeting of the sector WG, the WTWG, and assembled experts to get everyone's agreement or understanding on the EPs charge. That meeting would only be about addressing the specific BMP and any concerns any WG

member may have or any aspect about the BMP and or the EP and the expected upcoming effort. The EP coordinator and maybe from time to time the sector WG Chair should attend the WTWG as an agenda item on the regular WTWG schedule with technical presentations, not some high level overview. The EP coordinator will probably need a standing slot in both the WTWG and sector WG agendas as long as the EP is going. If any major or key decisions need to be discussed/made, the EP Coordinator should assemble another special combined meeting but only if needed. An official meeting at the end of the EP process where the combined expert estimates and technical appendix can then be approved by all and only then be moved to the WQGIT.

Greg Sandi, MDE, February 11.

Maryland has a few comments in the document but one overall comment we have is that it would be nice to see an expert panel workflow including which points in the process that allow for input, decision making, and/or approvals. It would also be good to show when signatory members weigh in or workgroups.

Kevin du Bois, DoD, February 3.

[Comments/edits provided in Word document]

Chris Brosch, DE Dept. of Agriculture, Feb 3

In this meeting I did express my interest in getting STAC to weigh in. There was also an offer by Lucinda to do a deeper dive in a March meeting. Given that STAC is scheduling this for 3/8, I would prefer to reserve my comments until STAC and Lucinda have an opportunity to report back to the GIT. The 2/18 request seems premature after reviewing the conversation on 12/13. I don't see any updates to the attachments since the document we discussed on 12/13. Is there a version of the fact sheet that is tracked?

I'd also like to encourage the GIT members to participate in that STAC conversation, once the agenda is released.

Thanks,

Chris

Teresa Koon, WV DEP, February 16.

[Comments and edits provided in Word document, comments appear as Dave Montali]

Bryant Thomas, VA DEQ, February 16.

Thank you for the opportunity to review and comment on the suggested revisions to the BMP Expert Panel Protocol. Our comments are provided below. We have not included specific comments on the draft documents at this stage. Rather, we want to provide a summary of our comments and concerns with the proposed revisions to the protocols. We look forward to continued discussion on these revisions and will provide specific suggestions and edits at a later date after consideration of the comments below.

If you have any further questions or need additional information, please do not hesitate to reach out to me, Bill or Kevin (both copied on this email).

Respectfully,
Bryant

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Virginia DEQ comments on: Proposed Revisions to CBP BMP Expert Panel Protocol

VA has concerns that the two step process outlined in the protocol is essentially separating out the experts' recommended reduction estimates from the technical appendix describing how that will be incorporated into the model. This may result in reduction estimates that cannot get a technical appendix approved. We have concerns whether we actually can separate out the effectiveness from the technical aspects for reporting many BMPs. These are not always two distinct and different processes as the reduction methods and effectiveness can easily influence what is needed to be tracked and reported.

Additionally, there appears to be a strong, and perhaps overdependence on representatives¹ of the WTWG being part of the expert panel. We suggest including the entire WTWG and sector WG throughout the process, including development of the charge for the EP. We would also like to suggest regularly scheduled, joint meetings of the WTWG, Sector WG, and EP. Each can meet separately, but should also routinely come together for joint meetings with the goal of producing the reduction estimate report and technical appendix concurrently. These should all be open to the public and interested parties with a draft final product available for a public review process once completed. After addressing any substantive comments the report and technical appendix can be made available to the WQGIT for final acceptance and official adoption.

We also note that the WTWG is being asked to complete tasks outside the charge of that WG. For example, the sector WG's are responsible for setting credit durations and verification requirements, not the WTWG. These aspects of the technical appendix should be the responsibility of the sector WG.

If the EP is to be the arbiter of the science, it is imperative that the panel be shielded from conflicts of interest by not only completing the vetting process and paperwork regarding such conflicts, but also be clearly instructed in the Protocol document that the EP has no concern over how many units of the BMP may or may not be implemented or to have any concern or discussion regarding incentivizing a proposed BMP. To do so could taint the EP findings. Also an EP should not feel obliged to develop efficiencies if during their efforts they determine there is not sufficient scientific basis to support developing reduction estimates.

We suggest that the EP should:

1. Determine if there is sufficient science supporting reduction estimates or the sufficiency of literature/scientifically acceptable evidence to support the use of best professional judgement.

2. And if so what those expected reductions should be in context of the CBP modeling framework.
3. Be supported by the entire WTWG, sector WG, and CBP modeling team in understanding that framework.
4. Work collaboratively with the WTWG, sector WG, and CBP modeling team to complete items 1 and 2 above.

As noted above, we believe the proposed process can be improved by having periodic, joint meetings of the combined WTWG, sector WG, and EP, and providing a 30-day public review period of the reduction estimates and technical appendix produced by this coordinated effort. If public comments warrant substantive changes to the document(s), a second public comment period may be considered if/as appropriate. If no substantive comments or changes to the document are warranted, then proceed with the 10-day period for WQGIT review and subsequent presentation for acceptance.

¹Concern over use of WTWG representatives as not all representatives are at the same level of understanding of the modeling and NEIEN specifics plus no one representative can describe what all partner jurisdictions are tracking and reporting. It has been seen in the past an EP work under false assumptions about the modeling and produce what they thought was final work only to find out some of the EP's base assumptions were incorrect (Advanced Grey infrastructure BMP) or the EP was working off of incorrect assumptions on the partners abilities to collect/report specific things.

KC Filippino, HRPDC, February 17

I wanted to provide the following comments. I did my best to understand the changes and rectify them with the fact sheet but I don't think either were clear to me. The fact sheet states "Separation of the scientific findings of an Expert Panel report from the technical appendix, which explains how the BMP is to be tracked, verified, and reported for progress.

- The scientific findings, which would undergo a partnership review period, would not require partnership approval."

However, the document states that the WQGIT will review and approve both the findings and tracking. If I'm reading this correctly, I support what the document says in that the WQGIT should be approving both and there shouldn't be separation of the scientific findings and the technical appendix. Presumably, the scientific findings are used to develop the technical appendix and they go hand in hand. I'm also trying to understand the role of the WTWG throughout this process, I believe they should be part of it from start to finish since they will be the ones that ultimately determine how efficiencies are put into the model via NEIEN. I was looking for a flow chart, and see the one on page 25, but I think it's too simplistic. A flow chart that documents the role of a workgroup, WTWG, and the WQGIT would be very helpful, and likely you would need 2 flow charts, one for new panels and one for existing panels.

Regarding changes to existing expert panel reports, the WTWG is largely left out until the end of the process in B.I and B.II. It seems they should be part of the process so as not to cause problems when it comes to determining how the efficiencies are included or changed in the model. For B.III, there seems

to be no inclusion of the appropriate workgroups, only the WTWG, which will cause the same problem, just in a different way. I think it's important that workgroups and the WTWG work more closely, not be separated out.

And for proprietary devices, there should be a sentence that references the upcoming effort by ASTM and the STEPP program to have a national testing protocol for proprietary BMPs. Once the testing protocols are finalized, the CBP should consider adopting those protocols and accepting those BMPs for inclusion into the model. Also, is there a list of proprietary BMPs that 'meet the definition(s) and qualifying conditions established by the Expert Panel for a class of BMPs'?

Thanks for the opportunity to comment.

Jen Walls, DE DNREC, February 17.

Thank you for the opportunity to provide initial feedback on proposed revisions to the Chesapeake Bay Program BMP Expert Panel Protocols previously discussed in December 2021. It is our understanding that these revisions are intended to address concerns and questions that have accumulated about the Expert Panel process and application of existing protocols. It is also our understanding that we will have opportunities for further review and comments during and following the March 2022 WQGIT conference call and other Advisory Committees and GITs.

I have incorporated our initial comments and feedback in the Fact Sheet document dated November 29, 2021 (attached).

Jennifer Starr, Alliance for the Chesapeake Bay, February 2.

I reviewed the draft as it relates to the role of the Advisory Committees and have noted several items. No specific need to reply back to me and this was really helpful to build my understanding of the work being done.

page 11 talks about expert panel memberships and input on members being gathered by ACs. I don't remember seeing this request but it likely hasn't occurred since I've been LGAC coordinator. I imagine STAC has a better handle on the right folks but appreciate LGAC being asked as well.

page 12 discusses proposed panelists and BMP protocol change and that being sent to ACs for review and comments. Great!

page 13 allows ACs to comment during the open forums before formal deliberations occur. That request is emailed to ACs--again great.

page 17 had me wondering how expert panel reports are distributed and if ACs have a role in the Formal Reviews.

Thanks for the opportunity to learn!

Lucinda response, February 3.

In response to your last comment about the role of Advisory Committees in the review process, it's open to the partnership. While official approval was sought from the WQGIT (and we're proposing to limit that just to the technical appendices), any partnership group can review and submit comments on the expert panel reports.

Verna Harrison, Verna Harrison Associates LLC, February 17.

I am trying to play catch up on this issue for CAC. Finished reading the edits to the report. My question below refers to the fact sheet section:

- o **Given the implementation concerns raised by partners**, and the experience of state and local jurisdictions in the tracking, verifying, and reporting of BMPs, **only the technical appendix would undergo a formal approval process.** However, the partnership would approve whether the Expert Panel recommendations would be incorporated into CAST.

Does this suggest that (1) the Expert Panel can recommend the use of Silly Putty to clean up Bay in a Report. (2) the only thing the public can comment on is how much credit the silly putty is given in CAST?

[Lucinda responses from February 22]

The partnership would have the opportunity to review the scientific findings of the report (e.g., load reduction efficiencies assigned to a practice) but the partnership would no longer approve those scientific findings. What the partnership would approve is if those recommended load reduction efficiencies are incorporated into CAST and how that practice is to be tracked, verified, and reported (i.e., the information reflected in the technical appendix).

What are the **"implementation concerns raised by partners?"**

Concerns have been raised about the tracking and reporting of certain BMPs. Jeremy, can you provide any specific examples?

Would it make sense to allow public comment on both report and appendix but put a caveat that xxx days for comment?

The public can review both the scientific findings and the technical appendix (although approval will only be sought on the latter). I believe it's typically a 30 or 60 day comment period but I'll double check.

Main document changes and comments

Page 2: Commented [OG(1)] **Onyullo, George (DOEE)** **1/11/2022 6:04:00 PM**

Please consider fleshing this out a little bit (in parenthesis or footnote). Otherwise, the flow is great!

Page 2: Commented [GS2] **Gregorio Sandi** **1/18/2022 10:53:00 AM**

If the GIT no longer approves these, who does?

Page 2: Commented [MD3] **Montali, Dave** **2/7/2022 2:05:00 PM**

Clarification needed. This should be one approval and contingent upon approving the Technical Appendix. As written it suggests two decisions - and if the partnership first approves "incorporating EP recommendations" but does not reach consensus on TA, how can the recommendations be incorporated into CAST?

Page 2: Commented [GS4] **Gregorio Sandi** **1/18/2022 10:56:00 AM**

The use of BPJ should be open to scientific review and BPJ outside the panel process if sufficient evidence exists to adjust the outcomes of the panel's BPJ assumption.

Page 3: Commented [MD5] **Montali, Dave** **2/7/2022 10:07:00 AM**

Sounds good here but what if they don't go concurrently? "Must"? We will still have issues regarding releasing the EP if the timing isn't concurrent. This is essential for efficient vetting and prompt release of panel. Perhaps you should say that the draft TA needs to be completed at the same time that the draft scientific findings are posted for 30-day public comment period.

Page 3: Commented [GS6] **Gregorio Sandi** **1/18/2022 10:58:00 AM**

I think this should be changed to the source sector work group that initiated the panel. WTWG members may not have the required experience to weigh in on the scientific nature of BMPs in various source sectors.

Page 3: Commented [GS7] **Gregorio Sandi** **1/18/2022 10:59:00 AM**

Again, source sector workgroup needs to be incorporated in this development and review process. It would also need to be updated in the footnote.

Page 3: Commented [GS8] **Gregorio Sandi** **1/18/2022 11:06:00 AM**

Where is the role of the source sector workgroup that sponsored the expert panel defined?

Page 3: Commented [MD9] **Montali, Dave** **2/7/2022 12:46:00 PM**

Note that this section is included, almost verbatim, in Section "Expert Panel Reports" on pages 17-19 and qualified as a table of contents that all reports must include. Of note, the last two bullets for O&M and costs are excluded from the latter section and included in the Technical Appendix "elements text on pages 19 and 20.

Page 3: Commented [MD10] **Montali, Dave** **2/7/2022 10:09:00 AM**

"Land use" confuses this. Why not just say "BMP"

Page 3: Commented [MD11] **Montali, Dave** **2/7/2022 10:11:00 AM**

Since later we require verification recommendations, why bring verification up here? It suggests that the definition has to include the verification recommendation details.

Page 3: Commented [MD12] Montali, Dave 2/7/2022 10:15:00 AM

What does “alternative modeling approaches” mean? I thought the effectiveness estimates are to be related to the modeling approach we are using.

Page 3: Commented [MD13] Montali, Dave 2/7/2022 10:20:00 AM

Not a defined term

Page 3: Commented [GS14] Gregorio Sandi 1/18/2022 11:01:00 AM

Can we provide a process that would vet unpublished, peer-reviewed sources?? We need a check on this. Solid documentation of what? That’s too open.

Page 3: Commented [MD15] Montali, Dave 2/7/2022 10:19:00 AM

Depending upon panel make-up, this may be an onerous task if numerical quantification expected; “explanation of how uncertainty addressed” in bullet below should suffice

Page 4: Commented [GS16] Gregorio Sandi 1/18/2022 11:03:00 AM

Also describe why BPJ was used and if there are potentially other options. Maryland has been disappointed by many BPJ decisions in the past.

Page 4: Commented [MD17] Montali, Dave 2/7/2022 10:23:00 AM

The lifespan of a default value is a policy consideration and should not be contained in scientific findings

Page 4: Commented [MD18] Montali, Dave 2/7/2022 10:25:00 AM

Merge these two. Land uses = load sources in our world

Page 4: Commented [MD19] Montali, Dave 2/7/2022 10:27:00 AM

To avoid confusion with climate change.

Page 4: Commented [MD20] Montali, Dave 2/7/2022 10:34:00 AM

Maybe define cc conditions - Increased air and water temperatures, precipitation volume and storm intensity

Page 4: Commented [DBKRCUNMN21] Du Bois, Kevin R CIV USN NAVFAC MIDLANT NOR (USA) 2/2/2022 3:02:00 PM

Page 4: Commented [GS22] Gregorio Sandi 1/18/2022 11:04:00 AM

Will we ask the panel to coordinate with State technical leads to determine this? Or is it purely theoretical. Maryland is dealing with issues from the Stream Restoration protocols that were not identified by the Expert Panel. I think this should be considered.

Page 4: Commented [DBKRCUNMN23] Du Bois, Kevin R CIV USN NAVFAC MIDLANT NOR (USA) 2/2/2022 3:03:00 PM

And schedules?

Page 4: Commented [DBKRCUNMN24] Du Bois, Kevin R CIV USN NAVFAC MIDLANT NOR (USA) 2/2/2022 3:04:00 PM

What about the new VIMS model that's going to be adopted?

Page 5: Commented [MD25] Montali, Dave 2/7/2022 12:59:00 PM

Reiterated, almost verbatim, in Technical Appendix elements text on pages 19 and 20. Of note, O&M and Cost bullets of prior section are part of TA elements on page 20

Page 5: Commented [DBKRCUNMN26] Du Bois, Kevin R CIV USN NAVFAC MIDLANT NOR (USA) 2/2/2022 3:07:00 PM

And included in updated annual data reporting templates distributed to stakeholders in each jurisdiction.

Page 5: Commented [MD27] Montali, Dave 2/7/2022 10:43:00 AM

This is confusing; If none will use, why has the EP process gone this far?

Page 5: Commented [MD28] Montali, Dave 2/7/2022 10:45:00 AM

Given the caveat, the prior general description of how the practice "could be tracked, reported and verified should suffice

Page 5: Commented [GS29] Gregorio Sandi 1/18/2022 11:09:00 AM

Footnote is incomplete, or not displayed. Includes a key definition.

Page 6: Commented [MD30] Montali, Dave 2/7/2022 11:29:00 AM

Perhaps the issue of "practice will be used and reported by jurisdictions" that I suggested removing from TA process could be inserted here?

Page 6: Commented [MD31] Montali, Dave 2/7/2022 10:54:00 AM

The deleted text seems too intense for the request.

Page 6: Commented [MD32] Montali, Dave 2/7/2022 11:32:00 AM

This "general description" is not the same as "it is the responsibility of the hosting Workgroup, GIT, or the original requestor for the Expert Panel to identify and *provide* any required resources" in the fact sheet for this document.

Page 7: Commented [MD33] Montali, Dave 2/7/2022 11:36:00 AM

For New EPs, only workgroup signatory members may request. Seems like anyone can request review/revision of existing EP by making request to appropriate workgroup. Is this distinction intended?

Page 7: Commented [MD34] Montali, Dave 2/7/2022 11:52:00 AM

Does this mean "convening a new EP"?

Page 7: Commented [MD35] Montali, Dave 2/7/2022 11:53:00 AM

Assume this paragraph intends that some revisions may be made by the workgroup, WTWG, and WQGIT (without a new EP). If yes lead off with that. The broad intent of this Section (I) is to make "substantial change to BMP efficiency estimates...." But it is vague as to which requested revisions need new EP and which don't.

Page 7: Commented [OG(36] Onyullo, George (DOEE) 1/11/2022 6:46:00 PM

This is great! Very important inclusion.

Page 8: Commented [MD37] **Montali, Dave** **2/7/2022 12:09:00 PM**

What follows is not only “review”, it includes “establishment”, “elements”, panelist specs,.... The establishment of an EP to revise an existing report is still a New EP

Page 11: Commented [MD38] **Montali, Dave** **2/7/2022 12:21:00 PM**

So a requestor may have to pay an expert? Or the panel should be made up of only volunteers if the requestor can't fund. In general, if the need is real, then the program should provide the resources, not the requestor.

Page 11: Commented [MD39] **Montali, Dave** **2/7/2022 12:24:00 PM**

Needs clarification. I understand that there isn't formal approval, but there is review (of a draft?) via 30 day public comment period and consideration of comments by the EP prior to a final report.

Page 12: Commented [MD40] **Montali, Dave** **2/7/2022 12:35:00 PM**

Has this been done before? Where does the work of the EP stop and the GIT begin? Are EP members involved in the GIT work?

Page 14: Commented [MD41] **Montali, Dave** **2/7/2022 12:39:00 PM**

If EP does incremental findings, must Tech Appendix for incremental finding be completed concurrently?

Page 16: Commented [MD42] **Montali, Dave** **2/16/2022 12:37:00 PM**

Near verbatim text to that on pages 3 and 4. Same comments as made there.

Page 16: Commented [MD43] **Montali, Dave** **2/16/2022 12:38:00 PM**

Deviates from prior text. On page 4, these bullets are part of scientific findings.

Page 16: Commented [MD44] **Montali, Dave** **2/16/2022 12:40:00 PM**

Near verbatim text to that on page 5. Same comments as made there.

Page 16: Commented [DBKRCUNMN45] Du Bois, Kevin R CIV USN NAVFAC MIDLANT NOR (USA) **2/3/2022 11:34:00 AM**

And schedules? Also, do they need to specify any qualifications to conduct inspection and verification?

Page 16: Commented [MD46] **Montali, Dave** **2/7/2022 12:55:00 PM**

Are these EP responsibilities or TA? Note difference in this section versus prior

Page 17: Commented [MD47] **Montali, Dave** **2/16/2022 12:55:00 PM**

Is a “Response to Comments” document required with respect to scientific findings? There should be.

Page 18: Commented [MD48] **Montali, Dave** **2/7/2022 1:50:00 PM**

Is this applicable only to Stage 3 or all three?

Page 19: Commented [MD49] **Montali, Dave** **2/7/2022 1:52:00 PM**

This is a tough one. Even when a good faith effort of prior review has been conducted, objection may arise after hearing details of the presentation at the meeting.

Page 19: Commented [MD50] **Montali, Dave** **2/7/2022 1:57:00 PM**

Ok, but this doesn't solve issue that EP members can be released after scientific findings accepted. Key point is that TA must be done concurrently and it would be best if done prior to public comment period for scientific findings

Page 19: Commented [MD51] **Montali, Dave** **2/7/2022 2:03:00 PM**

Does this scenario mean that the BMP is not approved for CAST incorporation? If yes, say so.

Page 20: Commented [MD52] **Montali, Dave** **2/16/2022 12:46:00 PM**

The first box is good with respect to the draft Report and TA offered for comment concurrently. But the implied 50 day finalization is unrealistic. There will need to be time to consider comments prior to WTWG review and approval and more time than 10 days as it goes up the ladder to sector workgroup and wqgit to accommodate meeting schedules.

Page 20: Commented [OG(53)] **Onyullo, George (DOEE)** **1/11/2022 5:13:00 PM**

I think it would be better to standardize comment period to either "calendar days" (e.g., 30-days) or "business days" (e.g., 10 business days) for purposes of consistency. If "calendar days" is selected, then each of the "Workgroup Reviews & Approves"/(Revised) Draft" should be given 2 weeks (14/15 days (if you'd like). Suffice it to say that it is customary on matters like this – akin to generic public "notices" - to give a 2-week period. I urge that the same should be extended to the "Workgroups" because they are the WQGIT's public/stakeholders equivalent. A 10-day period seems a little too contrived – for me. In other words, overall, we should consider a 60-days (2-months) process. Just a suggestion! But I really appreciate very much the wisdom of providing a 30-day comment period.

Page 20: Commented [OG(54)] **Onyullo, George (DOEE)** **1/11/2022 5:28:00 PM**

Please consider replacing with my suggested edit. Here is why. It is important to point out that the "Response to Comments" document (RCD) may not necessarily be technical. It is just a comment of issues – any and all- raised and "best attempts" to address them. In standard TMDL lingua, it is often stated that the RCD, when finalized, will be made part of the TMDL.

Page 20: Commented [MD55] **Montali, Dave** **2/16/2022 12:59:00 PM**

What about "response to comments" regarding public comments received pursuant to scientific findings?

Header and footer changes

Text Box changes

Header and footer text box changes

Footnote changes

Endnote changes