

EPA's Conditional Approval of West Virginia's Revised Draft BMP Verification Program Plans

January 26, 2016

EPA has conditionally approved West Virginia'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 West Virginia can apply for 2016 WIP assistance funds. Prior to award of West Virginia's 2016 Chesapeake Bay Implementation Grant and Chesapeake Bay Regulatory and Accountability Grant, EPA will need to be in a position to fully approve West Virginia's final revised BMP verification program plan.

West Virginia's BMP verification program plan provides an excellent level of documentation using text and formats easily readable and understandable by a wide audience. West Virginia was very clear in documenting its choices of which BMP to develop verification protocols. West Virginia made it clear that the state is relying on NRSC for verification of all cost shared practices, with the state agencies taking on responsibility for continued verification at the end of each contract. However, West Virginia still needs to address a number of comments provided by the Partnership's independent panel of experts in order for EPA to fully approve its plan.

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

Finally, for your reference and consideration as West Virginia works to further enhance its BMP verification program over the coming two years, attached please find a compilation of EPA's reviews of West Virginia'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 West Virginia

Overall

- West Virginia did not provide a listing of BMPs for which verification protocols have not been developed and a schedule for when such protocols will be developed.

Response: This text was updated in the Nonpoint Source QAPP Agriculture section D.7, p. 47:

The following BMPs are not included in this version of the QAPP, but will have verification protocols developed by the dates listed:

- Loafing Lot Management, June 30, 2016
- Land Retirement, June 30, 2017
- Horse Pasture Management, June 30, 2017

In addition, Table 8 was added to the Nonpoint Source QAPP Stormwater section, pp.68-69, to ensure that all potential BMPs are included in our plan.

- Verification procedures for BMPs owned or operated by Federal agencies, facilities and landowners were essentially absent from West Virginia's revised draft BMP verification program plan.

Response: During the 2-year refinement period for the Point Source QAPP and Nonpoint Source QAPP, the same verification protocols listed therein will be applied to practices owned or operated by Federal agencies, facilities and landowners. This will identify any special situations that warrant additional procedures. These procedures are low priority for West Virginia because the BMPs tracked on these properties represent a small proportion of our implementation progress overall. The only significant wastewater facility in West Virginia's Chesapeake Bay watershed area that is federally owned is the Leetown USGS facility; it does not require different verification procedures than the non-federal facilities. A new section was added to the Nonpoint Source QAPP, D.7, p.93.

- Need to provide URL links to many of the documented references throughout the text.
Response: Several URL links were added to references since the July 2, 2015 version of this QAPP, e.g. on p. 34, the National Planning Procedures Handbook (NPPH) <http://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=36483.wba> and on p. 39, Subpart C – Providing Conservation Technical Assistance <http://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=17131> and the FSA Handbook - Agricultural Resource Conservation Program, Part 17: Compliance and Spot Checks http://www.fsa.usda.gov/Internet/FSA_File/2-crp_r05_a21.pdf.

Agriculture

- Nutrient Management plans evaluation is a paperwork assessment that appears to be done in the office, without field visits or onsite verification of records.

Response: new text was added to the Nonpoint Source QAPP section D.4.1, p. 45:

Nutrient Management Plans that are reported as part of West Virginia's annual progress are revised at a minimum of every three years. This process includes an initial face-to-face meeting with producers, collection of soil samples and writing of a revised plan utilizing RUSLE2 and P-Index taking into account current farming practices. Certified nutrient management planners then meet again face-to-face with producers to deliver and discuss the plan. A portion of producers also request nutrient management plan changes during the life of their plan. These mid-plan changes include crop changes with fertilizer recommendations and nutrient loss risk assessment.

- West Virginia provided additional details on verifying manure transport (p.16), however manure transport is still identified as being verified through a paperwork review (p.46).
Response: Understood – As this is a non-visual, sometimes non-cost shared BMP, it is particularly challenging to identify a method beyond a paperwork review. We will continue to consider options and update our QAPP to reflect any changes in July 2016 and 2017. Regarding manure transport that is tracked through a cost-share program, new text was added to the Nonpoint Source QAPP section D.5.1, p. 46:

Cost shared litter transfer is tracked and verified utilizing a series of forms which verify litter type, analysis, origin, updated compliance of nutrient management plan, volume and receiving farm address along with certified weigh tickets on the trucking.

Streams

- Table 10 [now Table 11] needs to be clearer as to the frequency of follow-up checks.
Response: Both Table 10 (p. 81) and Table 11(p.84) have been clarified.
- West Virginia needs put more emphasis on measurement of functionality, not just presence of the stream restoration project itself, as called for in the Partnership's Stream Health Workgroup's stream restoration verification guidance.
Response: WVCA Staff has advised that the project specific goals would relate to the stream and its specific impairment which would usually involve the functionality. This would mean reduction in sediment load if erosion is an issue, or creating a more conducive dimension, pattern and profile if necessary, water quality, etc. We have expanded the text on p. 83.
- Needs to address what happens 5 years after the stream has been restored in terms of verification.
Response: New text was added to the Nonpoint Source QAPP Stream Restoration Section, p.83 to describe what is planned after 5 years.

Wastewater

- The wastewater section reads strictly like a wastewater treatment data reporting document, not a verification program plan.
Response: We believe the current document meets all requirements of a verification plan. We disagree with this statement because this document details the quality assurance measures taken to verify self-reported wastewater data.
- For non-significant wastewater treatment facilities, need documentation as to whether NPDES DMR data will be used to verify reported load reductions upgrades and offsets of new or expanding facilities.
Response: Point Source QAPP pgs. 9 & 14

- There is not documentation of CSO verification procedures.
Response: Point Source QAPP pg. 14
- There were no proposed verification protocols for septic systems/on-site treatment systems.
Response: Point Source QAPP pg. 14, Nonpoint Source QAPP p. 92. We will update the denitrifying septic systems BMP protocol by July 2017.

Wetlands

- No reference or link to the actual wetlands restoration field inspection protocol/checklist being used by West Virginia and its federal and NGO partners.
Response: Section D.5.1 (p.89) now references NRCS staff's annual monitoring form, which we have added to the Nonpoint Source QAPP as Appendix E, and descriptions of Trout Unlimited's and Potomac Conservancy's methods.
- West Virginia's documentation for wetlands verification needs to include the answers to the wetlands evaluation questions listed on page 52 of the Panel's August 7, 2015 report to the Partnership.
Response: Section D.5.4 has now been added to the Nonpoint Source QAPP Wetlands section, pp.89-90. We will continue to consider options and update our QAPP in July 2016 and 2017.