

BMP Verification Ad-Hoc Action Team (BMPVAHAT)

Meeting Minutes

June 11th, 2021

9:00 AM – 11:00 AM

Meeting materials: [link](#)

Summary of Actions & Decisions

Decision Requested at the July Meeting: At the July BMPVAHAT meeting, we will be requesting a vote on the following decision from the FWG: Extend the credit durations for the practices listed below from 10 to 15 years:

- Forest Buffers
- Forest Buffers Exclusion
- Forest Buffers Exclusion Narrow
- Forest Buffers Narrow
- Forest Buffers Urban
- Tree Planting
- Urban Tree Planting

Action: Vanessa will compile the information we currently have on grass buffer BMPs and distribute it to the BMPVAHAT. She will also check in with the WQGIT about our process moving forward and will update the group accordingly.

Action: Vanessa Van Note will distribute the BMP Lifespan/Verification Terms and Concepts chart to the BMPVAHAT.

9:00 **Welcome, Introductions, Roll Call**, *Elliott Kellner, Chair (WVU)*

- Welcome & Roll Call of participants
- **Announcement** – Update from the FWG on Forest and Tree Planting BMP Credit Durations, *Sally Claggett, FWG*
- **Announcement** – Back-Out and Cut-Off due to Land Use Update from WTWG, *Vanessa Van Note, WTWG Coordinator*
- **Announcement** – Wetland Restoration, *Vanessa Van Note (Coordinator)*
- **Announcement** – Grass Buffers, *Vanessa Van Note (Coordinator)*
 - **Action:** Vanessa will compile the information we currently have on grass buffer BMPs and distribute it to the group. She will also check in with the WQGIT about our process moving forward and will update the group accordingly.
- **Announcement** – Compiling Solutions to Verification Challenges Effort, *Vanessa Van Note (Coordinator)*
- **Next Meeting: Friday, July 9th, 9:00 am to 11:00 am**

9:15 **A Broader Programmatic Discussion**, *Vanessa Van Note, Coordinator, All.*

Vanessa gave a brief review of practice lifespan vs credit duration and led a larger discussion on programmatic issues that were brought to light in Delaware's [presentation](#) during last month's meeting.

Discussion:

Jill Whitcomb: This is helpful. If there is the opportunity to clear this up in any way so that this level of confusion doesn't continue as we move forward, perhaps we can do that.

Dana York: I want to highlight the inside of the BMP circle. The BMPs are gaining efficiencies over time, and when they become fully functional, it could be after the time it is inspected. Then when it nears the end of life span, it could be years after due to the farmer keeping up with operation and maintenance, etc. The main thing is that it's farmer dependent. But what I felt was important was that we put together guidance for protocols. The states developed the protocols (verification) and then they were approved by the Bay Program (validation). I think it's important that we look at whether or not we need to review the state protocols and determine if they need to be changed.

Vanessa Van Note: We can discuss protocols in the future, I didn't really cover that here. For the source sectors, those avenues do exist and we can work together to clarify if folks have a new verification or reporting method, etc. if need be.

Rebecca Hanmer: An important element is whether or not information would be coming to NEIEN to our system from NRCS. At that time, we assumed that there would be some input of inspection or verification of contract, or some inspection type information coming in from NRCS. We also expected we would have an easier time working with the contract lifespan issue and FSA and resigning up. We thought it would be easier to get the information on when a farmer, for example, decided to reup a contract for a forest buffer, but that's still an issue.

Leon Tillman: Vanessa, do you have any idea of who those 1619 agreements were established with?

Vanessa Van Note: I don't, but I can let you know.

Olivia Devereux: I have copies of all the state agreements and there weren't any new ones established after the new verification was approved. I can send those to Leon and Vanessa.

James Martin: How many are still in effect?

Olivia Devereux: I don't think any of them are.

Jill Whitcomb: I think it's important to know where we all stand. PA has never had a 1619 agreement with NRCS. In the framework guidance, things were assumed to occur that didn't, so how do we resolve those issues and challenges? The Bay Program partnership needs to adapt to the way that the rules are set with USDA. Maybe EPA, USGS, and USDA need to work on this together at a higher level.

Olivia Devereux: I think we just need to evaluate where we need to make any adaptations.

Jill Whitcomb: I think the 1619 provisions are there and those are the rules. So we have to adapt the policies to fit those rules, not the other way around.

Rebecca Hanmer: I want to clarify - it's not so much the policy of confidentiality as it is finding an implementation mechanism. For example, forest buffers were falling out of NEIEN because it's not clear when the contract ends that the farmer is either going to reup the contract or abandon the buffer. So we tried to work out a program with FSA where postcards were sent to the farmers at the end of contract life so that we could get that information, and it was partially successful. Is there a way, through some kind of agreement between EPA and NRCS, perhaps, to be able to have the states more effectively tap into the information?

Leon Tillman: Rebecca, are you saying to maybe have producers fill out some kind of survey or something, saying yes I have implemented this or no I am not?

Rebecca Hanmer: Sort of like that. FSA and PA had a postcard initiative. They simply sent a postcard to the farmer to see if they had an intention to renew the contract. If he did, the buffer would continue, and if he didn't, then he would have to say if he was going to maintain it or convert the land.

Elliott Kellner: What were the response rates?

Rebecca Hanmer: I'm not sure. Probably less than 50%. Also I think there were resource issues. It wasn't continued.

Jill Whitcomb: I think the idea was to gauge the interest level for re-enrollment, but when we look at BMP verification protocols, none of that information can be used unless we initiate another extra level of quality assurance and spot checks. I appreciate your comment about reevaluating the protocols so they aren't as burdensome on the states but still get at the results we're looking for.

Loretta Collins: This is my concern moving forward - pivoting back and forth between general guidance and the individual state protocols. We can reevaluate the state protocols but they have to work within the framework of the general guidance.

Rebecca Hanmer: The FWG revised our technical guidance in 2018 to try and make the technical guidance less onerous. I assume the AgWG would do the same thing. I do agree there needs to be some coherence between what happens at the guidance level and the state protocol level.

Norm Goulet: Verification was the states prerogative. The WGs were to provide some guidance. But it was up to the individual states to adopt the recommendations however they see fit.

Loretta Collins: That gives me more clarity I think, thanks Norm.

Norm Goulet: Right, the WGs were only making recommendations and how the states would incorporate it is completely up to them.

Jill Whitcomb: There's a disconnect between what some of us consider recommendations and others that see recommendations as something you have to follow in order to achieve the data quality and quality assurance of what's being reported and verified.

Norm Goulet: I think that's where the state's individual verification document comes into play. Because every state operates differently, it's up to them to create a verification program.

Jill Whitcomb: I agree. On the ag side, it's different because we have USDA reported practices that the states have no authority over. It's hard to be accountable for practices instituted by a federal agency that the states don't touch. It's not challenging for the practices that we already know about.

Norm Goulet: I agree completely. But I think the answer is not to be making changes to the individual practices, there needs to be changes whether it's regulatory or whatever, to find a way to adapt, rather than change the individual practices to reflect problems associated with that. What this boils down to is this whole aspect of transparency and whether the program was actually reporting what was on the ground. At one point, the numbers that the program was reporting made no sense and the trust level plummeted. That's why verification took on such a huge role. But I do agree with you that the 1619 cost share practices are a huge issue.

Rebecca Hanmer: I'm not trying to change protocols or guidance as a first step. I think first we should look at fixes to the reporting issues we have. Is there a way we could get information into our system that would allow states to take credit that verification has been done by NRCS at some point at the end of the contract?

Leon Tillman: Do you mean verification after the credit duration?

Rebecca Hanmer: We talked about knowing it's installed, maintained, and whether or not at the end of practice life, if the farmer is going to reup. I think NRCS does at least two of those as part of their administration review.

Leon Tillman: When a contract is active or implemented, it's inspected for completion. There is a status review or field review that is done while the contract is active, but it may not be every year. That's done up until the contract expires, but after the contract expires, NRCS does not typically do a review of the site for practice performance. Are you looking to see if there's a way to get credit before the contract expires?

Rebecca Hanmer: Yes and also if there is something that could be worked out so that the federal program talked to NEIEN in a way that would help the states say yes, this practice has been verified.

Brittany (in chat): Leon, can you explain the review process? Is it a desktop analysis or in-the-field visual BMP inspection?

Leon Tillman: There are two kinds of reviews. There's a status review that is done that looks at the practice in the field to make sure it's still in place and functioning or if it needs technical assistance, but I'm not sure it would be as in depth as you guys would need it to be for verification standards. That's documented on paper by hand.

Olivia Devereux: If you could help me use the correct terminology for when we do our USGS data request and get that final inspection information for the close out, that would give the states one more data point before they would have to do an inspection on their own and that might be helpful for them.

Jill Whitcomb: How can that be transferred to us to report to NEIEN if it's not on a unit by unit practice?

Olivia Devereux: We could aggregate inspection data at the county level similar to how we use aggregate implementation data.

Leon Tillman: Let me clarify as well, some of those practice reviews are only done while the contract is active. It's probably nowhere near the credit duration that these practices have. 5 years is on the high side. And we don't do those reviews for all of our BMP practices.

Action: Vanessa Van Note will distribute the BMP Lifespan/Verification Terms and Concepts chart to the BMPVAHAT.

10:00 **Introducing the Concept of Partial/Diminishing Credit**, *Vanessa Van Note, Coordinator, All.*

Vanessa provided a quick review of her [presentation](#) from the last meeting and clarified why this is a topic of discussion. There was then an opportunity for group members advocating for partial credit to address the group. Bill Tharpe, MDA

Discussion:

Bill Tharpe: We believe partial credit should be extended to all BMPs but should not extend past a 5 year period.

Matt English: Looking at the current limitations of BMP inspection from 1619 agreements, etc. and understanding BMPs do continue to operate past their credit life, we want to look at a step down approach looking at BMPs makes sense. This could also help mitigate a BMP practice like trees where overcounting could be an issue.

James Martin: I'm not sure I would say I'm an advocate for partial credit, but I think the verification program that we've established has swung too far. I think we should reevaluate our overall verification approach, which was to address the NRC report from May 2011.

Dana York: Can you clarify - is the point of this so that folks don't have to go out and re-verify but instead just automatically take reductions over a year instead of going out to check up on the BMP?

Vanessa Van Note: That's one way of looking at it. It could also be that a state is having trouble locating these practices to reverify them, but they know they're there, and this allows them to not fully lose the credit or at least gives them more time to verify.

Dana York: How does this play against the water quality data? Since this is just an administrative decision.

Olivia Devereux: That's a good question. The model gets calibrated when there's a new phase out. The next time it will be calibrated would be in 2025, so until then, we could be misleading ourselves if we make substantial changes. But it will be tried up in 2025.

James Martin: When this partial credit approach would be implemented, the current calibration uses our current verification rules, which are just the same as these would be but we would apply those rules to

the history of BMPs and calibrate based on that. That's what we did for Phase 6. For Phase 7 perhaps we would calibrate the model based on a different set of verification rules.

Jill Whitcomb: I agree with James's comments.

Leon Tillman: I see the issue with the pendulum swing. Also if the credit durations are in part tied to a practice lifespan, from the NRCS side, that being the minimum time that you're getting that maximum benefit, I do see the benefit in getting some additional credit. Even under poor management, our practices seem to hold up and provide environmental benefits.

Norm Goulet: In terms of the pendulum swing, the number one principle we operate on in the Bay Program is conservatism and science-based decision making. So it makes sense that we moved away from 100% efficiency and operating forever. My second comment is that, speaking from the urban sector, I see a huge equity issue here. All of the regulated MS4s require inspection, reporting, and verifying urban stormwater practices through their permit. If we start giving the states a pass, then it's putting all of this on the local governments.

Jill Whitcomb: I can see your point on equity, but perhaps what's being conflated is NPDES requirements and non-NPDES requirements. When we're talking about agriculture, most of them do not have NPDES permits. If we look at the model and the verification programs themselves, I don't see why we couldn't be open to looking to other source sectors, but it would become confusing to say if the NPDES program permitting authority requires something then it would supersede anything that comes out of the Partnership.

Norm Goulet: The states are the permitting authority. This is a Bay Program issue that all states agreed to. That's why I still think it's an equity issue, but again, I'm limiting my comments to the urban sector.

Gregorio Sandi: We have a different perspective about the urban site here. We've had inspections and maintenance as part of our CoMR. It was not based on the BMP verification aspect here. But one of the things I'm not clear on - I thought our urban BMPs got a 5 year verification window and then there is a phase out period over the next four years?

Norm Goulet: That does exist, but it's limited to certain practices, what we call the semi-regulated community. There's a requirement for an initial inspection. After that, there is no requirement because it's in an unregulated area. As part of the verification framework the USWG, while there is no regulation in place that requires the locality to inspect the facilities, if you did inspect them the credit duration would continue. If you didn't after that 5 year period of time, it would slowly reduce over time. We did this to encourage the states and localities to invest in these inspection programs.

11:00 **Adjourn**

Meeting Chat

From Matt English (DC) to Everyone: 09:11 AM

Will there be an urban wetland restoration bmp?

From sally claggett, usfs to Everyone: 09:12 AM

I made it to the call--sorry to be late

From Jessica DoD CBP to Everyone: 09:14 AM

Are you interested in similar challenges that Federal Agencies face with regard to inspection/verification of BMPs. Or are you just focusing on jurisdictions?

From Loretta Mae Collins to Everyone: 09:15 AM

I really like that spreadsheet

From Olivia Devereux to Everyone: 09:15 AM

@Matt, Wetland Enhance/Rehabilitate is a BMP in the Natural sector. Where developed is land converted to wetlands, then use wet ponds and wetlands. If none of that works, then propose a new BMP via the Urban SW WG.

From VANESSA VANNOTE to Everyone: 09:15 AM

Yes, Jessica!

From Rebecca Hanmer to Everyone: 09:16 AM

Jessica, I agree if would be good to hear from federal agencies on their inspection/verification experience. Good as well as trouble spots.

From Loretta Mae Collins to Everyone: 09:39 AM

This was such a clear and concise presentation. Thank you very much, Vanessa!

From Jennifer Starr, LGAC Coordinator to Everyone: 09:39 AM

Really helpful!!

From Bill Tharpe - MDA to Everyone: 09:53 AM

Is the proposed action steps geared towards ag bmps or all sector bmps?

From Loretta Mae Collins to Everyone: 09:56 AM

on website

https://www.chesapeakebay.net/who/group/best_management_practices_bmp_verification_committee under "Existing State and USGS 1619 Data Sharing Agreements"

From VANESSA VANNOTE to Everyone: 09:58 AM

We can discuss BMPs/sector guidance out of the Ag sector, Bill. I focused on the Ag practices due to the 1619 Agreements.

From Alana Hartman, WVDEP to Everyone: 09:58 AM

This has been very helpful, thank you. I have to switch over to Stream Health Workgroup now - a WV partner report is on the agenda. I will look forward to the meeting notes (and the recording if available?) to learn what else is discussed.

From Bill Tharpe - MDA to Everyone: 09:58 AM

Thanks, Vanessa

From VANESSA VANNOTE to Everyone: 09:59 AM

Thanks, Alana! Will update you.

From Bill Tharpe - MDA to Everyone: 10:12 AM

Good point Norm. I completely agree.

From Brittany Sturgis to Everyone: 10:20 AM

Leon, can you explain the reviewal process? IS it a desktop analysis or in-the-field visual BMP inspection?

From Brittany Sturgis to Everyone: 10:26 AM

Elliot, is there any way we can continue this conversation? I think we all have more questions for Leon, and I'm not sure if he can attend future meetings

From Leon Tillman to Everyone: 10:27 AM

Brittany so provide a full answer to your question, there is some in-field inspection while the contract is active, but there is also some desktop analysis done for practices to ensure practice implementation is properly documented.

From Rebecca Hanmer to Everyone: 10:29 AM

I would like to propose that we structure a small group to continue the discussion with Leon on how Ag reporting might help the states with some data points that can be considered "verification" for credit duration purposes. Working through this issue will have huge value.

PS thank you Elliott for allowing this discussion to continue for awhile today.

From Brittany Sturgis to Everyone: 10:31 AM

Thanks, Leon! I know we are probably bombarding you with questions. It's great to have a NRCS partner on these calls. I'm trying to link info that we learned from our State Conservationist to see if it's also Bay-wide. Is it also correct that only a percentage (10%?) of practices go through the inspection process annually?

From Me to Everyone: 10:32 AM

Just an FYI for the group - Leon has been added to the distribution list and will be sent invites to all future meetings

From Leon Tillman to Everyone: 10:39 AM

I understand Brittany. And yes states review a percentage (5%) of practices each year, but that is 5% of practices statewide by national policy.

From Brittany Sturgis to Everyone: 10:40 AM

Great to know. Thanks, Leon!

From Leon Tillman to Everyone: 10:45 AM

No problem. Because those reviews are statewide, for some states the inspected practices can be outside of the Watershed.

From Matt Ehrhart to Everyone: 10:54 AM

I need to run to another call

From Jill Whitcomb - DEP Chesapeake Bay Office to Everyone: 10:56 AM

That's the difference between NPDES requirements and non-NPDES requirements
Isn't it?

From Matt English (DC) to Everyone: 11:01 AM

I have to run. Thanks!

From James Martin to Everyone: 11:02 AM

How is the partial credit Norm and Greg are talking about simulated in the model?

From Norm Goulet to Everyone: 11:02 AM

they are not because the states never asked for it to be implemented

Participants

Jackie Pickford, CRC

Vanessa Van Note, EPA/CBPO

Elliott Kellner, WVU

Jason Keppler, MDA

Suzanne Trevena - EPA

Dana York, Green Earth Connection

Mark Dubin, UME/CBPO

Matt Ehhart - CAC
Jill Whitcomb, PA DEP
James Martin, VA DEQ
Leon Tillman- USDA/ NRCS
Bill Tharpe, MDA
Olivia Devereux, Devereux Consulting, Inc. Contractor to the Chesapeake Bay Program and USGS.
Lisa Beatty, PA DEP
KC Filippino, HRPDC
Jen Walls - DNREC
Clare Sevcik - DE DNREC
Jessica Rodriguez, DoD Chesapeake Bay Program
Elizabeth Hoffman - MDA
Chad Wentz - USDA NRCS
Jessica Rigelman, J7 LLC, contractor to the CBP
Brittany Sturgis, DE DNREC
Matt English - DOEE (DC)
Adrienne Kotula, Chesapeake Bay Commission
Rebecca Hanmer, chair, Forestry WG
Jennifer Starr, LGAC and Alliance for the Ches. Bay
Emily Dekar - Upper Susquehanna Coalition. (NY)
Ted Tesler, PADEP
Norm Goulet, Urban Stormwater Workgroup, NVRC
Loretta Collins, UMD, AgWG Coordinator
Ruth Cassilly UMD
Curt Dell- USDA ARS
Sally Claggett, USFS
Gregorio Sandi, MDE