

## BMP Verification Ad-Hoc Action Team

Meeting Minutes

April 9<sup>th</sup>, 2021

9:00 AM – 11:00 AM

### **Summary of Actions & Decisions**

**Action:** The BMP Verification Ad-Hoc is asked to provide feedback about the concept of Partial Credit to Vanessa Van Note ([VanNote.Vanessa@epa.gov](mailto:VanNote.Vanessa@epa.gov)) by **COB on Friday, April 30<sup>th</sup>**. Some questions to consider are: What is the concept Partial Credit? Should Partial Credit be incorporated into the Bay Model?

**Action:** The May meeting agenda will include a broader programmatic discussion on verification, such as the issues states are experiencing with their verification programs.

**Action:** Elliott Kellner, Chair, will report back the recommendations from Dave Goshorn and the GIT6 group about next steps.

**Action:** Jackie Pickford, Staffer, will send out voting documentation to the Ad-Hoc Action Team.

**Action:** Vanessa Van Note will work with members of this Action Team to get in contact with the Wetlands Workgroup regarding the credit duration for wetland restoration.

### **Welcome, Introductions, Roll Call, Elliott Kellner, Chair (WVU)**

- Welcome & Roll Call of participants
- Announcement – Update from the FWG on Forest and Tree Planting BMPs, *Sally Claggett, FWG*
- Announcement –Back-Out and Cut-Off due to Land Use Update from WTWG, *Jeff Sweeney, WTWG Coordinator*
- Announcement – Wetland Restoration, *Vanessa Van Note (Coordinator)*
  - Vanessa will give a quick update on the information she has found for the wetland restoration credit duration (to extend past 15 years).
- Announcement –Partial Credit, *Vanessa Van Note (Coordinator)*
- **Next Meeting: Friday, May 14<sup>th</sup>, 9:00 am to 11:00 am**

**Action:** The BMP Verification Ad-Hoc is asked to provide feedback about definitions of partial credit to Vanessa Van Note ([VanNote.Vanessa@epa.gov](mailto:VanNote.Vanessa@epa.gov)) by **COB on Friday, April 30<sup>th</sup>**.

### **Q&A Session on Consensus with GIT 6, Dave Goshorn (GIT 6) & Elliott Kellner, Chair**

Dr. Goshorn, the Chair of the Enhancing Partnership, Leadership and Management GIT, provided a brief overview on consensus, addressed concerns and answered any questions about the process.

**Discussion:**

**Jill Whitcomb:** Dave, you talked about how the previously existing verification committee itself had been sunsetted. I'm confused about where that committee reported to and if that's the case, what would be the next highest level for us?

**Dave Goshorn:** I'm not familiar with the background of this group, so I'm not sure. Important question though.

**Vanessa Van Note:** Jill, we are an action team of the WQGIT and we report to them as the higher decisional body.

**James Martin:** So the decision/question that we're facing today (Barnyard Runoff Control and Loafing Lot Management credit duration) was originally decided at the AgWG and then elevated as a piece of a package all the way to the PSC for approval of the BMP verification framework. The PSC didn't discuss every single BMP when they approved that decision, but the decision encompassed that whole package, so in this case it's a little more complicated than how you were explaining it.

**Dave Goshorn:** I would agree that there's not a clear path forward as to what happens next, but that doesn't necessarily change the discussion today though. That's more about what happens next. To some degree, you could decide to take this to the PSC as the next highest level, but the Management Board might decide that that is unnecessary.

**James Martin:** Well that contradicts your other slide.

**Dave Goshorn:** Right but our previous slide doesn't appreciate that level of complexity.

**James Martin:** Yeah I understand. There's complexity on the other side as well - I'll just raise this point that there's a question whether the proposal was charged to this group by a higher group or whether it originated in this group.

**Dave Goshorn:** We have a regular GIT6 meeting to discuss issues like this where I was planning on raising this. Make the decision or lack thereof today, and if you don't know how to proceed from that, let's chat after I meet with that group.

**James Martin:** I can't imagine the PSC wants to go through and approve practice by practice, that's why they are organized how they are. So I understand what you're saying.

**Brittany Sturgis:** I have a slightly altered approach to how we tackle these issues. We focus a lot on the technical aspects of BMPs, and I think along with discussing the ins and outs of the technical BMP lifespans, we also need to discuss the programmatic side of our verification programs. For examples, some of the big issues we've tackled between states, what worked and what didn't in our verification programs, how we utilize staff and funding in the best way possible, etc. I think we need to start incorporating that part, maybe by setting aside time in every meeting or every other meeting, so we can learn from each other and share tips.

**Jill Whitcomb:** I am completely on board for that. Hopefully PA's presentation will hit on the programmatic side a little bit. I appreciate where you're coming from. I hope to describe today why we're seeking extending credit duration from a programmatic perspective.

**Brittany Sturgis:** I don't even understand how the other verification programs work so even having simple descriptions of what they do and how it works would be beneficial.

**Vanessa Van Note:** Yes I like that idea of setting aside time every meeting for that. It addresses the "one size fits all doesn't work for every state" portion of the charge. One of the direct issues for our group charged by the MB was revisiting credit durations. It was its own separate charge. The second charge was the alternative to the all or nothing approach, the first description being partial credit, which is a very technical topic. The last bullet was discussing the one size fits all approach type of deal where every state has its own issues. But I do like your idea a lot and I'll be in contact with you after this meeting to see how we can start incorporating some of that into our monthly meetings.

**Brittany Sturgis:** Other states, would that be helpful for you?

**Dana York:** I do feel we've gotten into technical issues. In the previous group, we looked at protocols for doing verification. Maybe we should take it back to the group that brought this BMP forward.

**James Martin:** The expert panels that consider practices aren't standing groups. They are a group of volunteers that consider the science. Jeremy can you verify that?

**Jeremy Hanson:** Yeah, that's right James. The panel reports that we have that mention credit durations are the most information we're going to get from them. Most of the BMPs at issue were developed before we had the panel protocol so there's even less of a chance of getting input from the expert panels. Most of the BMPs pre-date them anyway.

**James Martin:** Also, the idea of repanelling a new expert panel to consider the issue could be an option, but my sense is that the CBP is trying to move away from creating more panels.

**Jeremy Hanson:** Yeah we shouldn't get a panel back together just to consider credit duration, that's what the sector WGs or Ad-Hocs like this one can do more efficiently, in my opinion.

**Dana York:** So we have to then go by what the statistics are showing us, what they've given us in these reports. So for example, if it's composed of many practices, we should take the more conservative view of the practice that will fail first.

**Elliott Kellner:** Can I redirect a bit? I think we're jumping a bit forward. Let's put a cap on this and revisit some of these discussion points after Jill presents.

**James Martin:** Pending clarification from the GIT6 small group that Dave is meeting with this week, we at least need to move through this process on the last slide right through determining whether the group thinks we should elevate the question to the WQGIT, even though the proposal may have been initiated by the group, the group was charged by a higher group to consider it.

**Elliott Kellner:** I appreciate that James and I agree with you. At this point, I think we need to finish the decision making process as a group, figure out next steps and get some clarification from the GIT6 small group.

**ACTION:** Vanessa Van Note will work with Brittany Sturgis to determine how broader programmatic discussions - concept and execution of verification - can be regularly incorporated into monthly meetings.

**Overview of PA's Verification Program and Available Data, *Jill Whitcomb, PA DEP***

PA DEP gave an overview of PA's verification and inspection program along with available data to provide additional information to consider prior to the official vote.

**Discussion**

**Jason Keppler:** I'm struggling to understand the percent of practices. The amount of practices inspected and the amount in compliance, are you suggesting that all of the practices that have been reviewed as your permitting process are in compliance at the time of inspection?

**Jill Whitcomb:** There is no in-between. It is either implemented and functioning or it is planned, and in all cases they need to meet the requirements. We don't have a rate of failure to show which ones are in flux. Kate can you further describe how we've identified and documented this?

**Kate Bresaw:** So the way that the planning process works - because our regulatory requirements are that the water quality resources are protected, they don't have an option as to whether or not they're going to implement the practices, it's just a matter of when. So if they are failing, they are written into the plan to be corrected and then they are corrected. So they are either implemented and functioning as intended during the inspection that takes place during the planning process, or they're written in as planned and implemented.

**Jason Keppler:** So your compliance rate will always be 100% then right? Because you're only reporting those that are in compliance.

**Kate Bresaw:** If we're only reporting implemented practices, yes.

**Jill Whitcomb:** This 1802 number errs on the side of caution because of the fact that it is the exact data as what has been verified, inspected, and functioning per the design.

**Jason Keppler:** One quick follow up- so the amount inspected (the 1802) in actuality is much greater than that but you are unable to distinguish between those in compliance and those in a planning stage. Is that right?

**Jill Whitcomb:** Correct.

**Sally Claggett:** The BRC you are showing 43% functioning past the 10 years, is that an average number of years after inspection? Do you look at averages to determine when it's time for re-verification inspections?

**Jill Whitcomb:** We are in the midst of collecting BMPs while we are also reverifying new ones. Historically we have relied primarily on NRCS for our reporting because they have most of the information and provide funding for ag conservation practices, technical assistance, etc. So because that data has been aggregated over time, we are still working to collect more detailed

information on these practices so we can continue to keep them maintained in the model to show that management actions still exist, these practices still function, etc. So we're doing it twofold, we are collecting more to add to the universe that while also reverifying what we already know exists. To answer your specific question - we haven't made the determination to prioritize who we work with, what farmers we contact based on when the credit duration ends. Instead we focus on the water quality resources and concerns in those given areas first and then we look at how we're going to document those practices. I'd like to get to a place where we can use remote sensing to collect this information more holistically but right now we focus first on the water quality concerns in a specific area and prioritize our efforts that way.

**Kate Bresaw:** And again, this is because our verification strategy is wrapped up in our programs and our programs are targeted towards water quality improvements and protections.

**Dana York:** So of the animal trails and walkways 25% were functioning beyond the 10 years and for the other 75% do you remove them from the system?

**Jill Whitcomb:** This is challenging to describe this. So overall 100% of them are functioning. So, of the total amount of animal trails and walkways that have been looked at we're identifying 25% of them have exceeded their 10 year duration, and 75% of them are between zero and ten years old.

**Dana York:** Oh I see, that helps.

**Jason Keppler:** You're saying that 100% are in compliance, but there could be more that you've inspected out there that are not in compliance and they have been switched to planned BMPs instead of implemented BMPs. Is that right?

**Jill Whitcomb:** Yes. What we were asked to provide initially was what information do you have that shows if these practices even function beyond 10 years, and this is the information that we have to show.

**Jason Keppler:** I'm trying to determine a percent of noncompliance to compare against the numbers of other states to see watershed averages. I'm assuming that you guys are probably tracking that somehow considering these practices are part of a permit or a requirement.

**Jill Whitcomb:** Yes, we're tracking holistic resource concerns how they are actually being addressed. The other states, correct me if I'm wrong, presented information that was at 98.7% and another one around 80% so I mean if we're going to be comparing that's fine. But this is what our subset of our NEIEN report shows.

**James Martin:** You could phrase it another way: of all the animal trails and walkway practices that passed inspection and are considered implemented, and therefore in compliance, the average age of those practices was 16 years old.

**Brief Overview of Additional Information and BRC/LLM Discussion, Elliott Kellner (WVU),  
Chair**

Elliott Kellner allowed for further discussion that was needed prior to the vote.

### **Continued Discussion**

**Dana York:** I have a question for the states - If you go out and find that one piece of the animal trails is not working for various reasons, what is the effect in your system where it's recorded? What happens in your verification process when you go out and see that part of the BMP is no longer functioning? Is it like PA's where it is then put into planning mode?

**Jill Whitcomb:** Well you bring up a good question Dana. When you go out and see that the animals are no longer there then the resource concern is no longer there, so do we get hit because the practice is no longer being used? That seems like a rabbit hole we don't have time for today. But I will say that PA has erred on the side of caution in many of our programs to be sure that what we're documenting is real. So the concern that we don't know exactly how many of these are failing and therefore we shouldn't expand the credit duration, I'm concerned about that because we're not seeing a significant failure rate in any of these practices that would tip the scales. What we provided is on average whereas the current credit duration is considered a minimum based on NRCS practice lifespans. It's important that we try to consistently apply the information that we have and the data to support it using the most professional judgement.

**Gary Felton:** My interpretation is that PA is not reporting the number or the percentage of practices in the whole state that are in failure. This means the average age is the average age of successes, it tells us nothing about when the practice becomes questionable because of failure. Is that wrong?

**Jill Whitcomb:** The information that we have available doesn't allow us to determine which are planned because they fell out of compliance and which are planned because they are new. This could be surmised from our data, but I can also say that people who design these practices and install them, they can tell you that what we are finding in our data set is valid. We don't necessarily track failure rates because they all have to come back into compliance at some point. To Gary's point, I would say that's an accurate assessment.

**Gary Felton:** Do you know the time in between inspections?

**Jill Whitcomb:** It varies because we build it into our program.

**Gary Felton:** Okay, and then someone comes out and looks at practices and says it needs to be repaired, the farmer starts repairing it, does the practice go back to zero?

**Kate Bresaw:** Yes.

**Gary Felton:** Okay, thank you.

### **Consensus Based Official Vote and Determining the Next Course of Action, Elliott Kellner (WVU), Chair**

Each voting member verbally stated their name and affiliation along with their voting preference utilizing the consensus continuum voting options. The Ad-Hoc leadership requests

that each member states their reasoning behind their voting preference, but this was considered to be optional.

The BMP Verification Ad-Hoc did not reach consensus. See attached document for votes and rationale. Moving forward, the BMPVAHAT leadership will discuss next steps after hearing recommendations from the smaller GIT6 meeting on Wednesday, April 14th, 2021.

**Elliott Kellner:** It seems that one option we have moving forward is to table these two issues. Several of the hold votes mentioned that they were looking for more information, and so we could continue to talk about what that information would like and how, if it's even possible to collect that information. So we could table these issues for now and entertain the possibility of bringing them back in at a later date. We still have 16 months left in our charter. I don't think there is a reason for us to kill these items entirely and immediately report to the WQGIT. I think we should wait until we hear back from the small GIT6 group. For our next meeting in May, I think we should start discussing the next course of action for these two items, as well as discuss how to incorporate broader programmatic discussions.

**Jill Whitcomb:** I would also like to say that this isn't just a Pennsylvania issue so for those looking for more data, I think that should be held consistently across the entire watershed to see what level of complete data all the jurisdictions have.

**ACTION:** Elliott Kellner will report back the recommendations from the GIT6 small group.

**ACTION:** Jackie Pickford will distribute voting documentation to the Ad-Hoc Action Team.

### **Meeting adjourned**

#### **Meeting Participants**

Elliott Kellner, WVU

Vanessa Van Note, EPA

Jason Keppler, MDA

Jackie Pickford, CRC

Gary Felton, UMD

Loretta Collins, UMD/CBPO

Matt Ehrhart, Stroud Center

Joe Wood, CBF

Matt English, DOEE

Brittany Sturgis, DNREC

Suzanne Trevena, EPA

Rebecca Hanmer, FWG

Dana York, GEC  
Emily Dekar, NY  
Cassandra Davis, NYSDEC  
Jill Whitcomb, PA DEP  
Kate Bresaw, PA  
Lisa Beatty, PA  
Ted Tessler, PA  
Curt Dell, USDA  
Norm Goulet, NRVC  
James Martin, VA DEQ  
Jeff Sweeney, EPA/CBPO  
Jeremy Hanson, VT  
Katie Brownson  
Sally Claggett, USFS  
Jessica Rodriguez, DoD CBPO  
Ruth Cassilly, CBPO  
Tim Peters, NRCS  
Elizabeth Hoffman, MDA

### **Meeting Chat**

From Matt English (DC) to Everyone: 09:43 AM

If we consider the credit life change similar to the development of a new BMP, which would have a suggested credit life by the expert panel, would that then just be approved by the WQGIT?

From Jill Whitcomb - DEP Chesapeake Bay Office to Everyone: 09:46 AM

I agree with Brittany.

From Loretta Mae Collins to Everyone: 09:47 AM

Well said Brittany

From James Martin to Everyone: 09:47 AM

@Matt - I think so. This groups decision is to make a recommendation to the WQGIT for their decision. And since the WQGIT was charged by the Management Board to establish this group and explore the question of credit duration, the WQGIT would need to report he decision up to the MB for their concurrence.

From Matt English (DC) to Everyone: 09:48 AM

Thanks James

From Jill Whitcomb - DEP Chesapeake Bay Office to Everyone: 09:53 AM

From what I understand, there is no "modern" BRC or LLM panel reports. Post-Phase 6.

From VANESSA VANNOTE to Everyone: 09:53 AM

That is correct, Jill.

From Jeremy Hanson (Va. Tech | CBP; he/him) to Everyone: 09:54 AM



those BMPs pre-date phase 5

From Jill Whitcomb - DEP Chesapeake Bay Office to Everyone: 09:54 AM

Thanks, Jeremy!

From Matt Ehrhart to Everyone: 10:22 AM

So in PA, we don't have an understanding of which BMPs have failed or are beyond their useful life (ie., a terrace that has filled or barnyard that has failed) vs new bmps needed

From Matt Ehrhart to Everyone: 10:23 AM

is that correct?

From Gary Kent Felton to Everyone: 10:28 AM

My interpretation is that PA is not reporting the number or percentage of practices in the whole state that are in failure. This means that average age is only that average of success. It tells us nothing about when the practice becomes questionable because of failure.

From Jill Whitcomb - DEP Chesapeake Bay Office to Everyone: 10:38 AM

Will the votes/reasons be documented in meeting actions/ decisions?

From Jill Whitcomb - DEP Chesapeake Bay Office to Everyone: 10:51 AM

This decision is not just based on Pennsylvania's data, we need to look holistically across the watershed.

From Matt English (DC) to Everyone: 10:51 AM

The information that would be most convincing is the percent failure/success for only the BMPs that were inspected 15 years after the initial installation or previous inspection.

From VANESSA VANNOTE to Everyone: 10:58 AM

Thank you, Matt for the input. I agree that that would be a useful statistic.

Thank you for your input, Jill.

From Matt Ehrhart to Everyone: 10:59 AM

I completely recognize respect Jill's comment. my comment about PA only reflect the rich understanding that might be gained based on more details from PA data