

Proposed CBP Partnership Responses to STAC/CAC/LGAC Comments on the BMP Expert Panel Protocol

EP Membership and Conflicts of Interest

- **STAC/CACL Comment 1.** Core EP membership shall include only individuals with the specific scientific expertise and experience needed to address the scientific charge put to the EP by the requesting CBP Workgroup (WG).
- **STAC/CAC Comment 2.** The primary criterion for EP membership must be scientific expertise related to the EP's objectives, as defined in the EP's formative documents drafted by the requesting WG. In this regard, there shall be no specific requirements in regard to inclusion or exclusion of EP members based on group or agency affiliation.
- **STAC/CAC Comment 4.** In the EP member selection process, the Chair shall collect input from the requesting source sector WG, the Watershed Technical WG (WTWG), the CBP Modeling Team, EPA Region III, the CBP Advisory Committees, and other stakeholders.
- **LGAC Comment:** In addition to scientific experts, it is the opinion of the Executive Committee that each Panel should include a local practitioner, who has practical, real-world implementation expertise.
- **Response:** The current language and proposed revisions to the BMP Protocol continue to place priority on scientific and technical expertise for panel membership, while striving to maintain a balanced panel composition (including the consideration of local practitioners). In addition to the source sector workgroup coordinating with the GITs and Advisory Committees on convening a panel, all proposed panel charges and proposed membership lists will undergo CBP partnership review.

Page 4: "Panel membership must include individuals with the specific expertise and experience in pertinent environmental and water quality-related issues needed to address the scientific charge put to the Panel. Priority for Panel membership will be focused on recognized regional or national experts in their field. Members that understand the programmatic implementation of the BMP, how it might be simulated in the CBP modeling tools, and the geography of the Bay watershed are also desirable to help ensure balanced representation and expertise on the Expert Panel. This also includes the consideration of including a local practitioner on a Panel. Local practitioner is defined in this context as a person with practical, real-world implementation expertise who will provide this technical expertise to the Panel. Examples include but are not limited to a public works director, soil and water conservation specialist, or municipal engineer. In the Panel member selection process, the hosting source sector Workgroup Chair(s) and Coordinator shall collect input from their own Workgroup, the GITs, and WTWG, the CBP Modeling Team, and the Advisory Committees."

Page 4: "The source sector Workgroup, in consultation with representatives from the WTWG, WQGIT Chair, and any other GIT Chair, and the Advisory Committees will coordinate the convening of an Expert Panel, including the development of a draft scope and charge of the Panel, along with a proposed list of Panelists."

- **STAC/CAC Comment 3.** The EP Chair shall be one of the EP members and will lead the selection of other members.

- **Response:** In certain cases, the panel chair is selected as part of the overall panel member solicitation process. If a panel chair is identified prior to the selection of other proposed panelists, then that panel chair will be actively involved in the process.

Page 4: “If an Expert Panel Chair is identified prior to the selection of proposed Panelists, then the Panel Chair will be actively involved in the selection process.”

- **STAC/CAC Comment 5.** Potential EP members must disclose potential conflicts of interest (COI) in writing. A potential COI is deemed to exist when:
 - a. A potential EP member could benefit financially from any EP recommendations.
 - b. The employer of an EP member could benefit financially from any EP recommendations.
 - c. The employer of an EP member could potentially benefit from EP recommendations as it relates to achieving TMDL pollutant target loads.
- **STAC/CAC Comment 6.** In addition to the COI disclosure, potential members must provide a 2- to 4-page Curriculum Vitae (CV) that illustrates the nature of their expertise as it relates to questions at hand.
- **STAC/CAC Comment 7.** The list of potential members and their CVs and COI disclosure statements should be made available to the relevant WG and the CBP Advisory Committees. Any EP membership-related concerns raised by the relevant WG and the CBP Advisory Committees should be brought to the attention of the WQGIT and STAC. We suggest that final decision regarding EP membership and COI concerns should rest with a standing 3-person STAC subcommittee.
- **Response:** Language has been added to the Protocol to expand the definition of what constitutes a conflict of interest and to require written disclosures of conflicts of interest. Further discussion is needed to understand the intent of Comment 5.c. as some might interpret the meaning to specifically exclude jurisdictional representation on panels.

The source sector workgroups, the GITs, and the Advisory Committees have the opportunity to be very involved in the panel convening process, which includes the review of all proposed panel charges and membership lists. However, final approval of those charges and membership lists lies with the source sector workgroup. If the source sector workgroup cannot reach consensus, then the approval process will be elevated to the WQGIT.

Pages 4-5: “Potential Panel members must provide to the hosting source sector Workgroup a Curriculum Vitae (CV) or any other justification that illustrates the nature of their expertise as it relates to the Panel’s charge. In addition, potential Panel members must disclose actual or potential conflicts of interest in writing to the hosting source sector Workgroup. An actual or potential conflict of interest is deemed to exist when:

- A potential Panel member could benefit financially from the Panel recommendations
- The employer of a potential Panel member could benefit financially from Panel recommendations

“As mentioned previously in this Protocol, all proposed panelists, including the conflict of interest disclosures and CVs, will be reviewed by the partnership before a Panel membership is finalized to help ensure that no actual or potential conflicts of interest exist. These conditions will minimize the risk that Expert Panels are biased toward particular interests or regions.”

“The proposed list of Panelists, as well as the draft scope and charge of the Panel, will be sent to the source sector Workgroups, the WTWG, the GITs, and the Advisory Committees for their review and comment. Final approval of the Panel scope and charge, as well as Panel membership, will be reserved for the hosting source

sector Workgroup or GIT and will follow the Chesapeake Bay Program partnership and WQGIT Governance Protocols. This includes in cases where consensus cannot be reached, the decision is elevated to the next higher decision-making group.”

- **STAC/CAC concerns about “grandfathering” in panels.**

➤ **Response:** Current language in the Protocol allows for the panels already underway to be exempt from changes to process steps that have already occurred within a panel. However, new language has been added that requires all panelists, regardless of what panel stage they are in, to sign conflict of interest disclosures.

Pages 1-2: “The Protocol will be reviewed by the CBP on a biennial basis to incorporate new information and/or changes to process based on input received from the partnership. Any changes to the Protocol will take effect immediately upon adoption by the WQGIT. Panels already underway will be exempt from changes to those process steps that have already occurred within a Panel. For example, a Panel is not required to hold a stakeholder forum, which is typically held once a Panel convenes, if Panel members are already at the stage of finalizing the Panel report. However, all Panel members will be required to sign conflict of interest disclosure forms if they had not done so already at the beginning stages of the Panel convening process.”

Suggested Access; Data Gathering and Review; and Report Generation, Review, and Approval Process

- **STAC/CAC Steps 1 – 2:** Public forums, closed panel meetings, reviews of literature, panel guests

Response: Panels are already required to hold open forum meetings soon after a panel is convened. This allows stakeholders and other interested parties to submit information to the panel and direct any questions about a panel’s charge to the membership. There are also other opportunities for interested parties to become involved in the panel process, either through guests of the panel or participating in the source sector workgroup meetings that receive regular updates on a panel’s progress. In addition, these panels currently follow the NAS practice standards for studies of the National Research Council. We believe that panel deliberations should be reserved for panelists only in order to allow for an open exchange of information. Please see pages 5-6 of the Protocol that provides further information about these processes.

Finally, the Protocol includes very specific criteria when reviewing and evaluating scientific literature. Please refer to the Data Source Characterization Table on page 8 of the Protocol.

- **STAC/CAC Steps 3 – 7:** Drafting a panel report, partnership review and comment period, finalizing the panel report

➤ **Response:** The current Protocol describes specific steps in order for a panel report to be approved by the CBP partnership. Although the panel members finalize (e.g. reaches consensus on) their recommendations in the panel report, the report is considered draft since it has yet to go through the CBP partnership approval process. The panel report is considered final once approved by the WQGIT. Also included in the Protocol are procedures for responding to comments, resolving dissenting option, and at what stage the panel members are released from duty (it is once the panel report has been approved by the WQGIT).

It should be noted that any modifications to the panel’s recommendations will be captured in a separate report in order to maintain those original recommendations that were developed by the panel.