



**Chesapeake Bay Program
SCIENTIFIC AND TECHNICAL ADVISORY COMMITTEE
CITIZENS ADVISORY COMMITTEE**

645 Contees Wharf Road
P.O. Box 28
Edgewater, MD 21037
Phone: (410) 798-1283
<http://www.chesapeake.org/stac/>

612 Hull Street
Suite 101 C
Richmond, VA 23224
Phone: (804) 775-0953
<http://chesapeakecac.org/>

April 30, 2015

RE: STAC and CAC Comments on revision of the Chesapeake Bay Program (CBP) BMP Protocol

Chesapeake Bay Program/Lucinda Powers
U.S. Environmental Protection Agency
410 Severn Avenue, Suite 112
Annapolis, MD 21403

Dear Lucinda,

The Scientific and Technical Advisory Committee (STAC) and the Citizens Advisory Committee (CAC) are aware that the Chesapeake Bay Program Partnership (CBP) BMP protocol document "*Protocol for the Development, Review, and Approval of Loading and Effectiveness Estimates for Nutrient and Sediment Controls in the Chesapeake Bay Watershed Model*" (hereafter referred to as the "CBP BMP Protocol") is undergoing revision, that a comment period on that revision is open until April 30, 2015, and that the Water Quality Goal Implementation Team (WQGIT) is also considering possible changes to the review process based on input from the partnership. We are also aware of some of the comments and proposals made at the April 13 WQGIT meeting and in a letter from the Local Government Advisory Committee (LGAC), dated April 23. We (the Executive Boards [EBs] of STAC and CAC) have been in telephone and email contact in regard to all of the above issues and would now like to offer these joint STAC/CAC comments and suggestions on the latest version of the CBP BMP Protocol (as last accessed from http://www.chesapeakebay.net/publications/title/bmp_review_protocol on April 24, 2015). Overall, STAC and CAC continue to believe in the core validity of a protocol and Expert Panel (EP) process which is transparent, based on the best science, and free from potential or perceived conflicts of interest.

In the context of current discussions, however, we now see a need to further clarify some aspects of the protocol outlined in the STAC memo to you dated July 14, 2014, and more specifically to suggest some selected revisions regarding how we advise for EP membership and EP membership conflicts of interest (COI) to be addressed in the revised CBP BMP Protocol. We emphasize that this letter represents a consensus view of both STAC and CAC EB's, but that, because of issues of time, all members of both groups have not yet seen its full content. In this and other regards, our first suggestion (request) is that you prepare a revised draft of the protocol for review (in response to comments below) and then offer an

additional 30 day period of review. Meanwhile, however, and in the paragraphs below, we offer some of our consensus opinions regarding three key areas of concern.

EP Membership and Conflicts of Interest:

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).
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.
3. The EP Chair shall be one of the EP members and will lead the selection of other members.
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.
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.
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.
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.

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

Each panel should be free to undertake its work in a flexible way that maximizes efficiency yet also maintains transparency and ample opportunity for public input. In this regard, it is important to have well publicized meetings to obtain public and stakeholder input at both the beginning and end of the process. A proposed process is offered below.

Step 1. Each BMP EP shall gather information through various means including:

- a) A well-publicized informational/data gathering meeting that includes invited submissions and is open to the public and stakeholders. This meeting shall be held soon after the EP is convened but not prior to 3 weeks after its public announcement through the CBP website and email notifications to the EBs of CBP Advisory Committees and interested WGs. The purpose of this meeting shall be to communicate the objectives of the committee and accept

- written and verbal comments relevant to the EP charge (i.e., comments, information, and data related to the BMP or BMPs the EP is tasked to review).
- b) Invitation for submission of information by outside parties. Parties external to the EP may submit relevant BMP performance data for the EP to consider during their deliberations. Any written materials provided to the committee for the panel's technical review purposes are to be maintained by the CBP in an archived location that can be made available for examination upon request. Some data may need to be treated as "proprietary", in which case requests will be granted only to a limited number of individuals who provide detailed explanations of their interest and are willing to sign confidentiality agreements in regard to further distribution or attribution.
 - c) Reviews of the literature. As outlined in the CBP BMP Protocol, the EP shall evaluate and consider any literature or data they deem appropriate. This may include peer-reviewed scientific publications, grey literature (data-based publications that may not have subjected to external peer review), and other data/information sources that the EP deems appropriate (e.g., unpublished data that the EP considers applicable and credible). The nature of the data should be clearly described in any resulting reports and highest priority should be given to high-quality peer-reviewed information. Citations to such literature shall be provided in the EP draft and final reports.
 - d) Invitations to outside experts for presentations or discussions.
- Step 2. The degree to which EPs are closed or open to the public should function in accordance with NAS standard practices for studies of the National Research Council (see http://www.nationalacademies.org/xpedio/groups/nasite/documents/webpage/na_069620.pdf) and of course also in compliance with applicable laws. The CBP shall provide brief summaries of EP meetings to interested parties, including (but not necessarily limited to), EB members of STAC, LGAC, and CAC. In addition, draft and final reports should include full minutes for each major EP meeting, including location, dates, and names of those in attendance. All analyses and drafts of the EP report, however, shall remain confidential (shared only among the EP membership) until the report is released for external review.
- Step 3. The EP generates its draft report.
- Step 4. A draft EP report is released for a specific, time-limited comment period (30-days). This release will be well publicized through the CBP website and via email notifications to the CBP Advisory Committees, WGs, and GITs. All comments received by the EP Coordinator during the review period will be archived and made accessible by the CBP for the purposes of Steps 5 and 6 below.
- Step 5. Over a following 30-day period, the EP Coordinator will review the comments in close collaboration with the EP membership, the requesting WG, and the associated GIT. If warranted, the report will be modified. Whether or not changes are made, the WG and GIT will draft a "response to reviews" document for the EP committee and standing STAC subcommittee to review. This response document, together with STAC and EP follow-up comments (if any) will be included as an appendix to the final EP report.

Step 6. The EP delivers its final report to the CBP, which will immediately make it available through the CBP website and email notifications to the CBP Advisory Committees and interested WGs. At this point, the EP has completed its charge.

Step 7. The WQGIT votes to accept or reject the recommendations of the EP report.

If there are aspects of this recommendation that need further clarification, please direct your questions to Natalie Gardner, the Chesapeake Bay Program's Scientific and Technical Advisory Committee Coordinator, who will distribute them to the STAC and CAC EBs, to Dr. Brian Benham (PI of the VA Tech Cooperative Agreement) and to other interested STAC and CAC members, many of whom have contributed to the formulation of this letter.

On behalf of STAC and CAC, we thank you again for considering these recommended steps, and we look forward to working with you closely on this in the future.

Sincerely,



Kirk Havens
Chair, Scientific and Technical Advisory
Committee



Charles Stek
Chair, Citizens Advisory
Committee