

Caveats and State/Agency Specific Language

Overview

This appendix outlines the state and agency-specific guidelines and caveats to the new Stream Restoration guidance that practitioners and Bay managers should know. This appendix includes:

- Bay-wide caveat for BMP Verification guidance
- Pennsylvania DEP Position on the Use of the BANCS Method for Protocol 1
- Official EPA position on Protocol 1
- Implementation of Protocol 3 in Maryland
- EPA Position on Protocol 5 (OGS)

BMP Verification

While the group recommends methods to effectively verify stream restoration practices, state and federal agencies have the discretion to modify them to meet their unique regional, environmental or regulatory conditions.

Pennsylvania DEP Position on The Use of the BANCS Method

These memo recommendations are advisory and the appropriate state and federal permitting agencies reserve the authority to decide how to handle stream restoration projects using Protocol 1.

The Pennsylvania Department of Environmental Protection (PADEP) continues to have substantial concerns regarding the development and application of BANCS methods for stream restoration crediting purposes in all hydrogeomorphic regions. One of their primary concerns is the use of BANCS methods within the Chesapeake Bay Watershed where BANCS relationships have not been appropriately validated and data is limited. They are also concerned that BANCS relationships developed using short-term monitoring-intervals may not produce valid results for reduction crediting.

PADEP is committed to providing additional technical documentation and support on the development and application of BANCS for stream restoration crediting purposes upon request by the USWG or other jurisdictions within the Chesapeake Bay Watershed.

Documentation of EPA Position on the Prevented Sediment Memo

WQGIT leadership team,

In preparation for the decision on the December 9, 2019 Water Quality Goal Implementation Team call regarding the Prevented Sediment Protocol for Stream Restoration Built for Pollutant Removal Credit, I wanted to forward EPA's tentative position as background. Per the consensus continuum used by the Chesapeake Bay Program partnership, EPA is "agreeing with reservations" regarding the Water Quality Goal Implementation Team's approval of this document.

While we appreciate the response to the comments that EPA had previously provided, EPA remains concerned that the differences between the guidance on "non-creditable" and "creditable with limits" practices leaves room for individual interpretation. Also, the report does not fully explain the functional

and ecological pros and cons of these practices and how stream habitat and functions will be maintained within the project reach.

However, EPA recognizes that, ultimately, the state and federal agencies which permit activities in regulated waters will make determinations on whether the practices outlined in this report may be authorized. As part of that process, practicable alternatives should be considered and stormwater should be addressed at its source wherever possible. EPA maintains the ability to review and comment on permits independent of decisions made by these workgroups.

Implementation of Protocol 3 in Maryland

The Maryland Department of the Environment (Department) thanks the Chesapeake Bay Program (CBP) for the opportunity to review and provide comment on the Consensus Recommendations to Improve Protocols 2 and 3 for Defining Stream Restoration Pollutant Removal Credits. The Department understands that numerous revisions and additional guidance have been incorporated and thanks CBP for the significant effort made in working with the Department and other stakeholders to address comments and include many of the suggested changes. The Department supports the Consensus Recommendations with reservation. At this time, the Department has remaining questions regarding assumptions associated with the treatable floodplain volume used in Protocol 3.

The research available does not provide sufficient scientific basis to support that the total volume of flow within the defined floodplain trapping zone is subject to pollutant reducing processes. Until the Department conducts the necessary research to support the pollutant reduction amounts as detailed in the report, it retains the authority to set or limit the amount of pollutant reductions used for total maximum daily loads and municipal separate storm sewer system (MS4) permitting requirements. The Department hopes that the result of this effort will add to the important work already completed. Ultimately, these efforts will allow the Department to offer additional guidance to stakeholders in Maryland that intend to implement the new stream restoration protocols.

EPA Position on Final Outfall and Gully Stabilization Memo

Per the consensus continuum used by the Chesapeake Bay Program partnership, EPA is “agreeing with reservations” regarding the Water Quality Goal Implementation Team’s approval of the “Final Memo Urban Stormwater Workgroup Approved, Revised September 30, 2019 Recommendations for Crediting Outfall and Gully Stabilization Projects in the Chesapeake Bay Watershed”. The EPA representatives took this position as participants on the workgroup to develop this report (initially dissenting to the memo but agreeing with reservations after certain changes were made to the document) and on the Urban Stormwater Workgroup. To document its “reservations”, EPA:

- a. Recognizes that, ultimately, the state and federal agencies which permit activities in regulated waters will make determinations on whether the practices (including armoring) outlined in this report (and others) may be authorized. As part of that process, practicable alternatives should be considered and stormwater should be addressed at its source wherever possible. EPA maintains the ability to review and comment on permits independent of decisions made by these workgroups.
- b. Recognizes that the definitions of armoring and the process for nutrient and sediment monitoring in this report have not yet been approved by the CBP partnership. EPA may not agree with future decisions on these issues and how they are used in this report.

c. Acknowledges that there are numerous potential unintended consequences with this practice, as outlined on pages 25-26 of the document. These unintended consequences should be considered prior to project funding, permitting, design and implementation. In addition, since these unintended consequences include impacts to habitat and stream health, consultation with the Habitat Goal Implementation Team and its Stream Health Workgroup are recommended.

d. Notes that development of this report did not use the expert panel process, as determined by the Urban Stormwater Workgroup, and recommends that the CBP partnership consider, at a minimum, consultation with the expert panel (or other scientific experts, such as STAC or STAR) when future modifications to expert panel reports are made.

i. Urban Stormwater Workgroup (USWG) Response: The USWG utilized their “Process for Handling BMP Decision Requests”, which was approved by the workgroup in 2016. This process outlines how to handle requests for BMPs that can be interpreted or classified within the context of another panel. This is consistent with the Water Quality Goal Implementation Team’s BMP Expert Panel Protocols, which allows the workgroup to determine that a requested BMP is sufficiently similar to a previously approved practice.