

King County

King County Comments on the Preliminary Draft 2019-2024 Phase I Municipal Stormwater Permit language.

Thank you for the opportunity to provide comments on Ecology's preliminary draft language for the requirements in the next iteration of the Phase I Municipal Stormwater Permit. The evolution of these requirements show that the conversations and feedback fostered through the ad hoc permit discussions on specific topics within the Municipal Stormwater Permits have been really worthwhile. The changes made to the permit reissuance process have been extremely important for ensuring that we are advancing as a region in managing stormwater effectively through regulations. This Permit is a critical tool in the region's efforts to reverse the environmental degradation caused by stormwater runoff. King County is a strong regional advocate of comprehensive stormwater management and believes that this permit is an essential element for improving the region's environmental health.

King County's comments on the preliminary draft language are organized into categories based on permit requirements.

S5 C6: Structural Retrofits

Overall, King County supports the development of a minimum performance standard for S5.C.6 Structural Stormwater Controls. King County feels that the approach currently proposed by Ecology is not fatally flawed and we agree with the general concept. However, there are significant refinements needed to this approach especially for the incentive point factors and defined level of effort. King County feels that this initial permit cycle should be used to develop a refined approach and view this round of structural retrofit requirements as a pilot effort that informs the future development of this requirement.

Level of effort threshold -

The currently proposed level of effort threshold runs the risk of retrofit programs focused on points and driving the types of projects permittees prioritize or are able to do in order to comply with the permit rather than maximize environmental benefit. King County recommends that Ecology lower the mandatory level of effort in the 2019-2024 Phase I and II Permits until the minimum performance standard for retrofitting has been proofed.

Instead, Permittees and Ecology should commence a facilitated stakeholder process, with consultant facilitation and analytical support, to refine this approaches' methodology and to determine an appropriate defined level of effort toward setting a requirement for the following Permit term. This could follow the highly successful model Ecology used to formulate LID requirements during 2009-2010 for the 2007 Municipal NPDES Stormwater permit in response to the Pollution Control Hearings Board (PCHB) ruling. Stormwater Action Monitoring (SAM) Effectiveness Monitoring funds collected under the MS4 Permits would appropriate source of funding for the necessary consultant support. Permittees (Phase I and Phase II) and other stakeholders would be invited to participate to provide Ecology the benefit of the varied experience and expertise that has developed regionally and nationally.

If Ecology is unable to omit a mandatory level of effort from the 2019 Permits, then Ecology should require a mandatory level of effort that shows progress but is not so high that it drives permittee priorities and investments before the Incentive Point approach can be refined. This would avoid Permittees using limited funding to chase "Incentive Points" instead of pursuing the highest priority projects to improve water quality. King County along with other stakeholders would like to work with Ecology to propose a level of effort threshold based on the current list of projects in the

Appendix 11 lists for the Phase I municipalities.

Retrofit Incentive Points –

The retrofit incentive point calculations need more detail and additional incentives are needed to more accurately reflect the environmental benefit of projects.

The Incentive Point Factors should be refined by gathering and analyzing information on the performance of the various project types in various settings. This appears to have been Ecology's original intent during 2012 Permit reissuance; the Fact Sheet states that Ecology would "refine this standardized reporting approach as necessary after evaluating how well it works during this permit cycle." (Fact Sheet for the Phase I Municipal Stormwater Permit (November 4, 2011), p. 93)

Unfortunately, this analysis has not occurred.

King County believes that this again points to the need for further analysis for this requirement and supports the recommendation that Ecology develop this requirement through a facilitated stakeholder process. This permit requirement will drive millions of dollars of structural investment by the region's jurisdictions, and at a minimum, it should be awarded the same level of analysis and review that the LID code review requirement was allowed under the 2007 permit.

S5.C.10: Education and Outreach

King County supports the feedback from STORM members on the Phase I (and II) proposed language. It feels that the draft language is reasonable and acceptable. These reviews and feedback from STORM have been shared and discussed with Ecology's permit writers in other venues and supplied directly to the permit writers. King County comments that are specific to the draft language are detailed below.

- S5.C10 Introductory paragraph: This paragraph should clarify that if a jurisdiction decides to work regionally, the chosen program should be implemented at a local level. In other words, connecting a behavior locally to a regional program strengthens all efforts. Allowing for local flexibility or customization may improve participation in regional programs.
- S5.C.10.b: King County supports allowing the program research to identify the target behaviors and key audiences which will strengthen overall project design, implementation and effectiveness.
- S5.C.10.b.i: King County agrees that encouraging participation in regional general awareness allows jurisdictions to participate in wider programs. Awareness has been linked to behavior change, and this approach will support effective awareness programs.
- S5.C.10.b.iI: The County is in support of a well-designed approach to behavior change, with specific audiences and BMP messaging that leads to behavior change relevant to the audience and the issue. Jurisdictions see a need to improve outreach to nontraditional, underserved or multicultural audiences and this flexibility may allow for those outreach efforts. Comments from Phase II permittees show that work needs to be ongoing to familiarize them with the effectiveness data on social marketing and behavior change.
- S5.C.10.c: The County agrees with options to choose between sections i-iii that allows maximum flexibility in audience and BMPs to evaluate. As a region, it would be helpful to have long term evaluation of key water quality behaviors or BMP programs, which we may be able to track with this flexibility of choices. The county advocates for the use of social marketing as the framework; this gives permittees a shared language, strategy and techniques for addressing complex programs like behavior change and communications.
- S5.C.10.d: Timelines should consider the need to continue behavior change programs over time to build success, and the investments of time, effort and resources invested in early, building and mature programs.
- S5.C.10.e: The timeframe has been reasonable for these early draft changes.
- S5.C.10.f: sharing and enhancing stewardship and awareness of opportunities to connect them with BMPs is helpful.

This permit does not specify projects for non-English speaking, underserved or multicultural audiences. Allowing local water quality issues to drive an audience focus may help agencies improve their outreach and experience with these audiences.

S5.C.8: IC/IDDE & Spills

- The information and formatting specified in WQWebIDDE:

King County agrees and strongly supports the use the annual report to collect standardized data that can be used for data-driven decisions. But there needs to be an understanding of the level of effort that data reports such as this requires of the jurisdiction and the value of the data collected in contributing to regional needs and program decisions. Making the requirement for information provided that is too broad and or undefined is counterproductive. Our recommendations are to eliminate some of the 16 plus data requirements that are currently required in this data submission requirement such as items 6, 14, and 15.

- Applicable data shall be reported for all potential incidents, regardless of whether G3 notification was required whether an illicit discharge was confirmed, or whether follow-up action was required by the Permittee:

King County regards the reporting of all potential incidents regardless of G3 is problematic and recommend that this requirement be kept to G3 incidents as currently required. The concern is twofold the first being the definition of a potential incident and the second being the purpose of collecting spill information on spills that do not reach the MS4 and are not qualified as a G3 and therefore not covered under the permit. Some of the questions are concerns raised by these two changes are as follows:

- o What is a potential incident? Can 55-gallon drum without secondary containment or an open can of paint be considered a potential incident?
- o King County's complaint program gets a number of call outs that result in not finding an issue, do these qualify as a potential incident and are all of these required to complete the data fields required in the WQWebIDDE?
- o A spill from wastewater is already reported through the wastewater permit and reporting again through this process is a duplication of effort.
- o Illicit discharges as defined by the permit "means any discharge to a MS4 that is not composed entirely of stormwater or of non-stormwater discharges allowed as specified in this permit (S.5.C.8, S6.D>3 and S6.E.3)."
- o The list of potential incidents that are not G3s can be substantial and incomplete. Not all incidents are reported to the jurisdiction, for example spills that occur on private property that do not leave the property are not reported to the jurisdiction
- o An oil leak in a parking lot that does not leave the lot can be a spill that is not a G3.
- o Does this apply to areas that are not serviced by the MS4 and therefore not covered by the permit? This requirement would increase the reporting requirements significantly without any noticeable improvements in the program or provide actionable data for the Municipal permit's IC/IDDE program. The amount of non-incident events and non-G3 events will overwhelm the spill database without any additional value.

S5C.2: Mapping

It is King County's general position is that unmapped stormwater features should be mapped as a good business practice that will allow the jurisdiction to better manage their assets, to support connectivity to other jurisdictions, and to support other permit-required programs such as pollutant source tracing and spill response. King County has also advocated for the long-term development of regional standards for the mapping framework with the intent of developing common database structures and common terminology that are clearly defined. The goal of this effort would be to

support the ability to connect stormwater systems to neighboring jurisdictions and to create the ability to easily communicate mapping information with other entities.

- S5.C.2.a.viii: "Tributary conveyances to all known outfalls and discharge points with a 24-inch nominal diameter or larger, or an equivalent cross-sectional area for non-pipe systems. For Counties, this requirement applies to urban/higher density rural sub-basins..."

Limiting this to urban/higher density rural sub-basins doesn't align with mapping proposal Phase Is.

- Begin mapping the tributary conveyances to outfalls (with a size of 24" or greater) in rural areas of the county not previously mapped in the previous permit cycle.

King County advocates that the timelines for completing the mapping be concurrent with the permit cycle and recommend that the mapping deadline be the end of the permit cycle. This will allow a smoothing of staff commitment for the jurisdictions and provide additional time for the mapping effort.

- Definition of outfall.

In section VI. MS4 mapping scenarios of the mapping requirements, Figures 4, 7, and 8 have representation of outfalls are indicating that discharges from the jurisdiction's MS4 that occur near to a surface water or discharge into a private stormwater conveyance or treatment systems should now be called outfalls instead of connections. This change to the definition of outfall does not align with the definition of an outfall as found in 40 CFR 122.2 nor as defined through a settlement agreement during the 2013 Municipal NPDES permit appeal process nor does it align with the definition of connection as found in this guidance manual. King County requests that the outfalls defined in Figures 4, 7, and 8 be returned to the original example term of connections.

o Connection refers to any discrete point where stormwater enters or leaves the MS4 - such as from ditches or pipes. This term does not include sheet flow, or roof drains. This includes discharges to privately owned systems and to systems owned or operated by other jurisdictions. King County does not map private or other jurisdictional systems that it discharges into and neither of those are part of the jurisdictions MS4 and the county has no surety of the eventual discharge point of those systems.

o Outfall means a point source as defined by 40 CFR 122.2 at the point where a discharge leaves the Permittee's MS4 and enters a surface receiving waterbody or surface receiving waters. Outfall does not include pipes, tunnels, or other conveyances which connect segments of the same stream or other surface waters and are used to convey primarily surface waters (i.e., culverts). The outfalls as described in the mapping scenarios cited above do not meet this definition.

o Once a discharge leaves the jurisdictions MS4, and therefore its jurisdictional control, it often not possible to know its eventual discharge point - to ground, to groundwater, to another jurisdiction or another private system.

- Ecology is proposing the collection of additional data on outfalls.

Based on conversations with Ecology staff and the language in the draft proposals, it is Ecology's intent that this additional attribute data be collected during the normal course of other MS4 work and not to be a specific requirement to have a program to specifically collect this data. This step-wise approach is not reflected in the draft permit language and the idea of collecting this additional attribute data occur during the normal course of events be added to the permit language and the deadline should be removed.

- Ecology will commit to working with permittees to voluntarily associate outfall data with NHD reach and measure and load into the Water Quality Atlas during the 2019-2024 permit cycle.

King County mapping staff has already been working with Ecology GIS staff on the use of the NHD database to use as a basis of our data structure of King County's stream layer and plan to continue this work. We would like to volunteer to work with Ecology on the use of the NHD database for the County's outfall data.

- Retain reference to an example description of standards and enhance the example with new guidance and a sample geodatabase (This will be provided with the formal draft permit in 2018).

King County would like an opportunity to provide input to Ecology's efforts in developing the new guidance and sample database referenced above prior to it being provided in the formal draft permit process.

S5.C.5: Manual Equivalency

- This will not require an equivalency process and the permits will include an appendix that describes the substantive corrections and updates that are reflected in the 2019 SWMMWW. The permit will instead require adopting or otherwise implementing an amendment that lists the substantive corrections and updates from the 2019 SWMMWW by December 31 of 2020.
 - o King County appreciates Ecology's flexibility in providing approaches to addressing the changes that will be included in the 2019 SWMMWW. The only concern is the date of implementation. Depending on the substantiveness of the corrections and updates contained in the appendix referred to above, King County may be required to go through a time consuming process of code adoption and rule making. The county is comfortable with the 18 months but would prefer the 18-month period start when the 2019 SWMMWW is made available for review during the permit cycle.
- Vesting: King County agrees that the permit will need include clarifying language to address when projects which haven't started construction by a date certain would need to be reviewed under updated or amended manual standards. The proposed language should follow the framework provided in the current permit.

S8: Monitoring

- Ecology has proposed narrowing the focus for reporting on stormwater monitoring in S.8.A.:
 - o King County agrees with this approach.
- The current language proposes that the budget increase with population growth:
 - o King County recommends that the total amount of funds collected over the five year period be equal to the amount collected during this 5-yr permit cycle.
 - o King County agrees with spreading the costs over all 5 years of the permit cycle, as opposed to 4 years as in the current permit.
 - o King County is concerned that the costs for Seattle will increase too much, and that they will opt to conduct individual monitoring and not contribute to the pooled resources. We recommend Ecology find a way to limit Seattle's contribution to limit this risk.
 - o King County recommends that an opt-out option remain for status and trends that involves receiving water monitoring. This was excluded from the preliminary draft language. For this option, I recommend that any jurisdiction that opts for individual monitoring also be required to submit a data analysis report that interprets their results. This type of analysis report is not required in the current permit.
- Ecology has proposed a requirement for jurisdictions to respond to information requests as part of effectiveness studies.
 - o King County supports this; however, we recommend some limits to the size or frequency of requests. This could be expressed as the number of requests per year, or number of hours responding per year, or some other metric. King County also recommends that the language be modified to be clear so that if a jurisdiction reports that replying that they do not have the requested information counts as a response from a permit compliance perspective.

- King County recommends that Ecology fold SIDIR in Effectiveness studies S8.D
- S5.C.5: Basin Planning (Comments not due to Ecology until February 2nd , still need to brief management)

King County's preference is that this effort be focused on identifying the projects needed to restore beneficial uses to the receiving waters. The intent behind this requirement is to be a planning tool to identify and construct capital projects and guide where operational projects will provide the most benefit. King County recommends that the basin planning efforts required in the 2013 permit be completed prior to additional requirements for basin planning. Furthermore, Phase I permittees should be required to build upon the work already done and use the modeling exercise to develop a more granular planning tool to inform capital projects and operational stormwater management actions. This approach could use multiple tools and there is a desire to preserve flexibility in choice of tools. There is also a concern that many jurisdictions have already done basin planning throughout their jurisdictions, and they want to make sure they get credit for the work they've already completed.

- Basin sizes as proposed do not work in rural areas 10 sq miles too small for counties our basins are larger
- This is overly burdensome on Phase I counties because of geographic area
- Question the value of having Phase I counties do all basins, prefer to focus on basin required in previous permit.
- Catchments should be up to 800 acres

Phase II

S5C1: Legal Authority

- King County agrees with the ad hoc Topic Group position that Phase II jurisdictions should be required to implement an escalating code enforcement program. Permit currently suggests a code enforcement program.

S5C7: Source Control:

- King County supports Phase II jurisdictions having business inspection requirements in their permits.

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King County's preference is that this effort be focused on identifying the projects needed to restore beneficial uses to the receiving waters. The intent behind this requirement is to be a planning tool to identify and construct capital projects and guide where operational projects will provide the most benefit. King County recommends that the basin planning efforts required in the 2013 permit be completed prior to additional requirements for basin planning. Furthermore, Phase I permittees should be required to build upon the work already done and use the modeling exercise to develop a more granular planning tool to inform capital projects and operational stormwater management actions. This approach could use multiple tools and there is a desire to preserve flexibility in choice of tools. There is also a concern that many jurisdictions have already done basin planning throughout their jurisdictions, and they want to make sure they get credit for the work they've already completed.

- Basin sizes as proposed do not work in rural areas 10 sq miles too small for counties our basins are larger
- This is overly burdensome on Phase I counties because of geographic area
- Question the value of having Phase I counties do all basins, prefer to focus on basin required in previous permit.
- Catchments should be up to 800 acres

Phase II

S5C1: Legal Authority

- King County agrees with the ad hoc Topic Group position that Phase II jurisdictions should be required to implement an escalating code enforcement program. Permit currently suggests a code enforcement program.

S5C7: Source Control:

- King County supports Phase II jurisdictions having business inspection requirements in their permits.