

# King County

## Long Term MS4 planning to protect and recover receiving waters

Comments are categorized by theme:

Long term goal/outcome for this requirement

King County Water and Land Resources Division (WLR) agrees with the proposed purpose and intent behind this requirement of long term environmental management planning to protect and restore receiving waters. An important and critical element in this effort for our region is a mechanism for prioritization and planning stormwater management investments to prevent and reduce impacts of stormwater runoff to receiving waters. King County WLR sees the greatest lift to the region, within this permit requirement, is to facilitate the development of prioritized capital retrofit projects needed to protect and restore beneficial uses in receiving waters as the permit-required outcome of this long term Municipal NPDES Stormwater Permit (Permit) planning requirement. This approach would also align this permit requirement with the Permit's purpose which is to control stormwater runoff and prevent violations of water quality standards. This approach supports the planning efforts that many jurisdictions have already undertaken and would reduce the need for jurisdictions to restart their long-range planning efforts to align with the proposed approach.

Stormwater management actions, as required by the Permit, have an important role to play in the protection and recovery of receiving waters but the permit is not the sole vehicle or solution for the protection and restoration of beneficial uses of receiving waters. It was understood that the original goal of and intent for this requirement was to be a planning tool to identify and prioritize the construction of capital retrofit projects. This approach would inform jurisdictions where structural retrofits will provide the most benefit in its role in protecting and restoring beneficial uses. This identification and prioritization of capital projects in prioritized catchments would align with the proposed retrofitting requirement that Ecology plans to add to the Phase I Permit and also aligns with the Phase I work that was done to meet the current Phase I Permit requirement found in S5. C6.c. This approach would also aid jurisdictions in identifying and prioritizing structural retrofit needs and take advantage of capital grants available through Ecology.

To address these flow and water quality impairments in the receiving waters caused by stormwater runoff, this proposed permit requirement would direct permittees to consider non-structural, permit-required actions as well as non-permit required, non-stormwater management strategies that are complementary such as land acquisitions, conservation easements, and land use or zoning code adjustments, critical area designations, restored riparian buffers, etc. King County WLR agrees with the intent of incentivizing permittees to consider land use to make informed decisions about stormwater management actions in priority basins. As non-structural, permit-required actions do not have specific metrics of impact, the value of including these actions in this permit requirement would not add measurable impacts to the analysis as outlined in the proposed requirement. The impacts of the programs that do not have metrics are presumptive, as intended, and would be difficult to determine the value of focusing the efforts into a single catchment or basin. In addition, including non-structural programmatic actions on a list of focused stormwater actions would unintentionally detract from the landscape-wide programmatic efforts being done elsewhere in that jurisdiction and reduce the ability of jurisdictions to focus needed efforts on priority areas not identified through this analysis.

Stormwater management actions are one of the fundamental components of watershed-based planning. King County supports and advocates for actions such as stream restoration, riparian

restoration, and review of actions required by the Growth Management Act in addition to the Permit and sees them as critical actions for receiving water protection and restoration.

#### Flexibility in approach

In order to tailor stormwater management actions to effectively protect and/or restore a particular receiving water, jurisdictions should be able to choose from a variety of options to identify and advance capital retrofit planning and prioritization. A number of jurisdictions in the region have already developed and implemented stratagems to identify and prioritize structural retrofit needs within their jurisdictions. These forward-thinking jurisdictions should be credited for their efforts and using these different approaches should be supported and credited in meeting this permit requirement and not be required to redo these efforts to meet the requirements described in this proposal.

Phase I counties should be allowed the flexibility to build upon the work already done under the current Permit. For example, King County WLR sees great value in using this permit requirement to identify capital retrofit projects in prioritized catchments for Bear/Evans Creek Basin which has already been considered a priority by Ecology and identified in the 2013 Permit. If this requirement is to identify priority basins and then develop focused implementation plans for specific catchments, then King County would advocate for the option to build upon the basin study done in the Bear/Evans over this last permit cycle. King County could use this effort to develop a more granular feasibility planning tool that would inform capital retrofit planning in catchments in the Bear Creek basin.

Additionally, many permittees have already undergone some form of prioritization for structural retrofitting in their jurisdiction, and this requirement should be flexible enough to support those efforts. Both Phase I and Phase II jurisdictions have built prioritization approaches that work best to meet the needs of the jurisdiction. This proposed requirement would require using the same approach for both counties and cities, and for Phase Is and Phase IIs despite their different characteristics and needs. In addition there should be considerations for equity for the level of effort this requirement would have for permittees. The prioritization, analysis, and retrofitting needs of a fully built out city is very different from a rural county. The disparity of level of effort can be seen simply by the exercise of examining the difference in square miles. Initial analyses for King County estimates that the number of ten square mile basins is well over a hundred, far in excess of any city which could have as few as one or two 10 square mile basins. King County also has few basins that are 10 square miles, the county currently has 64 recognized drainages and the Bear/Evans basin, as an example, is in excess of 26 square miles. King County WLR would also recommend that it makes most sense, for planning purposes, that catchments target their size range to be between 400 and 800 acres for feasibility studies.

King County WLR supports the approach of Building Cities in the Rain, we want to note the risk of including external guidance documents, or its equivalent, as a permit requirement. Appeals have been made on the use of external guidance documents due to the concern that they are subject to changes without any regulatory oversight or proscribed public review process which would change the interpretation of permit requirements. This would then require the permittees to restructure their compliance programs to match the new guidance requirements. It is critical that any external guidance documents that are included have, at a minimum, a version date and that date is referenced in the permit language, in order to meet the rulings of the Pollution Control Hearings Board on the use of external guidance documents.

As such, King County WLR recommends the following:

- This proposed permit requirement be rewritten and targeted at developing prioritization and planning process whose purpose is to inform jurisdictions about targeted stormwater capital investments.

- That there be a set of options offered within the permit recognizing and awarding past efforts and allowing for a selection of approaches that account for the variance of needs between cities and counties (or urban and rural land uses).

- That this requirement be measured by the outcome of this effort which would be a prioritized list of capital projects rather than focusing on determining if a particular approach was followed. The proposal may unintentionally limit the choices of the jurisdictions to one methodology when this approach could use multiple tools to achieve protection and restoration of beneficial uses.

The permit could offer a series of options to comply with this requirement, focused on clearly defined intended outcomes, which would allow jurisdictions to tailor their approach depending on their size, needs, and state of their long-term stormwater management planning program. Ecology could allow for a number of approaches, which achieve the intended outcome, which would include but are not limited to the following examples:

- o Do more detailed analysis and implementation in a sub-basin within an Ecology approved basin plan from the 2013 basin planning requirements to gauge the efficacy of these planning efforts.

- o Take lessons learned and use a tiered approach where basins can be batched or categorized into like basins to identify the highest priority basins that would then benefit from a more detailed analysis (based on %impervious, land use, etc.)

- o Allow for credit to be given to jurisdictions who have already implemented programs that have identified and prioritized stormwater capital retrofit needs.

It is important for the region's jurisdictions to use the funding available effectively, and for stormwater management actions to have the best return on investment. This effort will be a significant investment by the permittees and King County WLR supports the work done with the Ad Hoc Committee that the development of a structural retrofit identification and prioritization process is the best use of this permit requirement. King County thanks Ecology for the opportunity to review Ecology's thinking on this area of the Permit and would appreciate and advocate for a fuller discussion of this permit requirement before the final draft permit is issued later this year.

This could provide the region an opportunity to have a discussion with Ecology to consider how to develop a structural retrofit program that supports stormwater management actions on a multi-jurisdictional, watershed scale. The retrofitting need for the region exceeds the ability of any one jurisdiction to affect change on its own. Developing incentives within the permit for jurisdictions to look for solutions that would have a multi-jurisdictional benefit at a watershed scale would be of great value to the region. Providing this incentive would encourage opportunities for approaches that could emulate the WRIA approach to prioritizing and funding capital programs across jurisdictional boundaries and prioritize needs at a watershed scale.

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