

2022 Ad Hoc Subgroup: Possible Incentives for Developing Shared Priorities Across Jurisdictional Boundaries – Final – 02/23/22

Guiding Principles and Drivers: Explore how the Permit(s) could offer incentives for permittees who establish shared stormwater priorities across jurisdictional boundaries. The intention being incenting jurisdictions to work, coordinate and collaborate across a broader geography with the intention of achieving environmental improvements and/or establishing regional stormwater management priorities in a more strategic, focused way than the status quo. And, if the permit is going to ask more of permittees, partners should be considering how regional capacity building efforts like a partnership-driven Stormwater Investment Plan could then assist all local jurisdictions meet any new commitments.

Problem Statement: On our own we can each meet NPDES requirements without improving water quality in Washington State. If it's generally understood that shared resources and knowledge can lead to better and more enduring results, how can we use existing regulatory frameworks to incentivize and normalize greater regional collaboration for enhanced environmental outcomes? What types of regulatory as well as non-regulatory incentives could be applied to encourage jurisdictions coordinating on shared priorities across watersheds?

Possible Benefits: Voluntary incentives within the NPDES permit language could help build regional social infrastructure among permittees that result in new projects and proofs of concepts that, if successful, could be replicated at a broader scale. Such incentives could also direct regional resources across the watershed(s) and prioritize work in target basins with the worst stormwater management challenges and impacts.

Criteria for Further Developing Recommendations Our group sought to elevate criteria for any recommendations we would put forward. We similarly recommend the Department of Ecology consider the following for advancing permit language in the next permit. We propose that any new permit language that promotes regional collaboration:

1. Advance environmental quality/restoration.
2. Promote greater equity/inclusion (i.e., support overburdened communities).
3. Level the playing field/promote regional consistency.
4. Support and advance smaller jurisdictions (i.e., a rising tide lifts all ships).
5. Represent a 'better way of doing business' and leverage permittee resources in terms of:
 - a. Efficiency/timing/sequencing (i.e., desired outcomes happen faster, free up resources for other activities).
 - b. Cost-effectiveness (e.g., represent economies of scale, eliminate duplication).
6. Advance and/or leverage other benefits/co-benefits beyond permit goals, such as salmon recovery or flood risk reduction.
7. Support collaboration with other parties, including non-permittees.

In addition to these specific criteria, we recommend that any concepts considered for inclusion in the next permit cycle should be true incentives aimed at regional shared priority setting and joint stormwater management efforts, not absolute requirements. These concepts will likely be new to permittees and the incentives are intended to be beneficial additions, which support additional regional

collaboration; we believe the incentives are more likely to be favorably received if permit language is structured as “allowable and encouraged” over “required.”

Recommended Concepts:

Watershed-based Permits

Members of our group expressed an interest in exploring a return to watershed-based permitting. This could include opportunities to phase this in via pilot projects in certain watersheds; EPA has examples of how this has been applied. If such pilot opportunities are an option, those who opt into such a model could develop and evaluate proofs of concept to test elements of the concept. This approach could be fully optional and allow for permittees to pilot test concepts without being out of compliance with existing permit requirements. When applied, similar to current TMDLs, the concept could move the region to normalizing establishing shared priorities across jurisdictional boundaries.

The following presents our initial analysis of the opportunities and potential concerns with restructuring individual permits to Watershed/WRIA based permits (S1.A Geographic Area of Permit Coverage):

Opportunities:

- First Phase I permits were WRIA Based, so this would not be totally unfamiliar to permittees.
- Supports key provisions of the NPDES Permit stormwater rules:
 - Flexibility that allows Permittees to first focus their resources on the highest priority problems (40 CFR 122.26(d)(2)(iv)).
 - Pollution prevention is emphasized with some provisions requiring eliminating or controlling pollutants at their source and by requiring Permittees to assess potential future impacts due to population growth and other factors (40 CFR 122.26(d)(2)(iv)(B) & (d)(1) (iii)).
 - Further expands the PCHB ruling that directed Ecology to require the “permittees to identify, prior to the next permit cycle or renewal, areas for potential basin or watershed planning that can incorporate development strategies as a water quality management tool to protect aquatic resources”.
- Does not remove any areas from permit coverage.
- Examples of watershed-based permits are available from other EPA regions.
- Similar to the organization of Appendix 2 for TMDL, which already includes overlapping language across watersheds.
- May increase coordination across the watershed with other municipalities and with already established Watershed and Salmon Recovery Plans.
- May increase innovation, flexibility and cost efficiencies to focus resources Watershed-wide on highest priority problems.
- Potential for improved integration with the Puget Sound Partnership’s Action Agenda.

Concerns from other municipalities to be addressed:

- Why would a county or city want 3 permits instead of just 1?

- How would this be applied? How would this work?
- Could this lead to more complicated annual reporting?
- Interest may depend on the scale of the watershed.

Suggestions for evaluating the use of Watershed/WRIA based permits: To explore this option prior to the next permit cycle, Ecology could convene a team, seek volunteers and test these concepts prior to implementation of the next permit cycle. These near-term actions would be outside the permit.

- Establish a technical team to:
 - Review source literature
 - Prepare report with recommendations that advocates for watershed based-permit
- Pilot study in one WRIA/watershed that allows for innovation and flexibility.

SMAP Evolution

The evolution of the SMAP requirement could provide an opportunity for permittees to “warm up” to the idea of a watershed-based permit. This could include the development of an interdisciplinary team to provide critique and feedback on planning efforts at the basin or watershed-scale and identify opportunities for coordination across jurisdictional boundaries.

For example, all jurisdictions that contribute stormwater runoff directly or indirectly to the selected high priority catchment area for a given SMAP would be on the team to help identify and prioritize within their jurisdiction the stormwater retrofit BMPS locations, land management or development strategies, or stormwater management actions (i.e., IDDE field screening, source control inspections, enhanced maintenance, public ed and outreach focus areas) that could generate a significant water quality benefit for the receiving water of focus. The watershed-scale stormwater plans developed under the 2013 Permit generated costly lists of solutions that were clearly beyond the capacity of any one jurisdiction – even large ones – to accomplish. Division of these costs and responsibilities among neighboring jurisdictions would make these aspirational action lists more achievable.

We would want this concept to consider how to support smaller jurisdictions that are wholly within a small drainage basin. This economy of scale conversation has inherent overlap with the Ad Hoc discussion on proportionality and scaling of the permit. REF: This would support the Regional Retrofit Fund, below.

Modifications to Existing Permit Language

There are multiple opportunities to make enhancement to existing permit language that could encourage or promote additional collaboration and coordination among permittees at a broader (ideally regional) scale to more effectively and efficiently fulfill the requirements of various permit sections.

- Mapping of MS4 systems (Phase I Permit Section S5.C.2/Phase II Permit Section XX) using shared GIS and asset naming protocols among neighboring jurisdictions is one example of a persistent issue that has caused challenges for coordination for years. State resources (Ecology, Washington Stormwater Center (WSC), etc.) could be committed to assist jurisdictions in

achieving this level of mapping coordination. Such coordination would also support the broader implementation of coordinated watershed-wide GIS-based stormwater prioritization tools that are currently in development (e.g., King County, City of Tacoma, etc.).

- The Coordination section of the permit (Phase I Permit Section S5.C.3/Phase II Permit Section XX) is an obvious place in the permit where language could be included to incentivize more active coordination efforts throughout all the other relevant permit implementation sections.
- Public Involvement and Participation in SWMP development, updates, and implementation (Phase I Permit Section S5.C.4/Phase II Permit Section XX), like the Public Education and Outreach, represents a challenge for permittees to accomplish meaningful and effective engagement with community members. There are likely means of collaborating among neighboring jurisdictions (similar to STORM, SAM, WSC or others) to provide resources, strategies, trainings, or shared opportunities for engagement (e.g., watershed-scale SMAP development and implementation) that could provide support and opportunities to boost public involvement in meaningful ways.
 - This could include exploring a watershed approach to identifying and engaging overburdened communities, which would have the potential to assist all jurisdictions both in serving those communities and meeting their permit requirements.
- Source Control inspections and Illicit Discharge Detection and Elimination screening (Phase I Permit Sections S5.C.9 and S5.C.9/Phase II Permit Sections XX) are already two areas where stormwater inspection teams often communicate and collaborate across jurisdictional boundaries. These sections could potentially include language that highlights these activities as specific areas that count towards coordination.

Regional Retrofit Fund Recommendation

Water quality and flow control projects are currently funded by individual jurisdictions without knowledge of, or, often, consideration of the regional need. As a result, well-resourced agencies have been able to construct more structural stormwater improvements within their boundaries - irrespective of how the benefits measures up against projects in the same watershed or drainage area. This recommendation is suggesting a better way of distributing resources to tackle the most problematic stormwater problems and achieve large-scale water quality improvement outcomes.

Related to this, the concept could present the potential to promote Public/Private Partnerships. Nonprofit or corporate partners with programs for installing green stormwater infrastructure (such as raingardens, cisterns, and bioswales) operate outside of the municipal NPDES permit structure, though their work could theoretically accrue points for compliance with Structural Stormwater Controls requirements if they were to partner with a permittee. It is worth considering if and how these NGO and other partners might participate in such a system, e.g., if creating a regional retrofit fund through the permit could making funds available to GSI-focused nonprofits that implement agreed-to retrofit projects which advance shared watershed priorities. There could be additional (extra-permit) opportunities to develop alternative funding opportunities (i.e., corporate matching funds or fundraising events) which resemble the structure of SAM and reduce competition for limited state funds, while promoting the types of creative partnerships more likely to identify projects with co-benefits, and catalyze innovation at a regional scale.

We recommend advancing this concept through the proposed Structural Stormwater Controls Policy group, and we hope this document can serve to provide some initial thoughts to guide the conversation. Some items for the SSC Policy group to consider ought to include:

- Structure
 - If participation for this regional fund were to become a permit requirement it's recommended that it sit within the Structural Stormwater Controls section of the Phase I and Phase II permit.
 - The Regional Retrofit Fund could draw on the function and organizational structure of SAM. The fund would be managed and distributed by a consortium of contributing agencies (like SAM) or an impartial third party (public or private).
 - Permit language could use concepts highlighted in S.8 Monitoring and allow for full, partial, or no participation.
 - Determination of contribution amounts would need to be discussed by the SSC policy group
 - The Regional Fund could be created in a way that allows for contributions by Private agencies and non-profit partners. Contributing entities, along with non-profit and tribal partners, could be eligible to receive regional funds.
 - Regional Fund permittees would establish funding priorities annually, or on a given permit cycle

- Function
 - Incentives for participating in this program would be necessary. Some possible ideas include, but are not limited to:
 - Permittees that contribute to the regional fund could receive a multiplier on all projects used to meet compliance with their SSC requirement
 - Permittees that contribute to the regional fund could receive a portion of the points on all projects completed with this money – whether in their jurisdiction or not.
 - Being able to meet compliance by only contributing funds
 - The regional fund would operate as a competitive awarding agency based on estimated outcomes and regional benefits (TBD by the SSC Policy group)

- Additional Items to Consider
 - Applicable projects could be focused on a singular parameter of concern and specific to existing/emerging environmental issues (e.g., 6ppd-q). Focusing efforts like this on one primary parameter or in targeted watersheds would prioritize available resources for relatively more significant problems and those projects would provide stormwater treatment benefits as part of their implementation. These actions could also provide benefits for related outcomes such as fish passage, habitat improvement, and flood reduction projects.

Finally, a structure like this could help set the stage for expansions into regional in-lieu fee programs and water quality and flow credit trading frameworks.

Barriers to Collaboration: One of the primary obstacles to improved regional water quality is related to the limitations of existing stormwater management funding mechanisms. Generally speaking, NPDES permittees are required to spend fees associated with managing stormwater within the same geographic boundaries where those fees are collected. This is not something that could be changed via NPDES permit language. That said, Ecology and other agency partners, such as the Puget Sound Partnership, have the potential to work together at the state level to develop solutions to this issue.

Potential Lessons from Other Locations: There may be lessons learned or structures to be considered in reflection of regulatory collaborative approaches in other states, such as the [Integrated Regional Water Management Plan \(IRWMP\)](#) process applied by the California Department of Water Resources. Each IRWMP is a collaborative framework for municipalities and special purpose agencies to work collaboratively and find synergies across respective Watershed Management Areas. The purpose is to bring together a wide variety of stakeholders under a defined cooperative agreement in order to achieve more comprehensive and cost-effective solutions to water resources needs in each watershed.

Governance includes a policy committee of elected officials, senior staff from each member organization to develop a joint work plan and oversee its implementation, and regular stakeholder forums to involve the public and share information across organizations within each Watershed Management Area.

These groups and committees set shared priorities on water resource issues, including water supply, surface water quality, flood management, wastewater, and natural resource protection. Goals and solutions specific to each Watershed Management Area are formulated through consensus with participating stakeholders. Then, a custom slate of projects and programs is developed to address the water resource needs of each Area.

Benefits of developing and implementing an IRWMP are:

- Enhanced collaboration across agencies and stakeholders.
- Improved and proactive responsiveness to regional needs and priorities.
- Increased efficiency and effectiveness for regional projects.
- A means of more coordinated and efficient application of public funds; state statute and guidelines require that before IRWM grant funds will be provided that governing boards of participating agencies must adopt an IRWM Plan.

If a similar model were developed for Washington State, it would incent and/or compel stormwater practitioners operate at the watershed level and broadly increase coordination and collaboration at the basin scale.

Consideration of Within Vs. Outside of the Permit:

Outside the Permit:

- Possible coordination of Green Stormwater Incentive programs for private landowners, including technical assistance incentive programs. Consideration of how to incentivize voluntary retrofits and how those could relate to Structural Stormwater Control provisions.

- Funding prioritization (e.g., via SFAP program) for watershed scale projects OR projects prioritized through a collaborative, multi-jurisdictional evaluation/ranking process.

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