

Ad Hoc Committee on Stormwater Management Action Planning in the 2024 NPDES MS4 Permit

Final Report to Ecology February 2022

Background

In October 2021, the Ad Hoc Committee on Stormwater Management Action Plan (SMAP) requirements in the NPDES municipal separate storm sewer system (MS4) permit was formed. The Committee met monthly through January 2022 and consisted of 29 participants representing six Phase I permittees, fifteen Phase II permittees, one secondary permittee, and two other interested parties, all of whom voluntarily joined to provide their input and recommendations. The co-leads for the Committee were Janet Geer, City of Bothell, and Bill Leif, Snohomish County.

The main purpose of the Committee was to prepare ideas and recommendations for the Department of Ecology (Ecology) regarding the SMAP requirements in the Phase I and II MS4 permits that will be reissued in 2024. Committee discussions were focused primarily on the SMAP requirements, but also included the broader stormwater planning requirements originally set forth in the 2013 Phase I permit, as well as the relationship between stormwater planning in general and the Structural Stormwater Controls (SSC) program. The SSC program requirements as set forth in the 2019 Phase I permit are of significant interest to this Committee because it is anticipated that Ecology will add this program to the 2024 Phase II permit.

Two guiding principles for the discussions were to find as much agreement as possible, and to focus on ideas that seem implementable by Ecology in the MS4 permits. However, another principle was to draw out and discuss ideas that don't fit easily in the existing permit and/or challenge the status quo, and members were encouraged to present topics and viewpoints that did not "fit in the mold."

The first meeting was centered on gathering thoughts and ideas. These ideas from our notes were placed into potential themes for additional discussion and an initial survey was sent to capture the level of desire to discuss at the second meeting. All themes were then discussed and a series of statements were created. These statements were placed into a second survey so participants could provide their level of agreement prior to our final meeting. All statements were discussed at the final meeting along with a draft report for review.

This report has the following sections:

1. Sets of themes and statements that emerged from committee discussions, each with introductory information followed by specific recommendations for the MS4 permit. For each recommendation, committee members were given an anonymous survey in which to express their level of agreement. This method allowed the Committee to focus on crafting clear recommendation statements, without being overly constrained by trying to achieve group agreement on any statement, or having to combine or overlap contradictory ideas into a single recommendation.
2. Additional ideas and recommendations that any individual Committee member wanted to include in the report. The committee was not surveyed to determine level of agreement.

Section 1: Themes and recommendations with level of agreement among Committee members

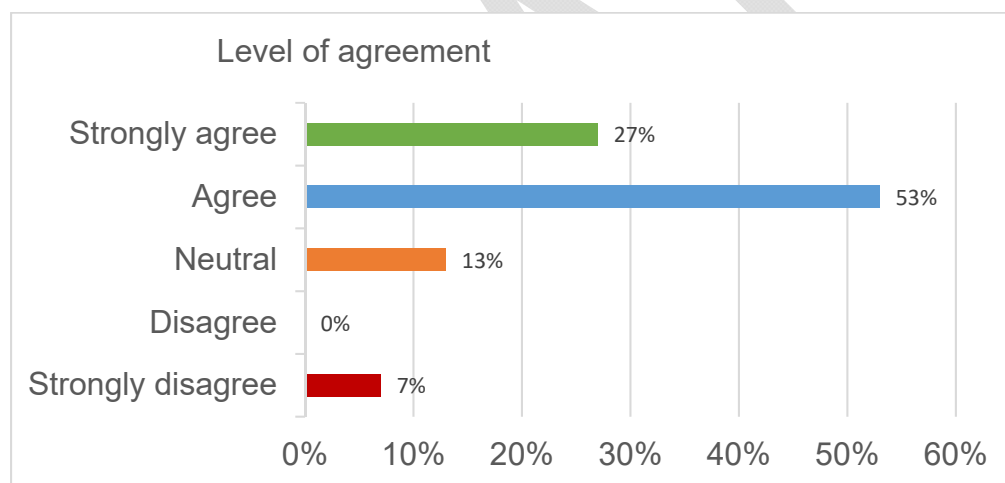
Theme 1. Options for compliance

The planning requirement should include options for compliance, from which a permittee could choose the option that best serves its city or county. The options should not be too prescriptive. Smaller jurisdictions may not be able to complete a new plan and implement a previous plan at the same time, which could force them to move on when they have viable projects that could be completed to greater water quality benefit. Alternatively, larger jurisdictions should have the flexibility to plan and implement in multiple watershed basins at the same time as needed.

Recommendation 1a

Stormwater planning options should include but not be limited to:

- performing a further analysis of a 2013 permit Stormwater Study to determine the applicability of the results to other watersheds in the jurisdiction;
- conduct further analysis for their original watershed basin area;
- apply existing planning to a new basin;
- complete a new watershed basin planning effort.

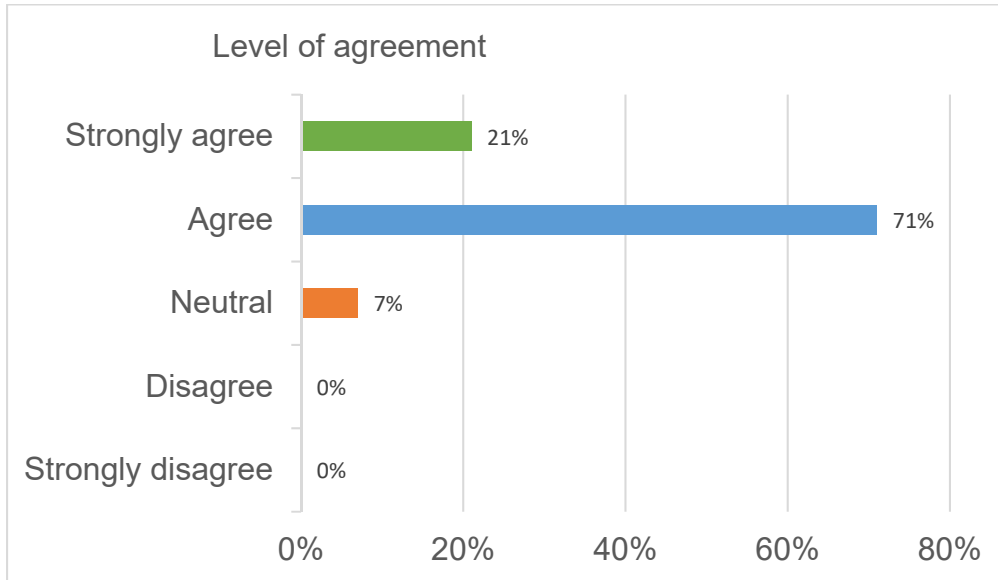


responses = 15

**The strongly disagree respondent was confused about the statement and thought this statement wouldn't allow them to implement what they had planned in the current phase II permit. They stated after the discussion that they would change their response to agree.*

Recommendation 1b

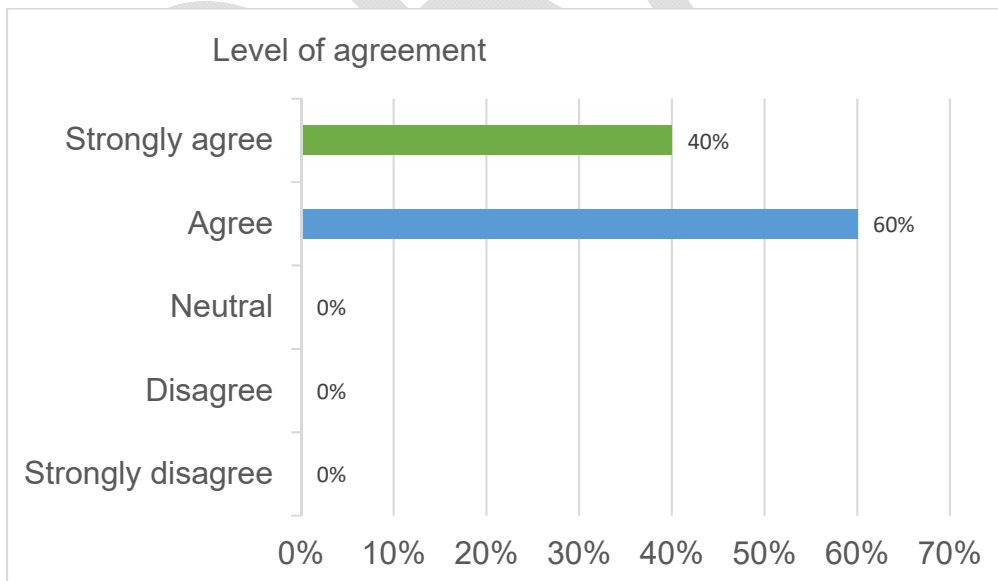
A permittee should be allowed to propose an option not included in the permit, with approval by Ecology. This would allow for flexibility within the permit where Ecology and a permittee agree a different approach may provide greater water quality protection or improvement. It will also help Ecology to inform the next permit cycle as other options are provided for consideration.



responses = 14

Recommendation 1c

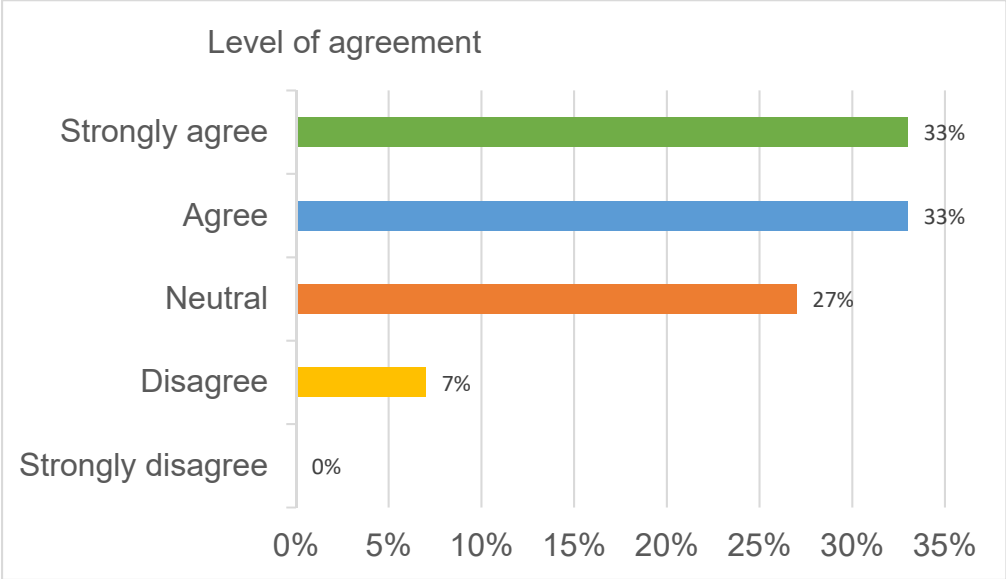
The permit should allow flexibility to offset or stagger implementation for permittees involved in multiple planning efforts with other permittees.



responses = 15

Recommendation 1d

Flexibility to plan only or implement only should be an option.



responses = 15

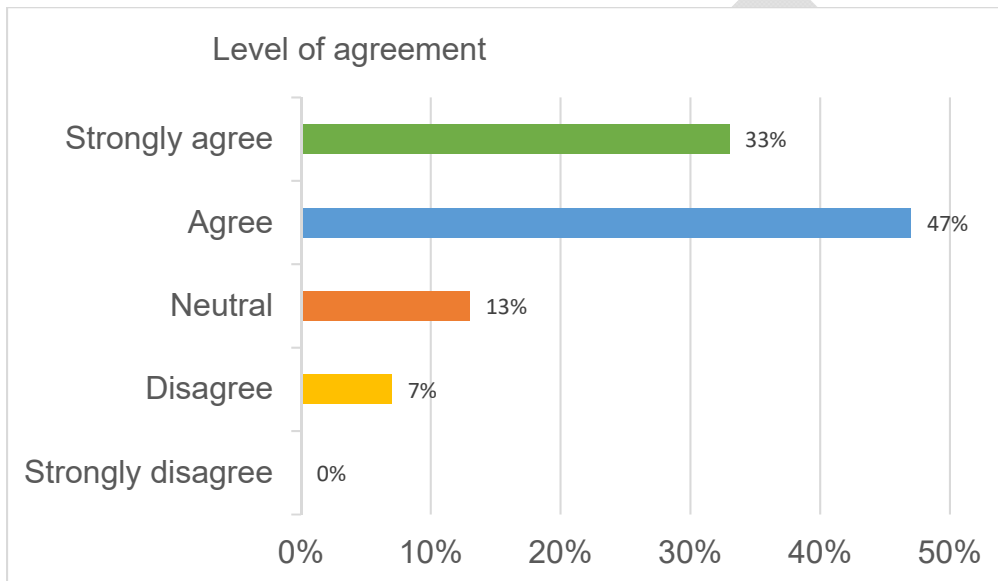
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Theme 2. MS4 permit planning requirements vs. other regulations such as GMA

The planning requirements should not conflict with other state and federal land use requirements such as the Shorelines Management Act (SMA) or Growth Management Act (GMA). The GMA allots a certain population growth to each municipality and municipalities are required to accommodate that growth. Also, requiring implementation of aspirational goals in plans gives a disincentive for including these goals if there is a concern about available resources. This is not a proper approach to planning.

Recommendation 2a

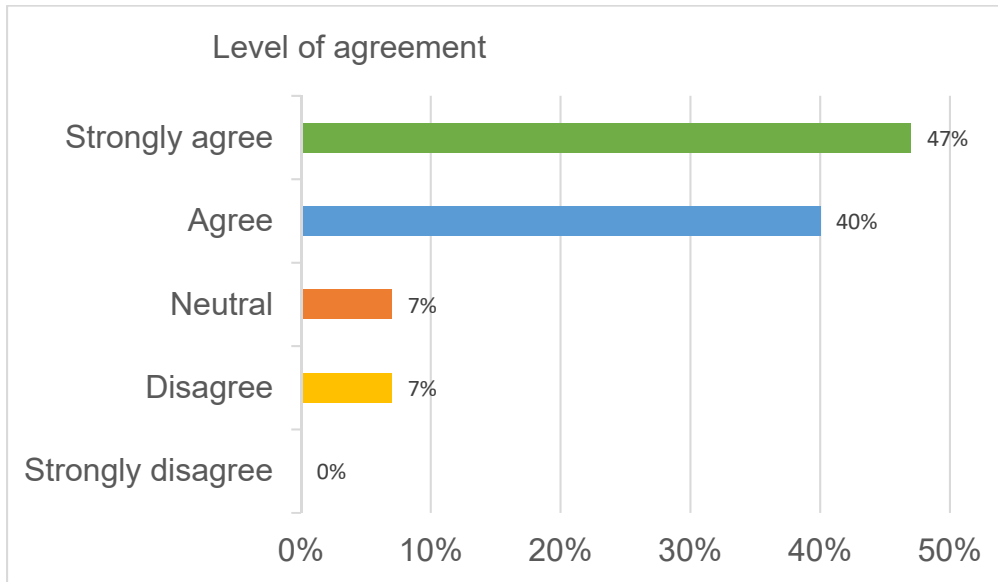
The planning requirements of the stormwater permit should be directed at measures to respond to effects of population growth, but should not be used to direct where growth occurs.



responses = 15

Recommendation 2b

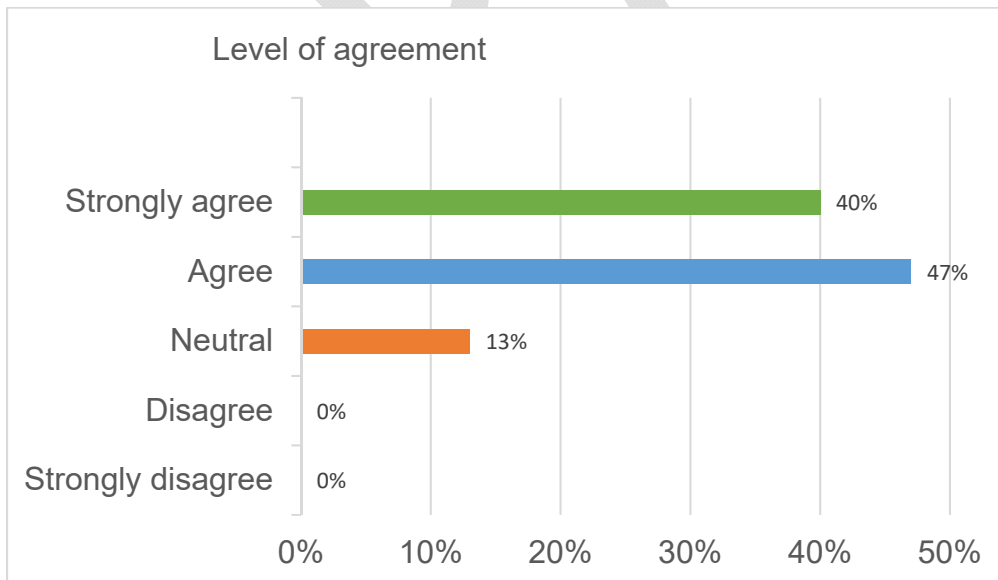
Recommendations in planning section should be directed towards high-level goals and actions that encourage sustainable development and inform GMA Comprehensive Planning. Recommendations should not be directed towards the policies dictated by Ecology in other state and federal requirements.



responses = 15

Recommendation 2c

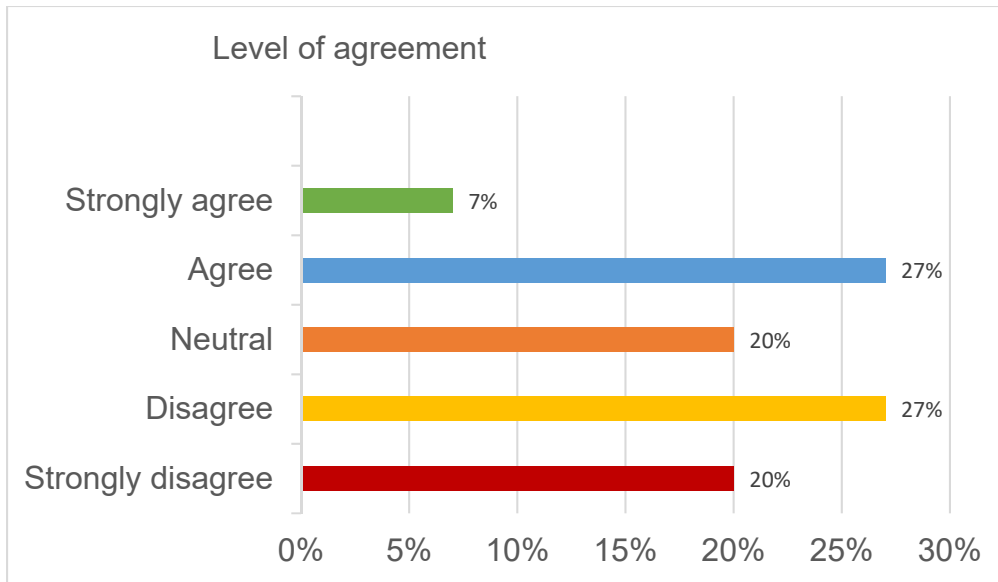
Permittees should be allowed to include all operational and structural programs in the scope of the stormwater planning requirements.



responses = 15

Recommendation 2d

The scope of the stormwater planning requirement should be limited to planning for the structural stormwater control program.



responses = 15

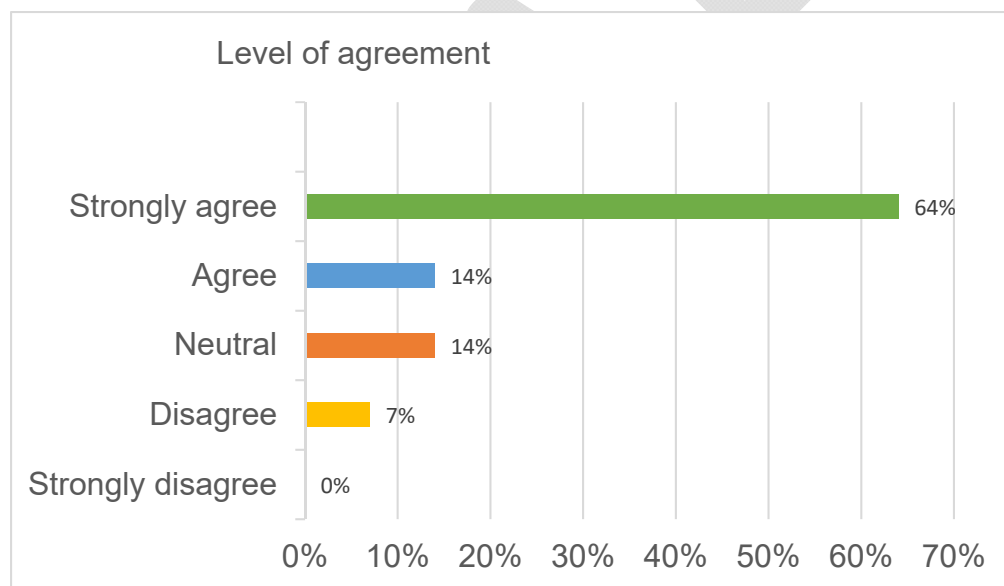
**The strongly agree respondent was confused about the statement and stated after the discussion that they would change their response.*

Theme 3. Required level of plan implementation

Planning level documents are meant to include programs, projects, assessments, and directives to guide projects, services, and subsequent rate/budget studies for those projects and services. Many of these projects and programs are contingent on outside funding sources with their own set of requirements and timelines (grants, loans, bonds, etc.). These timelines are often not aligned with permit timelines which can make their implementation difficult within the permitting process. If full implementation is required, it will be a disincentive for permittees to provide their full level of planning efforts. Permittees will be forced to create vague, truncated documents that are not representative of actual planning efforts. They will need to provide a plan that would not exceed their existing budget without any outside funding or budget increase considerations. Tax or rate increases are brought to Council and are subject to voter approval which is completely outside of jurisdiction control. Planning level documents have to include budget assumptions in order to be complete, but actions are not implemented if they are not funded.

Recommendation 3a

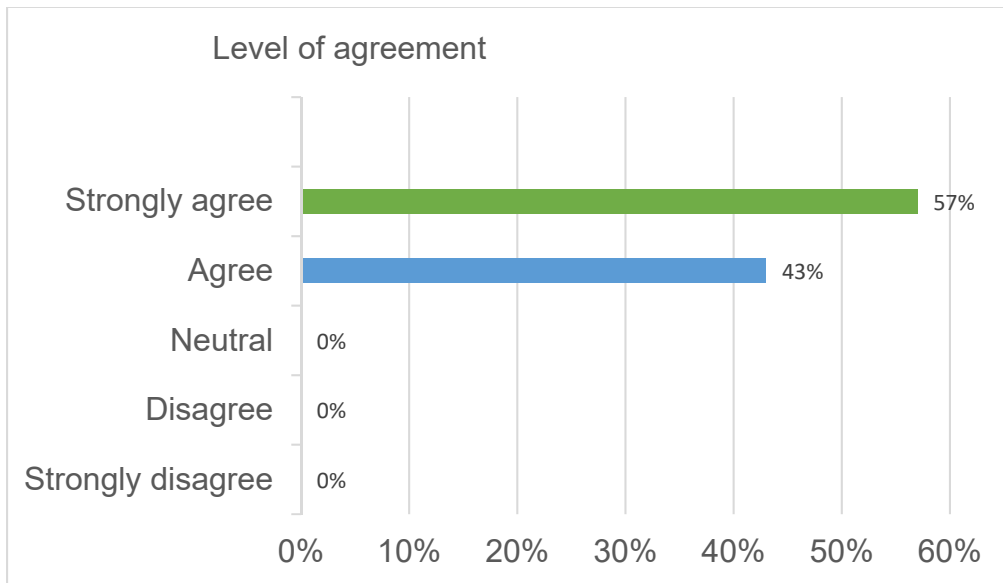
The permit should not require full implementation of planning documents developed under the permit.



responses = 14

Recommendation 3b

Planning requirements should recognize existing efforts such as capital projects that are legally obligated for reasons such as bond sales, which typically were the result of previous planning efforts.



responses = 14

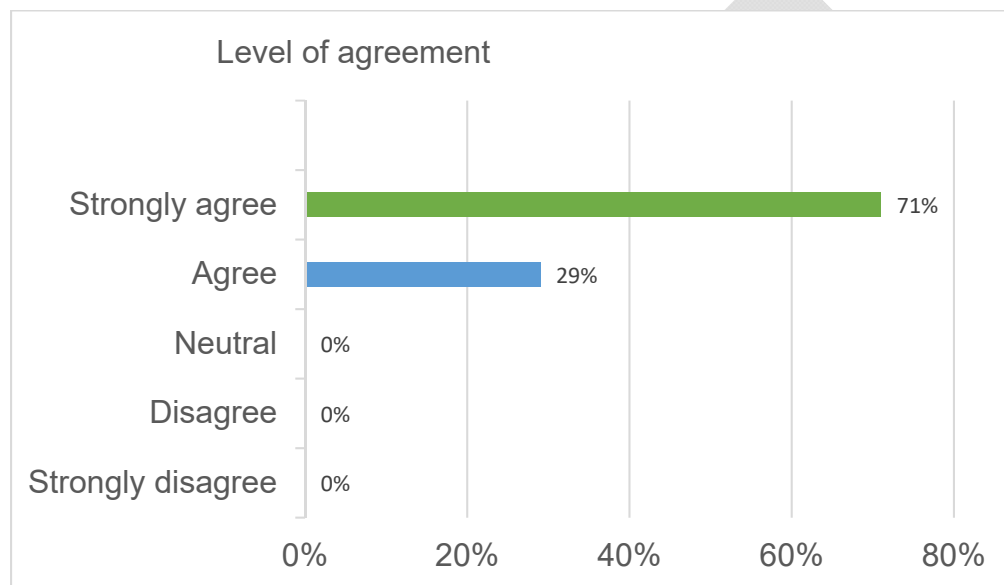
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Theme 4. Consideration of existing and past plans and consequent actions

Each permittee is in a different phase of watershed basin planning and implementation. Capital project planning can take several years, especially for larger efforts, and many permittees have activities and projects underway that are not part of future planned activities. Some jurisdictions have actions they must complete prior to the end of the current cycle due to funding, opportunities, and constraints. Allowing for credit towards on-going efforts will prevent permittees from holding off on projects or not taking actions just to receive credit in the next permit.

Recommendation 4a

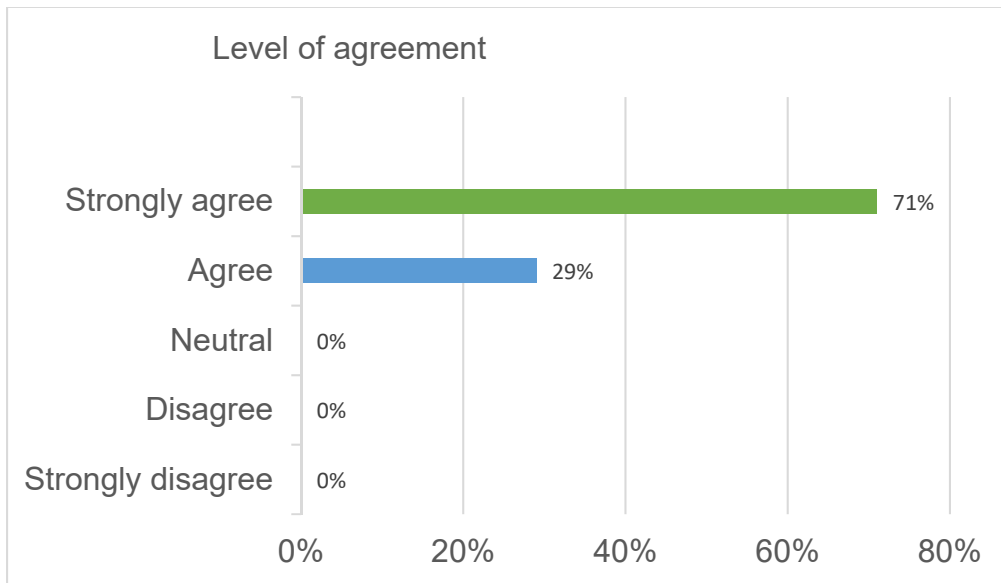
Stormwater plans should be allowed to include past, current, and future efforts of implementation within their planning areas.



responses = 14

Recommendation 4b

Stormwater plans should be allowed to acknowledge and take credit for pre-design, conceptual design, full design and permitting, construction, and monitoring activities as qualifying towards permit compliance.



responses = 14

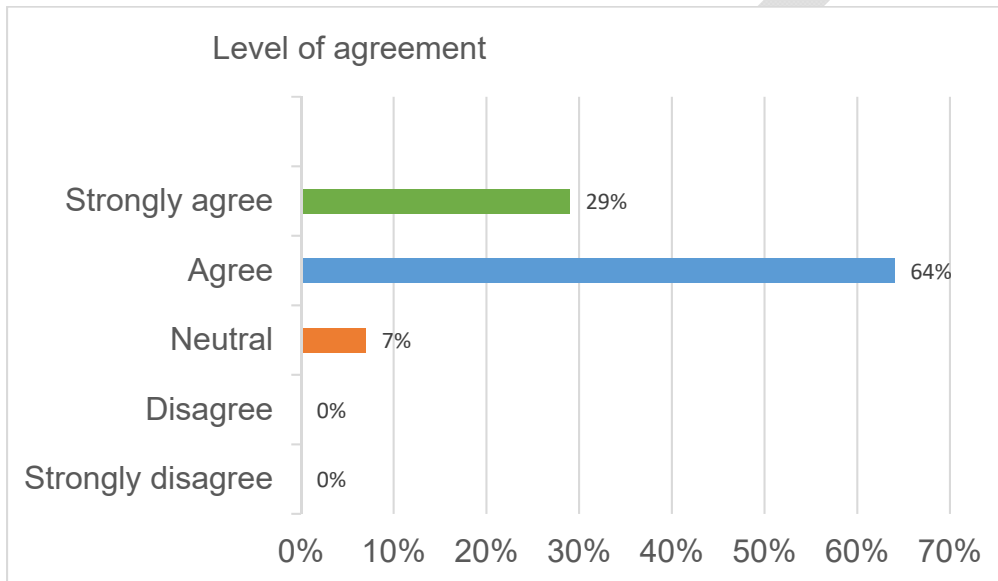
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Theme 5. Incentives for stormwater planning and plan implementation

The process in place leads to planning within jurisdictional boundaries even though it allows cross jurisdictional coordination. Watersheds cross jurisdictional boundaries so receiving waters could greatly benefit from shared efforts, but these are often slower, more complicated, and expensive to coordinate. It would be good for Ecology to promote or figure out a way to incentivize coordination through the SMAP process or outside of the permit language.

Recommendation 5a

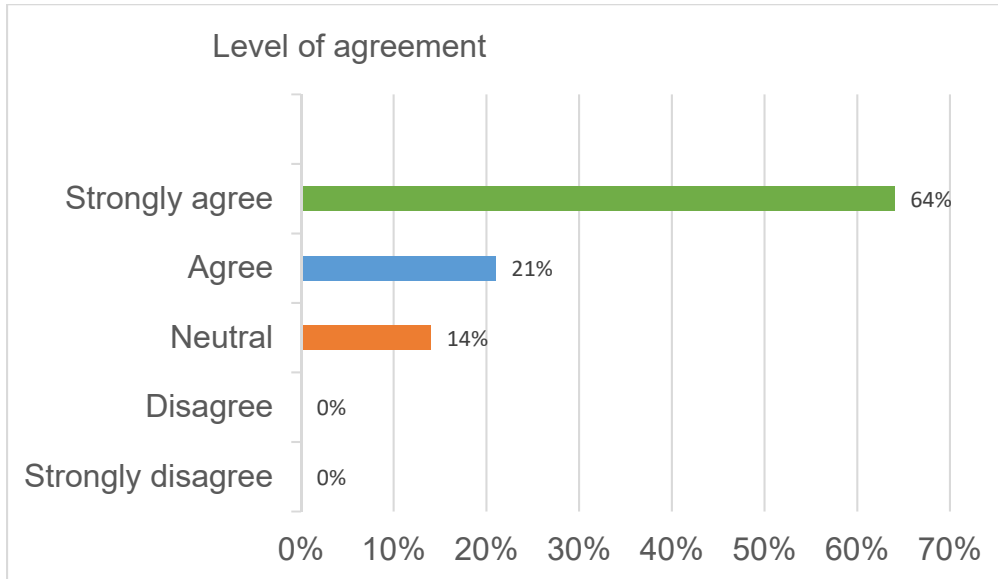
The permit should not require permittees to jointly develop or implement plans, but should provide incentives to doing so for watersheds containing multiple permittees.



responses = 14

Recommendation 5b

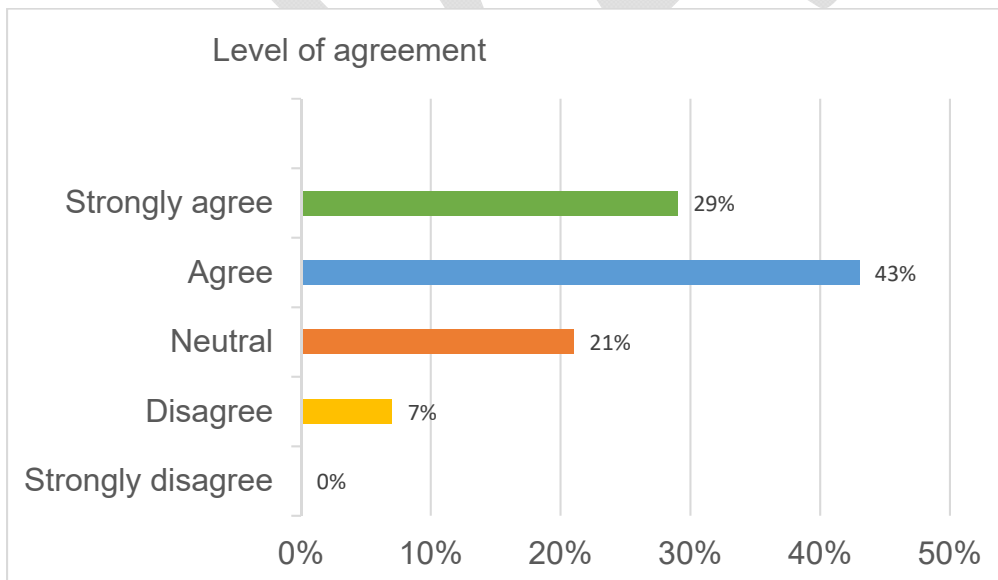
Ecology should establish incentives outside of the permit requirements that apply to interjurisdictional planning or projects that result from such planning.



responses = 14

Recommendation 5c

The permit should continue to have incentives in the SSC program for projects that arise from stormwater planning.



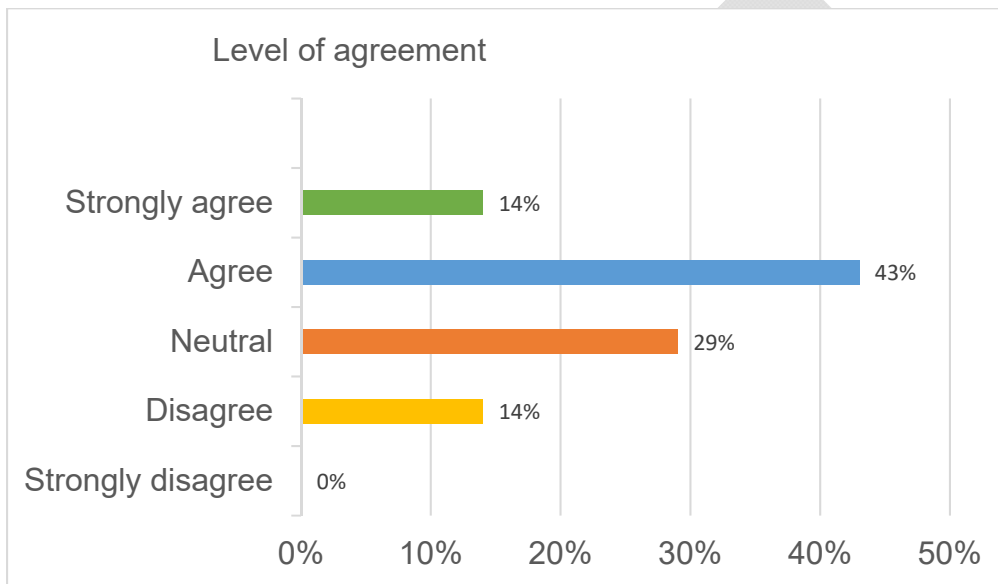
responses = 14

Theme 6. Equity and environmental justice requirements in NPDES stormwater planning.

An environmental justice lens for planning projects would make sure we are fixing issues in all areas that experience stormwater problems. Considerations could be flooding, development impacts, those that eat fish/swim in water, etc. This said, there are federal and state requirements in place (tribal grounds for example), so it would be important to be mindful of existing local, regional, and national requirements.

Recommendation 6a

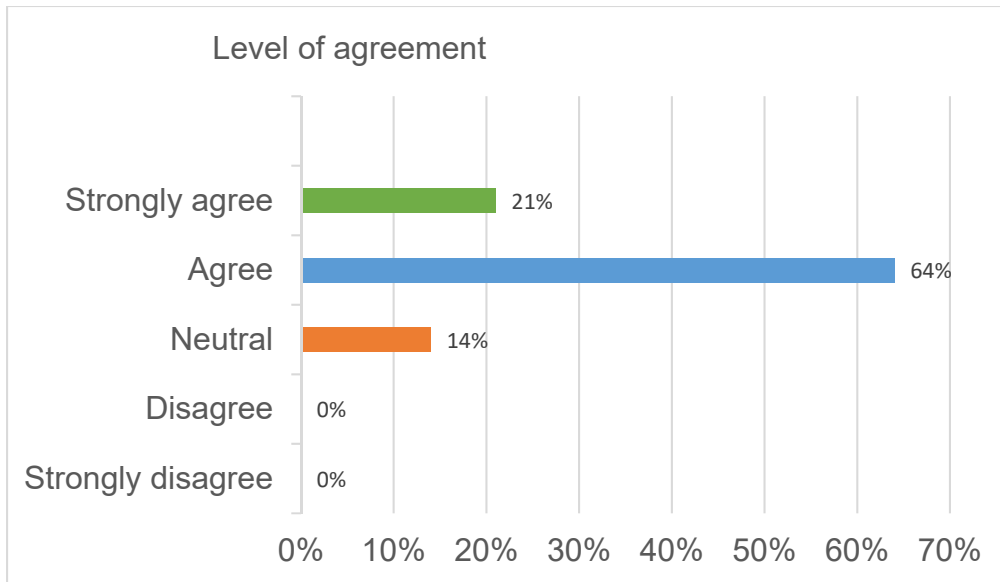
Stormwater planning requirements of the permit should include tangible actions for equity and environmental justice that are appropriate for the specific stormwater planning actions being performed.



responses = 14

Recommendation 6b

Stormwater planning requirements of the permit should support and interface well with federal and state requirements in place related to equity / environmental justice



responses = 14

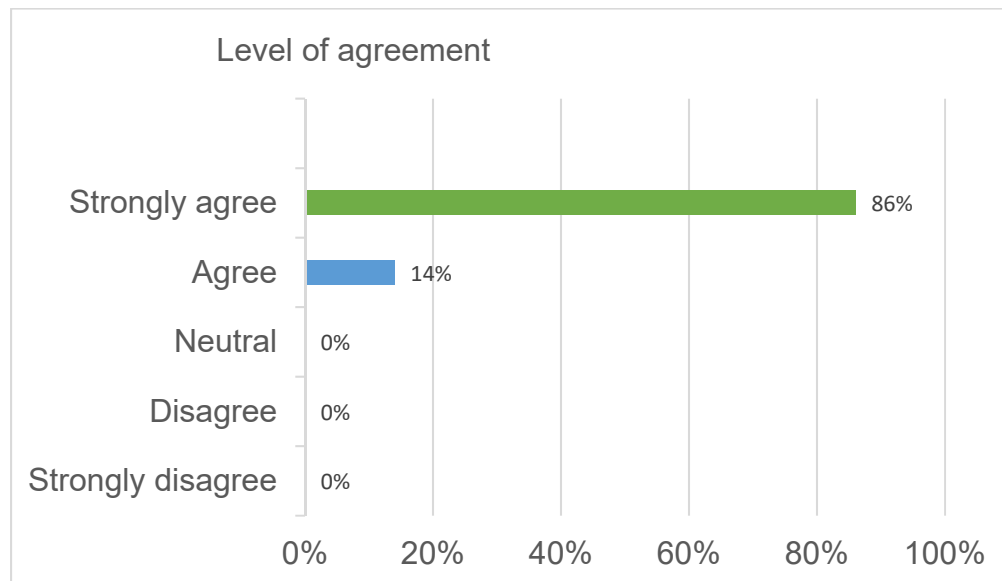
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Theme 7. Promulgating permit requirements through guidance documents

Guidance documents provided are often unhelpful, overreaching, or in conflict with each other.

Recommendation 7a

a. Do not include any binding permit requirements in guidance documents. Those documents should contain only non-binding recommendations and information.



responses = 14

Section 2: Additional comments from committee members

Comment 1:

The Committee discussions and the theme statements in Section 1 of this report illuminate the sometimes-confusing relationships between the SMAP requirements and the Structural Stormwater Control Program (SSC) requirements, and the intended outcomes of these requirements.

Given that the SSC point system is rudimentary, Ecology should use caution in tying compliance requirements for SMAP implementation to points achieved in the SSC program. Such a tie would further incentivize “chasing SSC points” and disincentivize implementing SMAP elements that are not recognized within the SSC program.

Ecology should consider requiring permittees to develop SMAPs that are directed at achieving specific outcomes.

Comment 2:

There are some cases in which generally-worded permit requirements provide needed flexibility. For example, in the case of equity / environmental justice considerations, the generally-worded requirements in the existing permit allow overburdened communities and permittees to mutually develop solutions from the bottom up. This can lead to broader support.

Comment 3:

Ecology tried to require jurisdictions to complete a SMAP basin plan for grant dollars on a project. We along with a lot of other jurisdictions rely heavily on having grant dollars and if the incentive Ecology imposes is grant funding, it would be an issue for us. We have multiple plans in multiple basins, so we don't want to have our projects disincentivized because they aren't in a SMAP or a coordinated basin. The work is still important and needs to be completed.

Comment 4:

Jurisdictions vary greatly, so box checking exercises for the SMAP when you have other requirements doesn't provide recognition of what we're doing already. For example, we do not have a lot of projects in our SMAP because we've already completed our stormwater planning. How is Ecology documenting work that we've already completed? One size fits all is going to limit larger jurisdictions and be too big for smaller jurisdictions that don't have the same capability to comply.