



June 23, 2022

Electronic Public Comments Submittal

RE: Comments on the draft Budd Inlet Total Maximum Daily Load for Dissolved Oxygen: Water Quality Improvement Report and Implementation Plan, Publication 22-10-012 (draft TMDL)

The Washington State Department of Transportation (WSDOT) seeks to work collaboratively with the Department of Ecology (Ecology) and other partners to improve water quality across the state. WSDOT appreciates the inherent contextual challenges to improving water quality in Budd Inlet associated with Capitol Lake, the Puget Sound, the Deschutes River TMDLs, and climate change.

WSDOT's existing Municipal Stormwater Permit (MS4 Permit) includes 33 TMDLs, with several more to be added in the next reissuance. It is helpful when Ecology considers our existing requirements and associated work when developing new TMDL specific actions. Such considerations enable WSDOT to employ a programmatic approach to compliance, the most efficient way for our agency to improve the quality of stormwater statewide. Using a statewide programmatic approach also supports environmental justice goals and reduces administrative tasks associated with tracking disparate TMDL boundary requirements within the statewide transportation framework. We believe TMDL specific actions and WSDOT's programmatic approach to compliance do not have to be incongruous.

New TMDL actions, above and beyond our existing MS4 Permit requirements, should be thoughtful and reasoned because they may require additional resources to implement. We believe stormwater data (not modeling) should be used to identify specific actions that will result in improved water quality outcomes (e.g., location specific retrofit). While the new actions in this TMDL are not specific or based on stormwater data, the actions appear to be achievable using existing data and resources (see comment 4).

General comment and recommendations:

1. Comment: The draft TMDL targets carbon and nitrogen to address dissolved oxygen, yet phosphorus is also mentioned. Such references to phosphorus could create confusion for our project staff applying for Construction Stormwater General Permit coverage and staff developing plans for both temporary (construction) and permanent stormwater best management practices (BMPs) that utilize compost.

Recommendation: Within this TMDL or external guidance, clarify temporary and permanent placement expectations for BMPs that utilize compost in relation to 303(d) listed waters and waters covered by TMDLs for dissolved oxygen, nutrients and/or phosphorus.

Specific comments and recommendations:

2. (p. 16, second paragraph) “Climate change impact analysis was not specifically included in the scope of this TMDL; however it will likely impact DO levels in Budd Inlet...”

Comment: A climate change impact analysis seems important for TMDLs that target impairments known to be impacted by a changing climate. The word “likely” seems to diminish the known impact of increasing temperatures on dissolved oxygen.

Recommendation: Consider adding an explanation for when Ecology includes a climate impact analysis in the scope of a TMDL. Consider rewording or deleting the word “likely”.

3. (p. 34, box at top of page) “In addition to existing permitting requirements, permittees must:
 - Track any BMPs implemented to meet the TMDL, and design nutrient control BMPs as needed. Priority areas include those that drain more directly to Budd Inlet.
 - Through a combination of analysis and/or monitoring, assess current stormwater loading to determine compliance with allocations.”

Comment: WSDOT’s MS4 Permit includes very different requirements than the Phase II MS4 Permits, yet this language about additional actions is described the same way for all MS4 permittees, which raises questions. WSDOT assumes Ecology wrote this language with the intention of allowing flexibility in interpretation and implementation. The variety of potential interpretations creates concerns over how this language will translate into future MS4 Permit requirements. WSDOT interprets these actions as likely achievable through analysis using our existing data, yet the timelines and ongoing obligations are unclear.

Recommendation: WSDOT would like to reiterate two applicable recommendations from the 2024 Western Washington Municipal Stormwater

General Permit Reissuance Ad Hoc White Paper for TMDLs¹ submitted to Ecology:

- Provide opportunities for MS4 Permittees and stakeholders engagement and involvement in the development of the MS4 Permit’s TMDL-related obligations in advance of the release of the MS4 permit public review draft.
 - Clarify ongoing TMDL-related programmatic obligations that don’t sunset (e.g., operations & maintenance) vs. those that are more discrete in time and space with a specific endpoint (e.g., installing a prescribed stormwater capital facilities project). This information has value for informing Permittee’s planning, program development, and budgeting in deploying these actions.
4. (p. 71, first paragraph) “The WSDOT’s current permit was issued in March 2014...WSDOT revised the HRM in 2014...”

Comment: These dates are not correct. It is unclear if stating when the HRM was revised has value.

Recommendation: WSDOT’s current MS4 Permit was issued in March 2019. Consider deleting the language about when the Highway Runoff Manual (HRM) was revised. If the language is determined to have value, the HRM was last revised 2019.

5. (p. 106 - 107, Reasonable Assurance section) “TMDLs must show “reasonable assurance” that these sources will be reduced to their allocated amount. If there is no reasonable assurance, EPA guidance indicates that the load must be transferred to point sources.”

Comment: Considering the inherent contextual challenges to improving water quality within Budd Inlet, the Reasonable Assurance section is rather simplistic. Reasonable assurance plays an important role within the TMDL framework. The regulated MS4 community implements many actions to address nonpoint sources of pollution. However, meaningful coordination and accountability amongst the various actors (regulatory, regulated, voluntary) remains challenging, partly because roles and responsibilities are often unclear.

¹ <https://www.wastormwatercenter.org/permit-assistance/municipal/2024-western-washington-ad-hoc-process/>

June 23, 2022

Page 4

Recommendation: Continue efforts to clarify roles and responsibilities to help improve coordination amongst the various actors, thereby helping to ensure the burden of the work to reduce the nonpoint load is not unduly transferred by default.

Thank you for considering our comments. If you have questions or wish to discuss these comments, please contact WSDOT's Statewide TMDL Lead, Elsa Pond, ponde@wsdot.wa.gov.

Sincerely,

A handwritten signature in black ink that reads "Tony Bush". The signature is written in a cursive, flowing style.

Tony Bush
Stormwater Branch Manager
Environmental Services Office
P.O. Box 47332
Olympia, WA 98504-7332
BushT@wsdot.wa.gov