

March 23, 2023

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Department of Ecology
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Dear Ms. Stockwell and Ms. Waterman:

On behalf of The Nature Conservancy in Washington and our 310,000 supporters across the state, thank you for your commitment to clean water and the health and well-being of our communities.

Thank you for the opportunity to provide input on the initial proposal for the National Pollutant Discharge Elimination System (NPDES) Municipal General Permits Phase 1 Structural Stormwater Controls and Phase 2 Stormwater Control for Priority Developed Areas.

Each year, millions of pounds of pollutants enter Puget Sound's rivers, streams, lakes, and the Sound itself. Much of the worst of this pollution flows as untreated stormwater from roads. The impacts of climate change and pollution are touching down everywhere we look. Scientists have demonstrated how this pollution laden with a toxic mix of chemicals and heavy metals, including 6PPD, is killing coho salmon, Endangered Species Act listed chinook salmon and steelhead, damaging aquatic ecosystems, and threatening the existence of our iconic Endangered Species Act listed orcas. Human health is also suffering as we live out our lives adjacent to near-ubiquitous pollution. Communities of color are the most at risk, here and around the world, of living near contaminated air, water and soil. Expanding investments in nature-based solutions to address urban challenges like storm water run-off and air pollution is a cost-effective way to improve the health, safety, productivity and well-being of people living in cities and to conserve biodiversity.

We can't afford to wait longer. The original goals of the Clean Water Act are still compelling today and should continue to be a guiding force in this work to ensure clean water for people and nature:

- It is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
- It is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
- It is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

Now is the time to step up and forge ahead. This permit must accelerate implementing large-scale use of bioretention to support environmental justice, tribal sovereignty, and make progress toward reducing the harm of 6PPD and other stormwater pollutants to people and aquatic life. We believe that strategically sited [stormwater parks](#) that can retrofit hundreds of acres in a single capital project are the best way of accomplishing this, especially in dense urban areas. Regional facilities often have better treatment and can be more cost-effective than smaller facilities. In addition, smaller cities and towns can frequently leverage analysis at the regional level for planning and use of their limited funds toward implementation.

The Phase 1 Structural Stormwater Controls and proposed Phase 2 Stormwater Controls for Priority Developed Areas programs offer Washington State an important opportunity to focus on three priorities of stormwater management:

- Environmental Justice
- Accelerating the pace of retrofits to meet our water quality problem, and
- Focusing on toxic hotspots, including urban areas.

Please refer to the attached document for detailed recommendations for ways to center these three priorities in the Structural Stormwater Controls and Stormwater Control for Priority Developed Areas programs.

Improving the stormwater retrofit requirements in this permit is one of the most critical steps the Department of Ecology can take for water quality. Thank you for the steps you have taken to strengthen retrofit requirements in these programs. We appreciate all your hard work continuing to improve the Structural Stormwater Controls and Stormwater Control for Priority Developed Areas programs by following the attached recommendations to center environmental justice, accelerate the pace of retrofits, and clean up toxic hotspots.

Best Regards,



Jessie Israel

Puget Sound Conservation Director
The Nature Conservancy in Washington

Attachment: The Nature Conservancy Detailed Comments, Structural Stormwater Controls & Stormwater Control for Priority Developed Areas.

The Nature Conservancy Detailed Comments, Structural Stormwater Controls & Stormwater Controls for Priority Developed Areas

The Phase 1 Structural Stormwater Controls and proposed Phase 2 Stormwater Controls for Priority Developed Areas programs offer Washington State an important opportunity to focus on three priorities of stormwater management:

Priority 1: Environmental Justice

- **Center Environmental Justice Principles** - The WA State Environmental Justice Task force laid out five environmental justice (EJ) principles in their [WA State Environmental Justice Task Force Final Report](#). Those are:
 1. Achieve the highest attainable environmental quality and health outcomes for all people.
 2. Adopt a racial justice lens
 3. Engage community meaningfully.
 4. Be transparent.
 5. Be accountable.
- **Require Baseline Investment in EJ** - Incorporate these principles into the Structural Stormwater Controls (SSC) program by explicitly requiring permittees use these principles when determining where and how they work. Following the model of the federal government’s Justice 40 Initiative, we recommend requiring a baseline level of at least 40% of SSC points be from projects in overburdened communities and EJ priority locations, including priority locations for tribal treaty resources. It does not follow EJ Principle 1 “Achieve the highest attainable environmental quality and health outcomes for all people” that this proposal allows jurisdictions to treat half the water if they do so in overburdened communities. While not perfect, the Environmental Health Disparities map provides a statewide resource to help prioritize stormwater investments for environmental justice. Based on the Environmental Justice Task Force’s recommendation 13, permittees should *“Use the overall EHD map rank 9 and 10 as a starting point to identify overburdened communities.”* Ecology can require permittees use the Environmental Health Disparities map with the option to use a more localized resource with equivalent or greater rigor. The program should also require investments to protect tribal treaty resources, as determined through consultation with tribes. A focus on racial justice and tribal resources is critical to incorporating EJ into stormwater retrofits.
- **Prioritize Tribal Treaty Rights, Including Salmon** – Salmon are a critical part of the ecosystems and Indigenous cultures in the Salish Sea and across the state, and are co-managed as a treaty reserved right. Washington has taken on Clean Water Act responsibilities from the federal government as writer of the NPDES permits, and permittees are ultimately responsible for implementation of stormwater controls needed to fulfill federal treaty commitments. As salmon continue to decline, Ecology and Permittees have an ethical and legal responsibility to clean runoff of 6PPD and other pollutants.
- **Work at Scale** – Though we have known about the toxicity of urban road runoff for decades, the recent identification of 6PPD as particularly toxic to salmon has added new urgency and attention to the need to retrofit our road system at a scale that matches our pollution problem. This aligns with EJ Principle 1: Achieve the highest attainable environmental quality and health outcomes for all people.

Priority 2: Accelerating Stormwater Retrofits

- **Increase Requirements by at Least an Order of Magnitude-** We would like to see 60 new regional stormwater parks across Western Washington before 2030. In order to meet that goal, increase the permit requirements to a minimum of 3000 points for phase 1 jurisdictions and 100x the proposed minimum acreage responsibilities for Phase 2 jurisdictions. This will push permittees to build regional stormwater facilities and other GSI to treat toxic hotspots.
 - **Incentivize Stormwater Parks and Regional Facilities** by raising requirements as described above. Puget Sound Regional Council has released their [Stormwater Park Planning Guide](#) detailing seven existing regional stormwater parks and six in planning stages with catchment basins ranging from 20 to 754 acres, many in the 100-300 acre range. Given the multipliers for enhanced treatment, work in overburdened communities and alignment with a watershed plan, points for a single well executed stormwater park could easily balloon to meet the full SSC requirements. Furthermore, both Phase 1 and Phase 2 jurisdictions have demonstrated ability to build high-capacity regional facilities:
 - Arlington Stormwater Wetland Park, 284-acre basin, flow control and treatment
 - Kitsap County Manchester Park, 100-acre basin, flow control and treatment
 - Shoreline Cromwell Park, 109-acre basin, flow control and treatment
 - Seattle Swale on Yale, 435-acre basin, water treatment
 - Tacoma Pt. Defiance Stormwater Facility, 754-acre basin, water treatment

Despite this demonstrated ability of Phase 2 jurisdictions to work at scale, the proposed Stormwater Control for Priority Developed Areas requires stormwater management on two acres for Arlington, 7.5 acres for Kitsap County, and 5.9 acres for Shoreline. The proposed acreage requirements are so low as to be irrelevant in terms of water quality outcomes.

Given the demonstrated capacity by these phase 2 jurisdictions to voluntarily build and maintain stormwater parks at two orders of magnitude higher than requirements, the even greater capacity of the Phase 1s to do the same, and the need to rapidly accelerate treatment for 6PPD and other pollutants, Ecology should multiply all the required acreage for phase 2 jurisdictions by 100 times the current proposal and raise the minimum SSC points for Phase 1s to at least 3,000.

- **Strengthen Collaboration** – The proposal to allow Phase 2 jurisdictions to participate in regional stormwater facilities outside their jurisdictions is a strong one. This functionally sets up a stormwater treatment credit trading among permittees in a basin. Based on TNC’s experience helping to set up the stormwater credit marketplace in Washington DC, successfully starting a trading system requires a significant increase in the stringency of requirements, pushing efforts towards the most efficient and high impact work. Raising the bar on overall level of effort as recommended above will push permittees to collaborate to meet requirements. Rather than lowering the bar by giving extra points for collaboration, drive collaboration with high requirements that can only be met working together.
- **Implement Plans** – With proper requirements and incentives to implement SMAPs and build retrofits, Western Washington permittees are poised to make significant progress on water quality. **The Nature Conservancy and others have been creating science and engineering based tools for the specific purpose of buying down the costs for jurisdictions to meet planning requirements.** These tools include: TNC’s [Stormwater Heatmap](#), [Retrofitting Our Legacy Report](#),

GSI Siting Guide and Scope of Work Template, [Puget Sound Regional Council's Stormwater Park Planning Guide](#), King County's WQBE Analysis, [Our Green Duwamish's SMAPr tool](#), and more. As these tools lower the planning cost by orders of magnitude, and salmon continue to decline, it is time for commensurate increases in implementation by orders of magnitude.

- **Provide Funding Support to Meet Increased Requirements** – Federal infrastructure money is at unprecedented levels, and the state has grant programs in place to fund water quality retrofits. With unprecedented money available and unprecedented urgency to protect salmon and address health disparities, writing an NPDES permit for maximum extent practicable cleanup means setting the expectation that permittees seek and utilize these outside funds. The status quo alternative means writing ineffective permits that don't achieve water quality. To help permittees access federal and state grants Ecology should:
 - a. Streamline the application process for the Combined Water Quality Funding Program
 - b. Create a prioritized funding list rather than competitive grant process
 - c. Lead a statewide strategy to maximize federal infrastructure funding for climate resilience and water quality
 - d. Prioritize funding for high impact, collaborative regional retrofits
 - e. Provide a pathway for Federal dollars to support NGOs and community-based organizations for stormwater retrofits that can sell points to the permittees.

Priority 3: Prioritize Toxic Hotspots including Urban Areas:

- **Focus on Retrofits (Project Types 1-4 & 6)** - We know that bioretention and green stormwater infrastructure (GSI) are two of the best solutions to treat for 6PPD, and the SSC program is the only place in the permit that requires GSI retrofits. Ecology should Leverage that by focusing these sections of the permit only on project types 1-4 and 6, the true retrofits. We know street sweeping is a cost-effective solution, but not enough to fix the water quality problems we face. We need both street sweeping and retrofits. Given the inclusion of street sweeping requirements elsewhere, using this portion of the permit to require retrofits will bring the highest benefit.
- **Focus on High Traffic Roads** – We appreciate the focus on high pollution generating areas. We recommend setting a minimum requirement to treat high pollution generating areas and only apply the points multiplier beyond that minimum.
- **Don't Abandon Urban Waters** – Ecology's Clean Water Act responsibility is to clean water for people and ecosystems. That means retrofits in urban cores where roads are densest and polluting runoff is worst. While land conservation in the urban fringe is important, it cannot substitute for retrofits.
- **Incentivize Voluntary Retrofits Above and Beyond Requirements** – In order to achieve clean water, permittees will need to go beyond the minimum requirements of the permit as currently proposed. Provide incentives so that jurisdictions can prioritize the construction and maintenance of the GSI needed to achieve clean water. Ensure that the permit has a mechanism to account for this work so that jurisdictions going above and beyond can use stormwater management fees for clean water.