

Draft Report

Cost and Pay-In Option Subgroup of the Stormwater Work Group

The schedule for the Department of Ecology (Ecology) to issue the 2012-2017 NPDES municipal stormwater permits requires that a pay-in option be clearly defined and established before the end of October 2010. The schedule for the SWG to approve recommendations submitted to Ecology requires that a draft report be completed by September 17, 2010.

The SWG recommended that NPDES permittees in the Puget Sound basin participate via permit requirements in three types of regional monitoring activities: Status and Trends, Source Identification and Diagnostic Monitoring, and Effectiveness Studies. The implementation mechanisms for each category of monitoring are envisioned to be different. To meet Ecology's schedule, we might identify one or more interim mechanisms to facilitate the pay-in option for the next round of permits, with an eye towards defining and creating a more robust, satisfying administrative entity in the coming years.

The Cost and Pay-In Option Subgroup was tasked with developing specific recommendations to establish the pay-in option and allocate and prioritize costs by the end of October so that Ecology can realistically include the pay-in option in the next cycle of municipal NPDES stormwater permits. This draft report is intended to document the workings of the Cost and Pay-In Option subgroup and describe their recommendations.

Subgroup Schedule and Participation

The subgroup met four times over the course of the summer to develop specific recommendations. The subgroup focused on the pay-in option, not on allocating and prioritizing costs. Table 1 shows participation at each subgroup meeting. All meeting materials and notes were shared among the entire subgroup.

Table 1 Matrix of subgroup participation

Name	Organization	July 26	Aug 17	Aug 24	Sept 13
Jim Simmonds	King County	X	X	X	X
Bill Moore	Department of Ecology	X	X	X	X
Phyllis Varner	City of Bellevue	X	X	X	X
Joyce Nichols	City of Bellevue	X	X	X	
Heather Kibbey	City of Everett	X	X	X	X
Mark Palmer	City of Puyallup	X	X	X	X
Neil Aaland	Washington State Association of Counties	X	X	X	X
Andy Meyer	Association of Washington Cities	X		X	
Dick Gersib	Department of Transportation	X (phone)	X		
Bruce Wulkan	Puget Sound Partnership		X		X
Mel Oleson	The Boeing Co	X			X

Nathalie Hamel	Puget Sound Partnership	X			
Karen Dinicola	SWG Project Manager, Department of Ecology	X			

Pay-In Option Subgroup Recommendations

The subgroup recommends

1. That the administrative entity have the following key characteristics
 - a. Can ensure that funds collected are dedicated to monitoring and cannot be redirected to other activities
 - b. Allows for the future expansion of the coordinated monitoring to other geographic areas, other types of permits, other types of organizations (e.g., NGOs, tribes, etc)
 - c. Is able to demonstrate that it is accountable and credible with transparent processes
 - d. That it has the capacity to manage contracts and funds in an efficient manner following all appropriate rules and laws
2. If the monitoring is funded by local municipalities, then the pay-in option will be implemented via contractual arrangements between each municipality and the administrative entity.
3. If the monitoring is funded by local municipalities, then the next municipal NPDES stormwater permit has entering into this contractual arrangement for a coordinated monitoring program as one option under the monitoring requirements (with “go it alone” as the other option).
4. If the monitoring is funded by local municipalities, then entering into the contractual arrangement and paying the invoices would then satisfy permit requirements for monitoring.
5. That if the permit reissuance schedule remains as currently anticipated, then Ecology serve as the administrative entity for the next permit term. If the schedule is extended then other options may become available.
6. If the administrative entity is Ecology, then AWC and WSAC pass resolutions endorsing this option.
7. That the administrative entity leverage existing capacities, including capacities at local municipalities, to conduct the monitoring.
8. That regardless of the final selection of the administrative entity, an administrative oversight board be created with broad representation, to ensure that funds paid to the entity for monitoring are appropriately accounted for.
9. That regardless of the final selection of the administrative entity, a technical oversight board be created with broad representation, to oversee the technical aspects of the monitoring conducted. It is possible that the Stormwater Work Group could serve in this role.

Characteristics of the Pay-In Option

A brainstorming session was held to identify characteristics of administrative entity. These are listed below.

1. Meets goals of permit pay-in concept

- a. Able to have some sort of reliable agreement with Ecology to ensure permit-required monitoring is done
- b. Local governments can write a check to directly to the entity or to Ecology using a boilerplate interagency agreement or in process similar to payment of permit fee
2. Competent: in management, monitoring, and contracting
 - a. Money will be well managed
 - i. Funding dedicated to stormwater monitoring can't be redirected
 - ii. Non-profit activity (not a for profit, shareholder-driven organization)
 - iii. Low overhead
 - iv. Best value for dollars
 - b. Capacity to meet deadlines
 - c. Can accept federal and state money
 - d. Can accept federal and state money without going out for bid
 - e. Existing stable organization with some history, don't start from scratch
 - f. Entity has technical experience in stormwater monitoring (yes or no)
 - g. Capability to do data analysis
 - h. Can provide repository for data
 - i. Experience managing large contracts
3. Accountable and credible
 - a. Willing to have oversight by board
 - b. Perceived as neutral and transparent: open (harder for private entities?)
 - c. Everyone trusts the data
4. Broader than muni NPDES permittees
 - a. Expandable geographically (i.e. to SW WA and E WA; likely not initially statewide)
 - b. Expandable/accessible to other types of permits/permittees
 - c. Includes more entities than local jurisdictions: all entities participating in cost-sharing arrangements
5. Fits core mission or goals of the organization: a priority for the entity
6. No potential conflict of interest
7. Able to evolve to take on more functions
8. Long-range view of monitoring

A brainstorming session was held to identify characteristics needed in the oversight of the administrative entity. These are listed below.

1. Allows us to start small with required functions and expand over time
2. Depends on entity selected
3. Who makes decisions/sets priorities? Want broad agreement. Needs Ecology buy-off.
 - a. Only folks paying in, or broader representation
 - i. Ecology determines whether complies with NPDES requirements (if accountability lies with local gov't, will have to demonstrate – if accountability lies elsewhere, depends how written up: contract law rather than CWA liability)
 - ii. Buying a package of services; end of "say" for permittees?
 - b. What is relationship to ecosystem monitoring program
 - c. What is relationship to SWG

A brainstorming session was held to identify the roles and responsibilities of administrative entity. It was determined that the roles and responsibilities needed to be better defined to initial set-up and keep long-term vision in mind. These are listed below.

1. Manage money (administer NPDES permittee pay-ins, contract out)
2. Conduct or contract:
 - a. Data analysis
 - b. Data management
 - i. Who owns the data? Need to spell out in contract to collect data
 - c. Data storage
 - d. Status and trends
 - e. Effectiveness
 - i. Run an RFP program for effectiveness studies
 - f. Source ID and diagnostic monitoring
 - i. regional prioritization
 - ii. data repository
 - iii. possible pay-in for service to meet permit requirements
3. QA/QC
4. Open process for prioritization
5. Has a communications process with permittees
6. Report back to permittees and to others
 - a. Disseminate info to public: PSP/ECY role?
 - b. This entity creates the message for existing outreach programs to share
7. Audit function
8. Look for opportunities to improve effectiveness, reduce costs
9. Recommend improvements in monitoring to Ecology and PSP

Benefits of Pay-In Option

The subgroup identified several benefits to having a pay-in option. In particular, it is anticipated that

- a coordinated monitoring program will cost less to implement than a series of independent monitoring programs
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- having a pay-in option will lessen the level of difficulty associated with satisfying permit requirements for monitoring by local municipalities
- flexibility
- data consistency will be improved
- monitoring data will more easily be collected at multiple geographic and temporal scales
- existing monitoring capacities will more easily be leveraged, without requiring each municipality to develop in-house expertise
- using a coordinated, pay-in approach will allow the region to address specific near term actions in the Action Agenda
- using a coordinated, pay-in approach will allow the region to address the highest priority monitoring questions

Initial list of Candidate Entities

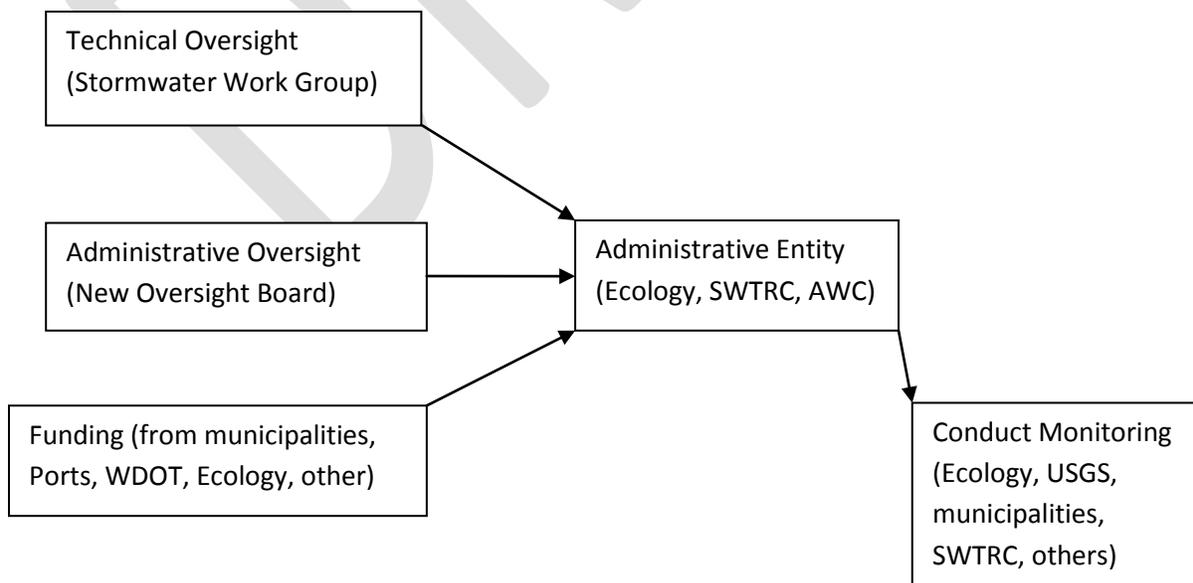
The subgroup developed an initial list of candidate entities (Table 2). This list was developed via brainstorming session, and includes suggestions from members of the Local Jurisdiction Caucus that are not participating in the subgroup. In discussing the characteristics and the list of potential entities, several subgroup members were interested in issuing a request for proposals for organizations to serve as the administrative entity. The subgroup agreed that no funding was available to issue the RfP or review the proposals, and also that sufficient time was not available to do this solicitation given Ecology's permit reissuance schedule. Based on these circumstances, the subgroup instead agreed to focus on a short list of four possible entities that could work for the next permit cycle. It was agreed that the selected entity would not necessarily be the entity selected in future permit cycles.

The four entities selected for further investigation included Ecology, Stormwater Technical Resource Center, USGS, and the Association of Washington Cities. Upon further consideration, the subgroup decided to not recommend USGS for the short-list of entities to consider to administer the pay-in option, but instead to consider USGS as an option as a contractor for implementing the streams status and trends monitoring program. The three entities were evaluated compared to key characteristics identified (Table 3). For the Department of Ecology, two sub-options were evaluated, one with funding derived from the state Toxics Fund, another with funding from local jurisdictions.

The subgroup agreed that based on the comparison of the three entities, the Department of Ecology was the most likely to be successful in the near term for the upcoming permit cycle. Neither the SWTRC nor AWC currently have capacity to administer the funds generated via the pay-in option. In addition, the SWTRC has not yet established its legal structure.

Draft Organizational Structure of Pay-In Option

A draft organizational structure was developed as shown below.



Issues for Further Discussion/Consideration

The subgroup identified several issues which may need to be addressed by the entire SWG

- Some municipalities will object to sending any money anywhere.
- Is it possible to structure the pay-in option such that every municipality wants to participate? How would this be done and what is the “go alone” option and how much does that cost?
- What if pay-in itself is too onerous? Would municipalities pull out and not do like in Alabama?
- All organizations would need to staff up to handle the increased work load to manage funds and contracts beyond their existing work load.
- No matter which entity is chosen, overhead will need to be evaluated to make sure it covers appropriate administrative capacity.
- There may need to be specific interest expressed by municipalities in having Ecology serve as the administrative entity to overcome the skepticism that may exist about having Ecology serve in this role.
- No matter which entity is chosen, overhead will need to be evaluated to make sure it covers appropriate administrative capacity.
- It is not clear if these options are defined well-enough for getting approval on them by the entities.

Table 2. Initial list of options for the administrative entity

State Agencies	Non Profits
Department of Ecology	People for Puget Sound
Puget Sound Partnership	Puget Soundkeeper
Department of Transportation	Bullitt Foundation
Department of Natural Resources	Cascade Land Conservancy
Academic Institutions	Sierra Club
UW Applied Physics Laboratory	New NGO/Trust focused on monitoring
UW Tacoma	Association of Washington Cities (AWC)
WSU Puyallup	Washington State Association of Counties (WSAC)
WWU	Salish Sea Institute
PLU	Center for Watershed Protection
Centers/Institutes	Private
Stormwater Technical Resource Center	Battelle Northwest
Puget Sound Institute	Boeing
Local Jurisdictions	Herrera
King County	Brown & Caldwell
Pierce County	Parametrix
Snohomish County	Taylor Associates
City of Seattle	Other Consultants
Other Cities or Counties	Other
Federal Agencies	Have Legislature Create an Entity
USEPA	
USGS	
Pacific Northwest National Laboratory	
US Navy	
NOAA Fisheries	

Table 3. Evaluation of Preferred Options for Administrative Entity

Option	Description	Funds Dedicated to Monitoring	Expandable to other areas/permits/etc	Accountable and Credible	Capacity to Manage Funds and Contracts	Other Issues and Potential Barriers
1a Ecology (funded by municipalities)	Ecology establishes agreements with every municipality. Each municipality sends money to Ecology to conduct and/or contract for the monitoring. Need to clarify if mandatory or optional. If optional, need to clarify if “go alone” is equal to “pay in” or if more onerous to encourage “pay in”. From a practical perspective, it will be difficult to manage two separate programs, though how difficult is unknown. Ecology could contract with municipalities with capacity to get monitoring done.	Yes, if done using contractual arrangements.	Yes, if done using contractual arrangements. Some businesses have restrictions on giving money to regulatory agencies – would need to work this out.	Yes, assuming oversight boards and contractual wording. Belief that contracts will be well managed and implemented appropriately at Ecology. Lots of scientific expertise, including stormwater. EAP is very credible and respected.	Lots of grant management and contract management experience. Already have existing contractual relationships with all Phase I and II permittees.	Perception of conflict of interest not really an issue – since not enforcement. May appear self-serving to have monitoring requirements that call for municipalities to send money to Ecology. Some municipalities have poor relationships with Ecology. Need to get enough municipalities to pay to get enough critical mass. This option has been discussed with program managers at Ecology, but not with higher level management.
1b Ecology (funded by local portion of the toxics fund)	Monitoring is conducted and/or contracted for by Ecology using local portion of the toxics funds from the state budget. Under this option, it is possible that water quality monitoring is not part of the municipal permit, but instead an Ecology work program. May then avoid issue of whether or not “pay in” is required or optional.	Whether funds remain in Ecology’s budget is at legislature’s discretion. Funds could be redirected by legislature.	Another funding source would be necessary for non-local gov’ts. Could be expanded to other areas of state.	Yes, assuming oversight boards and contractual wording. Belief that contracts will be well managed and implemented appropriately at Ecology. Lots of scientific expertise, including stormwater. EAP is very credible and respected.	Lots of grant management and contract management experience. Already have existing contractual relationships with all Phase I and II permittees.	Political support is critical for this option. Given state budget issues, the more detailed description of fund use and purpose is better. Fund source restrictions for ability to be used in some ways.
2 Stormwater Technical Resource Center (SWTRC)	SWTRC establishes legal structure, staffs-up appropriately, and then establishes agreements with every municipality. Each municipality sends money to SWTRC to contract for the monitoring. Or could be coming from line-item in state budget from toxics fund, in which case may not be part of municipal permit.	Yes, if from municipalities it is done on contractual basis. If from legislature, then required by law but legislature could reverse/alter decision in next biennium.	Yes, the mission of the SWTRC is already state-wide and the SWTRC is already working with industry.	In the process of establishing boards and advisory committees, so already working on this. As a new entity, doesn’t have track record, but UW and WSU have history and track record. SWTRC wouldn’t necessarily do the monitoring, but would likely contract it out. Maybe staff up in the future. LID facility might be one place monitoring would be done in-house.	SWTRC doesn’t currently have legal, contractual, budget, etc staff to manage funds and contracts. They have funding for planning through June 2011. Need funding and work program after that, and would need to staff accordingly. Would need an interim funding source between June 2011 and 2013 when monitoring funds would start.	As a new entity, doesn’t have track record, but UW and WSU have history and track record. Long-term viability in question if sustainable business plan is not developed and implemented. Still don’t know the business structure – it might be a 501c(3) or it might be something else, especially as it relates to universities. Could possibly remain ambiguous for preliminary draft language, but would need more certainty (ie a real entity) by summer 2011 for draft permit issuance. If not set up by summer 2011, could be implemented in future. Overhead rates are negotiable. This option is being discussed by SWTRC board.
3. Association of Washington Cities (AWC)	AWC staffs-up appropriately, and then modifies existing agreements with every city, modifies/creates agreements with counties. Each municipality sends money to AWC to contract for the monitoring.	Yes, if from municipalities it is done on contractual basis. If from legislature, then required by law but legislature could reverse/alter decision in next biennium.	Expandable state-wide for municipalities, but not sure how it would work for industries and businesses and non-profits and tribes.	No risk of perception of conflict of interest since AWC would not be bidding on various monitoring components.	Would serve solely in contract management and administrative role. Existing capacity is very limited and already used for ongoing business. Would need to staff up to handle the increased work load.	No in-house scientific expertise. This option has not been discussed with AWC board and executive director.