SWG Revised Draft Proposal for Pooled Resources Oversight

October 12, 2011 – revisions by Susan and Jim, based on subcommittee discussions (Attendees: Mark Palmer, Susan Saffery, Heather Kibbey, Dick Gersib, Jim Simmonds, Eric LaFrance, Karen Dinicola, Tony Paulson)

Dear Reader: The Stormwater Work Group (SWG) is proposing an oversight process to complement and support the proposed NPDES permit language and cost-sharing agreement and other integrated stormwater monitoring efforts, by which Ecology proposes to administer a pooled funding approach and implement a regional stormwater monitoring program. The SWG proposes that an Oversight Committee be formally established to provide financial oversight of the pooled funds and also ensure that the SWG's technical recommendations are followed.

The SWG seeks your input on this draft charter for the Oversight Committee. Comments are due to karen.dinicola@ecy.wa.gov by COB on February 3, 2012.

Proposed Oversight Committee Charter

The Stormwater Work Group recommends that this charter be formally adopted and that the Department of Ecology (Ecology) officially recognize the role of this new Oversight Committee (a subcommittee of the Stormwater Work Group).

I. Introduction

The Stormwater Work Group recommended a regional Stormwater Monitoring and Assessment Program for Puget Sound (SWAMPPS; regional monitoring program). Municipal stormwater National Pollutant Discharge Elimination System (NPDES) permittees will soon be contributing to a Pooled Municipal Stormwater Permit Resources Fund (Pooled Fund) dedicated to conducting specific, permit-required components of the regional monitoring program. The Oversight Committee will provide oversight of the Pooled Fund and other monitoring programs implemented by Ecology that are components of the Stormwater Work Group's technical recommendations.

This charter complements the agreements between Ecology and each permittee. The scope of work of the agreements will specify which components of the regional monitoring program Ecology will implement. .It also sets out a role for oversight of non-NPDES monitoring that is integrated into the regional stormwater monitoring effort. The Oversight Committee will get input from the Stormwater Work Group, municipal stormwater permittees, stakeholders, and other technical groups to assist in making recommendations as to how Ecology should award contracts and enter into other agreements to conduct the regional monitoring program using the Pooled Fund.

This charter shall be in effect for the duration of the next municipal stormwater NPDES permit cycle, and will expire in September 2018. The Oversight Committee shall conduct a formal review and assessment of Ecology's performance as the administrative entity for the Pooled Resources one year in advance of this expiration date.

II. Purpose

The primary functions of the Oversight Committee (the Committee), a subcommittee of the Stormwater Work Group, are to provide transparency, efficiency, and accountability of the expenditure of the Pooled Fund for the regional monitoring program.

The Ecology or other future service provider will:

(i) Implement the regional monitoring program according to the scope of work of the cost-sharing agreements with permittees;
(ii) Implement other regional monitoring program components through other funding agreements;
(iii) Consider the collective recommendations of the stakeholders represented by the Stormwater Work Group and its subcommittees; and
(iv) Conduct a process to request proposals and award contracts to perform monitoring and assessment activities.
(v) Ensure the execution of the program and awarded contracts meet the requirements set forth in NPDES stormwater permits.

The Oversight Committee will:

(i) Provide ongoing review and recommendations for Ecology's administrative and technical implementation the regional monitoring program. This review is intended to provide feedback to Ecology regarding the schedule, scope, budget, and quality of the program's deliverables and to provide accountability.
(ii) In coordination and consultation with the Stormwater Work Group's technical subgroups, provide Ecology with input for the process of ranking and evaluating proposals.
(iii) Verify implementation of the priorities and technical recommendations of the Stormwater Work Group.

III. Organization

The Oversight Committee shall be comprised of seven to eleven members with broad representation, as determined by the Stormwater Work Group, as follows:

- Four to six members (simple majority of committee) are representatives of local governments and other entities that are required by NPDES permit conditions to fund portions of the regional stormwater monitoring program, and
  The remaining members are representatives of a mix of environmental groups, business groups, federal and state agencies, and tribal governments.

Committee members shall be confirmed by the Stormwater Work Group as nominated by Work Group members and/or on the recommendation of the caucuses they will represent. Formal confirmation will take place at a regularly scheduled Stormwater Work Group meeting. Each representative may have a single official alternate, also to be confirmed by the Stormwater Work Group. Committee members may be a mix of Stormwater Work Group members and others.

Members should agree to participate consistently over the long term. It is desirable that members serve at least two years and preferably for the duration of the NPDES permit term. Terms will be

staggered. Committee members shall serve until their successors shall be duly designated. The Committee members shall elect a Chairperson and vice chairperson by vote of a majority of the full Committee.

The members of the Committee are representatives of various agencies and organizations and intended to provide expertise regarding project management and oversight for complex environmental monitoring programs. Members of the committee may have a range of backgrounds and experiences, and are not required to be accountants or auditors by profession or experts in the fields of accounting or auditing.. Consequently, it is not the duty of the Committee to conduct audits or to determine that Ecology's financial statements and disclosures are complete and accurate and are in accordance with generally accepted accounting principles and applicable rules and regulations. These are the responsibilities of Ecology and the State Auditor.

The committee membership size and composition will evolve as other permits and entities are brought into the program and other organizations fund major components of the program. Local Governments responsible for NPDES permit implementation will maintain the majority of the membership. The Stormwater Work Group may decide to add other members to the Committee as the program evolves. After one year (and annually thereafter), the Committee will review its performance and make specific recommendations to the Stormwater Work Group as to further need for safeguards, checks and balances on the permittee majority composition.

The Oversight Committee is authorized by Stormwater Work Group to submit recommendations and findings to both the Stormwater Work Group and to Ecology. The Committee may form and delegate authority to subcommittees or to other subgroups of the Stormwater Work Group when appropriate. The Stormwater Work Group reserves the right to submit separate comments to Ecology.

The Ecology staff person responsible for administering contracts and awards shall provide reports to the Committee. The committee will be supported by the Stormwater Work Group's staff person.

IV. Meetings

The Oversight Committee shall meet in open sessions four times per year on a quarterly basis, or more frequently as circumstances require. The Committee may require Ecology staff, contractors, and others to attend meetings and to provide pertinent information, as necessary. The Chairperson of the Committee will preside at each meeting and, in consultation with the other members of the Committee, will set the frequency and length of each meeting and the agenda of items to be addressed at each meeting. The Chairperson of the Committee shall ensure that the agenda for each meeting is circulated to each Committee member and shared with other interested parties in advance of the meeting. The Chairperson of the Committee shall also ensure that a summary of each meeting is circulated to each Committee member and shared with their caucuses as well as other interested parties no later than two weeks after the meeting.

V. Responsibilities and Duties

The Oversight Committee shall oversee Ecology's administration and management of the funds and contracts for implementing the regional stormwater management and assessment program. The Committee shall focus on reviewing the scope, schedule, budget, and quality of all aspects of the regional stormwater monitoring program, including expenditures of contingency funds for

cost overruns. The Committee shall make recommendations about contracting awards and will review the annual work plans and financial statements provided by Ecology.

In fulfilling its duties and responsibilities hereunder, the Committee will be entitled to reasonably rely on:

(a) The integrity of those persons within the Stormwater Work Group and Ecology, and of the professionals and experts from which it receives information,
(b) The accuracy of the financial and other information provided to the Committee by Ecology, and
(c) Representations made by contractors as to any services provided by such organization or entity to Ecology and the Stormwater Work Group.

To fulfill the Oversight Committee's responsibilities and duties:

<u>With respect to contracting decisions</u>:

1. Ecology shall provide directly to the Committee a list of contracting awards that must be made in the upcoming biennium in order to successfully implement the regional stormwater monitoring and assessment program.
2. The Committee shall provide Ecology with grouped lists of recommended contracts that should be awarded to implement components of the regional monitoring program.
3. The Committee will make recommendations to Ecology as to which contracts and agreements should be awarded to conduct the regional monitoring program activities.
4. The Committee will provide recommendations about contracts/agreements according to the component of the overall work plan being addressed, based on feedback from the technical subgroups:
    a. The Committee will assist Ecology with developing the requests for proposals.
    b. The Committee will work with Ecology to establish the criteria and process by which proposals are selected.
    c. The Committee and other subgroups of the Stormwater Work Group may assist Ecology as needed to evaluate, rate and rank the proposals for Ecology to award the contracts and enter into other agreements.
    d. The Stormwater Work Group's technical subgroups will assist the Committee in deciding how to group, sequence, and phase the proposals for review and decisions.
5. All Committee votes will be taken in a manner that allows for all members to confer with their caucuses and to receive feedback from the Stormwater Work Group's technical subgroups. Voting may be conducted by email following discussion at a regular meeting in order to allow for this to be done in a timely fashion. All Committee votes will be posted on the website for openness and transparency.
6. The Committee will present its recommendations and findings to the Stormwater Work Group at its next regularly scheduled meeting.
7. If the Committee is unable to reach consensus on recommendations or findings, then majority and minority opinions may be presented, with notation as to which caucuses are represented by each opinion.
8. In cases in which Ecology for any reason chooses not to or is unable to implement the Committee's recommendations, Ecology will explain to the Committee in a timely fashion the reasons for this decision, and propose a solution to the Committee.

9. Ecology retains direct responsibility for the appointment, compensation, retention and oversight of the work of the contractors (including resolution of disagreements between Ecology and the contractors) for the purpose of preparing its quarterly report or related work, who shall provide reports to the Committee.
10. Any Committee member associated with an applicant for any proposal must recuse himself/herself from all decisions relating to award and review of that contract, and oversight of the work performed if the application is selected.
11. At Ecology's request, the Committee will assist in hearing appeals on contract award decisions.

Periodic and Annual Reviews:

12. At least annually, the Committee shall obtain and review an annual report from Ecology describing:
    (i) the data collection, storage, and analysis methods and quality control procedures, and
    (ii) any fiscal or material issues raised by the most recent quality control review, or peer review, or by any inquiry or investigation, and any steps taken to deal with any such issues, for all of the contracted work.
13. The Committee shall review the quarterly financial statements from Ecology.
14. The Committee shall review the performance of each contractor.
15. The Committee shall review and approve the annual work plan and budget submitted by Ecology to the committee.
16. The Committee shall review and discuss any findings of the State Auditor pertinent to administration of this program as found in the course of their regular audits of Ecology.
17. The Committee shall review and reassess the adequacy of this Charter bi-annually and recommend to the Stormwater Work Group any changes the Committee deems appropriate.
18. The Committee shall initiate and lead an evaluation of Ecology's performance as service provider to be completed no later than 1 year prior to the expiration date of this charter.

Other:

19. The Committee shall perform any other activities consistent with this Charter, the Stormwater Work Group's By-laws and governing law as the Committee or the Stormwater Work Group deems necessary or appropriate.
20. The Committee may conduct or authorize investigations into or studies of matters within the Committee's scope of responsibilities, to the extent deemed necessary or appropriate by the Stormwater Working Group.
21. The Committee shall provide reports quarterly to the Stormwater Work Group on its activities, as appropriate.
22. This Charter and all meeting summaries will be made available on the Stormwater Work Group website at https://sites.google.com/site/pugetsoundstormwaterworkgroup/home and on Ecology's website at http://www.ecy.wa.gov/programs/wq/psmonitoring/swworkgroup.html