

Draft Report

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

October 13 voting and discussion notes

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

Note that Ecology abstained from voting on the following recommendations, as they are being made to the agency.

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 AGREED (Unanimous)
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. AGREED (Unanimous)
Discussion: add to text how arrangements are made (template, boilerplate preferred)
3. If the monitoring is funded by local municipalities, then the next municipal NPDES stormwater permit ~~has provides the option to~~ 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, or a mix of the two options as each jurisdiction chooses).
Discussion: there is a need for mandated funding of data bases, SOPs, analyses. How would status and trends be funded if there is an opt out option? Opt out versus in-kind. Alternative might be something statistically valid that contributes to S&T but would be expensive. This complicates Ecology’s job tremendously – have to develop two separate programs. Basic infrastructure needs to be developed. No certainty of critical mass participation to make the regional program work. Wondering how requirement would survive a legal challenge. Devil is in the details: how organized and implemented. Everyone (or too many permittees) opting out would negate intent of having a regional stormwater monitoring program. Consider splitting this in parts and acknowledge Ecology’s challenges in allowing opt-out. Group is leaning towards recommending that pay-in be required in the permit. There are challenges in executing this in the permit; limits to Ecology’s ability to implement them. Need both choices fully outlined before permit is issued so permittees can make appropriate choices. A minority of local governments will chafe at being required to pay into this program. Need to note all of these concerns related to 3.c-d in the text of the report.

NEW RECOMMENDATIONS FOR VOTING:

3.a Create a pay-in option for the NPDES Municipal Stormwater Permit monitoring requirements. AGREED (Unanimous)

3.b Require all municipal stormwater permittees to pay-in for infrastructure (SOPs and data bases for all three categories of monitoring (status and trends, source identification, and effectiveness), literature reviews, analyses). AGREED (Unanimous)

3.c Require all municipal stormwater permittees to pay-in for status and trends monitoring. AGREED (Unanimous)

3.d Allow go it alone option for effectiveness studies. 9 votes for; 4 votes against; 1 abstained. Voting discussion on 3-d: some reservations; should require this as part of creating a regional monitoring program. Costs seem reasonable and folks are likely to participate. Might defer this to PMEC recommendations discussion. Overall, this program looks pretty good and we can sell it. Everyone had an opportunity to comment/object. There is ample opportunity for contracting, paying back out within the framework.

4. If the monitoring is funded by local municipalities, The permit should be written in a manner that states that participating in the pay-in option ~~then~~ (entering into the contractual arrangement and paying the invoices) would ~~then~~ satisfy permit requirements for monitoring for section S.8 in the permit. AGREED (Unanimous)

Discussion: permit needs to be written such that this is the means by which the monitoring is funded and implemented. Not addressing TMDLs, IDDE, S4.F.

5. ~~That~~ If the permit reissuance schedule remains as currently anticipated, ~~then~~ Ecology should serve as the administrative entity for the next permit term. If the schedule is extended then other options may be preferred ~~come available~~. In the future, the hosting of the administrative functions to support pay-in option will be re-evaluated.

Discussion: STRC not really up and running yet. Likely best long-term option but Ecology is ready now and provides a very workable entity for this upcoming permit term. If permit is administratively extended as requested by local governments (concern about new costs), then perhaps STRC will be ready and have the capacity to provide these services. Committee not certain about UWT/Urban Waters – UW Seattle campus relationship; or lab/research capacity of Urban Waters; contractual issues something to work around in that option – their interest more in analysis of info not serving as entity. If we think there is a best long-term option (rather than Ecology) then we should go with them now and help them get going. Perception issue will not go away if we use Ecology for the time being, even with good answers to the questions. We want to make sure we create something that will work into the regional ecosystem monitoring program; this is a means to pool local gov't and other resources and is still part of the larger. Admin arrangements are separate from housing data, doing analyses, etc. Still need to figure out the mechanics of making this work: operationalize both sides of handling the money. Ecology needs to anoint the implementers; does it need to be an ECY contract? See a role for all of these parties because each brings a different expertise. Some of this is a viability discussion. Need to better describe the framework under which this program operates. What are stipulations, assurances in contractual arrangements? How is oversight board created and recognized? Need a model to follow. Permit requirement to send \$ to ECY puts the agency in a

difficult situation. Phase II jurisdictions largely okay with Ecy taking on this role. Maintain firewall between Ecy permitting role and analysis and reporting of information. Third party should report the findings of the program to Ecology. EAP is an independent non-regulatory program in Ecology, could do this. Folks need to know what they're buying. How to concentrate authority and capacity to gain greatest efficiencies? None of these entities is currently staffed up to perform these tasks.

Voting: To serve as the administrative entity to handle the money for this permit term: 5 for Ecology; 4 for STRC; 3 for Urban Waters/UWT; 0 for AWC; 2 abstained. No consensus recommendation.

Alternative: recommend that Ecology figure out interim means to eventually have STRC serve as the entity. (Needs to be fairly well defined: Ecology collect \$ for a set period of time, evaluate, and then decide. Ecy/the entity would sub-contract a number of tasks to others.)

Discussion: any of the three could work; none is ideal; is there something we can agree to live with? Need to ensure that pay-in option is viable. Concern about UW is overhead rate. STRC not ready now but might be for later in the permit cycle; don't know what overhead rate is or contracting ability; not convinced that STRC will be able to administer regional monitoring.

Might mean that contracts need to be renegotiated if change mid permit cycle. Concept is to use admin abilities of Ecology to mentor STRC. Both UWT and WSU-Puyallup are entities included in STRC. Call for an evaluation at some point but not mid-permit cycle.

Voting on whether each is a viable option to serve as administrative entity for this permit term: unanimous for Ecology; 8 yes, 4 no, 2 abstain for UWT; 7 no, 6 yes, 1 abstain STRC (from outset); unanimous no, several abstentions for Ecy transition to STRC if favorably evaluated mid-permit cycle; unanimous no, several abstentions for Ecy transition to something else if favorably evaluated mid-permit cycle.

Voting for calling for an independent review of the administrative entity in advance of next permit cycle; the review would include a survey of participants as to satisfaction with Ecology as service provider and evaluation of readiness of another organization to serve as the entity. The SWG might conduct this review: 10 for; 1 against; 3 abstained. Nay vote reminds the committee that all of this is under review; no need to cull this out. Will include as a recommendation (can also include that the monitoring requirements will undergo a review. Move to consensus.

Re-vote on group recommending that Ecology serve as the administrative entity for this permit term: 7 for, 4 against, 3 abstained. No consensus: some members still consider it unpalatable that Ecy require permittees to pay them; is this different from fee-in-lieu for mitigation?.

Revote on can live with Ecology: is this weak recommendation going to kill the pay-in option?

6. If the administrative entity is Ecology, then AWC and WSAC pass resolutions endorsing this option. AGREED (Unanimous. Why: to overcome perception issues of the regulatory agency requiring permittees to send money to itself; might still need letters of support from individual jurisdictions.)
7. That the administrative entity leverage existing capacities, including capacities at local municipalities and of other organizations, to conduct the monitoring. AREED (Unanimous)
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.~~ Combined into #9 below.

Discussion: is this redundant with administrative requirements and oversight processes that are already in place if Ecology serves as the entity? The contracts should ensure this is taken care of. Is interest more in that the dollars are being used efficiently and effectively?

9. That regardless of the final selection of the administrative entity, a ~~technical~~ oversight board be created with broad representation, to oversee the financial and technical aspects of the monitoring conducted. ~~It is possible~~We further recommend that the Stormwater Work Group ~~could~~ serve in this role. AGREED (Unanimous)

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

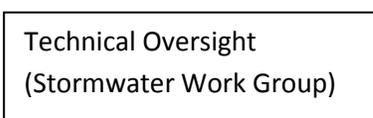
The subgroup developed an initial list of candidate entities (Table 2). This list was developed via brainstorming session, and includes suggestions from members of the Local Jurisdiction Caucus that are not participating in the subgroup. In discussing the characteristics and the list of potential entities, 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.

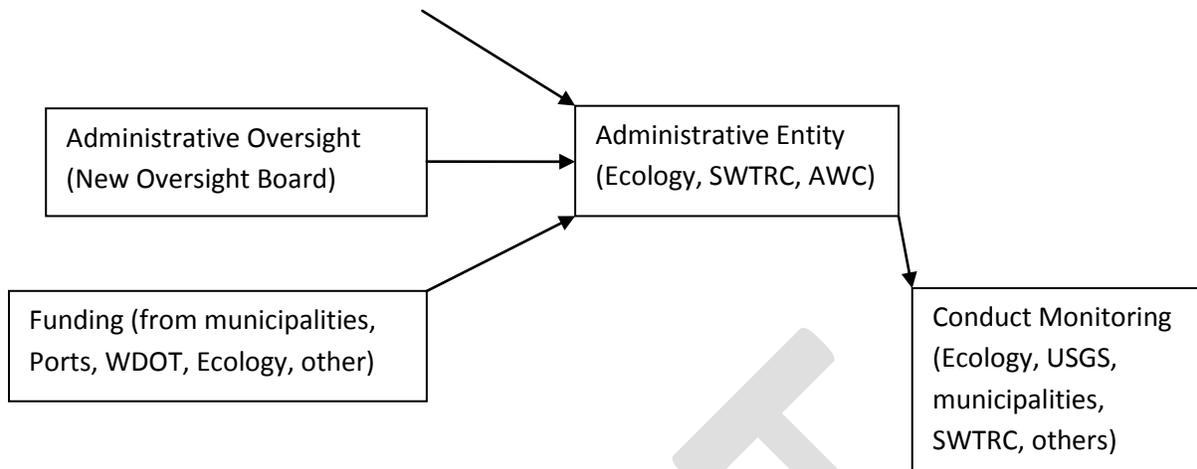
The four entities selected for further investigation included Ecology, Stormwater Technical Resource Center, USGS, and the Association of Washington Cities. Upon further consideration, the subgroup decided to not recommend USGS for the short-list of entities to consider to administer the pay-in option, 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. |