

# SWG Pooled Resources Oversight Subgroup Draft Proposal

May 9, 2011

## Proposed Oversight Committee Charter

The Stormwater Work Group (SWG) recommends that this charter be formally adopted and that Ecology officially recognize the purpose and decision-making role of this new Oversight Committee.

### 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 Resources Fund dedicated to conducting specific, permit-required components of the regional monitoring program. The Oversight Committee will provide financial oversight of the Pooled Resources Fund and also ensure that the Stormwater Work Group's technical recommendations are followed.

This charter will complement the contract between the Department of Ecology (Ecology) and permittees via which permit-required components of the regional monitoring program will be implemented.<sup>1</sup> The Oversight Committee will get input from the Stormwater Work Group's other technical subgroups to assist in making decisions as to how Ecology should award contracts to conduct the regional monitoring program using the Pooled Resources Fund.

This is a preliminary draft charter. The Stormwater Work Group will consider comments on this preliminary draft and release final draft charter in October 2011. The Stormwater Work Group plans to adopt the final charter in the summer of 2012, coincident with issuance of the municipal stormwater NPDES permits.

This charter shall be in effect for the duration of the next municipal stormwater NPDES permit cycle, and will expire in September 2018. A formal review and assessment shall be conducted one year in advance of this expiration date.

### II. Purpose

The primary functions of the Oversight Committee (the Committee) of the Stormwater Work Group are to provide transparency, efficiency, and accountability of the Pooled Resources Fund for the Regional Stormwater Monitoring and Assessment Program for Puget Sound.

The Department of Ecology (Ecology) or other future service provider will:

- (i) Manage the funds submitted by local governments and others to conduct the regional monitoring program;
- (ii) Implement the collective recommendations of the stakeholders that comprise the Stormwater Work Group; and
- (iii) Conduct a process to request proposals and award contracts to perform monitoring and assessment activities.

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<sup>1</sup> Oversight of the permit-required monitoring program is a separate function from the roles and responsibilities of the Oversight Committee that is the subject of this charter.

- (iv) Ensure the execution of the program meets the requirements set forth in NPDES permits.

The Oversight Committee will:

- (i) Implement Stormwater Work Group recommendations and oversee Ecology's administrative and technical methods of implementing the regional monitoring program.
- (ii) Oversee Ecology's management of the Pooled Resources Fund, including expenditures of contingency funds for cost overruns.
- (iii) In coordination with the Stormwater Work Group's technical subgroups, rank and evaluate proposals and provide Ecology with grouped lists of contracts that should be awarded to implement components of the regional monitoring program.
- (iv) Ensure that the technical recommendations of the Stormwater Work Group's other subgroups are implemented.

Although the Committee has the powers and responsibilities set forth in this Charter, the role of the Committee is oversight and decision making. The members of the Committee are representatives of various agencies and organizations and are not accountants or auditors by profession or experts in the fields of accounting or auditing and, in any event, do not serve in such capacity. 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.

### **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 National Pollutant Discharge Elimination System (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 and confirmed. The Committee's Chairperson shall be designated by the Stormwater Work Group or, if it does not do so, the Committee members shall elect a Chairperson by vote of a majority of the full Committee.

The committee membership will evolve as other permits are brought into the program. The Stormwater Work Group may decide to add other members to the Committee as the program evolves. After one year, 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 Committee may form and delegate authority to subcommittees or to other subgroups of the Stormwater Work Group when appropriate.

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 other interested parties no later than two weeks after the meeting.

#### **V. Responsibilities and Duties**

The Oversight Committee shall be responsible for overseeing Ecology's administration and management of the accounts and contracts for implementing the regional stormwater management and assessment program. The Committee shall make decisions about contracting awards and will review the annual work plans and quarterly financial statements provided by Ecology. The Committee shall consult with Ecology but shall not delegate these responsibilities.

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:

#### **With respect to contracting decisions:**

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 will decide which contracts should be awarded to conduct the regional monitoring program activities and will transmit this information to Ecology.
3. Committee will establish the criteria and process by which contracting decisions are made, and will evaluate, rate and rank the proposals for Ecology to award the contracts.
4. The Committee will make decisions about contracts in groups according to the component of the overall work plan being addressed: effectiveness studies, small streams status and trends monitoring, nearshore status and trends monitoring, and source identification and diagnostic monitoring.
  - a. The Committee will assist Ecology with developing the requests for proposals.
  - b. 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. The Stormwater Work Group's technical subgroups will assist the Committee in reviewing proposals.
6. 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.
7. The Committee will present its decisions to the Stormwater Work Group at its next regularly scheduled meeting.
8. Committee decisions that are made solely by a majority recommendation of the permittees shall be brought to the Stormwater Work Group for further discussion and final decision.
9. Committee decisions that are made with a third or more of the members having a strong dissenting opinion shall be brought to the Stormwater Work Group for further discussion and final decision.
10. Ecology will award contracts in accordance with Committee decisions and following state guidelines and regulations. In cases in which Ecology for any reason is unable to implement the Committee's recommendations, Ecology will explain to the Committee in a timely fashion the reasons Ecology cannot do so, and propose a solution to the Committee.
11. 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.
12. 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. An alternate member should serve on those occasions.
13. If the Committee is unable to reach consensus, decisions will be made by majority vote. The Committee will decide whether an issue needs to be heard by the entire Stormwater Work Group prior to making a decision.
14. The Committee will assist Ecology as needed in hearing appeals on contract award decisions.

**Periodic and Annual Reviews:**

15. 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.
16. The Committee shall review the quarterly financial statements from Ecology.
17. The Committee shall review the performance of each contractor on at least an annual basis.
18. The Committee shall review and approve the annual work plan and budget submitted by Ecology.
19. 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.
20. 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.
21. The Committee shall request a bi-annual performance evaluation by the Stormwater Work Group.
22. The Committee shall initiate and lead an evaluation of Ecology's performance as service provider.

**Other:**

23. 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.
24. 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 Committee.
25. The Committee shall provide reports regularly to the Stormwater Work Group on its activities, as appropriate.
26. This Charter and all meeting summaries will be made available on the Stormwater Work Group website at ["https://sites.google.com/site/pugetsoundstormwaterworkgroup/home"](https://sites.google.com/site/pugetsoundstormwaterworkgroup/home) and on Ecology's website at ["http://www.ecy.wa.gov/programs/wq/psmonitoring/swworkgroup.html"](http://www.ecy.wa.gov/programs/wq/psmonitoring/swworkgroup.html)