

**Stormwater
Permit
Requirements at
the Department
of Transportation
Report 11-2**

January 5, 2011



STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

STUDY TEAM
Stephanie Hoffman
John Woolley
Eric Thomas

PROJECT SUPERVISOR
David Dean

LEGISLATIVE AUDITOR
Keenan Konopaski

Copies of Final Reports and Digests are
available on the JLARC website at:

www.jlarc.leg.wa.gov

or contact

Joint Legislative Audit & Review
Committee
1300 Quince St SE
Olympia, WA 98504-0910
(360) 786-5171
(360) 786-5180 FAX

REPORT SUMMARY

Stormwater runoff is rain or snow melt that flows off highways, parking lots, and other surfaces. Federal and state laws recognize stormwater runoff as a major source of water pollution. The Washington State Department of Transportation (WSDOT) and others are required to obtain permits to manage and control stormwater runoff.

The 2010 Supplemental Transportation Budget (ESSB 6381) directs JLARC to analyze options for implementing WSDOT's stormwater permit. **WSDOT requested \$21.6 million in the 2011-13 Biennial Transportation Budget to implement the requirements of a new, five-year permit issued in 2009.** This permit has new and expanded requirements from WSDOT's previous permit.

WSDOT is proposing to perform almost all of the functions of the permit using its own staff and resources. The permit's requirements primarily fall into three major activities: **maintenance** of stormwater control devices, such as detention ponds; water quality **monitoring**; and **inventory** of stormwater systems. Maintenance is the single largest activity in WSDOT's budget request, accounting for 71 percent of the total estimated costs.

Viable Options Exist, But There Is No Clear Choice Due to Key Information Gaps

The Legislature directed JLARC to review the following entities performing the permit requirements: WSDOT, the Department of Ecology, a consortium of public entities, and the private sector.

JLARC considered timing needs, organizational fit, and the experience of other states and local governments when assessing the advantages and disadvantages of each option, and narrowed the viable options worth considering for each of the major activities required in the permit.

For maintenance, WSDOT and the private sector are viable options. Both have experience performing some of the maintenance functions now required. However, a large portion of the maintenance cost estimate is for an activity that has not been routinely performed in the past. There is limited experience nationally or locally to conclude whether one option is preferable to another.

For monitoring, WSDOT, Ecology and the private sector are viable options. Both Ecology and the private sector have experience and expertise in water quality monitoring. WSDOT has also begun to develop some in-house expertise, and a recent report by the U.S. Geological Survey recommends the agency develop some in-house expertise to manage the monitoring program.

For inventory, WSDOT and the private sector are viable options. WSDOT has contracted for some inventory services in the past. WSDOT has also used its own staff to perform similar tasks, and this activity is part of a larger agency effort to understand and manage its assets.

The consortium approach is the only one that is not feasible for the current permit. No such entity or infrastructure is currently in place to meet the permit deadlines. For the future, however, such an approach may be feasible. For example, a future consortium for monitoring is already being discussed among key stakeholders, including WSDOT, for the next round of permits.

Timing Considerations and Lack of Comparable Cost Information Complicate Choosing Among Options

Although viable options exist for performing each of the major permit functions, there are significant information gaps that make choosing among the options difficult. First, any entity that performs a major permit function must be able to meet the deadlines specified in the permit. While some options can be eliminated due to timing constraints, it is not possible to determine exactly who is best positioned to meet the permit deadlines.

Another key gap in information is a lack of comparable cost data on the options reviewed. WSDOT did not perform a comprehensive cost analysis of alternatives during the development of its budget request. JLARC was not able to obtain comparable, reliable cost data from other states and local governments for meeting stormwater requirements, either in-house or through an alternative approach. The absence of comparable cost data is consistent with the findings of recent national and local research on stormwater permit implementation.

The following recommendations seek to fill the largest information gaps so that more comprehensive information is available for future budget decision making.

Recommendation 1: To the Legislature

To obtain comparative cost information and determine whether private contractors can meet the permit deadlines, the Legislature should direct WSDOT to conduct a pilot program contracting for the maintenance of some stormwater control devices. WSDOT should report to the Legislature on the results of the pilot program.

In consultation with legislative staff, WSDOT should determine how many stormwater devices to include in the pilot, how long the pilot should be in place, and whether to pursue contracts based on the responses received. The pilot program should be designed to allow for a valid comparative cost analysis between using WSDOT staff and equipment and using contractors.

If the Legislature specifically directs WSDOT in statute or budget proviso to pilot maintenance contracting, WSDOT will not be subject to provisions of the competitive contracting law enacted through the 2002 Personnel System Reform Act (RCW 41.06.142). However, contracting could be raised as a collective bargaining issue.

Recommendation 2: To the Washington State Department of Transportation

To ensure that WSDOT is using the most cost-effective option for performing monitoring and inventory, WSDOT should prepare comparative cost information on viable options for meeting permit requirements for future budget cycles.

This should include the cost of WSDOT staff and equipment compared to the cost of those services being provided by others. In consultation with legislative staff, WSDOT should incorporate additional viable options—should any become available—in future analyses, such as a future monitoring consortium that is being discussed among multiple stakeholders for the next round of permits.