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FEBRUARY 2015

Accelerating Cost-Effective Green Stormwater Infrastructure: LEARNING FROM LOCAL IMPLEMENTATION

Nell Green Nylen and Michael Kiparsky
Wheeler Institute for Water Law & Policy

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Center for Law, Energy & the Environment
About the Wheeler Institute

The Wheeler Institute for Water Law & Policy develops interdisciplinary solutions to ensure clean water for California. Established in 2012 at the Center for Law, Energy & the Environment (CLEE) at Berkeley Law, the Institute conducts projects at the intersection of law, policy and science.

The Center for Law, Energy & the Environment (CLEE) at Berkeley Law educates the next generation of environmental leaders and develops policy solutions to pressing environmental and energy issues. The Center’s current initiatives focus on reducing greenhouse gas emissions, advancing the transition to renewable energy, and ensuring clean water for California’s future.

About the authors

Nell Green Nylen is a Research Fellow with the Wheeler Institute for Water Law & Policy. Her research engages law, science, and policy to tackle critical water issues. Dr. Green Nylen has also published on the legal and environmental implications of federal agency planning and decision making. Before becoming a Research Fellow, she clerked for Justice Gregory J. Hobbs, Jr., on the Colorado Supreme Court and interned with the California Attorney General’s Office and the Center for Biological Diversity. She earned a J.D. from Berkeley Law, and both a Ph.D. and a B.S. in Geological and Environmental Sciences from Stanford University, where her dissertation examined past climatic and environmental change along the Northern California coast.

Michael Kiparsky is Associate Director of the Wheeler Institute for Water Law & Policy. Dr. Kiparsky has worked on both technical and policy aspects of water resources management, and his overarching professional interest lies at the intersection between the two. As a researcher, he has published on governance and policy of complex water systems, as well as on risk analysis, impacts of climate change on hydrology, and adaptation to climate change. As a practitioner, he has water-related experience in consulting, non-profit, and agency settings, and he was previously on the faculty at the University of Idaho. Dr. Kiparsky earned a Ph.D. and M.S. at U.C. Berkeley’s Energy and Resources Group, and an A.B. in Biology from Brown University.
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I. Executive Summary

Ineffective stormwater management is a serious problem nationwide

Conventional stormwater management strategies based around “gray” collection and conveyance systems—networks of gutters, storm drains, and sewers—have not solved persistent stormwater problems. Instead they have shifted, and in many cases exacerbated, the impacts of stormwater runoff, trading urban flooding for pollution and hydromodification of nearby rivers, streams, lakes, and estuaries.

Green stormwater infrastructure (GSI) is an important part of the solution

A different approach to stormwater management is needed. Effective management requires a holistic approach that employs a locally tailored mix of on-site and off-site retention, treatment, and use along with pollutant source controls to protect local waters and meet other community and regulatory objectives.

GSI is a crucial piece of the stormwater-management puzzle. GSI works by addressing stormwater where rain or snow falls. It uses distributed installations to mimic natural stormwater retention and treatment processes. The goal is to minimize the quantity and maximize the quality of runoff that flows to local waters. GSI can be a powerful tool for managing stormwater while achieving a host of additional benefits.

With this in mind, the U.S. Environmental Protection Agency (EPA) and state regulators are beginning to encourage, and sometimes to require, expanded use of GSI to meet Clean Water Act goals. Requirements for using GSI in development projects, and increasingly stringent water-quality requirements for discharges to local waters, are helping to drive local GSI planning and implementation efforts.

Barriers to GSI implementation include uncertainty about performance and cost

Although its importance as a component of future stormwater management is difficult to overstate, there are many potential barriers to widespread, timely, efficient, and effective GSI implementation. These include informational, technical, legal, institutional, social, political, and financial barriers. This report focuses on the challenges posed by information limitations, which impede cost-effective GSI deployment by perpetuating uncertainty about performance and cost.

While robust information is important in any field, it is especially critical here because GSI is evolving technology. Good performance cannot simply be assumed. Each installation is a local experiment in which site-specific conditions and design specifications heavily influence what runoff-volume and pollutant reductions are actually achieved, whether these reductions are adequate to meet community objectives and regulatory requirements, and at what initial and long-term cost.

Many communities are still analyzing how to most efficiently use local resources to implement GSI. Cost-effectiveness is a primary consideration for stormwater managers who are trying to decide how to employ GSI in their communities. Uncertainty about either life-cycle costs or performance—both of which linger today—can impede decision making, leading communities to underinvest in GSI or to overspend on less cost-effective GSI. Either result is problematic for a community with limited funds and unaddressed stormwater needs.

While many cities with combined sewer systems already recognize that distributed GSI offers clear financial benefits over exclusively gray infrastructure, most municipalities with separate storm sewer systems (MS4s) do not yet face such obvious fiscal incentives. However, as stormwater permits trend toward stronger retention and water-quality requirements, more communities with MS4s will likely be weighing specific compliance scenarios that include different types, placements, and amounts of GSI. Reducing uncertainty about performance and costs would help clarify financial incentives and speed cost-effective GSI deployment across the board.

Monitoring and sharing data can reduce uncertainty and open the door for greater design standardization

Monitoring locally implemented GSI and sharing the results can provide information that is crucial for addressing the uncertainty that surrounds GSI
Monitoring data, and the lessons they can teach, reduce uncertainty, aid the development of cheaper and more reliable GSI designs, and give decision makers the information they need to more cost-effectively plan and deploy GSI at a scale sufficient to meet community and regulatory objectives.

As experience implementing different GSI designs under a variety of local site conditions accumulates, understanding of what variables are most important to proper function in different contexts, and how much GSI actually costs to install and maintain, will improve. This knowledge will enable development of GSI designs that achieve better reliability at lower cost.

Greater design standardization would help reduce costs further. Site variability makes true plug-and-play GSI designs impracticable. However, standardization could take the form of libraries of customizable basic designs and specifications that consistently deliver good performance for common sets of site conditions and community objectives.

State and federal regulators can boost local data collection and sharing to accelerate cost-effective GSI deployment

Without a concerted effort to reduce uncertainty about cost and performance, GSI deployment over the coming decades will be less extensive and less effective than communities need it to be. More and better data are crucial to reducing uncertainty and accelerating the development of GSI technology. Specifically, it is essential to increase collective learning from early GSI installations through sustained monitoring of performance, maintenance needs, and costs, paired with effective data sharing.

So far the extent of data collected and shared has been limited. Local implementers often informally collect information for their own tracking and management purposes (or, if not, they should). However, these data are rarely formally recorded or made accessible to others.

Although state and federal regulators are already promoting GSI, they have the authority to play a more active role in accelerating and improving it. More and more frequently, stormwater permits and combined sewer overflow (CSO) consent decrees now include requirements for municipalities to manage runoff using GSI. In connection with these requirements, regulators should require GSI monitoring, capturing relevant qualitative and quantitative information in an accessible, centralized database.

Specifically, the EPA and state water quality authorities should take the following seven actions:

**Action 1:** Incentivize and highlight the importance of voluntary GSI monitoring and data contributions to the International Stormwater Best Management Practices Database (ISBMPD). Given that **Actions 2**, **3**, and **4** may take time, this is critical.

**Action 2:** Identify quantitative and qualitative GSI monitoring priorities at the national, regional, and watershed level.

**Action 3:** Adopt standardized GSI monitoring and reporting protocols and guidance.

**Action 4:** Attach specific monitoring and reporting requirements to GSI required by National Pollutant Discharge Elimination System (NPDES) permits and consent decrees. Some requirements would be broadly applicable (e.g., context, cost, maintenance, and qualitative performance data and lessons learned). However, a limited subset of GSI installations (consistent with the priorities identified in **Action 2**) would also require quantitative performance monitoring.

**Action 5:** Capture required GSI monitoring data in the ISBMPD. This could involve requiring individual implementers to submit data directly to the ISBMPD, collecting information first in state or regional databases that regularly feed accumulated data into the ISBMPD, or coordinating data submission with implementation of the NPDES Electronic Reporting Rule by redesigning the NPDES Integrated Compliance Information System to facilitate carryover of monitoring data to the ISBMPD.

**Action 6:** Feed water-quality related GSI monitoring data into the National Stormwater Quality Database (NSQD).

**Action 7:** Prioritize ongoing support for quantitative GSI performance monitoring, database upkeep, and timely meta-analysis of accumulated monitoring data.

Opportunities to improve knowledge about GSI are inherent in local implementation efforts. Leveraging such efforts to expand organized monitoring and information sharing would reduce uncertainty about performance and cost, helping to speed widespread, cost-effective GSI deployment to achieve social and environmental goals.
### ACRONYMS USED IN THIS REPORT

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>BMP</td>
<td>Best management practice</td>
</tr>
<tr>
<td>CSO</td>
<td>Combined sewer overflow</td>
</tr>
<tr>
<td>EPA</td>
<td>U.S. Environmental Protection Agency</td>
</tr>
<tr>
<td>GSI</td>
<td>Green stormwater infrastructure</td>
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<tr>
<td>ISBMPD</td>
<td>International Stormwater Best Management Practices Database</td>
</tr>
<tr>
<td>LID</td>
<td>Low impact development</td>
</tr>
<tr>
<td>MS4</td>
<td>Municipal separate storm sewer system</td>
</tr>
<tr>
<td>NPDES</td>
<td>National Pollutant Discharge Elimination System</td>
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<tr>
<td>NSQD</td>
<td>National Stormwater Quality Database</td>
</tr>
<tr>
<td>TMDL</td>
<td>Total Maximum Daily Load</td>
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</table>
II. GSI can improve stormwater management

Conventional stormwater management strategies based around “gray” collection and conveyance systems have not solved persistent stormwater problems related to development and impervious surfaces. Instead they have simply shifted, and in many cases exacerbated, the impacts of stormwater runoff, trading urban flooding for pollution and hydromodification of nearby rivers, streams, lakes, and estuaries. Properly implemented GSI can lessen stormwater’s impacts on local waters and enhance communities in other ways.

The overarching goal of GSI is to reduce the hydrologic and water-quality impacts of development by mimicking natural, distributed stormwater retention and treatment processes. Well-implemented GSI keeps stormwater local, infiltrating or evaporating stormwater where rain or snow falls, or capturing it for later use; it minimizes the quantity and maximizes the quality of runoff that flows to local waters. GSI can complement or replace gray infrastructure.

Thoughtfully planned and executed GSI can have multiple benefits, helping local governments “make the most of limited public dollars and achieve multiple goals with a single investment.” In addition to reducing runoff volume and flood risk and protecting local water quality, GSI can provide other social, public health, economic, and environmental benefits. It can replenish groundwater and contribute to stream base flow; enhance community aesthetics, livability, and property values; improve wildlife habitat, air quality, and public health; reduce “urban heat island” effects, energy use, and greenhouse gases; and decrease municipal capital, operations, maintenance, and energy costs. Furthermore, communities that decide to implement GSI on a large scale can create viable “green collar” jobs based around designing, building, and maintaining GSI.

Given its potential to improve stormwater management, the EPA and state water quality authorities are encouraging, and sometimes requiring, cities and other stormwater managers to begin implementing GSI to meet Clean Water Act requirements.
GSI works by addressing stormwater on site, increasing infiltration, evaporation, transpiration (evaporation from plants), or capture and use of stormwater. This approach is also known as low impact development (LID). Properly implemented GSI reduces the quantity and improves the quality of stormwater that flows to local waters. GSI can be tailored to enhance removal of particular pollutants or designed around broad-spectrum pollutant-reduction goals that are difficult to accomplish conventionally. The main categories of GSI, grouped topically, include the following:

**BIORETENTION SYSTEMS** use vegetation and soils to filter, infiltrate, and evapotranspire stormwater runoff. They include biofiltration systems, which have underdrains that collect and carry some or all filtered stormwater to a storm sewer system, and bioinfiltration systems, which do not.

- **Bioretention cells/basins** (FIGURE 1) are shallow, vegetated depressions underlain by amended soils that facilitate stormwater infiltration and evapotranspiration. They can be designed to receive runoff from downspouts, parking lots, and roads.
- **Bioswales** (also known as vegetated swales) are drainage channels—often used adjacent to roads or parking lots—designed to slow, filter, and infiltrate runoff.
- **Vegetated filter strips** are gently sloped, often grass-covered, surfaces that slow sheet-flow runoff from adjacent impervious surfaces, like roads. Filter strips can help “pretreat” stormwater before it enters bioswales or bioretention basins.

**UNVEGETATED INFILTRATION SYSTEMS** reduce runoff by promoting stormwater infiltration.

- **Permeable/pervious pavements** include abundant pore space that allows stormwater to drain through. **Permeable paver systems** drain stormwater through gaps between impervious pavers.
- **Infiltration trenches** are rock-lined surface trenches without drainage outlets that receive and infiltrate runoff. **Exfiltration tanks** and **exfiltration trenches** (also known as dry wells or soakaways) introduce collected stormwater directly into native soils, with no internal treatment.

**GREEN ROOFS** use vegetation and soils to intercept and slow the flow of stormwater from rooftops or retain it for later evapotranspiration.

**STORMWATER HARVESTING SYSTEMS** employ rain barrels or cisterns to collect rainwater (often from roofs) for later landscape irrigation or other use.
FIGURE 1. Schematic cross section (not to scale) of a bioretention cell, one of the most widely used types of GSI, during (A) dry and (B) wet weather. In this design, water that enters the raised overflow structure remains untreated, but water that flows through the cell and either (1) enters the underdrain or (2) exits (exfiltrates) the cell, moving into (infiltrating) the surrounding soil, has the benefit of treatment.
Implementing GSI is rarely straightforward. Although its importance as a component of future stormwater management is difficult to overstate, there are many barriers—both perceived and real—to widespread, timely, efficient, and effective implementation.

Among the barriers implementers face are a broad spectrum of informational, technical, and institutional issues, including legal, social, political, and financial challenges. For example, GSI designs that work well in some cases may not be appropriate in others, leading to uncertainty about GSI’s effectiveness under specific local conditions. Relevant local, state, and federal rules, standards, and guidance may effectively prohibit or fail to address GSI. Limited local expertise or perceived high materials, construction, and maintenance costs may discourage GSI implementation. Potential loan and grant funding sources may support only traditional construction practices or discourage multi-benefit projects. Additionally, municipalities wanting to institute or increase stormwater-related taxes or fees may face substantial political hurdles, including voter approval requirements.

In this report, we focus on an under-addressed problem: the challenges posed by information limitations. Information limitations impede decision making by perpetuating uncertainty about GSI performance and the life-cycle costs of GSI. Accurate information about both is essential for those contemplating implementing GSI in their communities. Without it, decision makers cannot evaluate and compare the cost-effectiveness of GSI and other options for meeting regulatory requirements and achieving community goals.

The cost-effectiveness of a given stormwater management scenario is the ratio of (1) how much it will cost to design, install, and maintain and (2) the benefits it will achieve (e.g., stormwater volume reduction, pollutant removal, etc.). The chief impediment to carrying out such analysis is that it requires robust technical and financial data based on prior experience, and such data are currently limited. This report is intended to motivate increased availability of both types of data with the goal of enabling more accurate cost-effectiveness analyses going forward.

As the following sections explain, GSI has proven effective in many situations, but it is evolving technology, and performance to date has been inconsistent. In many parts of the United States, GSI is still in the pilot- or demonstration-project stage. Every installation is influenced by local priorities and regulatory requirements and has unique site-specific constraints. Although available data show that, on average, many types of GSI are capable of reducing runoff volume and pollutant load, actual performance varies substantially from site to site and from pollutant to pollutant. Additionally, long-term data about performance, maintenance needs, and costs are currently sparse.

### BOX 3. WHO IMPLEMENTS GSI?

While regulators may require or encourage GSI, specific implementation decisions are generally made at the local level. Local implementers include cities and counties; federal, state, and local agencies; private developers; neighborhood groups; and individual landowners. State and local governments can mandate or influence private implementation with generally applicable rules (like GSI regulations or ordinances) and specific permitting decisions.

#### A. Communities have different goals and expectations for GSI

Because communities implement GSI for different reasons, they may have different perspectives of what successful implementation looks like. A few examples:

**Reason 1: CSO control.** The Clean Water Act requires permits for municipal wastewater discharges to waters of the United States. It also requires cities with combined sewer systems to design and carry out long-term control plans to reduce CSOs and their associated water quality impacts. With
the EPA’s encouragement, more of these plans\(^7\) (as well as consent decrees that settle CSO enforcement actions\(^8\)) incorporate distributed GSI instead of, or in addition to, new gray infrastructure. For example, the city of Philadelphia has committed to substantially reducing its CSOs by 2036 through extensive GSI implementation.\(^9\)

Where CSOs are a major concern, the primary objective of GSI is to reduce the amount of stormwater entering the combined sewer system using distributed infiltration, retention, and evapotranspiration.\(^50\) Reducing the amount of raw sewage that enters local waters is the main water-quality benefit of relieving the burden on the sewage collection and treatment system.\(^51\) Therefore, the direct pollutant-capture capabilities of GSI may be considered peripheral.

**Reason 2: Stormwater permit compliance.** The Clean Water Act also requires permits for stormwater discharges to waters of the United States.\(^52\) Successive updates to some stormwater permits are beginning to explicitly require GSI solutions or are making them look more inviting to municipalities with MS4s\(^53\) and other stormwater permittees, including state departments of transportation,\(^54\) industrial permittees,\(^55\) and construction permittees.\(^56\)

The Act requires municipal stormwater permittees to limit the amount of pollutants they discharge to local waters through their MS4s to the “maximum extent practicable” and to comply with other permit requirements, including those aimed at achieving applicable water quality standards and effluent limitations.\(^57\) Implemented appropriately, GSI can help them fulfill a variety of general requirements.\(^58\)

Additionally, some permits require or encourage the use of GSI in new- and re-development projects\(^59\) or to achieve water-quality-based effluent limitations.\(^60\)

If GSI does not retain all stormwater—for example, where some fraction of the stormwater that enters a bioretention cell exits to the storm sewer system via an underdrain (Figure 1.B)—an MS4 permittee may need to affirmatively demonstrate that the collective pollutant-removal capabilities of its GSI installations are adequate to meet permit requirements.\(^61\) (See Parts III.C.2 and V.B for more.) On the other hand, GSI that captures and retains stormwater on site is assumed to keep that stormwater, and the pollutants it carries, out of the MS4, helping dischargers meet retention standards, water quality standards, and water-quality-based effluent limitations.\(^62\)

**Reason 3: Groundwater recharge.** Areas with limited local surface-water supplies or depleted groundwater are increasingly recognizing stormwater as a potential resource.\(^63\) Under these circumstances, distributed GSI that enhances infiltration\(^64\) could play an important role in local groundwater recharge that complements, or in some cases stands in for, centralized recharge facilities.\(^65\)

Growing interest in resilience to climate and water-supply variability, enhanced by the severe drought currently impacting California and other parts of the western United States, may motivate many communities to more seriously pursue GSI for groundwater recharge. In California, specifically, the state’s freshly minted Sustainable Groundwater Management Act\(^66\) could lead to substantial new commitments to implement GSI by local and regional management agencies.
In addition, Safe Drinking Water Act requirements may motivate implementers to be sensitive to the potential for aquifer contamination, leading them to value effective pollutant capture within GSI, as well as infiltration.

While stormwater control, regulatory compliance, and groundwater recharge are often the primary drivers behind GSI, communities may have additional social, public health, economic, and environmental goals for local implementation (see Part II, above). Each community’s particular set of local priorities and regulatory requirements shapes its expectations and needs for GSI.

B. Site-specific factors influence GSI design and performance

Deciding where and how to implement GSI is more complex than for gray infrastructure. Effective GSI implementation plans and installations acknowledge site-specific conditions, using them to advantage where possible and actively mitigating important deficiencies. Therefore, selecting wisely among potential sites, designs, treatment trains (which employ multiple GSI elements in series), and watershed-scale deployment scenarios requires a thorough understanding of how site characteristics affect performance.

Because GSI is part of an integrated management and development approach that attempts to approximate the predevelopment water balance in an area (or to improve upon it), site conditions that influence the effectiveness of infiltration and evapotranspiration are important. These include both internal factors (like soil infiltration rates and capacity) and external factors (like local rainfall and runoff patterns). Similarly, both internally and externally driven site characteristics—like soil composition and catchment pollutant load—influence water-quality performance.

Site conditions can vary regionally. For example, green roofs tend to evapotranspire a larger fraction of the rainfall they intercept in areas with sunnier, drier climates (like Southern California) than in moister areas with frequent cloud cover (like the Pacific Northwest). Similarly, regional geology and climate can govern native soil and vegetation characteristics. Somewhat counterintuitively, infiltration can be difficult in arid regions due to poor soil development and high-intensity rainfall events. However, conditions at a particular site may differ from regional conditions in ways that affect how well certain GSI designs work.

Because site-specific factors influence GSI design and performance, monitoring GSI installed under a variety of site conditions can boost understanding of what designs work best under what conditions.

C. GSI can be highly effective, but results are inconsistent

Experience to date shows that GSI is a potentially powerful tool for managing stormwater volume and water quality, but that good performance cannot be assumed in any particular case.

1. Stormwater-quantity performance

On the whole, the available information suggests that a variety of GSI designs can successfully reduce stormwater volume, especially for smaller storm events. For example, existing data indicate that bioretention systems often effectively reduce runoff volume and peak flow rate.

However, the performance of individual installations varies due to differences in site conditions (see Part III.B), design, installation, and maintenance. GSI may not meet expectations for stormwater volume reductions if important site conditions are overlooked during GSI design or construction or if it is poorly maintained.

For example, monitoring of recently installed bioretention cells along a single block of San Pablo Avenue in El Cerrito, California, revealed that (1) similarly designed cells in the system received significantly different volumes of runoff and infiltrated different volumes of water; (2) even very small...
storms caused stormwater bypass; (3) plantings inadvertently interfered with stormwater inlets; (4) inlet maintenance was needed “to ensure unimpeded inflow”; and (5) improperly placed overflow drains caused unnecessary bypass. These results suggest that the project did not fully account for local runoff patterns and that plantings and overflow drain placement could have been planned and executed more carefully.

This example highlights the value of monitoring, both for providing valuable feedback for adaptively managing the San Pablo Avenue site and for generating lessons applicable elsewhere.

2. Stormwater-quality performance

Reducing stormwater volume, by itself, can reduce the amount of pollutants reaching local waters, but other concerns are relevant to understanding GSI’s water-quality performance.

The type and abundance of pollutants in a catchment area affect the suitability of different GSI options. How effectively GSI captures a specific pollutant depends on a variety of factors, including whether the pollutant is associated with particles or dissolved in runoff and how the pollutant responds to the physical, chemical, and biological microenvironments within the installation.

Table 1 summarizes some of the treatment processes that GSI can foster and the types of pollutants each impacts. Some of these processes are well understood under controlled conditions, like those in sewage treatment plants. However, understanding of the hazard, transport, and fate of pollutants under complex environmental conditions is more limited. Due to constantly changing conditions, including temperature, moisture, and pollution loads, treatment processes perform less predictably in GSI.

<table>
<thead>
<tr>
<th>TABLE 1. Major treatment processes potentially available through GSI, some of the factors that influence their effectiveness, and the major categories of pollutants affected.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GSI TREATMENT PROCESS</strong></td>
</tr>
</tbody>
</table>
| SETTLING AND / OR FILTRATION | • Particulate matter  
• Adsorbed metals  
• Adsorbed organic compounds  
• “Particulate” phosphorus  
• Particle-associated pathogens |
| COOLING | • Thermal pollution |
| SORPTION OR PRECIPITATION | • Dissolved metals  
• Dissolved organic compounds  
• Orthophosphate  
• Ammonia  
• Pathogens |
| MICROBIOLOGICAL BREAKDOWN / TRANSFORMATION | • Organic compounds  
• Ammonia  
• Nitrate  
• Pathogens |
| VEGETATION UPTAKE | • Nutrients  
• Metals  
• Hydrocarbons |

Most categories of GSI appear to be capable of improving stormwater quality by capturing or degrading pollutants. Table 2 summarizes the effects of different categories of GSI on various pollutants (based on ISBMPD data).

However, pollutant-removal performance varies from category to category. Available data suggest that most GSI categories generally do a good job of capturing sediments and reducing the concentration of total suspended solids in outflow. GSI facilities may remove particle-associated pollutants more effectively than they remove dissolved pollutants, which can more easily flow through or overflow GSI to reach underdrains or groundwater. Nutrient removal
TABLE 2. Some categories of GSI and related stormwater control measures show statistically significant reductions or increases in effluent pollutant concentrations (based on data in the ISBMPD as of July 2012). The number of bioretention studies that analyzed each pollutant is shown in parentheses.

- No statistically significant difference between inflow and outflow concentration.
- No data available for this pollutant/category combination.
- Little data available (data for 3 or more storm events available for less than 3 facilities).

<table>
<thead>
<tr>
<th>POLLUTANT</th>
<th>TOTAL SUSPENDED SOLIDS (TSS)</th>
<th>METALS</th>
<th>BACTERIA</th>
<th>NUTRIENTS</th>
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<td></td>
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<tr>
<td>Cadmium</td>
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<td>Total Cd</td>
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<td>Total Cr</td>
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<td>Dissolved Cr</td>
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appears to be highly variable, with some forms of nitrogen and phosphorous showing more consistent removal than others, and some categories of GSI actually causing increases, rather than reductions, in outflow nutrient levels.98 Fewer performance data are available for some pollutants or forms of pollutants that may be locally or regionally important—like bacteria,99 organic compounds,100 chloride,101 and some metals. (Mercury, polychlorinated biphenyls (PCBs), and pesticides—pollutants of concern in the San Francisco Bay area102—and mercury, PCBs, PAHs, and pesticides—pollutants of concern in the Great Lakes region103—are some examples.) Few data exist for dissolved pollutants in general.104

In addition to differences between categories of GSI, there is often substantial variation in pollutant reduction within particular categories of GSI. For example, Figure 2 summarizes pollutant-removal data from peer-reviewed literature for bioretention systems. It describes pollutant removal in terms of percent reductions, by mass or concentration, in outflow relative to inflow. Such “removal efficiencies” give an incomplete picture of pollutant-reduction performance,105 but they illustrate the variability of existing water-quality performance data and highlight the need for more information about GSI effectiveness. Figure 2 shows that, for the same pollutant, some bioretention facilities can operate as net sources—effectively adding pollution to system outflow—while others operate as net sinks.106 Differences in site conditions, design, installation, maintenance, monitoring, and reporting may all contribute to observed variability. However, without more data, disentangling the influences of each may not be possible.

GSI can be tailored to enhance removal of particular pollutants of concern, but it also has the potential to achieve a broad spectrum of pollutant reduction goals that may be difficult to accomplish through conventional pollution controls alone.107 This potential is especially important in light of the variability of stormwater pollution even at a single location and incomplete understanding of the individual and cumulative risks stormwater pollutants pose to people and ecosystems.108

Nonetheless, in many cases, implementers may need to weigh trade-offs between competing priorities. For instance, there is tension between the priorities of rapid infiltration and pollutant reduction.109 Organic-rich soils with significant microbial activity can trap or degrade many pollutants of concern, including metals and hydrophobic organic compounds.110 Therefore, GSI that allows stormwater to percolate slowly through a substantial depth of fine-grained organic-rich soil is likely to be more effective at reducing these pollutants than GSI that relies on rapid infiltration or that bypasses surface soils completely (like infiltration trenches or dry wells).111

Similarly, because different pollutants require different conditions for removal, GSI designs and media compositions that effectively remove some pollutants may unintentionally exacerbate others. For example, although highly organic soils can effectively capture particle-associated metals and many organic compounds, they also contribute to nutrient leaching.112 Likewise, an anaerobic saturation zone within GSI can enhance nitrate removal but may have the undesirable side effect of increasing phosphate mobility.113

The good news is that careful implementers can often reconcile competing priorities using creative GSI designs that incorporate special soil amendments, produce microenvironments that target different pollutants or different forms of a pollutant (like ammonia and nitrate) in different zones, or employ several different technologies in series.114 Similarly, proper sizing can help reconcile treatment and infiltration goals. Consequently, creative design solutions are the subject of significant ongoing interest and innovation.115

Although performance monitoring results to date are inconsistent, they leave no doubt that GSI can be highly effective in reducing the quantity and increasing the quality of stormwater runoff. As more field and laboratory results accumulate, understanding of what makes GSI function well in different circumstances will grow, enabling smarter implementation that achieves consistently good results. Expanding monitoring and information sharing will be critical to increasing the pace of technologic improvements.

D. Summary of knowledge gaps about GSI performance, maintenance, and cost

Currently, much remains to be learned about how to implement and maintain GSI effectively under a range of real-world conditions,116 and how much it costs.

Numerous reports agree that there are important knowledge gaps. These include an incomplete

FIGURE 2. Percent reductions reported in peer-reviewed sources for bioretention systems. Where two bars overlap, a single study used two different quantification methods.
understanding of how particular pollutants move through and interact with GSI facilities, how certain regional and site-specific conditions influence performance, how to increase water-quality performance and reliability, and how to target GSI designs to address specific regulatory needs.

Major knowledge gaps also include the long-term performance of individual GSI installations, the cumulative performance of distributed GSI across watersheds, and GSI’s life-cycle maintenance requirements and costs. Although time frame and physical scale matter, information about long-term and cumulative performance, maintenance needs, and costs is currently limited.

For GSI to meet regulatory and community objectives, it must function well over time and space. However, most performance monitoring takes place over a short time frame relative to the intended lifespan of GSI. Additionally, there is a notable lack of watershed-level data about the cumulative impacts of distributed GSI. A 2013 literature review found “[n]o evaluation of implementation of [GSI] on a scale broader than pilot residential plat scale . . . except by modeling,” even though the scale and time frame of implementation will significantly influence cumulative performance.

Sustaining adequate pollutant capture and runoff-volume reductions takes ongoing performance assessment and maintenance. Together, site conditions and design specifications control the nature, scope, and frequency of maintenance needs. For example, permeable pavements may require regular sweeping with suction to maintain adequate infiltration capacity, while bioretention systems may need weeding, mulching, and debris removal. Soil media, mulch, and amendments may need periodic replacement. However, there are very few data addressing (1) whether GSI installations are being adequately maintained, (2) how they perform under different maintenance scenarios, and (3) how much adequate maintenance costs.

Making cost-effective choices about where and how to implement GSI requires an understanding of the likely lifecycle costs of individual installation options and watershed-scale deployment possibilities. Therefore, both initial cost outlays required to achieve desired performance levels and maintenance costs related to effective upkeep are important for comparing location, type, and design possibilities.

To begin to address the need for short- and long-term cost information, the EPA and others have gathered and publicized cost and cost-benefit analyses by municipalities and developers. These analyses are important beginnings, but there is substantial room for improvement. First, most existing analyses are based on projections derived from very limited cost and performance data. Additionally, many of the analyses have occurred in the CSO context, where cities with combined sewer systems are facing a clear choice between making substantial new commitments to specific gray infrastructure with readily identifiable costs and achieving the same goals more cheaply by relying, at least in part, on distributed GSI solutions.

Many municipalities with MS4s may not yet face such obvious fiscal incentives for GSI. However, as stormwater permits trend toward stronger water-quality-based requirements—including narrative or numeric effluent limitations related to Total Maximum Daily Loads (TMDLs) for impaired waters—more communities with MS4s will likely be weighing specific compliance scenarios that include different types, placements, and amounts of GSI.

Reducing uncertainty about performance and costs would help clarify financial incentives for potential implementers, speeding GSI deployment in general.

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**BOX 6. MORE DATA, FROM MORE GSI INSTALLATIONS IN MORE PLACES, ARE NEEDED**

Actual performance data for GSI are still very limited. Available data come from relatively few GSI installations that cover a limited range of site conditions and geographic areas.

Again bioretention data are illustrative. Although bioretention systems are one of the most common forms of GSI currently being implemented, bioretention monitoring results reported in peer-reviewed literature and the ISBMPD come from just 40 field sites in the United States; about 78% of these sites are on the east coast, and more than one third are in North Carolina. Data coverage for particular pollutants can be sparse and often contains important holes (e.g., the lack of dissolved-metals data for bioretention systems in the ISBMPD, seen in TABLE 2).
Expanding monitoring and information sharing would reduce uncertainty about GSI performance and cost and open the door for greater design standardization.

As we described in Part III, uncertainty about performance and cost can make cost-effectively implementing GSI challenging. The primary source of GSI’s benefits over gray stormwater solutions—that GSI works with site hydrology to achieve stormwater quantity and quality improvements—is also a potential stumbling block to widespread implementation. GSI must be matched to site-specific conditions, so an implementer cannot simply select an existing design, install it, and confidently assume it will function as intended over its lifespan. No one-size-fits-all approach exists, and the need for tailored designs increases up-front costs.

Much of the performance, maintenance, and cost data necessary to address existing knowledge gaps can come from monitoring local GSI implementation and then sharing and comparing results.

A. Monitoring benefits both current and future implementation

Monitoring offers both immediate and longer-term benefits for stormwater managers. Data gathered from monitoring current installations enable learning about how to implement GSI efficiently and effectively in different contexts. This knowledge can guide initial location and design decisions, inform maintenance and improvements, and aid decisions about future implementation.

Some benefits are local. Confirming and measuring progress is crucial when implementing promising but evolving technology to achieve community and regulatory goals. As one report put it, “due to a lack of structured monitoring,” distributed GSI is often simply “assumed to impart long lists of anticipated benefits.” Monitoring can provide immediate feedback for local implementers, functioning as a crucial check on their initial assumptions about expected performance and maintenance needs.

The lessons learned from monitoring enable adaptive management that continually improves existing installations.

Other benefits of monitoring accrue at multiple scales—locally, regionally, and nationally. Although decisions about where and how to implement GSI are inherently local, guided by local priorities and conditions, managers are likely to make better decisions when armed with information about what has worked (or not worked) under similar site conditions in other areas. Lessons learned from earlier installations can inform those that come later, both locally and across the nation. Over time, monitoring the performance and cost of many individual installations, as well as the cumulative impacts of broader implement efforts, creates data that can help answer important questions like:

- How can GSI be best implemented to meet current and future regulatory requirements and community needs?
- How do site, local, and regional conditions affect GSI effectiveness, design needs, installation costs, maintenance needs and costs, and effective lifespan?
- How does GSI design influence stormwater volume and water-quality performance, installation costs, maintenance needs and costs, and effective lifespan?
- How do “gray” and “green” alternatives compare in terms of cost, maintenance needs, and effectiveness under different conditions?
- What mix of “gray” and “green” infrastructure makes sense in a watershed, given local conditions and priorities?
- To what extent can GSI design and construction costs be streamlined by developing standardized designs that address common sets of conditions?
The information obtained through consistent monitoring can improve the accuracy of GSI siting and assessment models. It can also inform updates to zoning and building codes, stormwater management manuals, funding eligibility criteria, and other legal, policy, and institutional mechanisms that influence or limit the use of GSI.

**BOX 7. A “BIG DATA” APPROACH CAN HELP TO MAKE GSI MORE EFFECTIVE**

Analysis of context-rich monitoring data from GSI installations across the country would bring to light connections between site conditions, design parameters, cost, and performance, easing the path to broader, more cost-effective implementation.

There are a number of different ways to learn more about how GSI design influences performance. These include:

- Controlled laboratory experiments that attempt to simulate GSI function under different combinations of design parameters and site conditions (varying a single design parameter or site condition at a time).[^143]
- Semi-controlled field experiments (e.g., testing the performance of different bioretention soil media, different lengths of bioswales, or different widths of grass strips under otherwise similar conditions).[^144]
- Cumulative analysis of monitoring results from many different GSI installations with a range of site conditions and design parameters.

Although many valuable insights can come from the first two methods of inquiry, we expect the last method to become increasingly important and powerful. This “big data”[^145] approach uses statistical analysis to help identify relationships between design specifications, site conditions, costs, and performance outcomes. It can also identify important knowledge gaps—for example, particular climate regions, pollutant types/loads, and GSI designs and categories for which more or better monitoring data are needed—allowing regulators and implementers to cost-effectively prioritize future quantitative monitoring efforts.

**B. Expanded monitoring opens the door for greater design standardization**

GSI monitoring is not a goal unto itself. Instead, it is a prerequisite for making headway towards the real goal: cost-effective stormwater management. Monitoring provides performance, cost, and context data that—when shared and compared with other data— increase understanding of how GSI works now and where there is room for improvement. This knowledge enables development of GSI designs that achieve better reliability at lower cost and opens the door for increased design standardization.

Developing standard design options that reliably and cost-effectively address important sets of site variables and pollutants of concern would be a major step in facilitating widespread, distributed GSI implementation.[^146]

Greater design standardization could further lower costs and increase reliability, reducing the risk associated with implementing GSI and allowing local implementers to more straightforwardly plan and deploy it at a scale adequate to meet community needs and satisfy regulatory requirements. Helping along more rapid and widespread deployment in this way would achieve bigger near-term water-quality gains, and, ultimately, better progress toward Clean Water Act goals.

While fully standardized designs are not possible, given the need for GSI implementation to be responsive and adaptive to site variability, increased standardization could take the form of libraries of customizable basic designs and specifications that deliver consistently good performance for common sets of site conditions and community objectives. These could be accompanied by detailed guidance for tailoring GSI to meet special local needs or to address unusual site conditions.

To get to the point of confidently creating and implementing more-standardized designs, additional monitoring data are needed. This information can help identify which designs have successfully addressed which combinations of pollutants under which sets of site conditions. The goal is to understand in what contexts—and why—specific design features work.
C. Monitoring considerations:

1. Quantitative and qualitative data matter
Quantitative and qualitative GSI performance data can both be valuable. Quantitative performance data include measurements of the quantity and quality of GSI inflow and outflow. Qualitative performance data can include observations about an installation’s apparent condition or function and community feedback regarding perceived benefits.

Beyond performance data, many other types of data are useful, including quantitative or qualitative information about initial and ongoing costs and maintenance needs and site- and design-characterization data.

2. Context is critical
Performance data alone are not enough. Knowing that, somewhere, a GSI installation achieved excellent (or poor) pollutant reduction is not specific enough information to guide future decisions. In contrast, it is more helpful to know that a bioretention cell with particular specifications, built at a site with certain soil, climate, and land use characteristics, effectively captured a particular pollutant of concern, resulting in good outflow water quality. Contextual data such as detailed descriptions of site conditions and design specifications enhance performance data’s utility.147

3. “Lessons learned” are broadly useful
Monitoring should capture lessons learned, even if they don’t fit neatly into another data category. This information, which may be a mixture of qualitative and quantitative data, can serve many purposes. For example, in addition to supporting site-specific adaptive management, it can highlight easily overlooked design and construction issues or suggest solutions for commonly encountered stumbling blocks.

4. Long-term monitoring is necessary
Long-term monitoring helps ensure that GSI actually accomplishes community and regulatory goals. It also provides data that cumulatively build knowledge about (1) how hydrologic and pollutant-removal performance change over time, (2) how GSI can effectively facilitate other benefits (like groundwater replenishment, green jobs, air-quality improvements, and wildlife habitat),148 (3) the type, frequency, and cost of maintenance needed for good function, and (4) how lifecycle costs for potential alternatives (both “green” and “gray”) compare.

BOX 8. COULD GSI BE MORE LIKE SOFTWARE?

Skimping on monitoring and information sharing during the early stages of GSI implementation would ultimately waste scarce resources149 by hindering the large-scale transition to more effective and sustainable stormwater management. It may be useful to compare GSI implementation with software development.

Software developers write code they expect will function in a certain way. However, the first version of the code is unlikely to perform predictably. Developers gather performance data on early versions, including user-volunteered and automatically generated feedback. This information shows how software functions under real-world conditions. It can reveal issues that require maintenance or design changes and help identify the most appropriate responses.150 Developers take what they learn into account in subsequent revisions.

In principle, GSI should work the same way, with stormwater managers actively amassing performance data now to enable more effective, more resource-efficient implementation in the near future.
5. Watershed-scale monitoring can address the cumulative benefits of GSI deployment

Where there are multiple installations deployed across a development or within a larger watershed, monitoring their cumulative impacts to receiving waters and local communities over time can address key unknowns. Such monitoring can aid assessment of progress toward meeting community and regulatory goals. Indeed, it is the only way to directly measure the overall effectiveness of a complex array of stormwater control measures. The results of long-term, larger-scale monitoring are highly relevant to municipalities and developers contemplating important infrastructure planning and investment decisions. This type of monitoring can complement and serve as a reality check for cost-effectiveness modeling based on initial assumptions about the cost and performance of individual GSI installations and other stormwater control measures.

6. Data must be effectively shared

Data are most useful when they are easily accessible and readily comparable with other data. Standardized monitoring and reporting protocols can help achieve these goals and support information diffusion.

It can be difficult for prospective implementers to find and interpret others’ monitoring results. Currently, scattered monitoring data are available in sources including peer-reviewed scientific literature, white papers, masters theses, dissertations, and the ISBMPD. Data collection methods vary, and important contextual information is often absent, either because no one collected it in the first place or it was not reported. Review articles provide valuable coverage of the information available from field and laboratory studies of GSI, but the limited extent of currently accessible data constrains even the best attempts at synthesis.
V. Regulators can boost local data collection and sharing

Despite GSI’s substantial promise and its embrace by the EPA, some stakeholder groups, and some cities, GSI remains evolving technology in limited use across most of the United States. 

Ramping up GSI deployment to the level necessary to achieve important community and regulatory goals will take decades. Reducing uncertainty about immediate and long-term performance, maintenance needs, and costs would facilitate the decision-making process, allowing communities to reap the benefits of GSI more quickly and cost effectively. Given long infrastructure lifespans and investment cycles, accelerating the pace of implementation should be a key priority.

We suggest that the best way to reduce uncertainty in both the numerator and the denominator of the cost-effectiveness ratio—accelerating smarter, more cost-effective GSI planning and implementation—is for regulators to require local implementers to monitor and broadly share data and lessons learned. Federal and state regulators are already supporting GSI, but they have the authority to play a more active role by using Clean Water Act implementation and enforcement to boost data collection and sharing.

Specifically, regulators can use NPDES permits for stormwater discharges and CSO consent decrees to increase GSI monitoring and capture relevant quantitative and qualitative information in a broadly accessible, centralized database.

A. Local implementers need incentives to monitor and share information

Stormwater permit requirements and CSO consent decrees often act as direct or indirect drivers for GSI implementation, but local implementers generally decide where and how to incorporate GSI. Decentralized decision making provides important flexibility to tailor stormwater management solutions to local priorities and conditions. It also leaves most questions about where, when, and how to monitor in local hands. Where formal monitoring and performance evaluation occur, they are conducted piecemeal by nonprofits, universities, product manufacturers, municipalities, and (occasionally) state or regional testing and evaluation programs. For some sites monitoring is extensive, while others receive little attention. Monitoring results are not always shared or provided in a useful format.

Although hydrologic performance is important for all implementers, some install GSI without monitoring it or execute inappropriately designed monitoring programs that don’t accurately characterize hydrologic performance. Unfortunately, improper monitoring can obscure or exaggerate performance problems.

Some implementers monitor hydrologic performance, but not pollutant removal, on the assumption that stormwater volume acts as an effective proxy for stormwater impacts to local waters. They may assume that runoff reductions automatically translate into surface-water water-quality improvements. From a regulatory-compliance standpoint, this assumption makes sense for addressing water quality violations caused by CSOs. Municipalities with combined sewer systems have engaged in some of the most extensive GSI planning and deployment to date, but they may not capture information on the pollutant-removal capabilities of GSI, which are seen as peripheral. Stormwater permittees may invoke similar logic to infer that GSI stormwater volume reductions automatically translate into decreased pollutant loads to local waters. However, given the widespread use of underdrains that connect with existing storm-sewer infrastructure (Figure 1) and the fact that improperly designed, installed, or maintained GSI may not be effective (Figure 2), this reasoning may not be fully justified.

Furthermore, implementers who are focused on meeting surface-water water-quality requirements may not recognize a need to monitor GSI’s potential groundwater water-quality impacts. Yet, the groundwater water-quality implications of GSI are of general long-term importance, whether or not local priorities currently include groundwater recharge. Stormwater pollution has contributed to urban aquifer contamination in some cases. In many states, one-
third or more of water withdrawals for public supply are from groundwater, and, in all states, groundwater withdrawals are the dominant source of domestic self-supplied water. Reliance on local groundwater is expected to grow as climate variability and population growth intensify pressure on surface-water supplies.

When GSI implementation does include performance monitoring, resource constraints may mean it covers a very limited set of pollutants and other parameters, happens for only a short time, or both.

Even if implementers do collect broadly relevant data, the data may not be easily accessible, accessible data may lack important contextual information, or they may be difficult to compare with data from other installations due to differing monitoring and reporting protocols.

Providing new incentives for local implementers to gather and effectively share information about their implementation efforts would harness opportunities for knowledge building, facilitating cost-effective GSI implementation and speeding the pace of deployment.

B. Clean Water Act permitting and enforcement can drive monitoring and information sharing

The EPA and state water quality authorities are already encouraging or requiring GSI implementation through stormwater permits and CSO consent decrees. A natural extension would be to add or expand associated monitoring and reporting requirements.

Congress passed the Clean Water Act “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” The Act bars the unpermitted point-source discharge of pollutants into waters of the United States and sets a national policy prohibiting “the discharge of toxic pollutants in toxic amounts.” The eventual goal is to eliminate the discharge of pollutants to U.S. waters.

The EPA or an approved state program can issue NPDES permits for discharges from sewage treatment plants, industrial facilities, MS4s, and other point sources. Stormwater permits generally require MS4 operators to plan and implement a suite of “best management practices” (BMPs) to provide for the attainment of water quality standards and include, where applicable, water-quality-based effluent limitations that are consistent with the wasteload allocations identified in TMDLs developed for impaired waters. BMPs are “structural and nonstructural controls and operation and maintenance procedures” that “reduce or eliminate the introduction of pollutants into receiving waters” including GSI.

More and more MS4 permits include explicit requirements for municipalities to manage runoff with GSI, most often by requiring new and redevelopment projects to incorporate the technology. California municipal stormwater permits provide examples of various approaches.

The Clean Water Act and related regulations establish monitoring and reporting requirements for NPDES permits. Permits must include “conditions . . . to assure compliance” with permit limitations, “including conditions on data and information collection, reporting, and such other requirements as [the permitting authority] deems appropriate.” These conditions can include detailed monitoring and reporting protocols.

Stormwater permittees must evaluate the effectiveness of their stormwater programs and BMPs. What constitutes an adequate evaluation or demonstration of effectiveness depends on the stringency and specificity of the particular permit’s requirements. For example, demonstrating compliance with a permit that includes firm numeric water-quality-based effluent limitations (e.g., related to TMDLs for waters impaired by particular pollutants), would likely require more water-quality-related monitoring than would demonstrating compliance with narrative effluent limitations or minimum BMP requirements.

The EPA has made clear that GSI, like other BMPs, requires effectiveness evaluation, stating:

NPDES permits and enforcement agreements that incorporate green or gray infrastructure solutions require enforceable performance criteria, implementation schedules, monitoring plans and protocols, progress tracking and reporting, and operation and maintenance requirements.

Despite this guidance, many permits lack monitoring and reporting requirements for mandated GSI.

Other permits already include GSI monitoring and reporting requirements, but these could be made more detailed, more expansive, and, ultimately, more useful.
Two examples are the San Francisco Bay and Los Angeles municipal regional stormwater permits. The current San Francisco Bay municipal regional stormwater permit requires permittees to “cumulatively complete ten pilot green-streets projects that incorporate LID techniques for site design and treatment” and to “conduct appropriate monitoring of these projects to document the water quality benefits achieved.”

The permit suggests “appropriate monitoring” could consist solely of modeling based on design specifications and site-specific conditions, without any actual performance monitoring at all. However, modeling results could be misleading, given that relationships between design specifications, site conditions, and performance may not be well characterized or understood. The permit’s green-streets pilot-project reporting requirements include project maps, capital costs, operation and maintenance costs, funding sources, and lessons learned. There is a separate requirement for the permittees to collectively “[i]nvestigate the effectiveness of one BMP for stormwater treatment or hydrograph modification control.” This investigation must address “the range of pollutants generally found in urban runoff.”

There are no more specifics about the effectiveness investigation.

The San Francisco Bay permit’s GSI monitoring and reporting requirements have some positive features, but they could be considerably stronger. While the reporting requirements for the green streets projects include much useful information, there is little guidance for what constitutes “appropriate monitoring,” the scope and content of an appropriate “effectiveness investigation,” or what monitoring and reporting protocols should be followed. In addition, little actual performance data is required, only a very small number of GSI installations are affected, and the resulting data are not explicitly incorporated into a broadly accessible database. These limitations add up to substantial missed opportunity for knowledge gain.

The Los Angeles municipal regional stormwater permit makes a good start, with mandates for certification, tracking, and inspection of GSI implemented to meet new and redevelopment requirements. LA-area permittees must demand “an operation and maintenance plan, monitoring plan, where required, and verification of ongoing maintenance provisions for [GSI].” Permittees must also “verify proper maintenance and operation” of previously approved GSI. However, it is unclear how “operation” is verified or when a monitoring plan is actually required. Furthermore, the effectiveness-tracking requirement appears to be satisfied if the permittee maintains a database of design-storm related information for new and re-development projects / BMPs. In other words, there are no obvious requirements for actual performance monitoring, detailed site characterization (i.e., context) data, or actual cost data, and effectiveness-tracking data are not intended to be made widely available. Again, the permit has missed opportunities to require collection and sharing of useful information about GSI performance and lifecycle costs.

Like NPDES permits, CSO consent decrees could incorporate more useful monitoring and reporting requirements for GSI.

C. Existing databases can house and provide access to monitoring data

A centralized database already exists that could house expanded GSI monitoring data: the ISBMPD. The EPA supported its creation in the late 1990s in order to “provide scientifically sound information to improve the design, selection and performance of BMPs.” In addition to serving as a public repository for voluntarily reported data that researchers and implementers can contribute to and draw on, the website provides monitoring and reporting guidance. Substantial planning and effort have gone into the database, but it needs more data to fulfill its promise (see Boxes 6, 7, 9, and 10). An organizing principle and major goal is “continued growth to enable compilation of a robust data set that is ultimately appropriate for evaluating BMP design parameters and site-specific factors contributing to BMP performance.” Today the database contains information about more than 500 stormwater control measures, including GSI, but more, more complete, and more consistently gathered and formatted data for GSI installations are needed. The available data derive from a small fraction of the GSI installations that currently exist, and the information contributed is often very incomplete (see Table 2, Boxes 6 and 10).

The water-quality and water-volume performance data in the ISBMPD undergo periodic statistical
analysis and summarization. (For examples, see Table 2 and Box 10.)

GSI monitoring can also contribute data to a second EPA-supported and nationally important database: the NSQD. The NSQD collects stormwater runoff characterization data gathered by MS4 permittees around the country. Influent and effluent water-quality data are valuable not only for understanding GSI pollutant-removal performance but also for their utility in characterizing and tracking changes in ambient stormwater pollution over time. Therefore, these, and other water-quality-related data should find a second home in the NSQD.

With expanded, up-to-date content, both databases would be invaluable sources of information to drive more effective GSI modeling, decision making, and implementation. Therefore, increasing the flow of incoming data should be a priority. Meaningfully boosting submission quantity, breadth, and quality will require hands-on guidance and support from the EPA and state water quality authorities.

D. Specific recommendations

To boost local data collection and sharing, with the aim of accelerating cost-effective GSI deployment, we recommend that state and federal regulators take the following seven basic actions.

**BOX 10. EXPANDING THE ISBMPD WILL HELP LINK GSI DESIGN WITH PERFORMANCE**

Increasing the quantity and quality of data in the ISBMPD could speed identification of the most cost-effective GSI designs for different sets of site constraints.

A 2013 review of ISBMPD that sought to identify relationships between specific BMP design variables and pollutant-reduction performance concluded that design-related content was “relatively limited.” As might be expected, the review failed to identify any statistically significant relationships between bioretention design variables and pollutant-reduction performance. It focused on 6 pollutants and 3 design variables, noting that the effects of a fourth, likely very important, parameter (soil media composition) could not be evaluated due to “inconsistent and incomplete” information. Similarly, there were not enough data available to meaningfully analyze 2 of the 6 pollutants initially targeted. Many of the 30 bioretention studies in the database lacked one or more types of relevant design or water-quality data.

This example illustrates the current data deficit and hints at what could be gained from collecting and sharing more and better contextualized GSI data.

**Action 1. Incentivize voluntary monitoring and reporting**

Monitoring and data sharing are important today. However, it may take some time to accomplish Actions 2, 3, and 4. Therefore, as an initial step, regulators should highlight the importance of voluntarily monitoring GSI and contributing data to the ISBMPD and should encourage implementers to do both.

**Action 2. Identify quantitative and qualitative monitoring priorities**

State and federal regulators should develop quantitative and qualitative monitoring priorities through intensive discussions with stakeholders, including the regulated community, environmental organizations, other state and federal agencies, and other parties with relevant scientific and technical expertise.

Some monitoring priorities may be feasible for all required implementers to address. These include actual costs, maintenance performed, and qualitative performance measures—information that local implementers should be collecting already.

On the other hand, it may not be feasible to require extensive quantitative performance monitoring of every GSI installation required by an NPDES permit or consent decree. Therefore, regulators (in consultation with the stakeholders mentioned above) will need to decide where quantitative performance monitoring can be focused most fruitfully (e.g., all GSI facilities in environmentally sensitive or especially polluted areas, some fraction of the GSI facilities in the permit...
region, etc.) in light of national, regional, and local or watershed-based objectives and information gaps.

Ideally, monitoring priorities will be nested or layered, with regional- and watershed-level priorities supplementing national priorities developed with EPA leadership. For example, national priorities would include a core water-quality monitoring suite that state or regional regulatory authorities would build upon to ensure that local objectives and pollutants of concern are addressed.

**Action 3. Adopt standardized monitoring and reporting protocols and guidance**

Because monitoring and reporting that follow standard protocols are most useful, after consulting with stakeholders (as for Action 2), state and federal authorities should jointly adopt consistent monitoring and reporting protocols.

These should be explained in detail in an updated EPA monitoring manual that describes acceptable monitoring methods, equipment and specifications, data collection frequency, reporting requirements, etc., for different categories of GSI. The manual should include modified protocols, as needed, for different climates and other relevant site characteristics. It should also explain which data are suitable for demonstrating compliance in different regulatory contexts.

**Action 4. Include specific monitoring and reporting requirements in NPDES permits and consent decrees**

State and federal regulators should attach specific data collection and reporting requirements to GSI required by NPDES permits and consent decrees.

Low-hanging fruit include information that local implementers already are—or should be—producing and tracking for their own internal accounting and management purposes (e.g., for confirming proper installation, assessing whether GSI is functioning as intended, determining when maintenance is needed, and keeping track of expenses). Therefore, we recommend that standard monitoring and reporting requirements address the following:

- Relevant site conditions
- Community and regulatory goals
- As-built GSI plans/specifications and later modifications
- Initial and ongoing qualitative performance (e.g., based on visual inspections, community feedback, etc.)
- Frequency and type of maintenance performed
- Actual costs:
  - Installation costs
  - Operations and maintenance costs
  - Monitoring and reporting costs
- Estimated avoided costs (e.g., cost-savings achieved by using GSI to address multiple community needs)
- Lessons learned (e.g., about design, installation, performance, costs, public response, etc.)

Note that the details of these requirements would largely be determined through Actions 2 and 3.

In addition to these standard, broadly applicable monitoring and reporting requirements, regulators should impose supplemental requirements for quantitative performance monitoring on a subset of GSI installations, consistent with the monitoring priorities identified in Action 2. These should address:

- Initial and long-term hydrologic performance
- Initial and long-term pollutant-removal performance (for both a suite of pollutants of general interest and pollutants of special local interest)

Permits and consent decrees should make clear what role specific data will play in demonstrating regulatory compliance.

**Action 5. Capture required monitoring data in the ISBMPD**

Permits and consent decrees should require implementers to submit monitoring data for inclusion in the ISBMPD.

Regulators could require individual implementers to submit data directly to the ISBMPD or require reporting to state- or regional-level databases that regularly feed accumulated data into the ISBMPD. The latter method might make it easier for state permitting authorities to oversee compliance and confirm data quality. Furthermore, supplying and accessing data that are more locally focused might be more palatable to permittees.

On the other hand, coordinating GSI monitoring-data submission with the implementation of EPA's upcoming NPDES Electronic Reporting Rule
could prevent time and labor duplication. This might entail redesigning the NPDES Integrated Compliance Information System\(^{224}\) to facilitate the carryover of monitoring data to the ISBMPD.

**Action 6. Feed water-quality-related monitoring data into the NSQD**

Data that characterize stormwater pollution—including influent and effluent water-quality data—should also be included in the NSQD. To streamline the process for data contributors, these data could be supplied to the NSQD through the ISBMPD.

**Action 7. Prioritize sustained support for quantitative monitoring, database upkeep, and meta-analysis**

Finally, we recommend that state and federal regulators prioritize funding and other resources (1) to help lessen the financial and technical burden on local implementers tasked with quantitative monitoring and (2) to ensure that the ISBMPD and the NSQD are able to provide timely, relevant data and meta-analysis over the coming decades.

While we understand that funds are limited at all levels of government, sustained financial support for quantitative performance monitoring priorities—which benefit all but will likely be undertaken by a limited range of implementers—could be crucial for speeding learning. Furthermore, without database maintenance and periodic meta-analysis of accumulated data, even the most comprehensive monitoring efforts could have limited utility.

Prioritizing resources for these activities will most efficiently achieve the broad public benefits regulators seek.
VI. Conclusion

In sum, our argument is a simple one. GSI is critical to solving stormwater management challenges. Barriers, including uncertainty about performance and cost, impede widespread, cost-effective implementation. More extensive and effective monitoring and data sharing will enable learning about what works best, reducing uncertainty. State and federal regulators can actively accelerate cost-effective GSI deployment by requiring local implementers to monitor performance, maintenance, and costs and to broadly share their data and lessons learned.

Over the coming decades, GSI will be increasingly important for stormwater management. However, developing best practices for using GSI—and demonstrating its role in regulatory compliance—will require more thorough understanding of performance, maintenance needs, and costs. Uncertainty about the life-cycle costs or the effectiveness of green- and gray-infrastructure options makes it hard to accurately compare them. This impairs decision making about where and how to implement GSI, increasing the likelihood of underinvestment in GSI or overspending on inappropriate GSI. Improved understanding of which techniques are effective under different circumstances will facilitate more accurate cost-effectiveness comparisons, support better decision making, and open the door for increased design standardization.

The EPA and state water quality authorities can take a more active role in growing the collective GSI knowledge base to speed cost-effective deployment. Specifically, they can harness—and amplify—the potential for collective learning from each instance of local implementation by adopting the recommendations detailed in this report and summarized below.

The first step (Action 1) is for regulators to more actively promote voluntary monitoring and data sharing, but Actions 2 and 3 should also begin immediately. Fleshing out monitoring priorities, more detailed monitoring and reporting requirements, and the practical guidance that will aid implementers in carrying them out will require deep and thoughtful consideration and input from many sources.

We offer these recommendations as a starting point that we hope will spark further discussion and action.

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VII. Acknowledgments

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Any errors are the responsibility of the authors alone.
VIII. Endnotes


2 See Seth J. Wenger et al., Twenty-Six Key Research Questions in Urban Stream Ecology: An Assessment of the State of the Science, 28 J. N. Amer. Benthological Soc’y 1080, 1086–1089 (2009) (describing physical, chemical, and biological urban stream stressors); Nat’l Research Council, supra note 1, at 28–30, 231–33 (summarizing the hydrologic, geomorphic, and biological effects of urbanization and urban stormwater on watersheds); Christopher J. Walsh et al., The Urban Stream Syndrome: Current Knowledge and the Search for a Cure, 24 J. N. Amer. Benthological Soc’y 706, 713 (2005); G. Allen Burton, Jr. & Robert E. Pitt, Stormwater Effects Handbook: A Toolbox for Watershed Managers, Scientists, and Engineers 63–64 (2001) (describing stormwater-induced changes in stream flow, stream and floodplain morphology, riparian vegetation, and sediment loading). Stormwater burden appears to be a root cause of “urban stream syndrome,” the “cascade of changes” that occurs in urbanized watersheds. Wenger et al., supra, at 1081; see also Walsh et al., supra, at 706, 713 (“The mechanisms driving the syndrome are complex and interactive, but most impacts can be ascribed to a few major large-scale sources, primarily urban stormwater runoff delivered to streams by hydraulically efficient drainage systems.”). These consistently “include a flashier hydrograph, elevated concentrations of nutrients and contaminants, altered channel morphology and stability, and reduced biotic richness, with increased dominance of tolerant species,” and often include “other symptoms . . . such as reduced baseflow or increased suspended solids.” Walsh et al., supra, at 707, 708 tbl.1, 709 fig.1. Human activities have increased stormwater runoff by replacing natural pervious surfaces with impervious surfaces like pavements, roofs, and compacted sediments. See generally David J. Nowak & Eric J. Greenfield, Tree and Impervious Cover in the United States, 107 Landscape & Urban Planning 21, 22, 28–29 (2012). Aquatic ecosystem degradation can accompany even very low levels (a few percent) of directly connected impervious cover in a watershed. See U.S. Envtl. Prot. Agency, Estimating Change in Impervious Area (IA) and Directly Connected Impervious Areas (DCIA) for New Hampshire Small MS4 Permit 1 (revised 2014), available at http://www.epa.gov/region1/npdes/stormwater/nh/NHDCIA.pdf (“Typically watersheds with 4–6% IA start to show [negative] impacts, though recent work has found lower % IA threshold values for sensitive species. Watersheds exceeding 12% IA often fail to meet aquatic life criteria and narrative standards.” (internal citations omitted)); Seth J. Wenger et al., Stream Fish Occurrence in Response to Impervious Cover, Historic Land Use, and Hydrogeomorphic Factors, 65 Can. J. Fish. Aquat. Sci. 1250, 1253, 1260, 1260 fig.4 (2008) (reporting that some fish species become rare at effective (directly connected) impervious area coverage of as low as 2%); see also Walsh et al., supra, at 715, 715 fig.2. “Directly connected impervious cover” is the portion of impervious cover that has a direct hydraulic connection to a storm sewer system or body of surface water “via continuous paved surfaces, gutters, drain pipes, or other conventional conveyance and detention structures that do not reduce runoff volume.” U.S. Envtl. Prot. Agency, supra, at 1.

3 See Matthew A. Wilson et al., Assessment of Hydrodynamic Separators for Storm-Water Treatment, 135 J. Hydraulic Eng’g 383 (2009) (describing hydrodynamic separators as “proprietary underground devices designed to remove floatable debris (e.g., leaves, trash, oil) and to remove suspended solids from storm-water runoff by sedimentation”).


5 In areas with combined sewer systems, mixed stormwater and sewage are treated at a wastewater treatment plant unless stormwater overwhelms the collection/treatment system’s capacity. See discussion infra Part III.A, including Box 4.

6 For example, switching to unleaded gasoline in the United States “resulted in an order-of-magnitude reduction of lead levels in stormwater runoff in a decade.” Nat’l Research Council, supra note 1, at 358; see also, e.g., Peter C. Van Metre & Barbara J. Mahler, PAH Concentrations in Lake Sediment Decline Following Ban on Coal-Tar-Based Pavement Sealants in Austin, Texas, 48 Envtl. Sci. & Tech. 7222, 7226 (2014) (noting that, “although PAH concentrations are declining, existing stocks of coal-tar sealants continue to contribute the largest proportion of PAHs to the lake sediments, implying that PAH concentrations should continue to decrease as those stocks are depleted”). However, more and better source control is possible. For example, the 2009 NRC Report noted that EPA has not used “its existing licensing authority to regulate . . . products [like de-icing chemicals, materials used in brake linings, motor fuels, asphalt sealants, and fertilizers] in a way that minimizes their contribution to stormwater contamination.” Nat’l Research Council, supra note 1, at 4.

7 Pollutants “remaining even in ‘treated’ stormwater represent a substantial, but largely unappreciated, impact to downstream watercourses.” Nat’l Research Council, supra note 1, at 25. A broad spectrum of sources contributes to urban stormwater pollution. See id. at 32. For example, trash accumulates on pavements and in storm drains. Exhaust components, brake dust, motor oil, gasoline, and diesel fuel come from motor vehicles. Road salts, other deicers, and traction sand run off of roads, sidewalks, and driveways. Plant debris, soil, fertilizers, and pesticides run off of lawns, gardens, and landscaped areas. Pavements, pavement sealants, and road paint erode. Rainwater leaches roofing and building materials and rinses pet and other animal wastes from roofs, sidewalks, and landscaped areas. See, e.g., Nat’l Research Council, supra note 1, at 176–207. The composition and concentration of pollutants in stormwater and the volume of stormwater runoff vary over time and depend on climate, weather, watershed characteristics, and the type, intensity, and history of local and regional land uses. See Jartun et al., Runoff of Particle Bound Pollutants from Urban Impervious Surfaces Studied by Analysis of Sediments from Stormwater Traps, 396 Sci. Total Envt’y 147, 147 (2008). Stormwater exposes aquatic ecosystems to many different pollutants at once, including sediments, metals, organic compounds, nutrients, pesticides,

8 See Nat’l Research Council, supra note 1, at 32 (“[S]tormwater treatment must address not only “pollutants” but also physically and ecologically deleterious changes in flow rate and total runoff volume.”); id. at 34, 218 (discussing temperature).


13 See id.


18 See EPA Scorecard, supra note 17, at 2–3; See Managing: Wet Weather, supra note 11, at 4–5. The EPA uses the term green infrastructure to broadly encompass "systems and practices that use or mimic natural processes to . . . support the principles of “low impact development (LID).” Low Impact Development (LID), U.S. ENVTL. PROT. Agency, http://water.epa.gov/polwaste/green/ (last updated Oct. 3, 2014) [hereinafter EPA LID].


20 See infra note 107 and associated text.

21 Depending on site conditions and objectives, a bioretention system may or may not include an underdrain. See Minnesota Stormwater Manual: Bioretention Terminology, MINN. POLLUTION CONTROL AGENCY, http://stormwater.pca.state.mn.us/index.php/Bioretenion_terminology (last modified Apr. 4, 2014). While bioinfiltration systems filter and exfiltrate stormwater into surrounding soils, some treated stormwater leaves biofiltration systems through an underdrain that feeds into the storm sewer system. See id. Where stormwater is highly contaminated or groundwater recharge would be problematic, biofiltration systems include an impervious liner intended to eliminate exfiltration into surrounding soils. See id. These lined systems reduce flow to the storm sewer system through evapotranspiration only. See id.

22 See Univ. of FLA, Florida Field Guide to Low Impact Development: Bioretention Basins/Rain Gardens 1 (2008) [hereinafter Univ. of FLA - Bioretention], available at http://buildgreen.ufl.edu/Fact_sheet_Bioretenion_Basins_Rain_Gardens.pdf. In addition, detention basins can be built as, or retrofitted to become, “vegetated water quality basins” that further LID principles. See Pa. ENVTL.
COUNCIL, IMPROVING STORMWATER DETENTION BASINS FOR BETTER STORMWATER MANAGEMENT 2 (2006), available at http://www.lowimpactdevelopment.org/raingarden_design/downloads/PADetentionBasisheetFINAL.pdf ("A vegetated water quality basin or an extended detention basin is a BMP designed to (1) maximize the flow path through the basin, (2) slow the flow of stormwater through the basin, (3) improve how plants use stormwater to increase absorption and evapotranspiration, (4) filter and trap common runoff pollutants, (5) promote soil saturation/groundwater recharge, and (6) increase evaporation of stormwater."). Bioretention retrofits can improve the stormwater retention and pollution-reduction potential of conventional detention basins that were originally designed for the limited purpose of flood control. See, e.g., MICHAEL HABERLAND ET AL., GREEN INFRASTRUCTURE: CONVERTING DRY DETENTION BASINS TO NATURAL ECOSYSTEMS – COOPERATIVE EXTENSION FACT SHEET FS1195 (Nov. 2012), available at http://njasw.rutgers.edu/pubs/fs1195/green-infrastructure.asp; UNIV. OF FLA., FLORIDA FIELD GUIDE TO LOW IMPACT DEVELOPMENT: ENHANCED STORMWATER BASINS 1–2 (2008), available at http://buildgreen.ufl.edu/Fact_sheet_Enhanced_Stormwater_Basins.pdf; PA. ENVTL. COUNCIL, supra, at 2.

23 See Univ. of Fla. - Bioretention, supra note 22, at 1.


26 See Maria Cahill et al., Vegetated Filter Strips 1 (2011), available at http://extension.oregonstate.edu/stormwater/sites/default/files/VegetatedFilterStrips.pdf ("Generally, vegetated filter strips minimize flow velocities, filter pollutants, and collect sediment before passing the remaining runoff volume to a secondary facility, such as a swale or bioretention practice, but they can also be designed like rain gardens with amended soils to store and infiltrate runoff volumes."); see also Vegetated Filter Strip, 3 RIVERS WET WEATHER, http://www.3rivertswetweather.org/green/green-solution-vegetated-filter-strip (last visited Jan. 7, 2015) ("Vegetated filter strips are effective for treating low-intensity storms and are commonly used as first-in-line pretreatment for sequential treatment train BMPs.").


30 See Exfiltration Tanks/Trenches, supra note 29, at 1–2. Infiltration trenches and exfiltration trenches and tanks generally provide little in the way of stormwater treatment. See U.S. Envtl. Prot. Agency, GREEN INFRASTRUCTURE OPPORTUNITIES AND BARRIERS IN THE GREATER LOS ANGELES REGION: AN EVALUATION OF STATE AND REGIONAL REGULATORY DRIVERS THAT INFLUENCE THE COSTS AND BENEFITS OF GREEN INFRASTRUCTURE 3 tbl.1 n. c (2012) [hereinafter OPPORTUNITIES AND BARRIERS], available at http://water.epa.gov/infrastructure/greeninfrastructure/upload/Council_Watershed_Health_GI_Report.pdf ("USEPA generally does not consider dry wells a green infrastructure practice. Dry wells are not intended as treatment systems; they reduce stormwater flow rate and volume and help recharge groundwater only."). These types of infrastructure are generally regulated as Class V injection wells under the Safe Drinking Water Act. See tbl. 3 tbl.1; 40 C.F.R. 144.80(e); U.S. Envtl. Prot. Agency, UNDERGROUND INJECTION CONTROL (UIC) PROGRAM CLASS V WELL IDENTIFICATION GUIDE 4 (June 11, 2008), available at http://water.epa.gov/infrastructure/greeninfrastructure/upload/memo_gi_classvwell.pdf ("These devices are generally considered Class V wells if stormwater is directed to any bored, drilled, driven shaft, or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system."); see also MARY TIEMANN, CONG. RESEARCH SERV., SAFE DRINKING WATER ACT (SDWA): A SUMMARY OF THE ACT AND ITS MAJOR REQUIREMENTS 8–9 (2014). EPA urges “UIC Program managers [to] consider the proximity to sensitive ground water areas when looking at the suitability of stormwater infiltration practices,” noting that, “[d]epending on local conditions, infiltration without pretreatment may not be appropriate in areas where ground waters are a source of drinking water or other areas identified by federal, state, or local governments as sensitive ground water areas, such as aquifers overlain with thin, porous soils.” Memorandum from Linda Bornazian, Director, Water Permits Division, & Steve Heare, Director, Drinking Water Protection Division, U.S. Envtl. Prot. Agency, to Water Division Directors, Regions 1–10 (June 13, 2008), at 2, available at http://water.epa.gov/infrastructure/greeninfrastructure/upload/memo_gi_classvwell.pdf (addressing the subject of “Clarification on which stormwater infiltration practices/technologies have the potential to be regulated as “Class V” wells by the Underground Injection Control Program”).


33 Figure 1 is based on William F. Hunt et al., Meeting Hydrologic and Water Quality Goals through Targeted Bioretention Design, 139 J. ENVTL. ENG’G 698, 699 fig.1, 705 fig.2 (2012). The bioretention cell is depicted with an undrained, internal water storage created by an upturned elbow in the undrained exit pipe, and a raked bottom to enhance exfiltration potential. Including an internal water storage layer in a bioretention facility can provide “water quality, hydrologic, and thermal benefits.” ROBERT A. BROWN ET AL., N.C. STATE UNIV. COOP. EXTENSION, URBAN
and promote environmentally sensitive site design during development and redevelopment activities and to identify potential barriers to the functionality of landscapes" and reviewing Camden’s regulations and standards “to identify opportunities to minimize impervious cover and ordinances can include inflexible standards or incorporate outdated requirements that result in excess impervious cover and reduce the functionality of landscapes” and reviewing Camden’s regulations and standards "to identify opportunities to minimize impervious cover and promote environmentally sensitive site design during development and redevelopment activities and to identify potential barriers to the implementation of structural green infrastructure practices" as part of EPA’s Green Infrastructure Technical Assistance Program).

35 See, e.g., U.S. Env’tl. Prot. Agency, Green Infrastructure Barriers and Opportunities in Camden, New Jersey (2013), available at http://water.epa.gov/infrascture/greeninfrastructure/upload/Camden_GI_Evaluation.pdf [explaining that “[l]ocal codes and ordinances can include inflexible standards or incorporate outdated requirements that result in excess impervious cover and reduce the functionality of landscapes” and reviewing Camden’s regulations and standards “to identify opportunities to minimize impervious cover and promote environmentally sensitive site design during development and redevelopment activities and to identify potential barriers to the implementation of structural green infrastructure practices” as part of EPA’s Green Infrastructure Technical Assistance Program].

36 See, e.g., U.S. Env’tl. Prot. Agency, Green Infrastructure Barriers and Opportunities in Camden, New Jersey (2013), available at http://water.epa.gov/infrascture/greeninfrastructure/upload/Camden_GI_Evaluation.pdf [explaining that “[l]ocal codes and ordinances can include inflexible standards or incorporate outdated requirements that result in excess impervious cover and reduce the functionality of landscapes” and reviewing Camden’s regulations and standards “to identify opportunities to minimize impervious cover and promote environmentally sensitive site design during development and redevelopment activities and to identify potential barriers to the implementation of structural green infrastructure practices” as part of EPA’s Green Infrastructure Technical Assistance Program].


38 Funding multi-benefit projects, like GSI, can be challenging where many potential funding sources (with inflexible purpose-of-use limitations) are directed at just one, or a few, project benefits. For example, to execute its Sustainable Streets program, which combines “complete streets” with “green streets,” the City of San Mateo hopes to tap multiple funding sources. See City of San Mateo, Sustainable Streets—Public Draft I-2, K-1 (Oct. 2014), available at http://sustainablestreetsanmateo.com/downloads/. One potential funding source is the Highway Safety Improvement Program (HSIP); although “[n]on-safety related items . . . may be included in an HSIP project, . . . they are considered incidental . . . and shall not exceed 10% of a project’s construction costs.” Id. at K-8. Curb extensions promote pedestrian safety, but the funds necessary to incorporate stormwater controls (like bioretention) into curb extensions might be considered “incidental,” and would likely require an additional funding source directed at improving stormwater quality.

39 See, e.g., Year in Review, supra note 37 (describing stormwater funding issues, including “opposition to stormwater fees” in many communities); Ellen Hanak et al., Pub. Policy Inst. of Cal., Paying for Water in California 51 (2014), available at http://www.ppic.org/content/pubs/report/R_314EHR.pdf (describing a large funding gap for flood protection, stormwater management, and aquatic ecosystem management in California as “in part owing to the voter approval requirements of Propositions 218 and 26” for property-related fees and regulatory fees).

For example, the July/August 2014 issue of the journal STORMWATER contains articles on “Making Rain Gardens Work,” “The Challenges of Keeping the ‘Low’ in LID,” “Test Case for Improving a Highly Urbanized Watershed,” and “Green Infrastructure Sizing Criteria Development.” All of these articles address the developing nature of GSI technology and the importance of paying attention to site-specific details. See Janice Kaspersen, Editor’s Comments: Getting Green Infrastructure Right, Stormwater, July–Aug. 2014, at 10, available at http://www.stormh2o.com/SW/Articles/Getting_Green_Infrastructure_Right_26319.aspx (contrasting Portland, Oregon’s, Green Streets program, that has a “more-than-10-year track record and about 1,400 GI facilities,” with “those of us in other parts of the country who have less experience, perhaps, with rain gardens and other green infrastructure elements, but who nevertheless want to incorporate them into a stormwater management strategy? Where do we start? And how do we know we’re doing it right?”); Jim Nabong, A Test Case for Improving a Highly Urbanized Watershed: Designing and Testing BMPs in San Diego, Stormwater, July–Aug. 2014, at 48, 49, available at http://www.stormh2o.com/SW/Articles/Test_Case_for_Improving_a_Highly_Urbanized_Watersh_26523.aspx ("Each pilot project is a test to see if engineering and operations personnel can approve a design that breaks convention with decades-old practices for designing improvements in the street right of way. It is also a test of the city’s ability to gain community acceptance of streetscapes that look different from what people are used to seeing"); see also, e.g., Pilot Projects, Think Blue San Diego, http://www.sandiego.gov/thinkblue/pilot-projects/index.shtml (last visited Jan. 7, 2015) (providing links to a stormwater filtration project, a rain barrel downspout disconnect stormwater project, and a parking lot infiltration project); North Coast Stormwater Coalition’s Low Impact Development (LID) Pilot Project, Natural Res. Servs., http://www.naturalsourceservices.org/projects/north-coast-stormwater-coalition%E2%80%99s-low-impact-development-lid-pilot-project (last visited Jan. 7, 2015) (describing a 2013 to 2015 “project to promote the understanding and use of LID along the Northcoast” of California).

42 See Hai-feng Jia et al., Development of a Multi-Criteria Index Ranking System for Urban Runoff Best Management Practices (BMPs) Selection, 185 Envtl. Monitoring & Assessment 7915, 7917–18, 7917 fig.1, 7918 fig.2 (2013) (enumerating site suitability considerations for GSI, including land use type, pollutant loading, regulatory requirements, soil characteristics, groundwater characteristics, topography, catchment properties, and space requirements); see also infra Parts III.A, B.

43 See Claudia Copeland, Cong. Research Serv., R43131, Green Infrastructure and Issues in Managing Urban Stormwater 6, 9 (2014), available at http://nationalaglawcenter.org/wp-content/uploads/assets/ers/R43131.pdf [stating that “green infrastructure is often located on private properties”; discussing stormwater fee discounts or credits intended to encourage “private businesses, institutions, and homeowners . . . to support on-site green infrastructure”; and describing incentives for developers to use GSI].
See supra note 177–181 and accompanying text.

See 33 U.S.C. § 1342(q) (“Each permit, order, or decree issued pursuant to this chapter after December 21, 2000 for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy . . . .”); Combined Sewer Overflow (CSO) Control Policy, 59 Fed. Reg. 18688, 18688 (Apr. 11, 1994) (asking CSO permittees to) immediately . . . develop long-term CSO control plans which evaluate alternatives for attaining compliance with the CWA, including . . . water quality standards and protection of designated uses and “to implement the plans’ recommendations as soon as practicable”; see also U.S. Envtl. Prot. Agency, GREENING CSO PLANS: PLANNING AND MODELING GREEN INFRASTRUCTURE FOR COMBINED SEWER OVERFLOW (CSO) CONTROL 5–6 (2014) [hereinafter GREENING CSO PLANS], available at http://water.epa.gov/infrastructure/greeninfrastructure/upload/Greening_CSO_Plans.PDF (“Under their NPDES permits, communities are required to implement nine minimum controls (NMC) and to develop and implement Long Term Control Plans (LTCPs). Many communities are still searching for cost effective ways to implement their LTCPs.”).

See Peter Kenyon, Green Surge Threatens CSO Storage Solution, TUNNEL TALK [Jun. 19, 2013], http://tunneltalk.com/discussion-forum/19june2013-investigating-the-future-of-deep-storage-tunnels-in-the-usa.php; GREENING CSO PLANS, supra note 46, at 7, 12 (noting that “[m]any communities are still searching for cost effective ways to implement their [Long Term Control Plans]” and stating that green infrastructure “may be able to reduce the size of more capital-intensive, “downstream” gray infrastructure control measures” like off-line storage tunnels).


See Green City, Clean Waters, Philadelphia Water Department, http://phillywatersheds.org/what_were_doing/documents_and_data/cso_long_term_control_plan (last visited Jan. 7, 2015) (“Green City, Clean Waters is Philadelphia’s 25-year plan to protect and enhance our watersheds by managing stormwater with innovative green infrastructure.”). The city will “achieve the elimination of the mass of pollutants that would otherwise be removed by the capture of 85% by volume of the combined sewage collected in the combined sewer system during precipitation events on a system-wide annual average basis” by the year 2036. PHILADELPHIA WATER DEPARTMENT, GREEN CITY, CLEAN WATERS: COMPREHENSIVE MONITORING PLAN 1-2 (revised 2014), available at http://www.phillywatersheds.org/doc/Revised_CMP_1_10_2014_Finalv2.pdf.

See id. at 5 (describing the environmental and public health impacts of CSOs).

See discussion infra Part V.B.

MS4 operators are experiencing both direct and indirect pressure to adopt GSI. Direct pressure comes from stormwater permit requirements that specifically encourage or require GSI. See, e.g., Cal. State Water Res. Control Bd., Water Quality Order No. 2013-0001-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Waste Discharge Requirements (WDRs) for Storm Water Discharges from Small Municipal Separate Storm Sewers (MS4s) [General Permit], at pt. E.12 (adopted Feb. 5, 2013, effective July 1, 2013) [hereinafter CA General Permit], available at http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/pshii2012_5th/order_final.pdf (requiring small MS4s “to implement standards to effectively reduce runoff and pollutants associated with runoff” and to mandate GSI/LID site design measures for projects that create or replace more than a certain threshold of impervious surface); see also JEFFREY ODEFEY, AM. RIVERS, PERMITTING GREEN INFRASTRUCTURE: A GUIDE TO IMPROVING MUNICIPAL STORMWATER PERMITS AND PROTECTING WATER QUALITY 3 (2013), available at http://www.americansrivers.org/assets/pdfs/reports-and-publications/permitting-green-infrastructure.pdf. (explaining that, although “many of the initial MS4 permits simply required the permittees to implement stormwater management plans (or SWMPs), subsequent generations of permits, especially in California and other more progressive jurisdictions, have become far more specific and detailed[,] . . . incorporating provisions specifically designed to reduce stormwater discharges from new and re-development projects by imposing standards that require on-site management of precipitation”). Additionally increasingly stringent receiving water and effluent limitations are leading MS4 operators to consider GSI where conventional methods have so far failed to achieve water quality goals. See, e.g., ELLEN HANAK ET AL., PUB. POLICY INST. CAL., PAYING FOR WATER IN CALIFORNIA 43 (2014), available at http://www.ppic.org/content/pubs/rep/ R_314EHR.pdf (describing “increasingly stringent” MS4 requirements leading to rising costs); Kelly Lennon & Everett Gupton, TIDAL BACK RIVER GREENING PROJECTS: A CASE STUDY IN BMP PLACEMENT, PERFORMANCE & PRACTICE, IN WORLD ENVTL. & WATER RES. CONG. 2014, at 22, 24 (2014) (“One of the main goals of the project,” which involves multiple “green infrastructure and restoration sites in eastern Baltimore County[,] . . . is . . . to retrofit portions of the watershed developed prior to passage of the current stormwater management regulations” in “partial fulfillment of the County’s MS4 permit and [to] help the County meet the required pollutant load reductions associated with the Chesapeake Bay TMDL for Nitrogen and Phosphorus.”); U.S. Envtl. Prot. Agency, TOTAL MAXIMUM DAILY LOADS 4 (2012), available at http://water.epa.gov/infrastructure/greeninfrastructure/upload/EPA-Green-Infrastructure-Factsheet-5-061212-PJ.pdf (describing TMDL implementation plans, like the Machado Lake Toxics TMDL, that identify GSI as an effective means of controlling pollutant loads to impaired waters); see also sources cited infra note 135.

For example, the MS4 permit for the California Department of Transportation requires projects within the Department’s right of way to comply with “standard project planning and design requirements” that reflect LID principles and to include GSI post-construction stormwater


57 See 33 U.S.C. § 1342(p)(3)(B)(iii); 40 C.F.R. § 122.26(d)(2)(iv); 40 C.F.R. § 122.34(a) (explaining to regulated small MS4 operators: “[y]our NPDES MS4 permit will require at a minimum that you develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act.”); see also Odefey, supra note 53, at 2 (“Like other point sources, where discharges that are subject to these technology-based standards [(i.e., for stormwater: reducing the discharge of pollutants to the maximum extent practicable)] exceed local water standards, MS4 operators are also obliged to implement more stringent water quality based permit controls that are tailored to achieve compliance.”).

58 MS4s are subject to the following general requirements:

- Public education and outreach on stormwater impacts. 40 C.F.R. § 122.26(d)(2)(iv)(A)(6); 40 C.F.R. § 122.34(b)(1); see also 40 C.F.R. § 122.26(d)(2)(iv)(B)(5). Permittees can hold educational events about (and post explanatory signage near) GSI installations and provide GSI guidance for developers and private citizens.
- Public involvement / participation. 40 C.F.R. § 122.26(d)(2)(iv); 40 C.F.R. 122.34(b)(2). Permittees can encourage community residents and businesses to implement GSI on private property.
- Illicit discharge elimination. 40 C.F.R. § 122.26(d)(2)(iv)(B)(1); 40 C.F.R. 122.34(b)(3). GSI can capture non-stormwater runoff, such as sprinkler runoff, in addition to stormwater runoff.
- Construction site stormwater runoff control. 40 C.F.R. § 122.26(d)(2)(iv)(D); 40 C.F.R. 122.34(b)(4). GSI can capture construction-site runoff, and incorporating LID principles into design and construction planning can reduce the area disturbed during construction.
- Post-construction stormwater management in new development and redevelopment. 40 C.F.R. § 122.26(d)(2)(iv)(A)(2); 40 C.F.R. § 122.34(b)(5). Permittees can pass ordinances and develop standards that encourage or require GSI to be incorporated into development, redevelopment, and retrofit projects, including public works projects.
- Pollution prevention / good housekeeping for municipal operations. 40 C.F.R. § 122.26(d)(2)(iv)(A)(1), (3); 40 C.F.R. § 122.34(b)(5). Permittees that use native plants in GSI will reduce the need for irrigation, fertilizers, and pesticides, decreasing MS4 pollutant load.


60 More and more commonly, increasingly stringent water-quality-based effluent limitations in MS4 permits are directly or indirectly driving GSI implementation. See Compendium, supra note 59, at 15–20 (describing numeric water-quality-based effluent limitations in general or individual MS4 permits in California, Virginia, Maryland, Hawaii, and Washington, D.C.); Jonathan E. Jones et al., BMP Effectiveness for Nutrients, Bacteria, Solids, Metals, and Runoff Volume: International Stormwater BMP Database reaches the 500-BMP Milestone, Stormwater, Mar./Apr. 2012, available at http://www.stormh2o.com/SW/Articles/16214.aspx (“Current regulatory drivers [for understanding BMP effectiveness] include (1) the USEPA urging states to adopt numeric nutrient criteria, (2) steadily increasing use of numeric action levels and numeric effluent limits for stormwater municipal and industrial discharges, (3) new initiatives for reducing bacteria levels in waterbodies used by the public for recreation, (4) total maximum daily loads (TMDLs) that identify waste load allocations for stormwater discharges . . . .”). See also supra note 53 and accompanying text; infra note 183 and accompanying text.

61 For example, The Los Angeles Regional MS4 permit allows certain permittees to satisfy compliance with interim water-quality-requirements in part by conducting a “Reasonable Assurance Analysis” that demonstrates the permittee’s “activities and control measures . . . will achieve applicable water quality based effluent limitations and/or receiving water limitations.” Los Angeles Regional Water Quality Control Board, Order No. R4-2012-0175, NPDES Permit No. CAS004001, Waste Discharge Requirements for Municipal Separate Storm Sewer System (MS4) Discharges within the Coastal Watersheds of Los Angeles County, Except those Discharges Originating from the City of Long Beach MS4, at pt. V.C.5.b.iv.S. (adopted Nov. 8, 2012) [hereinafter LA Regional Permit], available at http://www.waterboards.ca.gov/rqwc/b4/water_issues/programs/stormwater/municipal/la_ms4/2012/Order%20R4-2012-0175%20-%20A%20Final%20Order%20revised.pdf. This quantitative...
analysis involves modeling the effectiveness of stormwater control measures using a combination of local data ("including land use and pollutant loading data") and control-measure performance data drawn from peer-reviewed sources. See id. Permits must also develop and implement a monitoring program to “assess progress toward achieving the water quality-based effluent limitations and/or receiving water limitations per the compliance schedules” and use adaptive management to improve their effectiveness in achieving water-quality requirements. Id. at pts. VI.C.2, 7, 8. Therefore, if the assumptions about GSI performance encompassed in the Reasonable Assurance Analysis turn out to be inaccurate, the permittee must change course, making improvements as necessary.

62 The Los Angeles Regional MS4 permit allows certain permittees to satisfy compliance with final water-quality-based effluent limitations and related receiving-water limitations by retaining (i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85th percentile, 24-hour event „for the drainage area tributary to the applicable receiving water.” L.A Regional Permit, supra note 61, at pt. V.II.E.2.c.(4); see also id. at pt. V.II.E.2.d.(3) (stating that, if “[t]here is no direct or indirect discharge from [a] Permittee’s MS4 to the receiving water,” the permittee will “be considered in compliance with an applicable interim water quality-based effluent limitation and interim receiving water limitation for a pollutant associated with a specific TMDL.”).

63 See, e.g., Andrew Fahlund et al., Water in the West, 6 CAL. J. POL. POT’Y 61, 81–82 (2014) (describing “stormwater capture and storage in groundwater aquifers to augment water supplies” as “[a]n important secondary goal of Los Angeles’s green infrastructure efforts”); Opportunities and Barriers, supra note 30, at 1–2 (describing the potential groundwater recharge benefits of GSI).

64 See Daniel B. Stephens et al., Decentralized Groundwater Recharge Systems Using Roofwater and Stormwater Runoff, 48 J. AM. WATER RES. ASS’N 134, 138, 142 (2012) (contrasting "rain barrels, green (vegetated) roofs, rain gardens, contained planters, vegetated swales, and flow-through planters") that “primarily capture runoff for use by on-site vegetation” with GSI “focused more on infiltration, including permeable pavers/pavement, turf blocks, vegetated infiltration basins, infiltration planters, surface and subsurface infiltration basins, and trenches”).

65 See Stephens et al., supra note 64, at 144 (“Stormwater capture for groundwater recharge at the lot, subdivision, or commercial site deserves consideration from groundwater managers as a means to replenish aquifers. . . . ”). But see id. at 140–43 (describing some of the "potential challenges to implementing a decentralized recharge program using stormwater," including water-quality concerns, low "infiltrability of local soils, impacts of excess local water on geotechnical stability, . . . flushing natural salts from the soil profiles," and state surface water rights);

Opportunities and Barriers, supra note 30, at 1, 2 (explaining that groundwater adjudications in the Los Angeles area prevent “parties who infiltrate stormwater through green infrastructure practices” from receiving the “[legal] benefit of increased groundwater supply,” dampening the incentives for GSI implementation). Some areas already employ centralized groundwater recharge facilities. For example, in California, centralized groundwater recharge using “imported surface water, local recycled wastewater, or stormwater . . . has been used successfully for some decades by the Orange County Water District, the Water Replenishment District of Southern California, the Pajaro Valley Water Management Agency, and the Santa Clara Valley Water District” which have “special legislative authority to manage groundwater supplies on behalf of their communities.” Ellen Hanak et al., supra note 53, at 31–32.


69 See Combined Sewer Overflows, supra note 68.

70 See id.; Combined Sewer Overflows Demographics, supra note 68.


72 The Safe Drinking Water Act applies to both surface water and groundwater supplies used for drinking water. See supra note 30 (describing some aspects of underground injection control under the Safe Drinking Water Act). It authorizes the EPA to set national health-based standards for drinking water contaminants. See 42 U.S.C. § 300g-1. Although it initially focused on treatment, 1996 amendments added source water protection requirements. See 42 U.S.C. §§ 300h–300h-8, 300j-13.

73 See GREENING CSO PLANS, supra note 46, at 32 (“Although it is relatively straightforward to model gray infrastructure solutions because of the limited number of feasible alternatives and locations, analyzing the opportunities afforded by green infrastructure requires additional modeling considerations.”).


75 See Jia et al., supra note 42, at 7917–18; GREENING CSO PLANS, supra note 46, at 7 (“Green infrastructure opportunities within a catchment largely depend on soil characteristics, topography and land use.”); Allen P. Davis et al., Improving Urban Stormwater Quality: Applying Fundamental Principles, 146 J. CONTEMPORARY WATER RESEARCH & EDUC. 3 (2010) (“The performance of a specific technology will depend on the facility configuration and makeup, climate, surrounding soil characteristics, topography, and the site hydrology.”); Mahesh R. Gautam
et al., Best Management Practices for Stormwater Management in the Desert Southwest, 146 J. CONTEMPORARY WATER RESEARCH & Educ. 39, 40 (2010) ([T]he natural drivers of [the] movement [of sediment, nutrients, pollutants, or debris from land to surface or ground waters] are highly dependent on the interaction among entities such as soil, vegetation, land use, storm and runoff characteristics, and processes such as runoff formation, infiltration, erosion, and sediment transport. The natural factors that guide these processes are dependent on topography, geology, soil-geomorphology, and the hydrometeorology of the region.”); Gautam et al., supra, at 47 (“[S]oil type and the level of pollution in the soil determine the feasibility of infiltration BMPs”); see also LOW IMPACT DEV. CTR., supra note 15, at 16–37 (explaining that “[a] comprehensive site assessment is a fundamental starting point in the development of an LID site design” and explaining important components of a site assessment); PRINCE GEORGE’S COUNTY, supra note 19, at 4–4.

76 GSI involves “creatively designing hydrologic functions into the site design with the intent of replicating the predevelopment hydrology,” PRINCE GEORGE’S COUNTY, supra note 19, at 1–5; see also CAL. WATER & LAND USE P’SHP, HOW URBANIZATION AFFECTS THE WATER CYCLE, at 2 fig.2 (2006), available at http://www.coolblue.com/Articles/Regional_Differences_in_the_Effectiveness_of_Bioretention_BMPs.aspx (modeling a 22% annual runoff volume reduction for a green roof in Seattle, compared to an approximately 40% reduction in Atlanta, Los Angeles, and Philadelphia).

77 See Allen P. Davis et al., Hydrologic Performance of Bioretention Storm-Water Control Measures, 17 J. HYDROLOGIC ENG’G 604, 605–06 (2012) (describing bioretention system design parameters, media conductivity and moisture, the conductivity of surrounding soils, and precipitation intensity and patterns as influencing hydrologic performance); Shuster et al., supra note 74, at 5 (“[T]he implementation of effective LID in great part relies upon specific knowledge of soil hydrology and soil physical properties, and it follows that assessment of these properties will largely dictate the type of LID practice used in a given situation and its capacity for retaining and infiltrating stormwater runoff.”); Texture, density, structure, and water content all influence a soil’s infiltration capacity. See Shirley E. Clark & Robert Pitt, Influencing Factors and a Proposed Evaluation Methodology for Predicting Groundwater Contamination Potential from Stormwater Infiltration Activities, 79 WATER ENV’T RESEARCH 29, 32 (2007).


79 See Beyerlein, supra note 78, at 32 (noting that Philadelphia’s alluvial soils “have higher infiltration rates than the glacier-compacted till soils found in Seattle or the clay soils of Los Angeles and Atlanta”); Nicole David et al., Removal Efficiencies of a Bioretention System for Trace Metals, PCBs, PAHs, and Dioxins in a Semiarid Environment, J. ENVTL. ENG’G 04014092-1, 04014092-2 (published online, ahead of print, Dec. 2, 2014) (“In the [San Francisco] Bay Area, the prevalence of clay soils with poor infiltration properties necessitates the use of subdrains” in bioretention facilities.”).

80 See Gautam et al., supra note 75, at 43, 44 (“[S]oils in arid regions are typically comprised of the erosion products of the underlying rock and do not have an overlying layer of organic matter marking the absence of O or A Horizons. The relative absence of organic matter, litter, and vegetation on the surface has implications for hydrological processes and flow pathways. . . . In some parts of the arid West, the desert soils consist of the silty low permeable vesicular A (Av) horizon. The discontinuous porosity in such soil, aided with their platy structure, leads to low infiltration rates, which have implications for aquifer recharge capacity and stormwater management BMPs.” (Citation omitted)).

81 In arid and semi-arid regions, rainfall can occur in brief, intense bursts that overwhelm the infiltration capacity of poorly developed soils. See Gautam et al., supra note 75, at 40, 41, 41 fig.1 (“[A]lthough the average and annual total precipitation in the Desert Southwest is much lower in other regions, the extreme value of rainfall depth and intensity can be significant.”).


83 See id. at 4256; see also INT’L STORMWATER BMP DATABASE, ADDENDUM 1 TO VOLUME REDUCTION TECHNICAL SUMMARY (JANUARY 2011): EXPANDED ANALYSIS OF VOLUME REDUCTION IN BIORETENTION BMPs 18 (2012) [hereinafter EXPANDED ANALYSIS OF VOLUME REDUCTION IN BIORETENTION BMPs], available at http://www.bmpdatabase.org/Docs/Bioretention%20Volume%20Reduction%20Addendum%20%5%2031%2012.pdf (“Volume-related data for bioretention BMPs in the BMP Database show that bioretention can be an effective approach for reducing runoff frequencies, peak flow rates and volumes during frequently occurring storm events.”).

84 See EXPANDED ANALYSIS OF VOLUME REDUCTION IN BIORETENTION BMPs, supra note 83, at 7 exhibit 3, 18. The report notes that “the reliability of categorical analysis results is still limited by the number of available studies,” that “[m]any of the studies have been concentrated in a few areas of the country,” and that “some studies are understood to have been conducted on systems with somewhat atypical design conditions (i.e., very large footprints; very high infiltration rates),” so care should be taken “when extrapolating [the] results[ of categorical and study-level analyses].” Id. at 18.


86 Davis et al., supra note 77, at 605 (“Although volume/flow management itself is important as an urban runoff goal to reduce erosion potential and sediment transport, volume is also critical in managing pollutant loadings, which are defined as the product of concentration and total volume.”).

87 See, e.g., Houn Li & Allen P. Davis, Water Quality Improvements Through Reductions of Pollutant Loads Using Bioretention, 135 J. ENVTL. ENG’G 567, 575 (2009) (concluding that “[b]ioretention has varying capacity to manage different pollutants; field data indicate that it can effectively reduce TSS, chromium, lead, and zinc concentrations in runoff. Slightly organic matter and nutrient leaks may occur from the bioretention media.”).

89 See Davis et al., supra note 75, at 8 (GSI “operations and treatments occur via specific flow and environmental process pathways that are known to engineers and scientists in other applications,” however, “[t]he stormwater application is unique because of its high variability of input, operating, and design conditions.”).

90 For example, the fate of some forms of nutrients in bioretention systems is not well understood. See, e.g., Liqing Li & Allen P. Davis, Urban Stormwater Runoff Nitrogen Composition and Fate in Bioretention Systems, 48 ENVTL. SCI. & TECH. 3403, 3403 (2014) (“Nitrogen behavior in bioretention systems is . . . complex because of the biogeochemical complexity of the nitrogen species [which varies with land use and hydrologic conditions] and the numerous treatment mechanisms inherent to bioretention, including sedimentation/ filtration, adsorption, mineralization, and biological transformations.”); Audrey Roy-Poirier et al., Bioretention Processes for Phosphorus Pollution Control, 18 ENVTL. REV. 159, 160, (2010); see also Gregory H. LeFevre et al., Review of Dissolved Pollutants in Urban Storm Water and Their Removal and Fate in Bioretention Cells, 141 J. ENVTL. ENG’ 0401-0405-1–17, (2015) (proposing “[seven] areas of research that will be critical to understanding bioretention function for dissolved pollutant removal, system sustainability, and water resource protection”).

91 See Davis et al., supra note 75, at 8.

92 The information in this table derives from the following sources unless otherwise specified: Erickson et al., supra note 7, at 23–51 (describing stormwater treatment processes); Davis et al., supra note 75, 5–8; Clark & Pitt, supra note 77, at 30–33; Jennifer Read et al., Variation Among Plant Species in Particle Removal from Stormwater in Biofiltration Systems, 42 Water Research 893, 894, 901 (2008) (explaining that plants can contribute directly to GSI treatment efficiency through “degradation of organic pollutants, uptake of macronutrients [nitrogen and phosphorus] and heavy metals and maintenance of longer-term soil porosity” and finding “marked variation in pollutant removal . . . among plant species” (citations omitted)); LeFevre et al., supra note 90, at 0401-0405-2–3 (discussing hydrocarbon removal by plant uptake).

93 Particle-associated pollutants may settle out of stormwater when its flow slows during detention or retention in GSI. Therefore, properly designed, installed, and maintained GSI that includes sedimentation and filtration processes will generally result in good suspended solids removal. See Int’l Stormwater BMP Database, Advanced Analysis: Influence of Design Parameters on Achievable Effluent Concentrations 72 (2013), available at http://www.bmpdatabase.org/Docs/BMPDB_AdvancedAnalysis_Final_2013.pdf [hereinafter Influence of Design Parameters]; see also Int’l Stormwater BMP Database, Pollutant Category Summary: Statistical Addendum: TSS, Bacteria, Nutrients, and Metals 5 fig.2, tbl.2 (2012 [hereinafter Pollutant Category Summary], available at http://www.bmpdatabase.org/performance-summaries.html (showing boxplots and table of median influent/effluent TSS concentrations that demonstrate statistically significant TSS removal for GSI categories). However, settling does not remove all particle-associated pollutants at the same rate. Instead, different pollutants may be associated with different particle size fractions, and smaller particles generally take longer to drop out of suspension. For example, although both PCBs and mercury—two legacy pollutants of significant concern in the San Francisco Bay area—are associated with sediment particles, settling is more effective at removing PCBs, which “appear to be associated with slightly coarser f[r]actions in flowing stormwater” than mercury. See Lester McKee et al., S.F. Estuary Inst., A BMP Tool: Box for Reducing Polychlorinated Biphenyls (PCBs) and Mercury (Hg) in Municipal Stormwater 23–27, 44–45, A-13 (2010). The majority of metals and PAHs may be associated with small particles that are less susceptible to removal by physical filtration. See Simon Toft Ingvertsen et al., A Minimum Data Set of Water Quality Parameters to Assess and Compare Treatment Efficiency of Stormwater Facilities, 40 J. ENVTL. QUAL. 1488, 1491 tbl.2 (citing studies finding the majority of cadmium, copper, lead, zinc, and PAHs associated with particles smaller than about 63 μm).

94 See, e.g., Ahiablame et al., supra note 82, at 4256, 4260, 4261. Sediment mobilized by stormwater acts as a physical pollutant. See Edwin D. Ongley, Food & Agric. Org. of the United Nations, Control of Water Pollution from Agriculture, ch. 2 (1996), available at http://www.fao.org/docrep/w2598e/w2598e05.htm#chapter%202:%20pollution%20by%20sediments (describing “[p]ollution by sediments”). Not only can sediment clog storm drain and reduce the effective volume of other flood control structures, it alters natural stream channel characteristics and fills in lakes, ponds, and wetlands, with repercussions for ecosystem function and navigability. See id. A sediment imbalance can negatively impact aquatic ecosystems in many ways. Suspended sediment interferes with photosynthesis and growth in aquatic plants and algae, and sediment-laden water can scour algae, plants, and animals from stream bottoms. See Walter Berry & Brian Hill, U.S. Env’t. Prot. Agency, The Biological Effects of Suspended and Bedded Sediment (SABS) in Aquatic Systems: A Review 7–8 (2003), available at http://water.epa.gov/scitech/swguidance/standards/criteria/aqlife/sediments/upload/2004_08_17_criteria_sediment_appendix1.pdf. These impacts on plants and algae in turn affect other organisms’ abilities to find food, grow, and reproduce. See id. High sedimentation rates can overwhelm filter-feeders, bury bottom-dwelling organisms, and impair salmonid reproduction and migration. See id. at 8 (noting that “[i]ncreased sedimentation can limit the amount of oxygen in the spawning beds which can reduce hatching success, or trap the fry in the sediment after hatching”). C.P. Newcombe & D.D. MacDonald, Effects of Suspended Sediments on Aquatic Ecosystems, 11 N. AM. J. FISHERIES MGMT. 72, 73 (1991). Particles of sediment in stormwater can also carry chemical pollutants and pathogens. See Kevin G. Taylor, Urban Environments, in ENVIRONMENTAL SEDIMENTOLOGY, at 190, 192 (Chris Perry & Kevin Taylor eds. 2007); Ongley, supra. In fact, “sediments act as the major vectors for the transport of contaminants in most aquatic systems.” Taylor, supra, at 192; see also Newcombe & MacDonald, supra, at 73 (“[I]ncreases in nutrients or toxic compounds, or both, adsorbed on suspended sediments can alter growth rates and biomass of algae.”). In particular, silt- and clay-sized organic and inorganic particles are significant reservoirs of nutrients, metals, and organic pollutants. See J.M. Zandber, Road Sediment: Characterization and Implications for the Performance of Vegetated Strips for Treating Road Run-Off, 339 SCI. TOTAL ENV’T 41, 42 (2005); Stanley B. Grant et al., CAITRANS, A REVIEW OF THE CONTAMINANTS AND TOXICITY ASSOCIATED WITH PARTICLES IN STORMWATER RUNOFF 1-4, 2-1, 5-1 (2003); Ongley, supra. As Ongley explains:

Phosphorus and metals tend to be highly attracted to ionic exchange sites that are associated with clay particles and with the iron and manganese coatings that commonly occur on these small particles. Many of the persistent, bioaccumulating and toxic organic contaminants, especially chlorinated compounds including many pesticides, are strongly associated with sediment and especially with the organic carbon that is transported as part of the sediment load in rivers.

Ongley, supra. Sediment deposits can temporarily store contaminants that are later remobilized. Taylor, supra, at 192.

95 See Ahiablame et al., supra note 82, at 4256, 4259, 4260, 4261; LeFevre et al., supra note 90, at 0401-0405-8 to 0401-0405-12 (discussing...
dissolved-metal removal performance of bioretention systems).

96 The data depicted in the chart come from the following source: Pollutant Category Summary, supra note 93 at 5–30 tbls. 2–27. The amount of data available for different pollutant types in different categories of GSI varies significantly. For example, from 0 to 5 installations were monitored for E. coli in each category, while between 2 and 63 were monitored for TSS. See id. at 5 tbl.2, 7 tbl.4. Some of the categories in the BMP database may include examples of both conventional stormwater infrastructure and GSI. For instance, conventional detention basins are widely used to slow stormwater flow by temporarily detaining it. See Dry Detention Ponds, U.S. Env’tl. Prot. Agency, http://cfpub.epa.gov/ndps/detentionponds/index.cfm?action=browse&btnotton=detail&bpm=67. However, detention basins can be built as, or retrofitted to become vegetated water quality basins that further LID principles. See supra note 22. The detention basin category in the International BMP Database includes 33 “grass-lined” basins and 6 “concrete lined basins or underground concrete vaults;” however, water quality performance was only analyzed for a subset of the grass-lined basins. Int’T Stormwater BMP Database, Narrative Overview of BMP Database Study Characteristics 6 (2012) [hereinafter Narrative Overview], available at http://www.bmpdatabase.org/Docs/Simple%20Summary%20BMP%20Database%20July%202012%20Final.pdf.

97 Separate results are shown for disinfection-, filtration-, and physical-settling-based devices.

98 See Ahiablame et al., supra note 82, at 4256, 4258–59, 4260, 4261; LeFevre et al., supra note 90, at 04014050-3 to 04014050-8 (discussing dissolved nutrient removal performance of bioretention systems).

99 See Janel E. Grebel et al., Engineered Infiltration Systems for Urban Stormwater Reclamation, 30 Env’tl. Eng’g Sci. 437, 441 (2013) (“Removal of pathogens from stormwater by engineered infiltration systems . . . requires further study and improvement.”); Ahiablame et al., supra note 82, at 4265 (“The influence of LID practices on pathogens should continue to be investigated . . . .”).

100 See LeFevre et al., supra note 90, at 04014050-12 to 04014050-17 (summarizing studies examining organic pollutant removal by bioretention systems and stating that “little is known about [the fate of] more polar organic pollutants in bioretention systems); Grebel et al., supra note 99, at 440–41 (“Further research is particularly necessary to ensure adequate removal of hydrophilic organic stormwater contaminants that pose the greatest risks for groundwater contamination.”); Gregory H. LeFevre et al., The Role of Biodegradation in Limiting the Accumulation of Petroleum Hydrocarbons in Raingarden Soils, 46 Water Research 6753, 6754 (2012); see also Gregory H. LeFevre et al., Quantification of Petroleum Hydrocarbon Residual and Biodegradation Function Genes in Rain Garden Field Sites, in Low Impact Development 2010: Redefining Water in the City, at 1379, 1380 (2010) (“Few studies have explicitly examined petroleum hydrocarbon removal in raingardens. . . . Based on the available evidence, bioretention appears to be successful in removing hydrocarbons from infiltrated stormwater. Nonetheless, we are unaware of any research performed to investigate the ultimate fate of hydrocarbons in raingardens. Removal is presumed to be a combination of sorption and biodegradation, but these two mechanisms and their relative importance in raingardens have not been adequately explored.”). See supra note 99.

101 See LeFevre et al., supra note 90, at 04014050-17 (“Road salt is a major source of dissolved chloride in some portions of the world, but little research has focused on its impact on bioretention function including pollutant removal.”).


104 Although “[d]issolved pollutants are more bioavailable, impacting the receiving water and its biota more quickly,” and “[m]any important storm-water pollutants are present partially or primarily in the dissolved phase, including some PCBs, copper, petroleum hydrocarbons, phosphorus, zinc, nickel, nonylphenols, and low molecular weight PAHs,” “much of the storm-water literature has not differentiated between dissolved and particle-associated pollutants and has often not addressed fundamental physical, chemical, and biological storm-water pollutant removal mechanisms.” LeFevre et al., supra note 90, at 04014050-2 to 04014050-3.

105 While percent reduction (also known as removal efficiency) is commonly reported, it does not paint a complete picture of GSI effectiveness. See generally Int’l Stormwater BMP Database, Why Does the International Stormwater BMP Database Omit Percent Removal as a Measure of BMP Performance? (2007), available at http://www.bmpdatabase.org/Docs/FAQPercentRemoval.pdf (summarizing some key shortcomings associated with percent removal as a tool to assess BMP performance). In fact, percent reduction can be misleading absent greater context. For example, for the same GSI facility, larger percent reductions generally accompany larger influent pollutant loads but convey nothing about the actual effluent quality achieved. See id. at 1. Additionally, because “[m]ethods for calculating percent removal are inconsistent (e.g., event by event, mean of event percent removals, inflow median to outflow median, inflow load to outflow load, slope of regression of loads, slope of regression of concentrations),” “[v]ery different percent removals can be reported from the same data set” Id. at 2. “In some percent removal calculation methods, volume reductions are partially taken into account, but not in others.” Id. at 3. Furthermore, standard percent removal reporting “carries non of the statistical support needed to assess uncertainty in the reported value.” Id. at 2.

106 See also, e.g., Wash. Dep’t of Ecology, Focus on Bioretention Monitoring: Ecology Begins Review of Bioretention Monitoring Data (Mar. 2013), available at https://fortress.wa.gov/ecy/publications/publications/1310017.pdf (noting that preliminary data from bioretention sites in three Washington cities revealed that “[p]hosphorus and dissolved copper increased significantly” and “[s]hort-term significant increases in nitrate [are] also possible” in effluent, leading the agency to potentially “consider additional restrictions to prevent cumulative impacts where bioretention system effluents could eventually comprise a significant source of groundwater recharge”).
For many pollutants, “surface percolation devices (i.e., grass swales and percolation ponds), which have a substantial depth of underlying organic-rich soils above the groundwater, are preferable to using subsurface infiltration devices (i.e., dry wells, trenches or French drains, and especially injection wells).” Clark & Pitt, supra note 77, at 35. Soil characteristics that affect pollutant capture and mobility include texture, permeability, saturation, pH, mineral composition, and organic content. See id. at 32–33.

See Clark & Pitt, supra note 77, at 32, tbl.4 and tbl.4 note, 35.

See supra note 109; Li & Davis, supra note 87, at 575. But see Michio Murakami et al., Sorption Behavior of Heavy Metal Species by Soakaway Sediment Receiving Urban Road Runoff from Residential and Heavily Trafficked Areas, 164 J. HAZARDOUS MATERIALS 707, 707 (2009) (suggesting that dissolved organic matter in road runoff may enhance the release of zinc from sediments in infiltration facilities, contributing to groundwater contamination).


See, e.g., Grebel et al., supra note 99, at 417 (Although “the combination of techniques to optimize treatment of one type of contaminant may not be suitable for another, making the design of broad spectrum treatment a challenge[,] . . . a systems-level approach, with proper ordering of treatment methodologies [can be] chosen to optimize synergies and reduce antagonism between various techniques.” For example, “[m]aterials could be layered to create reactive barriers that target specific types of contaminants for removal in a logical progression.”); Li & Davis, supra note 90, at 3403 (suggesting that “[a] specific filter media for adsorbing DON [dissolved organic nitrogen], and the incorporation of an anaerobic zone in the lower filter media [to address nitrates], may both be necessary for enhanced nitrogen removal” in bioretention systems, and noting that “biological pathways, including plant uptake and conversion to gaseous form via denitrification” may be required for sustainable nitrogen management); Palmer et al., supra note 113, at 831 (suggesting that adding aluminum water treatment residuals to bioretention soil media can enhance phosphate removal).

Joel G. Morgan et al., Sorption and Release of Dissolved Pollutants Via Bioretention Media 32 (2011) (suggesting a top layer of compost-amended sand to capture organic compounds and toxic metals over an “iron-enhanced sand layer” to capture phosphorus).

Impact Development 2010: Redefining Water in the City, at 1387 (2010) (stating that “Low Impact Development (LID) performance in Low Poresky et al., supra, of bioretention facility performance (more than seven to eight years) is largely unrepresented in the literature simply due to the recent advent of (published online, ahead of print, Sept. 15, 2014); Taylor & Cardno TEC, supra Long-term Hydraulic Performance of Stormwater Infiltration Systems monitoring costs”); Ahmed Mohammed Al-Rubael et al., presently is a thorough analysis comparing the costs of application and maintenance versus efficiency of LID with a similar analysis of conventional component in the use and success of these systems.”); Equilibrium Cmtys. Initiative, maintenance and performance of LIDs by local agencies and institutions, and the management of those LIDs will clearly be an important different than cells that are designed for a different subset of . . . [hydrologic and/or water quality needs] would be substantially bioretention works.” “Bioretention cells designed to meet a prioritized subset of . . . 

While implementation continues at an increasing rate, our fundamental understanding of the performance of these facilities is still forthcoming. Designs are highly empirical, and performance results are broadly applied across different situations. Performance is [wrongly] assumed to be independent of many highly dynamic conditions to which these facilities are constructed and exposed, including different land uses, climates, rainfall patterns, geometry, sizes, and soil and vegetation characteristics.”); Davis et al., supra note 117, at 109 (“Despite the rapid acceptance of “bioretention” throughout the United States, detailed performance information and related design guidance are not currently available for many regions. Several state and local governments have adopted bioretention guidelines published by another state agency, often without modifying the guidelines for local conditions, using out-of-date information, or without a good understanding of the range or limitations of these BMPs . . . .”)

See, e.g., Grebel et al., supra note 99, at 437 (“Although engineered infiltration systems also have the capacity to remove contaminants from stormwater, . . . [it] has not yet been fully exploited or optimized.”); id. at 440 (“[D]ata [for metals and nutrients] suggest that good treatment efficiencies are achievable . . . but that improvements in overall reliability will require more careful engineering.”); id. at 441 (“Removal of pathogens from stormwater by engineered infiltration systems also requires further study and improvement.”); see also William J. Taylor & Cardno TEC, Stormwater Management Program Effectiveness Literature Review: Low Impact Development Techniques 39 (2013), available at http://www.ecy.wa.gov/programs/wq/psmonitoring/ps_monitoring_docs/SWworkgroupDOCS/LIDWhitePaperFinalApril2013.pdf (“Researchers should “[c]onduct soil media composition and leaching studies together with nutrient sorption amendments and identification of a plant pallet most appropriate for growth success. Media studies should be conducted especially related to phosphorus and copper content and their leaching potential. Results of this effectiveness study will narrow the range of appropriate media composition and viable amendments for use in bioretention and green roof facilities to prevent high concentrations of phosphorus in the runoff while encouraging success of low maintenance planting plans.”). See, e.g., Hunt et al., supra note 33, at 698 (“Bioretention is one of the most commonly used stormwater control measures (SCMs) in North America and Australasia. However, current design is not targeted to regulatory need, often reflecting an outdated understanding of how and why bioretention works.” “Bioretention cells designed to meet a prioritized subset of . . . [hydrologic and/or water quality needs] would be substantially different than cells that are designed for a different subset of needs.”). See, e.g., Liu et al., supra note 117, at1082 (“Since the mechanisms and maintenance practices of bioretention systems are still evolving, long-term performance and life-cycle cost relationships are still being documented. As these relationships become better understood, simulations can better predict lifecycle costs and maintenance intervals.”); Taylor & Cardno TEC, supra note 120, at 38 (“The long term tracking of performance and performance of LIDs by local agencies and institutions, and the management of those LIDs will clearly be an important component in the use and success of these systems.”); Equilibrium Cmtys. Initiative, supra note 119, at 15 (“Another information gap is the quantification of long-term cost savings of LID practices, for example through the reduced need for conventional infrastructure.”); Nicole David et al., San Francisco Estuary Institute, Bioretention Monitoring at the Daly City Library 46 (2011) (“What is lacking presently is a thorough analysis comparing the costs of application and maintenance versus efficiency of LID with a similar analysis of conventional structural and non-structural municipal BMPs.”). See Ahiablame et al., supra note 82, at 4266 (“Bioretention performance . . . .”) a high monitoring costs”; Ahmed Mohammed Al-Rubael et al., Long-term Hydraulic Performance of Stormwater Infiltration Systems, Urban Water J. (published online, ahead of print, Sept. 15, 2014); Taylor & Cardno TEC, supra note 120, at 36 (“Long term monitoring of the performance of bioretention facility performance (more than seven to eight years) is largely unrepresented in the literature simply due to the recent advent of these systems.”). See Ahiablame et al., supra note 82, at 4266 (describing most GSI monitoring as occurring at the scale of individual installations); Aaron Poresky et al., Site-level LID Monitoring and Data Interpretation: New Guidance for International BMP Database Studies (Part 2), in Low Impact Development 2010: Redefining Water in the City, at 1387 (2010) (stating that “Low Impact Development (LID) performance
monitoring and reporting is currently in its infancy and continues to evolve as LID practices and site designs are implemented in more communities); Martin Jaffe et al., The Illinois Green Infrastructure Study 101, 102 (2010), available at http://www.epa.state.il.us/green-infrastructure/docs/draft-final-report.pdf (stating that “little information is available about the use of multiple [GSI] infrastructure in combination in treatment trains or across watersheds”).

125 Taylor & Cardno TEC, supra note 120, at 40 (noting that the scale of implementation “and spatial/temporal effects will likely play a significant role in the performance of, and ecological benefits of, a basin-wide application of [GSI]”); see also id. at ES-1 (stating that, “based on modeling,” “[b]asin scale performance of the use of LIDs appears to depend on a high level of basin development and a high density of LID to affect a difference in receiving waters,” but that “no basin scale studies have been conducted to document improvements in receiving waters as a result of the use of LIDs”); id. at 33 (stating that “[i]ndications suggest there are break points for level of development and level of LID implementation where benefits should be observable, but these break points will require empirical observation rather than results from modeling”).


128 See Grebel et al., supra note 99, at 447 (noting that media or media amendments can clog (with fine sediment), become saturated with pollutants, or may be “highly biodegradable,” potentially requiring period replacement to maintain system performance).

129 See, e.g., Houle et al., supra note 127, at 932 (explaining that “there is little documentation in terms of the frequency, intensity, and costs associated with LID maintenance operations required to meet system design objectives” and noting that more long-term cost information on maintenance would make “cost estimations” for LID alternatives “easier to accomplish and more precise”); see also sources cited supra note 122.

130 See Houle et al., supra note 127, at 932 (finding that, “generally, LID systems, as compared to conventional systems, have lower marginal maintenance burdens (as measured by cost and personnel hours) and higher water quality treatment capabilities as a function of pollutant removal performance”).


132 See U.S. Envtl. Prot. Agency, Case Studies Analyzing the Economic Benefits of Low Impact Development and Green Infrastructure Programs 2 (2013), available at http://water.epa.gov/polwaste/green/upload/lid-gi_programs_report_8-6-13_combined.pdf [hereinafter Case Studies] (“Although many entities have begun to implement LID and GSI approaches for stormwater management, research shows that a relatively small percentage of jurisdictions have conducted economic analyses of their existing or proposed programs. This lack of program analysis is due to many factors including uncertainties surrounding costs, operation and maintenance (O&M) requirements, budgetary constraints, and difficulties associated with quantifying the benefits provided by [GSI].”)


134 See infra note 183 and accompanying text.

135 See Ctr. for Leadership in Global Sustainability, supra note 17, at 17 (“Under the Clean Water Act, municipalities are facing increasingly rigorous standards with regards to water pollutant discharge, either as part of Total Maximum Daily Load (TMDL) implementation plans or as part of National Pollutant Discharge Elimination System (NPDES) permitting programs. . . . Rather than investing in all grey infrastructure upgrades to expand capacity, an increasing number of cities and regions are looking to green infrastructure as a viable way to meet their stormwater reduction goals while also benefiting from the other functions and values green infrastructure provides.”); Naboling, supra note 41, at 48 (“The compliance criteria in the new permit are so stringent that source control measures alone are not expected to be enough to reach success. In fact, the city has determined that an extensive program of treatment control practices in combination with source controls appears to be the only way to get close to the concentration-based load reduction requirements found within the new permit.”).

136 As reported in Liu et al., supra note 117, at 1083, 1075–76 tbl.1, 1079–80 tbl.2; Ahiablame et al., supra note 82, at 4257 tbl.1.

137 See Narrative Overview, supra note 96, at 5; see also BMP Map Tool, Int’l Stormwater BMP Database, http://www.bmpdatabase.org/map.html (studies available by selecting “Biotreatment” radio button). The ISBMPD contains entries for only 30 studies, representing 28 different installations. See Narrative Overview, supra note 96, at 5. There are no studies from arid climates, semi-arid climates, or the plains states. Id.
The stormwater volume reduction data in Figure 2 come from 17 sites in 5 states, while the pollutant-reduction data come from between 5 and 17 sites in 2 to 5 states, depending on the pollutant. Most studied installations are located in North Carolina (14), a few are in Maryland (6), and one each is in Connecticut, Kansas, New Hampshire, Virginia, and Washington. The ISBMPD contains data for 12 of the same North Carolina sites and the New Hampshire site analyzed in the peer-reviewed literature and adds at least some data from 15 additional sites in Wisconsin (4), New Hampshire (2), Virginia (3), and Colorado (1), Delaware (1), Massachusetts (1), Oregon (1), and Washington (1).

In this situation there are significant information gaps that monitoring GSI implementation can fill, enabling adjustments in current and future implementation. See Holly Doremus, Adaptive Management as an Information Problem, 89 N. CAROLINA L. REV. 1455, 1466 (2011) (describing when adaptive management makes sense). The extra cost and effort now will save money and improve the chances of meeting or making significant headway toward meeting stormwater management goals in the coming decades. See id. at 1479 (explaining that adaptive management, and the additional monitoring it requires, "should be used only if the tradeoff appears to offer a net benefit, measured in terms of improved likelihood of meeting management goals"). Eric Biber, Adaptive Management and the Future of Environmental Law, 46 AKRON L. REV. 933, 946 (2013).

See Shuster et al., supra note 74, at 10 ("Due to a lack of structured monitoring of many management actions, many LID approaches are assumed to impart long lists of anticipated benefits. . . . It is a false-economy to provide no scientific backing for benefits claimed at the inception of an LID management action.").

See GREENING CSO PLANS, supra note 46, at 23.

GREENING CSO PLANS, supra note 46, at 23; see also Shuster et al., supra note 74, at 10 ("Monitoring programs can impart a science-based assessment of environmental management practices and document their effectiveness for promotion to the public and local stormwater managers. In addition, monitoring can alert managers to conditions under which failure may result, and provide evidence for adaptation of the practices and needed maintenance following implementation."). A blend of active and passive adaptive management taking place at multiple scales is at play here, with local implementers contributing experiments and data to the broader stormwater management pool and gleaning lessons and feedback from there own and others' implementation experiences. See Biber, supra note 139, at 934 (describing active and passive adaptive management).

See e.g., Allen P. Davis et al., Laboratory Study of Biological Retention for Urban Stormwater Management, 73 WATER ENV'T. RESEARCH 4 (2001).


See generally McKinsey Global Institute, Big Data: The Next Frontier for Innovation, Competition, and Productivity 1 (2011) ("Big data" refers to datasets whose size is beyond the ability of typical database software tools to capture, store, manage, and analyze.).

Cf. CTR. FOR LEADERSHIP IN GLOBAL SUSTAINABILITY, supra note 17, at 13 ("In some situations, the lack of design standards for green infrastructure precludes [it] from implementation. In other situations, it presents a perceived risk and liability for engineers to go outside of the industry standard."); CLEAN WATER AM. ALLIANCE, BARRIERS AND GATEWAYS TO GREEN INFRASTRUCTURE 14–15 (2011) ("Many respondents indicated that the lack of complete local, state and federal design standards that take into account differences in regional and local soil, climate and topography variables has limited the ability of communities to implement green infrastructure projects. Without design standards, local design professionals and engineers are less likely to deviate from the familiar measures of pipes, basins, and ditches."). General design drawings (and related standards and specifications) are currently available for some types of GSI; however, these are often very general, lacking sufficient guidance to achieve water quality goals under different site-specific conditions. See, e.g., Drainage-Bioretention Specification, LOW IMPACT DEVELOPMENT CTR., http://www.lowimpactdevelopment.org/cp03/biospec.htm (copyright 2003). But see S.F. PUB. UTILS. COMM’N, GREEN STORMWATER INFRASTRUCTURE TYPICAL DETAILS (Jul. 2014), available at http://sfwater.org/modules/showdocument.aspx?documentid=6009 (including fairly detailed design and specification guidance, drawings, etc.); S.F. PUB. UTILS. COMM’N, GREEN STORMWATER INFRASTRUCTURE TYPICAL DETAILS INFORMATIONAL MEMORANDUM (Aug. 2014), available at http://sfwater.org/modules/showdocument.aspx?documentid=6008.

See, e.g., INT’L STORMWATER BMP DATABASE, ADVANCED ANALYSIS: INFLUENCE OF DESIGN PARAMETERS ON ACHIEVABLE EFFLUENT CONCENTRATIONS 72 (2013), available at http://www.bmpdatabase.org/Docs/BMPDB_AdvancedAnalysis_Final_2013.pdf ("[T]here is a significant need for more complete and consistent reporting of the meta data requested for each BMP type with submissions . . . ."); EXPANDED ANALYSIS OF VOLUME REDUCTION IN BIORETENTION BMPs, supra note 83, at 19 ("As new studies are added to the BMP Database, the benefit of these studies will be the greatest when facility design and watershed characteristics are included with the data submission.").

Monitoring and quantifying the multiple benefits GSI brings and estimating the costs it avoids (like maintaining and replacing gray infrastructure) will help paint a more accurate picture of its true costs.


“Software maintenance is done to correct faults, improve performance, or adapt a software system to a new environment”; it can be corrective, adaptive, perfective, or preventative. Software Engineering: Maintenance, ONESPBARUM, http://onespbarum.org/se/modules/22/index/screen.do (last updated Aug. 14, 2008).

See, e.g., GEOSYNTEC CONSULTANTS & WRIGHT WATER ENGINEERS, URBAN STORMWATER BMP PERFORMANCE MONITORING 1-5, ES-3 (2009) [hereinafter BMP PERFORMANCE MONITORING], available at http://www.bmpdatabase.org/monitoring-guidance.html#MonitoringGuidance ("A strong data management and reporting system helps to ensure that studies are documented in a manner that enables long-term use of the data and transferability to the local, regional, national, and international state of the practice"); MARTIN JAFFE ET
Information “is not useful for management efforts unless it reaches the people who must make management decisions and reaches them in a form they can use.” Doremus, supra note 139, at 1490. Improving “data architecture and information flow” can be a crucial step in making this happen. Id. (title capitalization omitted).

See, e.g., Liu et al., supra note 117, at 1075–76 tbl.1, 1079–80 tbl.2; Ahiaiblame et al., supra note 82, at 4257 tbl.1; Roy-Poirier et al., supra note 117, at 878; Davis et al., supra note 117, at 109.

See id. (summarizing sources of monitoring complexity, including stormwater’s temporal and spatial variability).

See id. (distinguishing 5 general categories of stormwater control measures, including those “with well-defined inlets and outlets” (like detention basins and vegetated swales), those “with well-defined inlets, but not outlets” (like infiltration basins, infiltration trenches, and bioretention cells), etc.).

See, e.g., BMP Performance Monitoring, supra note 151, at 1-5 to 1-6 (prepared with the support of EPA, other government agencies, and organizations).

See id. (distiguishing 5 general categories of stormwater control measures, including those “with well-defined inlets and outlets” (like detention basins and vegetated swales), those “with well-defined inlets, but not outlets” (like infiltration basins, infiltration trenches, and bioretention cells), etc.).

See, e.g., BMP Performance Monitoring, supra note 151, at 8-7, 8-8 (describing the importance of monitoring “the ways in which overall [development-level] site design and implementation impact hydrology and water quality”); see also id. at 8-9 (identifying additional challenges for larger-scale monitoring, including a “multitude of discharge locations and distributed nature of the controls [that] often does not present an opportunity to select a single monitoring point sufficient to assess site hydrology and water quality”).

Cf. Holly Doremus, Data Gaps in Natural Resource Management: Sniffing for Leaks Along the Information Pipeline, 83 Ind. L.J. 407, 429 (2008) (“Monitoring drains scarce agency resources without providing the political benefits of action. It may even threaten to scuttle delicate political compromises if it highlights problems with existing management efforts. As a result, post-decision monitoring of management steps is the exception rather than the rule, and opportunities for learning are regularly squandered.”).

King & Herbert, supra note 157, at 10; see also Robert Bloomfield, What Counts & What Gets Counted 51 (2014).

See supra note 16.


See How Can I Overcome the Barriers to Green Infrastructure? U.S. ENVTL. PROT. AGENCY, http://water.epa.gov/infrastructure/greeninfrastructure/gi_barrier.cfm (last updated June 13, 2014) (“As planners, researchers, and engineers become more aware of the many benefits of green infrastructure, interest is growing in adding sustainable green practices to existing gray systems. Many communities have adopted performance standards or incentives promoting green infrastructure and many more have built demonstration projects but single-purpose gray systems remain the norm.”). This is particularly true in the arid and semi-arid west and other areas where the main drivers for GSI implementation are non-CSO water quality concerns or groundwater recharge, and financial incentives for widespread implementation are less straightforward. See supra notes 133–135 and accompanying text.

See CTR. FOR NEIGHBORHOOD TECH. & HEY & ASSOCIATES, MONITORING AND DOCUMENTING THE PERFORMANCE OF STORMWATER BEST MANAGEMENT PRACTICES viii (2012), available at http://www.istc.illinois.edu/info/library_docs/TR/TR048.pdf (“More widespread utilization of green infrastructure... is impeded by a lack of data concerning how well these BMPs perform immediately after installation, how they perform over time, and how frequently maintenance may be required.”); Nabong, supra note 41, at 57 (“Once the [pollutant] load reduction performance is quantified, the city can refine estimates of how many treatment control BMPs such as this are needed to meet the [TMDL] load reduction mandate. Ideally, new design concepts such as the ones featured here would be tested for 20 years or more before investment is made in broader implementation, but regulatory timelines don’t allow that. Concurrent with testing and evaluating the featured project, additional capital improvement projects are coming online to support additional pilot testing and to make a dent in the required load reductions.”).

See supra notes 47–48, 53–56, 135, and accompanying text; see also, e.g., Andrew Fahlund et al., 6 Water in the West, CALIF. J. POL. & POL’Y 42

See BMP PERFORMANCE MONITORING, supra note 151, at 1-5, ES-2–3 (“A well-thought out and systematically designed monitoring program is essential to a cost-effective study design that yields meaningful results…. In order to obtain high-quality data in BMP monitoring studies, it is necessary to select the proper precipitation, flow, and water quality sample collection and monitoring equipment and procedures…. In order for well designed monitoring programs to result in high quality data, personnel must be properly trained, equipment properly installed, calibrated and maintained, samples correctly collected and analyzed, and data properly reported. Failures at this stage of the monitoring program can result in data that cannot be used to draw valid conclusions regarding BMP performance…. Once data have been collected from a monitoring program, the data need to be compiled and managed in a manner that reduces introduction of errors and enables ready access for future reference ….”); see also G. Fred Lee & Anne Jones-Lee, Issues in Monitoring Hazardous Chemicals in Stormwater Runoff/Discharges from Superfund and Other Hazardous Chemical Sites, 20 REMEDIATION J. 115, 115 (2010) (“Two pervasive problems are the use of analytical methods that are inadequate … and the application of ‘criteria/standards’ that are inappropriate for evaluating … impacts ….”).

See supra notes 46–51 and associated text.

For example, the city of Philadelphia’s “comprehensive” monitoring plan explains that “[t]he monitoring and assessment of green stormwater infrastructure performance, sewer system response to precipitation, receiving water quality, meteorological conditions, and groundwater are integral parts of the program’s implementation and adaptive management approach.” PHILA. WATER DEP’T, GREEN CITY, CLEAN WATERS: COMPREHENSIVE MONITORING PLAN 2-1 (revised 2014), available at http://www.phillywatersheds.org/doc/Revised_CMP_1_10_2014_Finalv2.pdf; see also id. at 4-13–4-14 tbl.4-2 (describing post-construction monitoring subjects, associated research questions, and potential tasks related to each). The city’s view of GSI performance encompasses hydrologically-oriented “functional components,” like “stormwater inflow, soil moisture storage, storage, evapotranspiration, surface infiltration, subsurface infiltration, underdrain return flow, and bypass flow”—but no direct pollutant-reduction performance monitoring. Id. at 4-3.

See supra Tables 2, notes 95–106 and associated text, and Figure 2; see also, e.g., Mary Jane Clark & Youbin Zheng, Fertilizer Rate and Type Affect Sedum-Vegetated Green Roof Mat Plant Performance and Leachate Nutrient Content, 49 HORTSCIENCE 328, 328 (2014) (describing leaching of nutrients from green roofs).

Contamination has generally occurred in situations where stormwater is especially polluted, pretreatment (e.g., sediment settling) before infiltration is insufficient, the groundwater table is shallow, and/or infiltration occurs very rapidly (e.g., through highly permeable soils). See Peter T. Weiss et al., CONTAMINATION OF SOIL AND GROUNDWATER DUE TO STORMWATER INFILTRATION PRACTICES: A LITERATURE REVIEW 15–16 (2008); Clark & Pitt, supra note 77, at 50–51, 35 (describing reported instances of groundwater contamination and noting that “[i]nfiltration of stormwater from residential areas is … safer than from more contaminated areas, unless suitable pretreatment is used”); Shirley E. Clark et al., GROUNDWATER CONTAMINATION POTENTIAL FROM INFILTRATION OF URBAN STORMWATER RUNOFF, IN EFFECTS OF URBANIZATION ON GROUNDWATER (2010), at 119, 121, 123, 154–55 (identifying salts and nutrients as potentially problematic); Suzanne Dallman & Martin Spongberg, Expanding Local Water Supplies: Assessing the Impacts of Stormwater Infiltration on Groundwater Quality, 64 PROF’L GEOGRAPHER 232, 234, 247 (2012) (recapping reviews as “concluded” that groundwater contamination potential from surface infiltration is low to moderate without pretreatment and low for infiltration with simple pretreatment “… for most constituents of environmental concern,” and finding “little evidence indicating that stormwater infiltration has negatively impacted groundwater at [Los Angeles Basin Water Augmentation Study] monitoring sites”); see also GROUNDWATER IMPACTS, U.S. ENVTL. PROT. AGENCY, http://water.epa.gov/infrastructure/greeninfrastructure/gi_gwimpacts.cfm (last updated June 13, 2014).


See, e.g., Richard G. Taylor et al., GROUND WATER AND CLIMATE CHANGE, 3 NATURE CLIMATE CHANGE 322, 326 (2013) (“Ground water can enhance the resilience of domestic, agricultural and industrial uses of fresh water in the face of climate variability and change…. Comprehensive management approaches to water resources that integrate ground water and surface water may greatly reduce human vulnerability to climate extremes and change, and promote global water and food security. Conjunctive uses of ground water and surface water that use surface water for irrigation and water supply during wet periods, and ground water during drought, are likely to prove essential.” (Internal citation omitted)).


33 U.S.C. § 1251(a). The 1972 Act revised the 1948 Federal Water Pollution Control Act to achieve “a stronger regulatory, water chemistry-focused basis to deal with acute industrial and municipal effluents that existed in the 1970s.” NAT’L RESEARCH COUNCIL, supra note 1, at 47.

See 33 U.S.C. § 1311(a) (“Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.”); 33 U.S.C. § 1362(12) (defining “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source”). A “pollutant” is “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). “Navigable waters” are “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). A “point source” is “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). It “does not include agricultural stormwater
discharges and return flows from irrigated agriculture." Id. All other discharges (including agricultural discharges) are considered nonpoint sources.


See 33 U.S.C. § 1251(a)(1). Although Congress originally envisioned meeting this goal by 1985, actual results have fallen well short of even the interim target of achieving surface waters that are universally swimmable and fishable. See 33 U.S.C. § 1251(a)(1), (2) (describing the interim goal of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water").

See 33 U.S.C. § 1342(a)(1), (b).

See supra note 57 and associated text; see also 33 U.S.C. § 1342(p)(3)(B); National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. at 68,737 (stating that "[p]ermit conditions developed to address concerns and conditions of a specific watershed . . . must provide for attainment of applicable water quality standards (including designated uses"); Defenders of Wildlife v. Browner, 191 F.3d 1159, 1166 (9th Cir. 1999) ("Although Congress did not require municipal storm-sewer discharges to comply strictly with § 1311(b)(1)(C), § 1342(p)(3)(B)(iii) states that [p]ermits for discharges from municipal storm sewers . . . shall require . . . such other provisions as the Administrator . . . determines appropriate for the control of such pollutants."). These provisions may include "strict compliance with state water-quality standards" or "less than strict compliance with state water-quality standards"—for example, "use[ing] best management practices (BMPs) . . . to provide for the attainment of water quality standards.")

See National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. at 68,737 (stating that "[p]ermit conditions developed to address concerns and conditions of a specific watershed . . . must provide for . . . allocations of pollutant loads established by a TMDL, and timing requirements for implementation of a TMDL"); Overview of TMDL Program Results Analysis, U.S. Envtl. PROTECTION AGENCY, http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/results_overview.cfm (last updated Sept. 11, 2013). The Clean Water Act requires states to adopt and update water quality standards that include the designated beneficial uses of particular waters and water quality criteria sufficient to protect those designated uses. See 33 U.S.C. § 1313(c)(1), (c)(2)(A); 40 C.F.R. §§ 131.2, 131.4–131.6, 131.10–131.11, 131.12(a)(1). Designating the beneficial uses of a portion of a water body is like zon ing it. See Nat’l RESEARCH COUNCIL, supra note 1, at 53. Potential beneficial uses include "public water supplies, propagation of fish and wildlife, recreational purposes, . . . agricultural, industrial, and other purposes, and . . . navigation." 33 U.S.C. § 1313(c)(2)(A). Each state must adopt water quality criteria for pollutants for which the U.S. EPA has published recommended criteria that support the state’s designated uses. 33 U.S.C. § 1313(c)(2)(B). Ideally, water quality criteria should be numeric, but narrative criteria (descriptive criteria “based on biological monitoring or assessment methods”) are acceptable when numeric criteria are unavailable. 33 U.S.C. § 1313(c)(2)(B); see also 33 U.S.C. § 1362(15) (defining biological monitoring). States must identify waters within their boundaries that fail to meet applicable water quality standards and develop TMDLs, accounting for all pollution sources—including nonpoint sources—to correct exceedances of particular pollutants. See 33 U.S.C. § 1313(d). A TMDL is “the sum of the individual [wasteload allocations] for point sources and [load allocations] for nonpoint sources and natural background” plus a margin of safety. 40 C.F.R. §§ 130.2(i), 130.7. The TMDL process involves assessing and listing waters, developing TMDLs and source wasteload and load allocations, then implementing TMDLs by modifying NPDES permit requirements and encouraging nonpoint sources to adopt BMPs that reduce their pollutant discharges. See Overview of TMDL Program Results Analysis, U.S. Envtl. PRO T. AGENCY, http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/results_overview.cfm (last updated Sept. 11, 2013).

40 C.F.R. § 130.2.

See, e.g., COMPENDIUM, supra note 59, at 3 (“Many states have developed performance and/or design standards to control post-construction stormwater discharges from newly developed and redeveloped sites. MS4 permits in 33 states have conditions implementing numeric [retention-based] performance standards.”). Federal regulations require small MS4’s to “develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb at least an acre of land the MS4 “that would prevent or minimize water quality impacts.” 40 C.F.R. § 122.34(b)(5)(i). More generally, they must “A) Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for [the] community; (B) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State, Tribal or local law; and (C) Ensure adequate long-term operation and maintenance of BMPs.” 40 C.F.R. § 122.34(b)(5)(ii). EPA guidance urges permittees to select BMPs that “minimize water quality impacts[,] and attempt to maintain pre-development runoff conditions,” like GSI and the policies and ordinances required to implement it. 40 C.F.R. § 122.34(b)(5)(ii). The agency suggests that permittees ensure structural BMPs are implemented appropriately using some combination of “pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance.” 40 C.F.R. § 122.34(b)(5)(iii). EPA emphasizes that requirements should be responsive to frequent “changes, developments or improvements in control technologies.” 40 C.F.R. § 122.34(b)(5)(iii). Although EPA had been developing a national “post-construction rule” that would have included a “stormwater retention performance standard and provide[d] regulated entities with several suggested compliance options, including green infrastructure techniques, . . . after nearly four years of work,” in March 2014, EPA announced it would shelf the rulemaking in favor of “incentives, technical assistance, and . . . leverage[ing] existing requirements to strengthen” MS4 permits. Copeland, supra note 43, at 15–16.

Two such examples are the San Francisco Bay and Los Angeles municipal regional stormwater permits. The San Francisco Bay municipal regional stormwater permit requires MS4 operators to “use their planning authorities to include appropriate source control, site design, and stormwater treatment measures in new development and redevelopment projects to address both soluble and insoluble stormwater runoff pollutant discharges and prevent increases in runoff flows from new development and redevelopment projects . . . primarily through the implementation of low impact development (LID) techniques.” San Francisco Bay Regional Water Quality Control Board, San Francisco Bay Region Municipal Regional Stormwater NPDES Permit, Order R2-2009-0074, at pt. C.3 (adopted Oct. 14, 2009, revised Nov. 28, 2011) [hereinafter SFB Regional Permit], available at http://www.swrcb.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2009/R2-2009-0074.pdf; see also id. at pts. C.3.e, C.3.d (describing specific requirements, including LID sizing criteria). Stormwater treatment systems must be sized to accommodate a
design storm (defined either by volume or flow rate). See id. at pt. C.3.d.i; see also Compendium, supra note 59, at 10. Additionally, the permit requires permittees to complete "pilot green street projects that incorporate LID techniques . . . . " See SFB Regional Permit, supra, at pt. C.3.b.iii. The Los Angeles municipal regional stormwater permit requires permittees to require new development and redevelopment projects "to control pollutants, pollutant loads, and runoff volume emanating from the project site by: (1) minimizing the impervious surface area and (2) controlling runoff from impervious surfaces through infiltration, bioretention and/or rainfall harvest and use" by on-site retention of the greater of “[t]he 0.75-inch, 24-hour rain event or . . . [t]he 85th percentile, 24-hour rain event . . . . " LA Regional Permit, supra note 61, at pt. VLD.7.c.i; see also id. at pt. VLD.7.c.iv (requiring new development and redevelopment projects "within natural drainage systems . . . to prevent accelerated downstream erosion and to protect stream habitat . . . by maintaining the project’s pre-project storm water runoff flow rates and durations"); see also Compendium, supra note 59, at 17–18. The permit prioritizes "on-site infiltration, bioretention and/or rainfall harvest and use" over "on-site biofiltration"—in other words, bioretention facilities without an underdrain are preferred to those with an underdrain. LA Regional Permit, supra note 61, at pt. VLD.7.a.7. For both permits, the requirements apply to projects that exceed specific thresholds for land disturbance / size. See SFB Regional Permit, supra, at pts. C.3.b.i, ii; LA Regional Permit, supra note 61, at pt. VLD.7.b. Additionally, both include alternative compliance measures (generally off-site treatment or in-lieu fees) where on-site treatment is infeasible. See SFB Regional Permit, supra, pt. C.3.c; LA Regional Permit, supra note 61, at pt. VLD.7.c.ii–iii (also allowing for alternative compliance where there is "an opportunity to replenish regional ground water supplies at an offsite location").

187 See 33 U.S.C. §§ 1318(a), 1342(a); 40 C.F.R. § 122.44(i); 40 C.F.R. § 122.48.


189 40 C.F.R. § 122.48 provides that “[a]ll permits shall specify: (a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate). (b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; (c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in § 122.44 . . . .”

190 See 40 C.F.R. §§ 122.26(d)(2)(v), 122.34(g).

191 Alternative compliance mechanisms in the Los Angeles municipal regional stormwater permit illustrate this point. For example, the standard compliance path would require permittees to demonstrate compliance with water-quality-based effluent limitations through direct measurement of specific pollutant concentrations at MS4 outfalls. See LA Regional Permit, supra note 61, at pt. VLD.2.d.i.1, VLD.2.e.i.1. By contrast, a permittee who chooses to develop a Watershed Management Programs (WMP) or Enhanced Watershed Management Programs (EWMP) can demonstrate compliance with interim water-quality-based effluent limitations by fully implementing that program, including by making sure that structural BMPs are “designed and maintained to treat storm water runoff from the 85th percentile, 24-hour storm” and that up-to-date maintenance records are available for inspection. See id. at pt. VLD.2.d.i.4. Permittees who develop EWMPs can demonstrate compliance with final water-quality-based effluent limitations by retaining “(i) all non-storm water and (ii) all storm water runoff up to and including the volume equivalent to the 85th percentile, 24-hour event . . . for the drainage area tributary to the applicable receiving water.” See id. at pt. VLD.2.e.i.4. This option requires no water-quality monitoring at all, although it would require monitoring of stormwater volume. In a 2013 factsheet, the EPA suggested that “[p]re- and post-implementation water resources monitoring and assessment,” “[a]ssessment of erosion rates in receiving waters,” “[a]ttainment of water quality standards for specific pollutants,” “[p]ercent stormwater volume capture in a combined sewer area,” or “[p]ercent reduction in CSO volume as a result of [GSI]” are potential metrics for gauging GSI effectiveness. U.S. Envtl. Prot. Agency, General Accountability Considerations for Green Infrastructure 3–5 (2012) [hereinafter General Accountability Fact Sheet], available at http://water.epa.gov/infrastructure/greeninfrastructure/upload/EPA-Green-Infrastructure-Factsheet-1-061212-PJ-2.pdf.

192 Stoner, supra note 16, at 2; see also General Accountability Fact Sheet, supra note 191, at 5 ("It is important to carefully select a set of metrics and incorporate them into evaluation requirements to ensure that desired outcomes are being approached and/or achieved. . . . There should also be clear expectations for corrective action when observed values and progress do not meet established standards or thresholds. . . . In addition, for long-term compliance schedules, performance data should be fed back into an adaptive management framework so that performance can be continuously improved over time.").

193 SFB Regional Permit, supra note 186, at pt. C.3.b.iii, iii.5. The permit also requires 10 pilot projects for “removal of mercury by on-site treatment systems [like detention basins, bioretention units, sand filters, infiltration basins, and treatment wetlands] via retrofit of such systems into existing storm drain systems.” Id. at pt. C.11.e. Similarly, the permit requires 10 pilot projects (which may be the same as for mercury) for on-site retrofits to remove PCBs. Id. at pt. C.12.e.

194 SFB Regional Permit, supra note 186, at pt. C.3.b.iii.5.

195 See discussion supra Part III.

196 See SFB Regional Permit, supra note 186, at pt. C.3.b.x.2. For the mercury and PCBs on-site removal retrofit pilot programs (mentioned in note 193, above), permittees must report “status, results, mercury/(PCBs)-removal effectiveness, and lessons learned from the ten pilot studies and their plan for implementing this type of treatment on an expanded basis throughout their jurisdictions during the next permit term.” Id. at pts. C.11.e.i, C.12.e.i.

197 SFB Regional Permit, supra note 186, at pt. C.8.d.ii (noting that the BMP effectiveness investigation may be done on a green streets pilot project (pt. C.3.b.iii), a mercury-removal on-site treatment retrofit pilot project (pt. C.11.e), or a PCBs-removal on-site treatment retrofit pilot project (pt. C.12.e)).

198 SFB Regional Permit, supra note 186, at pt. C.8.d.ii.

199 See LA Regional Permit, supra note 61, at pt. VLD.7.d.iv (requiring permittees to implement electronic tracking, certification, inspection, and enforcement for GSI and related BMPs).
The requirements for single family residences are different, and include keeping GSI maintenance records on site. See id. The pollutants were total phosphorus, dissolved phosphorus, nitrate, total suspended solids, total copper, and dissolved copper. See id. at 2. The design parameters were (1) the ratio of system footprint to drainage area, (2) the depth of soil media above the underdrain, and (3) whether or not the system included internal water storage below the underdrain outlet. See id. at 3.

The manual covers: designing a monitoring and reporting program; methods and equipment for BMP monitoring; monitoring program implementation; data management, evaluation, and reporting; BMP performance analysis; and cumulative monitoring and performance evaluation of distributed GSI.

Given the difficulties of collecting ambient environmental data on an ongoing basis, it would be wise to put this environmentally relevant data to full use. See generally Eric Biber, The Problem of Environmental Monitoring, 83 U. Colo. L. Rev. 1 (2011).


Influence of Design Parameters, supra note 93, at 1. The review focused on 6 BMP categories (bioretention systems with underdrains, detention basins, grass strips, grass swales, media filters, and retention ponds), for which there was potentially enough design data to support meaningful analysis. See id. at 2, 70.

Id. at 71.

Id. at 3–4. The pollutants were total phosphorus, dissolved phosphorus, nitrate, total suspended solids, total copper, and dissolved copper. See id. at 2. The design parameters were (1) the ratio of system footprint to drainage area, (2) the depth of soil media above the underdrain, and (3) whether or not the system included internal water storage below the underdrain outlet. See id. at 3.

Id. at 3.

Id. at 3–4.

Id. at 3–4, 4 tbl.2.

See, e.g., Eric W. Strecker et al., Determining Urban Storm Water BMP Effectiveness, J. Water Res. Planning & Management, May/June 2001, at 144, (describing BMP monitoring study inconsistencies and proposing protocols for future analyses). Table 2 includes parameters deemed important to report with water quality data for different types of BMPs. See id. at 146.

GSI “studies without well designed and implemented hydrologic and hydraulic monitoring components are of little value to the technical community.” See BMP Performance Monitoring, supra note 151, at 3–1. The Urban Stormwater BMP Performance Monitoring Manual describes meteorological data collection and flow measurement methods, discusses cost considerations, and directs readers to more detailed references. See id. ch. 3.

See e.g., BMP Performance Monitoring, supra note 151, at 4–1 (describing how to select water quality parameters for a monitoring location); see also Ingvertsen et al., supra note 93, at 1490 fig.1 (suggesting a minimum data set of the concentration of suspended solids less than 63 μm in size, total copper, total zinc, several PAHs, total phosphorus, and total nitrogen as well as potential additional parameters where possible.
or locally important (pesticides, phenols, molybdate reactive phosphorus, chemical oxygen demand, biological oxygen demand, \textit{E. coli}, and \textit{Enterococci}).

221 \textit{See also} Martin Jaffe et al., \textit{The Illinois Green Infrastructure Study} 36, 103 (2010), \textit{available at} http://www.epa.state.il.us/green-infrastructure/docs/draft-final-report.pdf (recommending “implementation of a systematic monitoring and reporting program requiring submission of standardized data to the [ISBMPD] . . . in the format required by this database”).


224 According to the EPA:

The Integrated Compliance Information System for the National Pollutant Discharge Elimination System program (ICIS-NPDES) is one of EPA’s two existing NPDES national data systems, designed as an effort to modernize and eventually replace its predecessor system, the Permit Compliance System (PCS). The ICIS-NPDES system is currently operational and, as of December 2012, contains NPDES information for all 50 states, 10 EPA regions, 19 territories, and 2 tribes. All States have had their NPDES data migrated from PCS into ICIS-NPDES. EPA plans to decommission PCS by the third quarter of the federal fiscal year 2013 (April-June 2013).