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November 14, 2018

VIA UPS OVERNIGHT and
Electronic Mail Amanda.Heye@ecy.wa.gov

Ms. Amanda Heye
Stormwater Engineer
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Union Pacific Comments on the Stormwater Management
Manual for Western Washington 2019 Draft

Dear Ms. Heye:

Union Pacific Railroad Company (UPRR) respectfully submits the enclosed comments regarding the draft *2019 Stormwater Management Manual for Western Washington* ("SMMWW"), *Best Management Practices* ("BMPs") *for Railroad Yards, S422 and for Roads, S421*. UPRR submits these comments without waiver or limitation upon the effect or scope of federal preemption, as explained in more detail below.

As a preliminary matter, UPRR notes that the proposed Washington Department of Ecology (Ecology) revisions appear to extend the reach of stormwater control beyond that which the U.S. Environmental Protection Agency has authorized or found to be necessary under the Clean Water Act (CWA). EPA has determined that only those portions of a transportation facility where fueling or vehicle maintenance are actually performed need to be subject to the requirements of an NPDES permit. *See i.e.*, 40 CFR 122.26(b)(14)(viii) ["Only those portions of the facility that are either involved in vehicle maintenance ... [or] equipment cleaning operations ... are associated with industrial activity."]

Moreover, even where there are legitimately permitted activities (*i.e.*, occurring in covered areas of a facility), UPRR believes there may still be undue or otherwise burdensome impacts that may impact railroad operations and/or interstate commerce in such a way as to trigger federal preemption under the *Interstate Commerce Commission Termination Act (ICCTA)*, 49 U.S.C. § 10501(b). ICCTA preempts the application of state and local regulations that may impact railroad operations, activities and facilities, and grants exclusive jurisdiction over such matters to the Surface Transportation Board. The Locomotive Inspection Act, 48 U.S.C. § 20701 et seq., and the Federal Railroad Safety Act, 49 U.S.C. § 20102 et seq., also preclude certain action by state and local governments that relate to rail activities, equipment and facilities. UPRR's comments also seek clarification and, in some instances, offer alternative language to minimize undue or burdensome impacts upon railroad operations and interstate commerce, and bring the proposed BMPs into alignment with actual railroad operating conditions.

Thank you for your time and consideration.

Respectfully Submitted,

Rami S. Hanash
Sr. Environmental Attorney