



BUILDING AMERICA®

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

Union Pacific Railroad Company		
Comments on the Draft 2019 SWMMWW		
Draft 2019 SWMMWW Section (select from drop down)	Comment	Comment Made By
(General Comment)	Union Pacific Railroad Company (UPRR) is providing these comments without waiving or limiting the effect or the scope of federal law preemption of the SWMMWW as applied to rail operations, maintenance, equipment, facilities and construction. The Interstate Commerce Commission Termination Act (ICCTA) expressly grants exclusive jurisdiction over transportation by rail carriers to the Surface Transportation Board (STB) and precludes regulation of transportation by state and local governments. 49 U.S.C. § 10501(b). 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. Several of the BMPs proposed by Ecology, as further discussed below, limit, restrict or conflict with UPRR's construction, maintenance and operation of its interstate railroad transportation system as required by and in compliance with federal law and therefore run afoul of federal law.	Union Pacific Railroad Company
(General Comment)	UPRR also notes that the subjective Ecology revisions appear extend the reach of stormwater control beyond that which EPA 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 occurring need to be subject to the requirements of an NPDES permit. See 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."] Ecology's attempts to expand the boundary of a permitted facility beyond that determined to be needed under the CWA, as shown through the proposed revisions to the Stormwater Manual as discussed in more detail below, exceeds the authority delegated to the State. To the extent activities that are the subject of the Ecology revisions discussed below are occurring in otherwise covered areas of a facility as defined under the CWA, UPRR is providing comments on those proposed BMPs to minimize the impact on construction, maintenance and operation of its interstate railroad transportation system. UPRR's comments included here apply with equal force to the proposed revisions Ecology has made to the Stormwater Manual for Eastern Washington.	Union Pacific Railroad Company
(General Comment)	UPRR seeks clarification that the scope of the BMPs being proposed by Ecology are limited to the footprint of the permitted facility.	Union Pacific Railroad Company
(General Comment)	UPRR comments are generally focused on rail-specific BMPs identified by Ecology in its proposed revisions. To the extent Ecology intends to apply BMPs from other sections to railroads or to railroad activity, UPRR reserves the right to comment on and further address those BMPs.	Union Pacific Railroad Company
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 4: "Discharge locomotive cooling systems only after the locomotive has stopped and at a location where the coolant can be collected, managed, and then disposed of properly."</p> <p>Comment: When the ambient external temperature approaches freezing, locomotives must discharge radiator water through an automated purging mechanism in order to prevent catastrophic damage to the locomotive. Restrictions on the discharge of coolant to only after the locomotive has stopped or when it is at a predetermined location are unduly restrictive, cost-prohibitive, and not technically feasible as implementation of this BMP would result in rerouting of trains, lengthy delays, and substantial damage to locomotives that may not be able to reach a designated area before catastrophic failure occurs. Therefore, UPRR recommends this BMP be limited as revised below.</p> <p>Suggested Revision: Revise S422 Bullet 4: <u>When undergoing routine maintenance</u>, discharge locomotive cooling systems only after the locomotive has stopped at a location where the coolant can be collected, managed, and then disposed of properly. <u>This BMP does not apply to automatic discharges of the locomotive coolant that occur by design to prevent damage to the locomotive.</u></p>	Union Pacific Railroad Company

Union Pacific Railroad Company		
Comments on the Draft 2019 SWMMWW		
Draft 2019 SWMMWW Section (select from drop down)	Comment	Comment Made By
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 9: "Place track mats under each rail/flange lubricator that is in service."</p> <p>Comment: This BMP is beyond the scope of the CWA and Industrial Stormwater General Permit (ISGP) as this BMP appears to attempt to extend to areas of a transportation facility not associated with vehicle maintenance shops or equipment cleaning operations and, therefore, attempts to cover areas not associated with industrial activity. 40 CFR § 122.26(b)(14)(viii).</p> <p>To the extent that an in service rail/flange lubricator is located within the area or portion of a facility associated with industrial activity as defined in the CFR, UPRR notes that track mats are typically installed at designated locations where locomotives or equipment are traveling at slow speeds such as in switching yards. Conversely, automatic rail/flange lubricators are typically located on mainline tracks where locomotives travel at greater speeds. Installation of a track mat at these locations have the potential to hinder proper operation of the lubricator creating a safety hazard, and the track mat itself could become a safety hazard. Further, track mat may obstruct or limit the ability to conduct track inspections required by federal law. As such, track mats may not be an appropriate BMP for all rail/flange lubricator locations within an area covered by a SWPP. Instead, UPRR recommends that the BMP be revised to provide for use of track mats at locations covered by a permit where they can be used in a way so as not to interfere with railway operations.</p> <p>Suggested Revision: Revise S422 Bullet 9: "Place track mats under each rail/flange lubricator that is in service <u>covered by a permit where track mats can be safely installed and maintained without danger to rolling stock or personnel and without interfering with railway operations.</u>"</p>	Union Pacific Railroad Company
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 10: "Select cost-effective rail/flange lubricant that cause the least adverse environmental impact. Consider both the chemical composition of the lubricant and the likelihood of transfer off of the rail during rain events."</p> <p>Comment: This BMP is beyond the scope of the CWA and ISGP as this BMP appears to attempt to extend to areas of a transportation facility not associated with vehicle maintenance shops or equipment cleaning operations and, therefore, attempts to cover areas not associated with industrial activity. 40 CFR § 122.26(b)(14)(viii).</p> <p>Since the purpose of rail/flange lubricant is to support continued and safe operation of the railroad, lubricants are selected based on performance, in addition to cost and environmental attributes. The selection of a more environmentally friendly, but poorer performing lubricant may result in a high risk to rail safety; or in using higher quantities of that lubricant, potentially negating the positive environmental attributes.</p> <p>Suggested Revision: Revise S422 Bullet 10: For rail/flange lubricators located in an area of a covered industrial activity, select cost-effective rail/flange lubricant that provides safe and effective rail operation while considering cause the least adverse environmental impact. Consider both the chemical composition of the lubricant and the likelihood of transfer off of the rail road right-of-way during rain events.</p>	Union Pacific Railroad Company

Union Pacific Railroad Company		
Comments on the Draft 2019 SWMMWW		
Draft 2019 SWMMWW Section (select from drop down)	Comment	Comment Made By
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 11: "Record the date of installation of track mats and replace them once the outdoor life of the track mats has expired, or there are signs pollutants are being transported off the mats. Routinely inspect all track mats for tears or saturation. Replace track mats as necessary due to tears or saturation. Dispose of saturated track mats properly."</p> <p>Comment: The Federal Railroad Administration ("FRA") requires specific types of track mat must be installed on non-exempt track to allow for inspection of tie plates. (Non-exempt track is required to be inspected by the FRA for damage/defects that could cause derailments.) Therefore, for non-exempt track, the track mat does not extend from rail to rail as pictured in the proposed BMP (Figure IV-7.3: Installed Railroad Track Mats). To require a different type of track mat for non-exempt track would conflict with FRA's federal requirement, and thus, be preempted.</p> <p>The requirement to record the date of installation of every track mat would be unduly burdensome, particularly as track mats wear at varying rates depending on a number of conditions and variables. Track mats are replaced based on the conditions of the mat, which are assessed during routine inspections. The BMP should be revised to indicate that track mat maintenance is completed through inspections with decisions to replace the track mat based on the condition of the mat.</p> <p>Suggested Revision: Revise S422 Bullet 11: Record the date of installation of track mats and replace them once the outdoor life of the track mats has expired, or there are signs pollutants are being transported off the mats. Inspect and replace track mat, as necessary. Routinely inspect all track mats for tears or saturation, <u>and replace as necessary.</u> Replace track mats as necessary due to tears or saturation. Dispose of saturated track mats properly.</p>	Union Pacific Railroad Company
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 12: "Install spill containment pans/trays at locomotive and railcar maintenance facilities, fueling areas, and switching yards to collect all spills under locomotives and other track equipment. Direct spills to an oil / water separator for treatment or collect spilled chemicals for proper disposal."</p> <p>Comment: Installation and maintenance of spill containment pans/trays at the locations and yards as described in the draft SWMMWW would be unduly restrictive, cost-prohibitive, and not technically feasible or practicable as it would require track pans/trays to be installed over acres of property, and require the railyards and/or tracks to be shut down for extended periods to facilitate installation, removal, and maintenance for little to no benefit. Such shutdowns would significantly interfere with the ability of the railroad and yards to operate, severely disrupt rail operations and maintenance, and ultimately cause significant delays in the movement of goods in interstate commerce. Further, this BMP appears to be based on a flawed premise that all locomotives and track equipment leak or spill. In addition, the installation of track mats instead of pans/trays may be a feasible approach for collecting potential spills at particular locations where spills may occur (i.e. fueling or maintenance areas). UPRR recommends the BMP be revised to include the use of track mats where necessary and to apply to designated maintenance areas and fixed fueling areas. Spill containment pans/trays and mats can be installed and effectively used in these areas without significant interference to railroad operations. This approach would efficiently facilitate the collection of spilled chemicals utilizing portable pans/trays (or other collection devices) under connections where spills are most likely to occur during fueling operations.</p> <p>In addition, a provision which suggests "all" spills from a locomotive and/or track equipment must be captured is unduly burdensome, vague and impossible to achieve. It is impossible to capture every spill in a containment pan or tray or on a track mat. Therefore, it is necessary to recognize that measures must be taken only where they are feasible to avoid undue interference with rail operations, maintenance and construction. UPRR also recommends other clarifying language as suggested below.</p> <p>Suggested Revision: Revise S422 Bullet 12: Install spill containment pans/trays <u>or track mat at designated</u> locomotive and railcar maintenance <u>areas</u> facilities and fixed fueling areas, and switching yards to <u>reduce environmental impacts from potential</u> collect all spills under locomotives and other track equipment. Direct spill containment pans/trays to an oil / water separator <u>where feasible</u> for treatment or collect spilled chemicals for proper disposal.</p>	Union Pacific Railroad Company

Union Pacific Railroad Company		
Comments on the Draft 2019 SWMMWW		
Draft 2019 SWMMWW Section (select from drop down)	Comment	Comment Made By
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 13: "During locomotive fueling and inspection use drip pans to capture any fuel or oil seepage."</p> <p>Comment: This BMP is duplicative of Bullet 12 and should be removed. Further, like the comment to Bullet 12, this BMP description is too vague and too restrictive in referring only to drip pans and excluding other secondary containment equipment. In addition, drip pans are not needed when only conducting an inspection. The suggested revision includes clarification on when and where the drip pans or secondary containment should be used.</p> <p>Suggested Revision: Revise S422 Bullet 13: "During locomotive fueling <u>operations and inspection</u> use drip pans <u>or secondary containment</u> to capture any fuel or oil seepage <u>when making or breaking connections</u>."</p>	Union Pacific Railroad Company
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 14: "Place oil absorbent track mats beneath engines when they are parked outdoors."</p> <p>Comment: Locomotives can be parked for varying amounts of times and at different locations dependent on train schedules and rail traffic. Track mat installation and maintenance requires advanced planning and significant commitment of resources, including allocating track time and worker protection. Track mats cannot be placed underneath a locomotive once it is parked somewhere. As such, this BMP is unduly restrictive, cost-prohibitive, and not technically feasible or safe in light of the operation of the railroad and its facilities. UPRR recommends the BMP be revised to apply only where locomotives are unattended and idle for extended periods of time at designated Engine Tie-up locations and only in areas that are covered by a Stormwater Pollution Prevention Plan (SWPP).</p> <p>Suggested Revision: Revise S422 Bullet 14: "Place oil absorbent track mats beneath engines when they are parked outdoors. <u>Install track mats at designated Engine Tie-Up and/or outdoor locomotive parking locations (e.g., service tracks) located in SWPP permitted areas where locomotives are unattended and idle for extended periods of time.</u>"</p>	Union Pacific Railroad Company
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Bullet 16: "Store creosote-treated railroad ties in railroad freight cars, in a building, or on an impervious surface covered by a tarp."</p> <p>Comment: This BMP is beyond the scope of the CWA and ISGP as this BMP appears to attempt to extend to areas of a transportation facility not associated with vehicle maintenance shops or equipment cleaning operations and, therefore, attempts to cover areas not associated with industrial activity. 40 CFR § 122.26(b)(14)(viii).</p> <p>Creosote-treated railroad ties are finished products that are designated for outdoor use. The timely replacement of railroad ties is critical to the safe operation of the railroad, and occurs on a continuing basis throughout the railroad system. This results in a constant cycle of removing old ties and installing new ties. Railroad ties are often staged in locations to allow for installation and/or replacement during limited windows of available track time. Restricting access to railroad ties by severely limiting the locations where the ties can be stored would significantly impact the tie replacement process and the ability of the railroad to function, and therefore, negatively impact the safe operation of the railroad and interstate commerce. As such, this BMP is unduly restrictive, cost-prohibitive and not technically feasible in light of the operation of the railroad and its facilities. To the extent storage of new ties occurs within the permitted area covered by a SWPP, UPRR recommends the BMP be revised to generally apply to new creosote-treated railroad ties with a focus on the reduction of the potential to impact stormwater runoff.</p> <p>Suggested Revision: S422 Bullet 16: "Store <u>new</u> creosote-treated railroad ties <u>located within an area of permitted industrial activity in locations that reduce the potential to impact stormwater runoff</u>." railroad freight cars, in a building, or on an impervious surface covered by a tarp."</p>	Union Pacific Railroad Company

Union Pacific Railroad Company		
Comments on the Draft 2019 SWMMWW		
Draft 2019 SWMMWW Section (select from drop down)	Comment	Comment Made By
S422 BMPs for Railroad Yards	<p>Draft SWMMWW Text: S422 Applicable Treatment BMP 2: "Store large metal scrap and materials that cannot be stored in covered areas because of their size, volume, and/or weight (for example rail and tie plates) in locations where stormwater runoff is managed, controlled, and directed to a Runoff Treatment BMP that meets the Enhanced Treatment Performance Goal."</p> <p>Comment: This BMP is beyond the scope of the CWA and ISGP as this BMP appears to attempt to extend to areas of a transportation facility not associated with vehicle maintenance shops or equipment cleaning operations</p> <p>Rail and tie plates are finished steel products that are designated for outdoor use. Much like railroad ties, it is critical to the safe operation of the railroad that rail and tie plates are staged at various locations prior to deployment for rapid installation. The leachability of potential pollutants from finished steel products that are designed and intended for outdoor use is minimal. Likewise, the leachability of potential pollutants from large metal scrap (typically steel) is also minimal. The requirement to install a runoff treatment BMP for any location where large metal scrap or finished rail and tie plates are stored is unduly burdensome, cost-prohibitive, and impractical as it would effectively require railroad yards to capture and treat stormwater from the entire yard.</p> <p>Suggested Revision: Revise S422 Applicable Treatment BMP 2: Store large metal scrap <u>located within an area of permitted industrial activity</u> and materials that cannot be stored in covered areas because of their size, volume, and/or weight (for example rail and tie plates) in locations <u>that reduce the potential to impact stormwater runoff</u>, where stormwater runoff is managed, controlled, and directed to a Runoff Treatment BMP that meets the Enhanced Treatment Performance Goal.</p>	Union Pacific Railroad Company
S421 BMPs for Parking and Storage of Vehicles and Equipment	<p>Draft SWMMWW Text: S421 Bullet 4: "Place drip pans below inoperative or leaking vehicles and equipment in a manner that catches leaks or spills, including employee vehicles."</p> <p>Comment: UPRR properly mitigates leaking equipment by use of BMPs, including but not limited to, drip pans and absorbent materials. Placing drip pans underneath all inoperative vehicles would not be necessary if the vehicle has already been drained of fluids, or the vehicle is not leaking. As such, to apply this BMP requirement to all inoperative vehicles and equipment is overly burdensome and impractical. This BMP is also unduly restrictive in referring only to the use of drip pans when other secondary containment approaches are equally effective.</p> <p>Moreover, employers do not have control over the condition of employee vehicles, which are typically parked in administrative parking areas or non-industrial areas of a facility. Requiring oversight of employee vehicles expands the scope of the stormwater BMPs to personal vehicles which are outside and independent of operations at a given facility and beyond the scope and authority of the CWA implementing regulations, which expressly exclude "office buildings and accompanying parking lots," as long as the drainage is not mixed with stormwater from industrial areas. 40 CFR §122.26(b)(14). This BMP is also beyond the scope of the CWA and ISGP as the BMP would apply to areas of a transportation facility not involved with vehicle maintenance shops or equipment cleaning operations.</p> <p>Suggested Revision: Revise S421 Bullet 4: Place drip pans <u>or secondary containment</u> below inoperative or <u>industrial</u> vehicles and equipment in a manner that catches leaks or spills, including employee vehicles.</p>	Union Pacific Railroad Company

Union Pacific Railroad Company		
Comments on the Draft 2019 SWMMWW		
Draft 2019 SWMMWW Section (select from drop down)	Comment	Comment Made By
(General Comment)	<p>SEPA COMPLIANCE: The adoption of the Manual and its incorporation into an NPDES Permit is an “action” for purposes of SEPA.</p> <p>Comment: The materials available on Ecology’s website do not refer to a SEPA Checklist or a threshold determination to support this action. Ecology must conduct a complete review of the adverse impacts this action will have on the natural and built environment, including but not limited to impacts arising from the disruption of interstate commerce. For example, implementation of the BMPs in the Manual may delay or disrupt locomotive fueling, track and equipment maintenance, and material storage thereby delaying or disrupting interstate shipments by rail, increasing the risk of accidents, increasing fuel consumption, and diverting freight from rail to other methods of transportation. Following Ecology’s adoption of BMPs specific to rail transportation facilities and operations other jurisdictions may adopt different BMPs for the same types of facilities and operations leading to cumulative impacts on interstate transportation further disrupting or delaying interstate shipments by rail. Alternatives to the proposed revisions to the Manual that would avoid or minimize these adverse impacts should be reviewed, disclosed and considered prior to taking this action. Reasonable mitigation measures to reduce, off-set, or compensate for adverse impacts should be disclosed and discussed. Where impacts cannot be avoided or mitigated, these unavoidable impacts should be disclosed.</p> <p>Request: Issue a Determination of Significance and scoping notice for public comment and prepare an EIS before taking this action.</p>	Union Pacific Railroad Company