

Phase I MS4 Permit	Phase II MS4 Permit - WWA	Phase II MS4 Permit - EWA	SWMMWW	SWMMEW	Comment	Comment Made By
			General	General	<p>BNSF is providing these comments without waiving or limiting the effect or the scope of federal preemption, as explained in more detail below.</p> <p>BNSF has been the primary freight railroad in the State of Washington since 1873 and has played an important role in Washington's economy. BNSF's role in Washington includes delivering American commodities to the West Coast for global distribution, as well as originating key Northwest traffic such as lumber, frozen foods, and paper goods. In all, BNSF moves more than 1.2 million carloads of freight in Washington annually.</p> <p>BNSF's extensive interstate network connecting Washington to the rest of the United States and to foreign markets relies on the consistent and predictable regulatory environment created by the federal regulatory regime governing railroads. As Congress recognized, rail transportation in the United States would be undermined by a patchwork of state and local regulation as Ecology proposes here. The Interstate Commerce Commission Termination Act ("ICCTA") expressly grants exclusive jurisdiction over transportation by rail carriers to the Surface Transportation Board. 49 U.S.C. § 10501(b). ICCTA preempts the application of state and local regulations that target railroads and impose burdens on rail transportation, activities, and facilities. 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. Revisions proposed by Ecology here may, as written, have the effect of limiting, restricting, or contradicting BNSF's maintenance and operation of its interstate railroad transportation system, facilities and equipment, as required by and in compliance with federal law.</p> <p>Without waiving any preemption or other legal arguments that may be available, the enclosed comments seek clarification and, in some instances; offer alternate language in an effort to bring the addressed revisions into alignment with actual conditions and operations of the railroad and its equipment and facilities.</p>	BNSF

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			Volume 1	Chapter 5	<p><u>SWMMWW / SWMMEW Section</u> SWMMWW Volume 1, Section 4.12 Prohibited Activities for UIC Wells SWMMEW Chapter 5.12 Prohibited Activities for UIC Wells</p> <p>“Train terminals and train yards” were added to the list of prohibited activities for UIC wells.</p> <p><u>Comment</u></p> <p>Proposed edits in Section 1-4.12 in the western Washington manual and Section 5.12 in the eastern Washington manual will prohibit underground injection control (UIC) wells that receive stormwater from “Train terminals and train yards.” To the extent that this provision applies to railroad yards, it is an unnecessary prohibition as UIC wells are already prohibited if they receive stormwater from vehicle maintenance activities, commercial or fleet vehicle washing, storage of treated lumber, storage or handling of hazardous materials, and the generation and handling of hazardous waste. Any activities at a railroad facility that may adversely impact ground water quality are already addressed through the existing prohibitions in the 2019 manuals and WAC 173-218-030. There is no basis for a blanket prohibition of UIC wells for railroad facilities which typically include areas such as parking lots, equipment and material storage, and administrative buildings, that would not be associated with any particular endangerment of ground water quality.</p> <p>In response to this comment, BNSF would appreciate responses to the following questions.</p> <ol style="list-style-type: none"> 1. What is meant by “train terminal” and “train yard”? How do these terms apply to railroad yards and how does Ecology define what constitutes a “train terminal” and what constitutes a “train yard”? 2. What is the basis for a blanket UIC prohibition for stormwater from a railroad facility? 3. Does the prohibition apply to areas of railroad yards used for equipment and material storage, administrative parking, and administrative buildings? If so, why are railroad activities being treated differently than other transportation activities? 4. How will the prohibition impact existing UIC wells that are registered with Ecology at railroad facilities? 5. How will the prohibition impact the availability of UIC wells at railroad facilities that are not covered under an existing NPDES permit? Will this prohibition operate as general prohibition of UIC wells at such facilities applicable to existing UIC wells and the use of UIC wells in the future? <p><u>Suggested Revision</u> Remove “train terminals and train yards” from the list of prohibited activities for UIC wells.</p>	BNSF

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			Volume 1	Chapter 2	<p>Regulatory/Permit Reference SWMMWW Volume 1, Chapter 3.2 Exemptions SWMMEW Chapter 2.2 Exemptions</p> <p>Comment An exemption for “Railroad Maintenance Practices” should be added to the SWMMWW Volume 1, Chapter 3.2 Exemptions and SWMMEW Chapter 2 Exemptions to create consistency with grading codes for local jurisdictions. Railroads, similar to pavement and roadways, require ongoing maintenance to continue the original, intended function of the railroad operations and facilities. As such, railroad maintenance should be provided with the same/similar type of exemption as pavement maintenance and utility repairs/upgrades.</p> <p>Suggested Revision Add an exemption for “Railroad Maintenance Practices” to the SWMMWW Volume 1, Chapter 3.2 Exemptions and SWMMEW Chapter 2 Exemptions as described below.</p> <p>Railroad Maintenance Practices <u>A preservation or maintenance project is defined as preserving/protecting infrastructure by rehabilitating or replacing existing structures to maintain operational and structural integrity, and for the safe and efficient operation of the facility. Railroad maintenance practices do not increase the capacity of railroad tracks.</u></p> <ul style="list-style-type: none"> • 	BNSF

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			Volume 1	Chapter 2	<p>Regulatory/Permit Reference SWMMWW Volume 1, Chapter 3.4.6 MR6: Runoff Treatment SWMMEW Chapter 2.5 CE5: Runoff Treatment</p> <p><i>The following TDAs require construction of Runoff Treatment BMPs. If a TDA meets any either of the following thresholds, Runoff Treatment BMPs are required. The project proponent must demonstrate that the TDA does not meet either of the following thresholds for Runoff Treatment BMPs to not be required for that TDA.</i></p> <ul style="list-style-type: none"> • TDAs that have a total of 5,000 <u>2,000</u> square feet or more of pollution-generating hard surface (PGHS), or • TDAs that have a total of 3/4 of an acre or more of pollution-generating pervious surfaces (PGPS) – not including permeable pavements, and from which there will be a surface discharge in a natural or man-made conveyance system from the site. <p>Comment The Runoff Treatment BMPs threshold of 5,000 square feet or more of pollution-generating hard surface (PGHS) should be retained in the SWMMWW. Lowering this threshold to 2,000 square feet will require the installation of Runoff Treatment BMPs for increasingly smaller areas that provide less and less environmental benefit and will result in a segmented patchwork of smaller Runoff Treatment BMPs being installed that are inefficient compared to Runoff Treatment BMPs installed for larger areas or regional treatment systems in general.</p> <p>Language needs to be added to SWMMWW Volume 1 and SWMMEW Chapter 2 that takes existing Runoff Treatment BMPs and stormwater treatment systems into consideration (e.g., treatment systems installed for ISGP compliance, etc.). Projects that occur within areas that already drain to an existing Runoff Treatment BMP or stormwater treatment system should be exempt from installing Runoff Treatment BMPs. After completion of the project, any stormwater flowing from the project area would be treated by the existing Runoff Treatment BMP or stormwater treatment system. Requiring Runoff Treatment BMPs to be installed for areas that flow to existing Runoff Treatment BMPs or stormwater treatment systems would result in “double treatment” and is not necessary. Similar to the exemption for Flow Control, an exemption for Runoff Treatment should be added to address projects that are within areas that already flow to a stormwater treatment system prior to discharge.</p> <p>Suggested Revision Retain the 5,000 square foot threshold to require treatment under SWMMWW Volume 1, Chapter 3.4.6 MR6: Runoff Treatment – TDA Thresholds and SWMMEW Chapter 2.5 CE5 Runoff Treatment.</p> <p>Add a new section for TDA Exemption under SWMMWW Volume 1, Chapter 3.4.6 MR6: Runoff Treatment and SWMMEW Chapter 2.5 CE5 Runoff Treatment:</p> <p>Existing Runoff Treatment BMPs or Stormwater Treatment Systems Runoff Treatment BMPs are not required for TDAs that discharge to an existing Runoff Treatment BMP or stormwater treatment system that provides similar water quality benefits that would otherwise be required for a given TDA under MR6: Runoff Treatment.</p>	BNSF

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					<p>Regulatory/Permit Reference SWMMWW Volume 3, Chapter 1.2 Choosing Your Runoff Treatment BMPs, Step 5 SWMMEW Chapter 6.1.2 Choosing Your Runoff Treatment BMPs, Step 5</p> <p>When is Enhanced Metals Treatment Required? Enhanced Metals Treatment BMPs are required for the types of project sites listed below that:</p> <ol style="list-style-type: none"> a. discharge directly to fresh waters designated for aquatic life use or that have an existing aquatic life use; or b. discharge to conveyance systems that are tributary to fresh waters designated for aquatic life use or that have an existing aquatic life use; or c. infiltrate stormwater within ¼ mile of a fresh water designated for aquatic life use or that has an existing aquatic life use. <p>The types of project sites are:</p> <ul style="list-style-type: none"> • Sites subject to industrial activities, • Commercial project sites, • <u>Light rail elevated and non-elevated guideways/tracks</u> • <u>Other project sites that are anticipated to generate a high pollutant loading, including:</u> <ul style="list-style-type: none"> ○ <u>Parking areas as follows:</u> <ul style="list-style-type: none"> ▪ <u>Commercial or industrial areas: All on-street parking areas.</u> ▪ <u>Areas other than commercial or industrial areas:</u> ▪ <u>On-street parking areas on streets with an expected total AADT of ≥ 7,500.</u> ▪ <u>Parking areas with an expected trip end count ≥ 40 vehicles per 1,000 sf of gross building area.</u> ▪ <u>Parking areas with ≥ 100 expected trip ends per day.</u> ○ <u>Fueling stations</u> ○ <u>Log storage and sorting yards</u> ○ <u>Railroad yards</u> ○ <u>Transit center bus stops</u> <p>Comment Including a blanket requirement to require railroad yards to install Metals Treatment does not consider the types of land use at railyards such as office areas, parking areas, etc. and is duplicative of existing requirements for industrial areas.</p> <p>Proposed edits in Section 3-1.2 in the western Washington manual and Section 6.1.2 in the eastern Washington manual will require Metals Treatment to be installed at railroad yards for any development/redevelopment project that exceeds the applicable thresholds. To the extent that this provision applies to railroad yards, it is an unnecessary prohibition as Metals Treatment is already required for areas subject to industrial activities. Any activities at a railroad facility that would be anticipated to potentially generate a high amount of pollutant loading are already addressed through the existing requirements in the 2019 manuals. There is no basis for a blanket requirement for Metals Treatment to be installed at a railroad facility for development/redevelopment projects that exceed the applicable thresholds as many areas at railroad facilities include lightly used parking lots, equipment and material storage, and administrative buildings, and would not be anticipated to potentially generate a high amount of pollutant loading.</p> <p>Suggested Revision Remove “railroad yards” from the list of types of project sites that require Metals Treatment.</p>	BNSF

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			Volume 4	Chapter 8	<p>SWMMWW / SWMMEW Section SWMMWW Volume 4, S422 BMPs for Railyards SWMMEW Chapter 8.8, S422 BMPs for Railyards</p> <p><i>S422 Bullet 10: Select cost-effective rail/flange lubricant that provides safe and effective rail operation while considering adverse environmental impact. Consider both the chemical composition of the lubricant and the likelihood of transfer off of the rail during rain events.</i></p> <p>Comment</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. The second sentence in bullet 10 to <i>“Consider both the chemical composition of the lubricant and the likelihood of transfer off of the rail during rain events.”</i> Is repetitive and not necessary as adverse environmental impact is already included in the first sentence of this BMP.</p> <p>Suggested Revision Revise S422 Bullet 10: Select cost-effective rail/flange lubricant that provides safe and effective rail operation while considering adverse environmental impact. Consider both the chemical composition of the lubricant and the likelihood of transfer off of the rail during rain events.</p>	BNSF