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**Subject:** Comment on draft Industrial Stormwater General Permit

## The Industrial Stormwater General Permit (ISWGP), Public Notice Draft, draft 11/21/07

We submit the following written comment on behalf of Union Pacific Railroad Company (UPRR). This comment focuses on the ambiguity, contradiction and inconsistency in the draft ISWGP regarding required permit coverage for railroad transportation facilities (SIC 40xx, 41xx). We believe a revision to the draft permit is necessary to clarify the scope of required coverage for these facilities so it is clear and concise to facilities, Ecology field inspectors and the public.

### Comment 1 - Section S1 Permit Coverage

Table 1 (Activities Requiring Permit Coverage) on page 3 of 76 in the ISWGP identifies SIC codes 40xx and 41xx for railroad transportation facilities. The table specifically notes the following activities which would require permit coverage:

*Vehicle maintenance shops (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations,... at the following facilities (footnote 3)*

- *Railroad Transportation*

Footnote 3 then states: "3. Only the specified activities (vehicle maintenance shops, equipment cleaning operations....) occurring at a facility require coverage under this permit" (Emphasis added)

While Table 1 and Footnote 3 appear clear to have limited permit coverage for railroad transportation facilities to "only the specified activities", there are other parts of Section 1 and the accompanying ISWGP permit Fact Sheet that are confusing as to the required coverage such as the following:

Table 1 Footnote 1 - *All activities requiring permit coverage may not be included in a single SIC Code. Facilities with activities similar to those described in the narrative title shall also apply for permit coverage.* (Emphasis added)

Section S1A Facilities Required to Seek Coverage under this General Permit - *The Department of Ecology (Ecology) requires facilities that discharge to a surface water body or to a storm sewer system and that meet any of the four conditions below to obtain permit coverage. A facility shall obtain permit coverage if: 1. The facility engages in any listed industrial activity in Table 1 in S1A, and the industrial activity is exposed to precipitation;....* (Emphasis added)

Industrial Stormwater General Permit Fact Sheet pg 58 – *The February 2007 draft of the permit did not contain a special caveat addressing permit coverage that is contained in the 2002 ISWGP and EPA's MSGP. The caveat is detailed in the federal regulations (40 CFR 122.26.(b)(14)(viii)). The caveat applies to facilities in the transportation and warehousing industries (SICs 40xx, 41xx, 42xx [except 4221, 4222, and 4225], and 43xx)..... The*

*regulation states that only portions of a facility that contain onsite vehicle maintenance or equipment cleaning operations are required to apply for coverage under this permit. The remainder of the facility is exempt from permit coverage....Ecology removed this special condition from the draft permit because the agency had not conducted adequate outreach to the affected industries during development of the permit. (Emphasis added)*

## Summary

Based on the above and Ecology's effort to clarify the required coverage for railroad transportation facilities by adding Footnote 3 to Table 1, the permit still appears to confuse the specific industrial activities that are included and excluded at a railroad transportation facility. It is also our experience during site inspections that Ecology's own Site Inspectors are also not clear on the required permit coverage. At a recent Ecology public meeting on the November 2007 draft ISWGP, the Ecology presenter implied that clarity would be provided in guidance documents that would be published later on. Often the intended Ecology guidance documents are never published, are guidance only and not part of the permit. For example, guidance documents intended to be published by Ecology for clarification of the Model Toxics Control Act (MTCA) Cleanup Regulations rule revisions (finalized in 2001) have not yet been completed. Overall, this leads to continuing confusion regarding required permit coverage. The opportunity is available now to make the permit language clear which would eliminate the need for a guidance document later on the issue. We are requesting that the draft permit language be modified so it is clear in advance of the permit going into effect this May that only the specific activities identified in Table 1 and Footnote 3 require permit coverage for railroad transportation facilities.

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