

TODD KIM
Assistant Attorney General
ELIZABETH L. LOEB (NY Bar No. 2294809)
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington D.C. 20044-7611(202) 616-8916
Elizabeth.loeb@usdoj.gov
Attorneys for Plaintiff United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

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UNITED STATES OF AMERICA,)
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Plaintiff,)
)
v.)
)
GENESEE & WYOMING RAILROAD SERVICES, INC.,) Case No.: 1:23-cv-00084)
THE BAY LINE RAILROAD, LLC,))
DALLAS, GARLAND & NORTHEASTERN))
RAILROAD, INC.))
OHIO CENTRAL RAILROAD, INC,))
PORTLAND & WESTERN RAILROAD, INC.))
RAPID CITY, PIERRE & EASTERN RAILROAD, INC.))
))
Defendants.))
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CONSENT DECREE

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) has filed a complaint in this action concurrently with this Consent Decree, pursuant to Section 204 of the Clean Air Act (“CAA”), 42 U.S.C. § 7524, alleging that Defendants violated requirements promulgated under Section 213 of the CAA, 42 U.S.C. 7547(a)(5), relating to Regulated Locomotives (as defined herein).

WHEREAS the United States' Complaint alleges that Defendants are liable for injunctive relief and penalties pursuant to Section 205 of the CAA, 42 U.S.C. § 7524, for violation of emissions standards for locomotives, promulgated by EPA under Section 213 of the CAA, 42 U.S.C. § 7547(a)(5), at 40 C.F.R. Parts 92, 1033, and 1068, pertaining to Regulated Locomotives owned, leased and operated by Defendants and/or Defendant Affiliates.

WHEREAS Defendants are each wholly-owned subsidiaries of Genesee and Wyoming, Inc. ("GWI").

WHEREAS the United States alleges that Defendants and/or Defendant Affiliates are "owners" and/or "operators" and/or "remanufacturers" of Regulated Locomotives within the meaning of and subject to the CAA and its regulations codified at 40 C.F.R. Parts 92, 1033 and 1068.

WHEREAS on March 29, 2019, EPA issued GWI a Finding of Violation ("FOV") alleging that GWI violated 40 C.F.R. Parts 92, 1033 and 1068 by placing Locomotives into service that did not comply with required emissions standards and have an EPA-issued certificate of conformity; failing to implement required maintenance on Locomotives in its fleet; and failing to keep required maintenance records for Locomotives in its fleet.

WHEREAS Defendants and Defendant Affiliates do not admit the United States' allegations or any liability to the United States arising out of the transactions or occurrences alleged in the Complaint or FOV.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 204 of the Clean Air Act, 42 U.S.C. § 7524, and over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7524 and 28 U.S.C. §§ 1391(b)(1) because two of the Defendants are incorporated in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 204 of the CAA, 42 U.S.C. § 7524.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and Defendant Affiliates, and any successors, assigns, or other entities or persons otherwise bound by law.

4. Wherever this Consent Decree imposes a requirement or prohibition upon Defendants, such requirement or prohibition shall also apply to each Defendant Affiliate with respect to Regulated Locomotives that it owns, leases, and/or operates. Defendants shall ensure that Defendant Affiliates comply with the terms of this Consent Decree. Any violation of this Consent Decree by a Defendant Affiliate shall constitute a violation by Defendants.

5. Transfers of Ownership of Defendants or Defendant Affiliates.

a. No transfer of ownership or operation of a Defendant shall relieve Defendants of their obligations to ensure that the terms of the Decree are implemented. Except where the transfer of a Defendant is to another Defendant or Defendant Affiliate, at least 30 Days prior to transfer of ownership or operation of that Defendant, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer to EPA and DOJ in accordance with Section XIV (Notices). Any transfer of ownership or operation of a Defendant without complying with this Paragraph constitutes a violation of this Decree.

b. No transfer of ownership or operation of a Defendant Affiliate shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented unless the Defendant Affiliate to be transferred complies with Paragraph 6 with respect to Regulated Locomotives owned, leased or operated by the Defendant Affiliate prior to the transfer.

6. Transfer of Regulated Locomotives. Defendants shall be relieved of responsibility to comply with this Decree with respect to a Regulated Locomotive upon the transfer of ownership and operation of a Regulated Locomotive, or of a Defendant Affiliate that owns, leases, or operates a Regulated Locomotive to any party that is not a Defendant or Defendant Affiliate, only if all the applicable requirements below are satisfied with respect to the Regulated Locomotive(s) to be transferred or, in the case of transfer of a Defendant Affiliate, to the Regulated Locomotive(s) owned and operated by the Defendant Affiliate being transferred.

a. No Defendant or Defendant Affiliate retains any ownership interest in, directly or indirectly, lease, or operate the Locomotive after the transfer; and

b. Defendants or Defendant Affiliate furnishes to the transferee the information from the recordkeeping and maintenance database described in Paragraph 20 for the Regulated Locomotive being transferred so that transferee may utilize the information in its own recordkeeping and maintenance system; and

c. the Regulated Locomotive to be transferred either has not been repowered, refurbished, or remanufactured, or, if repowered, refurbished or remanufactured, it has a valid EPA-issued certificate of conformity for its model year (or later) and the required label; and

d. the Regulated Locomotive either is not subject to Section VI (Mitigation Project) or, if subject to Section VI has been substituted by another Locomotive prior to the transfer in accordance with the procedures set forth in Paragraph 28 below; and

e. Defendants report the transfer of the transferred Defendant Affiliate and/or transferred Regulated Locomotive in their semi-annual Report pursuant to Section VII for the reporting period in which the transfer occurred.

7. Defendants shall provide a copy of this Consent Decree (either in hard copy or electronic form) to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, and is responsible for ensuring that any contractor retained to perform work required under this Consent Decree performs the work in conformity with the terms of this Consent Decree. Provision of this Consent Decree in electronic file format shall be deemed compliance with this Paragraph.

8. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated thereunder have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

- a. “Complaint” means the complaint filed by the United States in this action;
- b. “Consent Decree” or “Decree” means this Decree and all appendices attached hereto (listed in Section XXV);
- c. “Date of Lodging” means the day that this Consent Decree is lodged with the Court for public comment as provided in Section XIX (Public Participation);
- d. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day;
- e. “Defendants” mean Genesee & Wyoming Railroad Services, Inc., The Bay Line Railroad, LLC., Dallas, Garland & Northeastern Railroad, Inc., Ohio Central Railroad, Inc., Portland & Western Railroad, Inc. and Rapid City, Pierre & Eastern Railroad, Inc.;
- f. “Defendant Affiliate” means GWI or any entity in which GWI or a Defendant has a direct or indirect ownership interest that is greater than 50 percent;
- g. “DOJ” means the United States Department of Justice and any of its successor departments or agencies;
- h. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;

- i. “Effective Date” means the definition provided in Section XV;
- j. “Interest” means the interest rate provided in 28 U.S.C. § 1961, as of the date that the payment to which it pertains is due unless another date is provided herein;
- k. “Locomotive” means a self-propelled piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment. A Locomotive includes its engine;
- l. “Locomotive Engine” means an engine that propels a Locomotive;
- m. “Maintenance Instructions” means the written instructions for properly maintaining and using a Locomotive, including (but not limited to) the emission-control system provided by the certifying manufacturer/remanufacturer in compliance with 40 C.F.R. § 1033.125;
- n. “Paragraph” means a portion of this Decree identified by an Arabic numeral;
- o. “Parties” means the United States and Defendants;
- p. “Regulated Locomotive” means a Locomotive owned, operated, or leased by a Defendant or a Defendant Affiliate at any time between the Date of Lodging and termination of this Consent Decree pursuant to Section XVIII that is subject to any requirement in the CAA or regulations set forth at 40 C.F.R. Parts 92, 1033 or 1068;
- q. “United States” means the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Within 30 Days after the Effective Date, Defendants shall pay the sum of \$1,350,000 as a civil penalty, together with Interest accruing from November 1, 2021 at the rate in effect on the Effective Date.

11. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Connecticut after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Genesee & Wyoming, Inc.
Thomas D. Savage
Attn: Chief Financial Officer
20 West Avenue
Darien, CT 06820
TSavage@gwrr.com

on behalf of Defendants. Defendants may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices).

12. At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ and EPA via email or regular mail in accordance with Section XIV (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United*

States v. Genesee & Wyoming Railroad Services, Inc. and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-12479.

13. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal, state or local income tax.

V. COMPLIANCE REQUIREMENTS

A. Compliance with Locomotive Standards

14. Defendants shall comply with all applicable requirements in 40 C.F.R. Part 92 and 40 C.F.R. Part 1033 Subparts A, G, I, J and Appendix I, and 40 C.F.R. Part 1068, Subpart B for each Regulated Locomotive.

15. For the following Locomotives, no later than August 31, 2022, Defendants shall obtain a valid EPA-issued certificate conformity for the Locomotive’s model year (or later).

Locomotive ID
PNWR 2303
CCH 3348
CCH 3349
CCH 3350
HAL 3351
CAGY 3353
AGR 3212
OHCR 4023
RCPE 3463
ARZC 3999
IORY 3494

16. In the first semi-annual report submitted to EPA pursuant to Section VII (Reporting Requirements), Defendants shall notify EPA which of the Locomotives listed above have obtained a valid EPA-issued certificate of conformity, the date EPA issued the certificate of conformity, the date the Locomotive was placed back into service after issuance of the certificate

of conformity, the name of the Tier kit manufacturer, and the Tier emissions standards to which the Locomotive is now certified.

17. Beginning no later than the Date of Lodging, Defendants shall conduct due diligence prior to purchasing or leasing a Regulated Locomotive to determine whether such Regulated Locomotive was repowered, refurbished, or remanufactured and, if so, whether the Locomotive has a valid EPA-issued certificate of conformity for its model year (or later) and the required label.

18. For any Regulated Locomotive that a Defendant or Defendant Affiliate purchases or leases after the Date of Lodging that has been repowered, refurbished, or remanufactured but does not have a valid EPA-issued certificate of conformity for its model year (or later) and the required label, Defendants shall obtain a valid EPA-issued certificate of conformity within one year of purchasing or leasing the Regulated Locomotive. The United States reserves the right to contend that Defendants' compliance with this provision does not constitute compliance with the CAA or its applicable regulations (40 C.F.R. Parts 92, 1033 and 1068) (and Defendants reserve the right to contest any such contention). This Paragraph does not apply to Locomotives or Locomotive Engine purchased or leased to replace a Locomotive subject to Section VI (Mitigation Project).

19. Defendants and Defendant Affiliates shall not sell or lease a Regulated Locomotive to any third party that has been repowered, refurbished, or remanufactured unless the Regulated Locomotive has a valid EPA-issued certificate of conformity for its model year (or later) and required label. This provision does not apply to transfers or leases of Locomotives to or between Defendants or Defendant Affiliates, however, the transfer or lease of Locomotives to another Defendant or Defendant Affiliate does not extend one-year time period in which

Defendants have to obtain a valid EPA-issued certificate of conformity pursuant to Paragraph 18 above.

B. Locomotive Maintenance and Recordkeeping

20. No later than the Date of Lodging, Defendants shall design and implement a recordkeeping database and maintenance tracking system for all Regulated Locomotives. The recordkeeping database shall include, at a minimum, the following:

- a. A database that includes every Regulated Locomotive (including every Locomotive to which Section VI (Mitigation Project)) below applies, and contains (at a minimum) the following information for each such Locomotive;
 - i. the company/entity that owns and/or operates the Locomotive;
 - ii. the Locomotive identification number(s);
 - iii. the Locomotive and Locomotive Engine serial number(s);
 - iv. the make and model of the Locomotive;
 - v. the date the Locomotive Engine was originally manufactured;
 - vi. if the Locomotive Engine was replaced, the date of engine replacement and manufacture date of the replacement engine;
 - vii. the date the Locomotive was acquired or leased;
 - viii. the Locomotive Engine family;
 - ix. the original Locomotive Engine power rating;
 - x. the manufacturer(s), part number(s), and installation date(s) of any and all Locomotive Tier emissions kit(s) currently installed on the Locomotive;
 - xi. all date(s) when each engine power assembly was replaced on each Locomotive;
 - xii. the date(s) when each fuel injector was last replaced on each Locomotive;

- xiii. if applicable, all date(s) when the Locomotive was remanufactured (as defined by 40 C.F.R. §1033.901);
- xiv. the full name and address of any and all remanufacturer(s);
- xv. the current applicable EPA Tier Emission Standard (see 40 C.F.R. §1033.101);
- xvi. whether the Locomotive Engine contains an automatic engine start/stop (AESS) system (i.e. idle controls) and if yes, the date(s) the AESS system was installed; and
- xvii. whether the Locomotive has been equipped with an Auxiliary Power Unit (APU) and if yes, the date(s) the APU was installed.

b. The database described in Paragraph 20.a shall include maintenance tracking for all maintenance performed on each Regulated Locomotive, including the following;

- i. All power assembly replacements (including partial power assembly replacements if only partial);
- ii. Any maintenance and replacements of any emissions-related component;
- iii. Any maintenance and replacements as required by the Maintenance Instructions;
- iv. A reference to an electronic copy of the current Tier kit maintenance instructions applicable to each Locomotive.

c. The database and maintenance tracking system above shall be electronically accessible through an application accessible to all applicable employees with maintenance responsibilities.

d. The application shall include alerts to notify maintenance supervisors if required maintenance has not been entered into the database or performed when required.

e. The database shall retain maintenance information for a minimum of eight years, regardless of whether a Defendant or Defendant Affiliate continues to own, lease, or operate the Regulated Locomotive.

f. The information requirements of Paragraphs 20.a and b shall be subject to the availability of the required information, and in instances where a Defendant does not possess the required information the database shall so indicate and explain why the Defendant does not possess the required information.

21. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section IX (Force Majeure).

VI. MITIGATION PROJECT

22. To mitigate excess tons of pollutants that EPA contends are associated with the violations alleged in the Complaint, Defendants shall implement the Mitigation Project as set forth in Paragraphs 23-29 below. Defendants shall permanently remove from service each of the 88 Locomotives listed on Appendix A in accordance with the following schedule.

Phase	Date of Completion
Phase 1 (12 Locomotives)	12/31/2022
Phase 2 (17 Locomotives)	12/31/2023
Phase 3 (28 Locomotives)	12/31/2024
Phase 4 (31 Locomotives)	12/31/2025

23. The required date of completion set forth above shall be extended by 90 Days if Defendants meet the following requirements.

a. Notifies EPA in writing within one week of the date when a Defendant first knew it is unlikely to be able to remove a Locomotive from service by the completion date; and

b. Within 14 Days thereafter, demonstrates to EPA in writing, with documentation, that:

- i. Defendants are unable to acquire the parts or equipment that are necessary to operate a replacement for Locomotives that Defendants are required to remove from service;
- ii. Defendants undertook the steps required to acquire the necessary parts or equipment with sufficient time to meet the completion date and their failure to acquire the necessary equipment arises from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors; and
- iii. The failure of Defendants to operate a replacement for a Locomotive required to be removed from service by Paragraphs 22 and 25 and Appendix A would violate federal law.

An extension of the completion date under this Paragraph shall not be considered a modification of the Consent Decree.

24. If an extension greater than 90 Days is required, Defendants shall proceed to request such extension in accordance with the provisions of Section IX (Force Majeure).

25. Defendants shall permanently remove from service each of the listed Locomotives by either:

- a. irrevocably disabling the Locomotive Engine (e.g. cutting the engine's prime mover) and selling the remaining Locomotive frame for scrap metal; or
- b. irrevocably disabling the Locomotive Engine (e.g. cutting the engine's prime mover) and installing a replacement Locomotive Engine (and any necessary associated components) such that the Locomotive is able to meet EPA's Tier 3 or 4 emission standard in 40 C.F.R. Part 1033.

26. Nothing herein prohibits Defendants from scrapping, recycling, or reusing the balance of the Locomotive (i.e. parts other than the Locomotive Engine) for parts on other Locomotives, but the Locomotive frame shall not be placed back into use unless and until the Locomotive meets the Tier 3 or 4 emission standard.

27. Defendants shall not operate any Locomotive that it adds to its fleet to replace a Locomotive listed in Appendix A unless the replacement Locomotive meets the higher of: (1) Tier 0+; or (2) the required Tier for a Locomotive that was repowered, refurbished, or remanufactured.

28. Defendants may substitute any Locomotive listed in Appendix A on a one-for-one basis provided that:

a. The new proposed Locomotive (or group of proposed Locomotives) has a 90% or greater fuel usage in the 18-month period prior to the projected date they are to be Permanently Destroyed as the original Locomotive(s) proposed to be swapped;

b. The new proposed Locomotive is not currently subject to any emission Tier in 40 C.F.R. § 1033.101;

c. If the Locomotive to be swapped doesn't have an AESS system installed then the new proposed Locomotive shall also not have an AESS system installed; and

d. Defendants notify EPA pursuant to Section XIV (Notices) of the substitution at least 60 Days prior to substituting a Locomotive being Permanently Destroyed and provides the following information:

- i. The original Locomotive on Appendix A being substituted;
- ii. The substituting Locomotive identification numbers, year of manufacturer, and if known remanufacturer;
- iii. The fuel usage for the original and substituting Locomotive(s) for the prior 18 months.

29. Defendants shall submit with their semi-annual reports required by Section VII (Reporting Requirements) photographic and documentary evidence that each Locomotive Engine from a Locomotive required to be permanently removed from service by Paragraph 22 and 25

during the reporting period was irrevocably disabled and, if applicable, that the balance of the Locomotive was scrapped. Defendants shall also include a list of those Locomotives subject to this Section in which a Tier 3 or 4 engine was installed in accordance with Paragraph 25.b.

30. With regard to the Mitigation Project, Defendants certify the truth and accuracy of each of the following:

a. That, as of the date of executing this Decree, Defendants are not required to perform or develop the Mitigation Project by any federal, state, or local law or regulation and is not required to perform or develop the Mitigation Project by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. That the Mitigation Project is not a Mitigation Project that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

c. That Defendants have not received and will not receive credit for the Mitigation Project in any other enforcement action; and

d. That Defendants shall neither generate nor use any pollutant reductions from the Mitigation Project as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

VII. REPORTING REQUIREMENTS

31. By July 31st and January 31st of each year after the Effective Date, until termination of this Decree pursuant to Section XVIII (Termination), Defendants shall submit a semi-annual report to EPA at the addresses set forth in Section XIV (Notices) containing, for the preceding six months, the following information:

a. A description of the status of work performed and progress made toward implementing the requirements of Section V (Compliance Requirements) and Section VI (Mitigation Project), including completion of milestones, and problems encountered or anticipated, together with implemented or proposed solutions.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

32. If a Defendant violates, or has reason to believe that it may violate any requirement of this Consent Decree, Defendants shall notify DOJ and EPA of such violation and its likely duration, in writing, within ten business days of the Day a Defendant first becomes aware of the violation, with an explanation of the violation's likely cause, and of the remedial steps taken, or to be taken, to minimize such violation or prevent such violation in the future. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the report. In such a case, Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day a Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves a Defendant of its obligation to provide the notice required by Section IX (Force Majeure). This notification requirement shall not apply to violation of regulatory recordkeeping, maintenance, or repair requirements in 40 C.F.R. §1033.815 (incorporated into this Consent Decree by Paragraph 14 above); however, Defendants shall report such violations in their semi-annual reports pursuant to Paragraph 31 above.

33. Whenever any violation of this Consent Decree or any other event affecting a Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA by email as provided in Section XIV (Notices) as soon as possible, but no later than 24 hours after a Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

34. Each report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

35. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

36. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

38. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

39. Unless otherwise noted below, stipulated penalties shall accrue per violation per Day. The number of Days of a particular violation is calculated as the total Days on which a violation occurred but shall reset to Day 1 if compliance is achieved between violations and Defendants demonstrate that the violations are not due to the same cause.

40. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendants shall pay the following

Period of Non-Compliance	Penalty Per Day Late
Days 1-9	\$10,000
Days 10-19	\$15,000
Days 20 and beyond	\$25,000

41. Compliance with requirements in 40 C.F.R. Parts 92, 1033 and 1068. Defendants shall be liable for stipulated penalties for violations of requirements Paragraph 14 as follows.

- a. Placement into Service or operation of a Regulated Locomotive that has been repowered, refurbished, or remanufactured unless the Locomotive has a valid EPA-issued certificate of conformity for its model year (or later) and required label. This stipulated penalty does not apply to Locomotives that are subject to Paragraph 18.

Period of Non-Compliance	Penalty Per Day Per Locomotive
Days 1-29	\$500
Days 30-59	\$2,500
Days 60 and beyond	\$5,000

b. Failure to perform required maintenance.

Period of Non-Compliance	Penalty Per Day Per Locomotive
Days 1-29	\$200
Days 30-59	\$500
Days 60 and beyond	\$1,000

c. Failure to comply with recordkeeping and reporting requirements.

\$50 per day for each missing, late, or inadequate record or report until submitted or corrected up to a maximum of \$10,000 per Locomotive per year.

d. Failure to comply with 40 C.F.R. Part 1068.101(b)(1) and (2) (tampering and defeat devices).

\$5,179 per Locomotive.

e. Failure to comply with any requirement in 40 C.F.R Part 92, 40 C.F.R. Part 1033 Subparts A, G, I, J and Appendix I, and 40 C.F.R. Part 1068 Subpart B with respect to Regulated Locomotives for which a stipulated penalty is not set forth above.

\$2,000 per Locomotive or \$200 per violation per day, whichever is lower.

42. Violation of Other Requirements in Section V (Compliance Requirements).

Defendants shall be liable for stipulated penalties for violations of other requirements in Section V (Compliance Requirements) as follows.

a. Failure to obtain EPA-issued certificate of conformity in violation of Paragraph 15.

Period of Non-Compliance	Penalty Per Locomotive Per Day of Operation
Days 1-29	\$1,000
Days 30 -59	\$3,000
Days 60 and beyond	\$5,000

b. Purchase of a Regulated Locomotive without conducting due diligence as required by Paragraph 17.

\$ 5,000 per Locomotive

- c. Operation of a Locomotive or Locomotive Engine subject to Paragraph 18 more than one year after lease or purchase that does not have an EPA-issued certificate of conformity for the model year.

Period of Non-Compliance	Penalty Per Locomotive Per Day of Operation
Days 1-29	\$1,000
Days 30 -59	\$2,000
Days 60 and beyond	\$5,000

43. Failure to comply with Section VI and Appendix A regarding the Mitigation Project. Defendants shall be liable for stipulated penalties for violations of requirements in Section VI and Appendix A as follows.

- a. Failure to take Locomotive out of service as required by Paragraphs 22-25 and Appendix A.

Period of Non-Compliance	Penalty Per Locomotive Per Day of Operation
Days 1-29	\$1,000
Days 30-59	\$2,000
Days 60 and beyond	\$4,000

- b. Operation of replacement locomotive in violation of Paragraph 27.

Period of Non-Compliance	Penalty Per Day Per Locomotive Per Day of Operation
Days 1-29	\$1,000
Days 30-59	\$1,500
Days 60 and beyond	\$2,000

44. Defendants shall be liable for stipulated penalties for failure to comply with reporting requirements in Paragraphs 6.e, 15, 29, and Section VII of this Consent Decree, and recordkeeping requirements in Section XI of this Consent Decree as follows.

Period of Non-Compliance	Penalty Per Day Late or Inadequate Per Violation
Days 1-29	\$300
Days 30-59	\$600
Days 60 and beyond	\$1,500

45. Defendants shall be liable for stipulated penalties for violation of any other requirement in this Consent Decree for which a stipulated penalty is not provided above as follows.

Period of Non-Compliance	Penalty Per Day Per Violation
Days 1-29	\$100
Days 30-59	\$300
Days 60 and beyond	\$1,000

46. Where a stipulated penalty set forth above consists of either a per-day amount or economic benefit-based penalty, the United States has sole discretion to determine which stipulated penalty to assess.

47. Except as provided in Paragraph 50 below, Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

48. Defendants shall pay any stipulated penalty within 60 Days of receiving the United States' written demand.

49. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

50. Defendants may dispute that the violations underlying a demand for stipulated penalties occurred and/or the amount of stipulated penalties owed by invoking dispute resolution as provided in Section X below. Stipulated penalties shall continue to accrue as provided in Paragraph 47, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with Interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with Interest, within 15 Days of receiving the final appellate court decision.

51. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to violations of Paragraphs 15-20 and 22 that have occurred prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

52. Defendants shall pay stipulated penalties and Interest owing to the United States in the manner set forth in Paragraph 11 and with the confirmation notices required by Paragraph 12, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

53. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for Interest accruing as of the date payment became

due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

54. The payment of penalties and Interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

55. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

56. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that causes delay or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree. Force Majeure includes the failure of a permitting authority to issue any

necessary permit in a timely fashion where Defendants submitted a timely and complete permit application and the failure of the permitting authority to issue a required permit is beyond the control of the Defendant.

57. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice by telephone or by email to EPA as soon as reasonably possible and no later than within one week after the date when a Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

58. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those

obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

59. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

60. If Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 30 Days after receipt of EPA's notice of decision. In any such dispute resolution proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 56 and 57. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism for Defendants to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such dispute as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

62. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a Defendant sends DOJ and EPA a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

63. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph 62, by sending DOJ and EPA a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendant.

64. The United States will send Defendants its Statement of Position within 45 Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position is binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph 65.

65. Judicial Dispute Resolution. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion (a) must be filed

within 45 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph 64; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 64 that would reasonably be expected to have been raised during such informal dispute resolution, unless the Plaintiff raises a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and (c) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

66. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

67. Standard of Review. In any dispute brought under this Section, Defendants shall have the burden of demonstrating that its position complies with this Consent Decree and the CAA and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Defendants reserve the right to argue to the contrary.

68. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 50. If

Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

69. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right to inspect any Regulated Locomotive or the records pertaining thereto at any facility owned or operated by Defendants at all reasonable times, upon presentation of credentials and following reasonable safety requirements, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

70. Until three years after the termination of this Consent Decree, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its agents' possession or control, or that come into its or its agents' possession or control, and that materially relate to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph 70, Defendants shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph 70 and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

72. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

73. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

74. This Consent Decree resolves the civil claims of the United States for the violations that occurred prior to the Date of Lodging that are alleged in the Complaint filed in this action and/or in the Finding of Violation issued by EPA to GWI on March 29, 2019. This resolution of liability extends to Defendant Affiliates that, at the time of the violations, owned, operated, or leased the Locomotives with respect to which the alleged violations occurred.

75. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 74. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, a Defendant's facility or a Regulated Locomotive, whether related to the violations addressed in this Consent Decree or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to a Regulated Locomotive, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 74.

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants' responsibility for achieving and

maintaining compliance with all applicable federal, State, and local laws, regulations, and permits is not affected by this Consent Decree; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of Title II of the CAA, 42 U.S.C. § 7521 et seq., with the regulations promulgated thereunder, or with any other provisions of federal, State, or local laws, regulations, or permits.

78. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

79. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

80. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action in which it substantially prevails necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIV. NOTICES

81. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email addressed as follows:

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-12479

As to DOJ by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #

As to EPA by email only: EPA Region 5
Compliance Tracker
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency - Region 5
r5ardreporting@epa.gov

As to Defendants: SVP Operations Support
Genesee & Wyoming Railroad Services, Inc.
13901 Sutton Park Drive South
Suite 270
Jacksonville, FL 32224

Office of General Counsel
Genesee & Wyoming Railroad Services, Inc.
20 West Avenue
Darien, CT 06820

With email copies to: achunko@gwrr.com
afergus@gwrr.com
catherine.pushchak@gwrr.com
bellc@gtlaw.com
tangr@gtlaw.com

82. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

83. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

84. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket, provided, however, that Defendants hereby agree that they shall be bound to perform the duties set forth in Section V (Compliance Requirements) and Section VI (Mitigation Project) scheduled to occur prior to the Effective Date to the extent such obligations have an earlier compliance date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

85. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree, or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

86. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Extension of any deadline by more than one year shall constitute a material modification. Substitution of Locomotives subject to the Mitigation Project pursuant to Paragraph 28 above shall not be a material change to this Consent Decree.

87. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 67 the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

88. After Defendants have completed the requirements of Section V (Compliance Requirements) and Section VI (Mitigation Project), has thereafter maintained satisfactory compliance with this Consent Decree for a period of one year, and has paid the civil penalty and any accrued stipulated penalties and Interest as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

89. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

90. If the United States does not agree that the Decree may be terminated or if Defendants do not receive a written response from the United States within 90 Days of the Defendants' submission of the Request for Termination, Defendants may invoke Dispute Resolution under Section X.

XIX. PUBLIC PARTICIPATION

91. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

92. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

93. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. INTEGRATION

94. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the subject matter of the Decree herein.

XXII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

95. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the requirements in Paragraphs 7, 14-20, 22-32, 34-35, 69-71 and Appendix A is restitution, remediation, or required to come into compliance with law.

XXIII. HEADINGS

96. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.


XXIV. FINAL JUDGMENT

97. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rule of Civil Procedure 54 and 58.

XXV. APPENDICES

98. The following Appendices are attached to and part of this Consent Decree:
“Appendix A” is the Mitigation Project

Dated and entered this 22nd day of June, 2023



UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the Consent Decree in the matter of *United States v. Genesee & Wyoming Railroad Services, Inc.*, subject to public notice and comment:

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: January 18, 2023

/s/ Elizabeth L. Loeb
Elizabeth L. Loeb
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Elizabeth.loeb@usdoj.gov

DAVID C. WEISS
United States Attorney
District of Delaware

/s/ Laura Hatcher
LAURA HATCHER
Assistant United States Attorney
District of Delaware
U.S. Attorney's Office
1313 N Market Street
Wilmington, DE 19801

We hereby consent to the entry of the Consent Decree in the matter of *United States v. Genesee & Wyoming Railroad Services, Inc.*, subject to public notice and comment:

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 5:

Date: 12/29/22


/s/ Robert A. Kaplan
ROBERT A. KAPLAN
Regional Counsel
United States Environmental Protection Agency,
Region 5 Chicago, IL 60604

Date: 12/16/22

/s/ Andre Daugavietis
ANDRE DAUGAVIETIS
Office of Regional Counsel
United States Environmental Protection Agency,
Region 5 Chicago, IL 60604

Each undersigned Defendant hereby consents to the entry of the Consent Decree in the matter of United States v. Genesee & Wyoming Railroad Services, Inc. et al.

For GENESEE & WYOMING RAILROAD SERVICES, INC.;


Senior Vice President, Operations Support
GENESEE & WYOMING RAILROAD SERVICES,
INC.

For THE BAY LINE RAILROAD, LLC


Vice President, THE BAY LINE RAILROAD, LLC

For DALLAS, GARLAND & NORTHEASTERN RAILROAD, INC.


Vice President, DALLAS, GARLAND &
NORTHEASTERN RAILROAD, INC.

For OHIO CENTRAL RAILROAD, INC,

A large black rectangular redaction box covering the signature of the Vice President of Ohio Central Railroad, Inc.

Vice President, OHIO CENTRAL RAILROAD, INC,

For PORTLAND & WESTERN RAILROAD, INC.

A large black rectangular redaction box covering the signature of the Vice President of Portland & Western Railroad, Inc.

Vice President, PORTLAND & WESTERN
RAILROAD, INC.

For RAPID CITY, PIERRE & EASTERN RAILROAD,
INC.,

A large black rectangular redaction box covering the signature of the Vice President of Rapid City, Pierre & Eastern Railroad, Inc.

Vice President, RAPID CITY, PIERRE & EASTERN
RAILROAD, INC.,

Appendix A

	Loco	Railroad	MODEL	STATUS	FUEL	GALLONS
1	AGR 3309	AGR	SD40-2	Active	YES	130161
2	AGR 3354	AGR	SD40-2	Active	YES	110475
3	AGR 3355	AGR	SD40-2	Active	YES	113182
4	AGR 3356	AGR	SD40-2	Active	YES	134620
5	AGR 3373	AGR	SD40-2	Active	YES	76959
6	AGR 3374	AGR	SD40-2	Active	YES	81661
7	AGR 3375	MNBR	SD40-2	Active	YES	63761
8	BPRR 3301	MNA	SD40-T2	Active	YES	120621
9	BPRR 3302	MNA	SD40-T2	Active	YES	131175
10	BPRR 3330	MNA	SD40-3	Active	YES	138741
11	BPRR 3332	MNA	SD40-3	Active	YES	137287
12	BPRR 458	AGR	SD40-3M	Active	YES	83814
13	CAGY 3310	CAGY	SD40-2	Active	YES	101345
14	KYLE 3203	MNA	SD40M-2	Active	YES	47823
15	KYLE 3207	MNA	SD40M-2	Active	YES	129084
16	MNA 3300	MNA	SD40M-2	Active	YES	165273
17	MNA 3363	MNA	SD40-2	Active	YES	133539
18	MNA 4081	MNA	SD40-2	Active	YES	135811
19	MNA 7000	MNA	SD40-2	Active	YES	86188
20	MNA 8055	MNA	SD40-2	Active	YES	82711
21	AKMD 400	AKMD	GP10	Active	YES	4508
22	PW 2216	OHCR	B23-7S	Active	YES	30516
23	AKMD 707	AKMD	GP8	Active	YES	12705
24	AKMD 728	AKMD	GP8	Active	YES	7228
25	OHCR 4092	OHCR	B23-7S	Active	YES	74469
26	BPRR 887	SB	GP9-3	Active	YES	31164
27	ALM 1812	ALM	GP28	Active	YES	11127
28	YRC 1604	YRC	GP16	Active	YES	24708
29	ATW 1612	ATW	GP16	Active	YES	500
30	BPRR 886	WCOR	GP9	Active	YES	9976
31	BPRR 926	SB	GP18-3	Active	YES	64488
32	CA 2158	CA	GP7	Active	YES	9149
33	CAGY 1806	CAGY	GP11	Active	YES	735
34	OHCR 4094	OHCR	B23-7S	Active	YES	63989
35	CAGY 8720	CAGY	GP11	Active	YES	10440
36	CBNS 1705	CBNS	GP9-3	Active	YES	6998
37	CCPN 1701	CCPN	GP9	Active	YES	3133
38	CFNR 1570	CFNR	GP15-1	Active	YES	32272
39	CSCD 1001	CSCD	GP10	Active	YES	9499
40	CSCD 1002	CSCD	GP10	Active	YES	18084
41	OHCR 4095	OHCR	B23-7S	Active	YES	59965
42	OHCR 4099	OHCR	B23-7S	Active	YES	23954
43	FCRD 1602	FCRD	GP16	Active	YES	3175
44	FCRD 1605	FCRD	GP16	Active	YES	24876
45	FCRD 1810	FCRD	GP10	Active	YES	13501
46	GC 1706	RSOR	GP10M	Active	YES	1219

47	GC 1713	HOG	GP9	Active	YES	4257
48	GC 1761	GITM	GP16	Active	YES	42004
49	GSWR 1208	GSWR	SW1200	Active	YES	9990
50	OHCR 8712	YB	GP11	Active	YES	22518
51	ISRR 4040	BAYL	GP40-1	Active	YES	34404
52	KRR 4033	AKMD	GP40	Active	YES	8514
53	KRR 4050	DGNO	GP40-1	Active	YES	27863
54	KWT 304	KWT	GP10	Active	YES	1616
55	KWT 1807	KWT	GP18-3	Active	YES	21645
56	OHCR 1711	POHC	GP10	Active	YES	17975
57	LDRR 1710	LDRR	GP8	Active	YES	10165
58	OHCR 8702	YB	GP11	Active	YES	20013
59	MNA 3026	MNA	GP40	Active	YES	47551
60	MNA 4010	MNA	GP40	Active	YES	43094
61	MNBR 3057	AGR	GP40-1	Active	YES	39600
62	NCVA 3808	NCVA	GP40CU	Active	YES	62551
63	NECR 1750	NECR	SD9	Active	YES	23101
64	RCPE 3437	RCPE	SD40-2	Active	YES	44124
65	NECR 4049	BAYL	GP40	Active	YES	5500
66	OHCR 3185	OHCR	B23-7S	Active	YES	36064
67	OHCR 4098	OHCR	B23-7S	Active	YES	16359
68	PNW 26	AKMD	SW9	Active	YES	1002
69	PNWR 1501	PNWR	SD7	Active	YES	43752
70	PNWR 1801	PNWR	GP9	Active	YES	16875
71	PNWR 1803	PSAP	GP9	Active	YES	19520
72	PNWR 1852	PNWR	SD9	Active	YES	47327
73	PNWR 1854	PNWR	SD9	Active	YES	35142
74	PW 2215	CSO	B23-7S	Active	YES	42730
75	YRC 1606	YRC	GP16	Active	YES	18100
76	ARZC 4002	ARZC	SD40-2	Active	YES	183972
77	ATW 109	ATW	GP10	Active	YES	22500
78	RLIX 1004	MMID	SW1001	Active	YES	4041
79	RLIX 1250	RAIL	SW7	Active	YES	4874
80	RLIX 1251	RAIL	SW7	Active	YES	3750
81	RLIX 137	RAIL	SW7	Active	YES	12054
82	RLIX 266	RAIL	SW10	Active	YES	12125
83	RLK 4001	OVR	GP9-3	Active	YES	2376
84	SAPT 1001	SAPT	SW1001	Active	YES	10142
85	SAPT 1002	SAPT	SW1001	Active	YES	11867
86	WTRY1203	WTRY	SW1200	Active	YES	1096
87	WTRY1205	WTRY	SW1200	Active	YES	11340
88	YRC1600	YRC	GP16	Active	YES	5103