

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**



In the Matter of:) **Docket No. CAA-05-2026-0011**
)
Wells Fargo Rail Corporation) **Proceeding to Assess a Civil Penalty**
Rosemont, Illinois,) **Under Section 205(c)(1) of the Clean Air Act,**
) **42 U.S.C. § 7524(c)**
Respondent.)
_____)

Consent Agreement and Final Order

A. Preliminary Statement

1. This is an administrative penalty assessment proceeding commenced and concluded under Section 205(c)(1) of the Clean Air Act (the CAA), 42 U.S.C. § 7524(c)(1), and Sections 22.1(a)(2), 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b) and 22.18(b).

2. Complainant is the U.S. Environmental Protection Agency (EPA). The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 205(c) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.

3. Respondent is Wells Fargo Rail Corporation (“Respondent” or “the company”), a company doing business in Illinois. Respondent is a “person,” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. The EPA and Respondent agree that settling this action is in the public interest and consent to the entry of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b)(2) and (3) without the adjudication of any issues of law or fact.

5. Respondent agrees to comply with the terms of this CAFO.

B. Jurisdiction

6. The alleged violations in this CAFO are pursuant to Section 205(a) of the CAA.

7. On September 26, 2022, the EPA issued to Respondent a Finding of Violation (FOV), providing notice to Respondent that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On December 13, 2022, representatives of Respondent and the EPA conferred regarding the FOV.

8. The Regional Judicial Officer of Region 5 is authorized to ratify the Consent Agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

C. Statutory and Regulatory Background

9. Section 213(d) of the CAA, 42 U.S.C. § 7547(d), provides that the emissions standards for locomotives and locomotive engines shall be enforced in the same manner as enforcement of emissions standards for new motor vehicles or new motor vehicle engines. The Administrator of EPA shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under Section 213 of the CAA. *Id.*

10. On April 16, 1998, EPA promulgated emission standards and associated regulatory requirements for the control of emissions from locomotives and locomotive engines. See 40 C.F.R. Part 92. 63 Fed. Reg. 18978.

11. On June 30, 2008, EPA promulgated revised emission standards and regulatory requirements for locomotives and locomotive engines. See 40 C.F.R. Part 1033. 73 Fed. Reg. 37096.

12. On June 29, 2021, EPA migrated the regulatory requirements from 40 C.F.R. Part 92 to 40 C.F.R. Part 1033, with additional testing and compliance provisions in 40 C.F.R. Parts 1065 and 1068. See 86 Fed. Reg. 343708. The Tier 0, Tier 1, and Tier 2 emissions standards originally adopted in Part 92 are now identified in 40 C.F.R. Part 1033, Appendix I.

13. 40 C.F.R. § 1033.1(a) states that specified emission standards begin to apply each time a locomotive or locomotive engine is originally manufactured or otherwise becomes new (defined in § 1033.901). Further, the requirements of this part continue to apply as specified after locomotives cease to be new. *Id.* See also 40 C.F.R. § 92.1.

14. 40 C.F.R. § 1033.125 (Maintenance instructions) states that the owner of each new locomotive shall be provided written instructions for properly maintaining and using the locomotive, including the emission-control system. Such instructions are required to contain a notification that owners and operators must comply with the requirements of Subpart I of Part 1033 (Requirements of Owners and Operators). See also 40 C.F.R. § 92.211(a) (2020).

15. 40 C.F.R. § 1033.815(a) states that “all owners of locomotives subject to the provisions of this part must ensure that all emission-related maintenance is performed on the locomotives, as specified in the maintenance instructions provided by the certifying manufacturer/remanufacturer in compliance with § 1033.125 (or maintenance that is equivalent to the maintenance specified by the certifying manufacturer/remanufacturer in terms of maintaining emissions performance). See also 40 C.F.R. § 92.1004(a) (2020).

16. 40 C.F.R. § 1033.815(d) states that the owner of a locomotive must keep records of all maintenance and repairs that could reasonably affect the emission performance of any locomotive subject to Part 1033, and it must keep these records for eight years. See also 40 C.F.R. § 92.1004(c).

17. 40 C.F.R. § 1033.815(f) states that failure to comply with the maintenance or recordkeeping provisions of 40 C.F.R. § 1033.815 is a violation of 40 C.F.R. § 1068.101(b).

D. Stipulated Facts

18. Respondent is a railcar and locomotive leasing company that owns locomotives operated by lessees throughout the United States. Respondent does not operate any locomotives, nor does it own or operate any facilities for maintaining or repairing locomotives.

19. On September 9, 2021, EPA issued a CAA Section 208 Information Request to Respondent (Request) requesting information about locomotives owned or operated by Respondent.

20. In response to EPA's Request, Respondent provided spreadsheets containing information on the locomotives in its fleet (Spreadsheets) based on the information it possessed at the time of such responses. In addition, during the course of this matter, Respondent contacted its lessees and obtained additional information about the locomotives owned by Respondent but operated and maintained by lessees, which information was included in Respondent's subsequent responses.

21. In response to EPA's Request, WFR provided manufacturer/remanufacturer maintenance instructions ("applicable maintenance instructions") for its locomotives. The applicable maintenance instructions require replacement or renewal of fuel injectors every three years, with some maintenance interval adjustments based on usage.

22. In the Spreadsheets and other information provided by the company, Respondent listed a total of 53 locomotives that had not replaced or renewed one or more of its fuel injectors within the interval required under the applicable maintenance instructions.

23. In the Spreadsheets and other information provided by the company, Respondent also listed three locomotives (FURX 6248, FURX 6249, and FURX 8169) that Respondent sold in 2022, for which it could not locate and produce the required maintenance and repair records.

24. Since EPA's Request, WFR has worked with the lessees of the 53 locomotives referenced in Paragraph 22 to replace or renew the fuel injectors as required under the applicable maintenance instructions. Respondent has provided documentation to the EPA verifying that all of the fuel injectors for each of the locomotives listed in Appendix A of this CAFO have been replaced.

25. Since EPA's Request, Respondent has designed and implemented an enhanced electronic maintenance recordkeeping system for all locomotives owned by Respondent, to achieve compliance with applicable maintenance requirements in accordance with 40 C.F.R. § 1033.815(a) and the creation and retention of records of such maintenance in accordance with 40 C.F.R. § 1033.815(d).

26. Since EPA's Request, Respondent sent a written notification to all of its lessees to which Respondent currently leases locomotives, explaining the importance of ensuring that all emission-related maintenance is timely performed on each locomotive and the requirement to maintain records of all maintenance and repair in accordance with 40 C.F.R. § 1033.815.

27. Since EPA's Request, Respondent implemented procedures to be performed prior to its acquisition of any locomotive. The procedures include due diligence efforts to determine whether the locomotive has been repowered, refurbished, or remanufactured, and, if so, whether the locomotive has a valid Certificate of Conformance for its model year (or later) and the required

label. See 42 U.S.C. § 7522(a)(1); 42 U.S.C. § 7547(d) (making Section 2023 applicable to new locomotives); see also 40 C.F.R. § 1068.101(a)(1).

E. Allegations

28. Respondent failed to timely perform required “emission-related maintenance” (e.g., fuel injector replacement) on each of the locomotives listed in Appendix A in accordance with the maintenance instructions provided by the certifying remanufacturer and as required by 40 C.F.R. §§ 92.1004(a) and 1033.815(a).

29. Respondent failed to maintain emissions-related records for the three locomotives owned by Respondent listed in Paragraph 23 in accordance with 40 C.F.R. § 1033.815(d).

F. Terms of Consent Agreement

30. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits to the jurisdictional allegations in this CAFO;
- b. neither admits nor denies the allegations stated in Section E of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to any conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section E of this CAFO; and
- f. waives its right to appeal this CAFO.

31. For the purposes of this proceeding, Respondent:

- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges this proceeding constitutes an enforcement action for purposes of considering the compliance history of the Respondent in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any

issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

- d. waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c);
- e. waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement; and
- f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for noncompliance, and agrees that federal law shall govern in any such civil action.

32. Based on analysis of the factors specified in Section 205(c) of the CAA, 42 U.S.C. § 7524(c), the facts of this case, and Respondent's cooperation, the EPA has determined that an appropriate civil penalty to settle this action is \$300,000.

33. Respondent agrees to pay the civil penalty above ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk ("Filing Date").

34. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

35. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this CAFO, CAA-05-2026-0011,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Tasia Kastanek
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
kastanek.tasia@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

36. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7524(c)(6), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is, the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of handing collection.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

37. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7524(c)(6). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

38. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

39. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

40. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service ("IRS") a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably

believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Respondent's failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN.
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at wise.milton@epa.gov within 30 days after the Final Order ratifying this Consent Agreement is filed, or within 7 days after the Final Order ratifying this Consent Agreement is filed should that happen between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence.
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

41. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

42. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal authority to bind the party they represent to this CAFO.

43. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there may be significant penalties for knowingly submitting false information, including the possibility of fines and/or imprisonment under 18 U.S.C. §§ 1001 and 1519.

44. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

G. Other Conditions

45. To offset any excess emissions from the alleged violations, Respondent shall Permanently Remove from Service two un-tiered, Tier 0, or Tier 0+ in-use locomotives from its fleet within 60 calendar days following the Effective Date of this CAFO. Permanently Remove from Service shall mean to irrevocably disable the locomotive engine by cutting the prime mover, drilling a hole in the engine block, or similar irreversible mechanical destruction such that the entire locomotive and its engine is not able to be placed back into service. Nothing herein shall prohibit Respondent from scrapping, recycling, selling, or reusing the balance of the locomotive (with the exception that the locomotive engine and locomotive frame may only be scrapped (or sold for scrap)) on other locomotives provided the locomotive engine and locomotive frame are not placed back into service.

46. Within 90 calendar days from the Effective Date of this CAFO, Respondent shall send documentation (photographs, receipts, and invoices) verifying that the locomotives in Paragraph 45, above, have been Permanently Removed from Service.

H. Effect of Consent Agreement and Final Order

47. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: kastanek.tasia@epa.gov (for the EPA), and bellic@gtlaw.com (for Respondent).

48. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged in this CAFO.

49. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to this matter.

50. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

51. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, authorized representatives, successors, and assigns.

52. Any violation of this CAFO may constitute a violation of Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. § 7522(a)(3)(A) and (B), and Respondents could be subject to penalties of up to the statutory civil penalties in 40 C.F.R. § 19.4. The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

53. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the

EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

54. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

55. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

I. Effective Date

56. This CAFO will be effective on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

Wells Fargo Rail Corporation, Respondent

3/16/20

Date



Timothy Kubiak
CEO and President of Wells Fargo Rail

**Consent Agreement and Final Order
In the Matter of: Wells Fargo Rail Corporation
Docket No. CAA-05-2026-0011**

United States Environmental Protection Agency, Complainant

Carolyn Persoon
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Appendix A: List of Required Maintenance

locomotive ID#	Current EPA Tier	Required Maintenance
WFRX 8863	1+	Replace or renew fuel injectors
WFRX 8966	0+	Replace or renew fuel injectors
UP 3806	1+	Replace or renew fuel injectors
UP 3818	1+	Replace or renew fuel injectors
UP 3822	1+	Replace or renew fuel injectors
UP 3848	1+	Replace or renew fuel injectors
UP 3850	1+	Replace or renew fuel injectors
UP 3851	1+	Replace or renew fuel injectors
UP 3855	1+	Replace or renew fuel injectors
UP 3858	1+	Replace or renew fuel injectors
UP 5174	1+	Replace or renew fuel injectors
UP 5220	1+	Replace or renew fuel injectors
UP 5257	2+	Replace or renew fuel injectors
UP 5259	2+	Replace or renew fuel injectors
UP 5527	2+	Replace or renew fuel injectors
UP 5539	2+	Replace or renew fuel injectors
UP 5550	2+	Replace or renew fuel injectors
UP 8427	2	Replace or renew fuel injectors
UP 8428	2	Replace or renew fuel injectors
BNSF4148	1+	Replace or renew fuel injectors
BNSF4156	1+	Replace or renew fuel injectors
BNSF4164	1+	Replace or renew fuel injectors
BNSF4166	1+	Replace or renew fuel injectors
BNSF4184	1+	Replace or renew fuel injectors
BNSF4195	1+	Replace or renew fuel injectors
BNSF4634	1+	Replace or renew fuel injectors
BNSF4664	1+	Replace or renew fuel injectors
BNSF5001	1+	Replace or renew fuel injectors
BNSF5014	1+	Replace or renew fuel injectors
BNSF5017	1+	Replace or renew fuel injectors
BNSF5019	1+	Replace or renew fuel injectors
BNSF5030	1+	Replace or renew fuel injectors
BNSF5032	1+	Replace or renew fuel injectors
BNSF5035	1+	Replace or renew fuel injectors
BNSF5058	1+	Replace or renew fuel injectors
BNSF5066	1+	Replace or renew fuel injectors
BNSF5078	1+	Replace or renew fuel injectors
BNSF5094	1+	Replace or renew fuel injectors
BNSF5106	1+	Replace or renew fuel injectors
BNSF5107	1+	Replace or renew fuel injectors
BNSF5128	1+	Replace or renew fuel injectors
BNSF5135	1+	Replace or renew fuel injectors

BNSF5147	1+	Replace or renew fuel injectors
BNSF5180	1+	Replace or renew fuel injectors
BNSF5233	1+	Replace or renew fuel injectors
BNSF5249	1+	Replace or renew fuel injectors
BNSF5250	1+	Replace or renew fuel injectors
BNSF5272	1+	Replace or renew fuel injectors
BNSF5278	1+	Replace or renew fuel injectors
BNSF5520	1+	Replace or renew fuel injectors
BNSF5521	1+	Replace or renew fuel injectors
BNSF5524	1+	Replace or renew fuel injectors
BNSF5666	1+	Replace or renew fuel injectors