



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR 28 2019

REPLY TO THE ATTENTION OF

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John C. Hellmann  
President and Chief Executive Officer  
Genesee & Wyoming Inc.  
13901 Sutton Park Drive South  
Suite 330  
Jacksonville, Florida 32224

Re: Finding of Violation for Clean Air Act Violations

Dear Mr. Hellmann:

The U.S. Environmental Protection Agency (EPA) is issuing the enclosed Finding of Violation (FOV) to Genesee & Wyoming Inc. (G&W or you) for violating Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and regulations promulgated pursuant to Section 213(a)(5) of the CAA, 42 U.S.C. § 7547(c), that are codified at 40 C.F.R. Part 92 (Control of Air Pollution from Locomotives and Locomotive Engines), 40 C.F.R. Part 1033 (Control of Emissions from Locomotives), and 40 C.F.R. Part 1068 (General Compliance Provisions for Engine Programs). As summarized in the attached FOV, EPA has determined that G&W has failed to comply with Sections 203(a) and 213(d) of the CAA, 42 U.S.C. § 7522(a) and 7547(d), and 40 C.F.R. Parts 92, 1033, and 1068 for introducing into commerce new locomotives that were not covered by an EPA-issued Certificate of Conformity and failing to keep records required under Part 1033.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call him at (312) 886-5112 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



Edward Nam  
Director  
Air and Radiation Division

Enclosure

cc: Allison M. Fergus, G&W General Counsel and Secretary  
Catherine A. Pushchak, G&W General Counsel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Genesee & Wyoming Inc.  
Jacksonville, Florida

Proceedings Pursuant to  
the Clean Air Act,  
42 U.S.C. §§ 7401-7671q

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**FINDING OF VIOLATION**

**EPA-5-19-MOB-05**

**FINDING OF VIOLATION**

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to Genesee & Wyoming Inc. (G&W) for violating Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and regulations promulgated pursuant to Section 213(a)(5) of the CAA, 42 U.S.C. § 7547(c), which are codified at 40 C.F.R. Part 92 (Control of Air Pollution from Locomotives and Locomotive Engines), 40 C.F.R. Part 1033 (Control of Emissions from Locomotives), and 40 C.F.R. Part 1068 (General Compliance Provisions for Engine Programs).

**Statutory and Regulatory Background**

1. Title II of the Clean Air Act (CAA), 42 U.S.C. §§ 7521–7554, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare . . .” Section 101(a)(2) of the CAA, 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” Section 101(b)(1)–(2) of the CAA, 42 U.S.C. § 7401(b)(1)–(2).
2. Section 213(a)(5) of the CAA, 42 U.S.C. § 7547(a)(5), requires EPA to “promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.”
3. The standards established under Section 213 of the CAA, 42 U.S.C. § 7547 are subject to, among other things, Section 208 of the CAA, 42 U.S.C. § 7542. Section 213(d) of the

CAA, 42 U.S.C. § 7547(d). Moreover, enforcement of the emission standards for locomotives and locomotive engines occurs in the same manner as enforcement of emission standards for new motor vehicles or new motor vehicle engines. *Id.* 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.*

4. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1) prohibits manufacturers of new locomotives from importing, selling, offering for sale, introducing or delivering for introduction into commerce (or causing any of the foregoing with respect to) any new locomotive unless the locomotive is covered by a Certificate of Conformity (COC) issued by EPA under regulations prescribed by the CAA. *See* Section 213(d), 42 U.S.C. § 7547(d) (making Section 203 of the CAA applicable to new locomotives).
5. Section 208(a) of the CAA, 42 U.S.C. § 7542, requires persons subject to Part A of Title II of the CAA to establish and maintain records, make reports, and provide information the Administrator of EPA may reasonably require to determine whether the person has acted or is acting in compliance with such Part. Section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), prohibits any person to fail or refuse to permit access to or copying of records or fail to make reports or provide information required under Section 208 of the CAA.
6. 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. 18998.
7. 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. 37197.
8. Locomotive manufacturers/remanufacturers, as well as owners and operators of locomotives subject to the requirements of 40 C.F.R. Part 1033, and all other persons, must observe the provisions of Part 1033, the requirements and prohibitions of 40 C.F.R. Part 1068, and the provisions of the CAA. 40 C.F.R. § 1033.601. The provisions of Part 1068 apply for locomotives as specified in that Part, with certain exceptions not applicable here. *Id.* *See also* 40 C.F.R. § 1033.15(b) (“the requirements and prohibitions of [Part 1068] apply to everyone, including anyone who manufactures, remanufactures, imports, maintains, owns, operates any of the locomotives subject to [Part 1033]”).
9. 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.
10. 40 C.F.R. § 92.1(e) states that the provisions of Part 92 do not apply to locomotives that are subject to the emissions standards of 40 C.F.R. Part 1033.

11. 40 C.F.R. § 1033.901 states that “a locomotive or engine becomes **new** if it is remanufactured or refurbished ...” (Emphasis added). The definition of a new locomotive also states that “[l]ocomotives and engines that were originally manufactured before January 1, 1973 are not considered to become new when remanufactured unless they have been upgraded” (as defined in Part 1033).
12. 40 C.F.R. § 1033.901 defines “Upgrade” as one of the following types of remanufacturing: (1) repowering a locomotive that was originally manufactured prior to January 1, 1973; (2) refurbishing a locomotive that was originally manufactured prior to January 1, 1973 in a manner that is not freshly manufacturing; or (3) modifying a locomotive that was originally manufactured prior to January 1, 1973 (or a locomotive that was originally manufactured on or after January 1, 1973, and that is not subject to the emission standards of this part), such that it is intended to comply with the Tier 0 standards.
13. 40 C.F.R. § 1033.901 defines “Remanufacture” as one of the following: (1)(i) to replace, or inspect and qualify, each and every power assembly of a locomotive or locomotive engine, whether during a single maintenance event or cumulatively within a five-year period; (ii) to upgrade a locomotive or locomotive engine; (iii) to convert a locomotive or locomotive engine to enable it to operate using a fuel other than it was originally manufactured to use; (iv) to install a remanufactured engine or a freshly manufactured engine into a previously used locomotive; or (v) to repair a locomotive engine that does not contain power assemblies to a condition that is equivalent to or better than its original condition with respect to reliability and fuel consumption; or (2) remanufacture also means the act of remanufacturing. See also 40 C.F.R. § 92.2.
14. 40 C.F.R. §§ 1033.101, 1033.102, and Part 1033 Appendix I specify the nitrogen oxides (NO<sub>x</sub>), particulate matter (PM), hydrocarbon (HC), carbon monoxide (CO), and smoke (opacity) emission standards that apply to new line-haul and switcher locomotives during the useful life of the locomotive. See also 40 C. F.R. § 92.8.
15. 40 C.F.R. § 1033.115 states that “[l]ocomotives that are required to meet the emission standards of [Part 1033] must meet the requirements of this section. These requirements apply when the locomotive is new (for freshly manufactured or remanufactured locomotives) and continue to apply throughout the useful life.” These requirements include: (a) crankcase emissions may not be discharged directly into the ambient atmosphere from any locomotive,” except under limited circumstances; (b) locomotives that have adjustable parameters must meet all the requirements of [Part 1033] for any adjustment in the approved adjustable range; (c) a locomotive must not be designed or produced with emission control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating; and (d) for locomotives fueled with a volatile fuel, it must be designed and produced to minimize evaporative emissions during normal operation, including periods when the engine is shut down, and must also be designed and produced to minimize the escape of fuel vapors during refueling; (e) all locomotives must be designed to include features that

compensate for changes in altitude; (f) locomotives must not be equipped with a defeat device; (g) all new locomotives must be equipped with automatic engine stop/start, and all new locomotives must be designed to allow the engine(s) to be restarted at least six times per day without causing engine damage that would affect the expected interval between remanufacturing; and (h) Tier 1 and later locomotives must be equipped with MW-hr meters (or the equivalent) consistent with the specifications of § 1033.140. See also 40 C. F.R. §§ 92.7 and 92.8.

16. 40 C.F.R. § 1033.135 states that “each locomotive must have a label on the locomotive and a separate label on the engine. The label on the locomotive stays on the locomotive throughout its service life. It generally identifies the original certification of the locomotive, which is when it was originally manufactured for Tier 1 and later locomotives. The label on the engine is replaced each time the locomotive is remanufactured and identifies the most recent certification.” See also 40 C. F.R. § 92.212.
17. 40 C.F.R. § 1033.1(d)(1) provides that each person meeting the definition of remanufacturer must comply with the requirements of Part 1033 that apply to remanufacturer.
18. The remanufacturing requirements contained in 40 C.F.R. §1033.805 states that a locomotive owner/operator should first “see the definition of “remanufacture” in § 1033.901 to determine if they are remanufacturing their locomotive or engine” and then “see the definition of “new” in § 1033.901 to determine if remanufacturing their locomotive makes it subject to the requirements of Part 1033. If the locomotive is considered to be new, it is subject to the certification requirements of Part 1033, unless it is exempt under subpart G of this part.” The requirements further state that a “remanufactured locomotive must be covered by a certificate before it is reintroduced into service” and that “failure to comply with [these requirements] is a violation of [40 C.F.R. §1068.101(a)(1)].”
19. 40 C.F.R. § 1068.101(a) specifies prohibitions and requirements that apply to manufacturers of new engines, manufacturers of equipment containing these engines, and manufacturers of new equipment, with certain exceptions not applicable here.
20. 40 C.F.R. § 1068.101(a)(1) states that “[y]ou may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag.”
21. 40 C.F.R. § 1068.101(a)(2) states that “[t]his chapter [including Part 1033] requires you to record certain types of information to show that you meet our standards. You must

comply with these requirements to make and maintain required records.... Failure to comply with the requirements of this paragraph is prohibited.”

22. 40 C.F.R. § 1033.610(e) provides that the placement of a new locomotive or new locomotive engine back into service following remanufacturing constitutes introduction into commerce and is a violation of 40 C.F.R. § 1068.101(a)(1), unless it has a valid COC for its model year and the required label. See also 40 C. F.R. § 92.1103(a).
23. 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. § 92.215.

### **Background**

24. G&W is a short-line railroad holding company that owns and operates railroads throughout the United States.
25. G&W is a person, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
26. On June 4, 2018, and September 6, 2018, EPA issued CAA Section 208 Information Requests to G&W.
27. In response to EPA’s Section 208 Information Requests, G&W provided spreadsheets containing detailed information on each locomotive in its fleet (Spreadsheets). In the Spreadsheets, G&W lists a total of 12 locomotives that both were originally manufactured after 1973 and have had all power assemblies replaced within a 5 year period (therefore meeting the definition of “remanufacture” under 40 C.F.R. § 1033.910), but either does not identify that that locomotive meets EPA Tier or lists an EPA Tier other than the correct Tier applicable to the locomotive as remanufactured. More specifically, Locomotives BAYL 1545, PNWR 2303, HESR 3034, AGR 3412, RCPE 3429, RCPE 3446, RCPE 3463, RCPE 3464, RCPE 3465, RCPE 3466, NECR 3859, and ARZC 3999 should have been remanufactured to meet the Tier 0+ standard in accordance with 40 C.F.R. Part 1033, and G&W should have obtained a valid COC for these locomotives establishing compliance with such standard.
28. In the Spreadsheets, G&W lists a total of 21 locomotives that were manufactured after 1973 and have a “Re-Mfg Date(s)” between January 1, 2000 and 2008, but appear to not have been remanufactured to meet Tier 0 in accordance with 40 C.F.R. Part 92. More specifically, Locomotives PNWR 102, MNA 509, GW 1000, GW 1001, SAPT 1002, GC 2114, GC 2115, GC 2116, PW 2201, PNWR 2304, PNWR 2309, PNWR 2316, IORY 3494, CSO 3771, HESR 3867, PW 3904, PW 3909, PW 4006, PW 4007, AZER 4007, and OHCR 4023 should have been remanufactured to meet the Tier 0 standard in accordance with 40 C.F.R. Part 92, and G&W should have obtained a valid COC for these locomotives establishing compliance with such standard.

29. In the Spreadsheets, G&W lists a total of 20 locomotives that were manufactured after 1973 and have “Re-Mfg Date(s)” after 2009, but appear to not have been remanufactured to Tier 0+ in accordance with 40 C.F.R. Part 1033. More specifically, Locomotives SAPT 1001, PW 2008, PW 2009, MQT 2042, MQT 2043, HESR 3044, MNBR 3053, AGR 3311, CCH 3348, CCH 3349, CCH 3350, HAL 3351, HAL 3352, CAGY 3353, PW 3901, PW 3902, PW 3907, PW 3908, PW 4001, and PW 4005 should have been remanufactured to Tier 0+ in accordance with 40 C.F.R. Part 1033.
30. In the Spreadsheets, G&W was asked to provide the dates that each power assembly on each locomotive was replaced. G&W provided the requested dates for only 16% of the power assemblies and listed “N/A” for the remaining 84% of the dates.
31. In a January 30, 2019 follow-up email, G&W clarified that “N/A” for the power assembly columns in the Spreadsheets represented that “no record of [the power assembly] change-out” was available.

### **Violations**

32. EPA finds that G&W violated Sections 203(a)(1) and 213(d) of the CAA, 40 C.F.R. §§ 92.1103(a), 1033.610(e) and 1068.101(a)(1) by remanufacturing and introducing into commerce numerous locomotives, including the locomotives listed in Paragraphs 27 through 29 above, without first obtaining a valid COC demonstrating compliance with applicable emission standards .
33. EPA finds that G&W violated Section 203(a)(2) and 213(d) of the CAA and 40 C.F.R. §§ 1033.815(d) and 168.101(a)(2) by failing to keep the necessary records of all maintenance and repairs, such as, but not limited to power assembly replacements and EPA locomotive Tiers.

### **Environmental Impact of Violations**

34. These violations may result in excess emissions of PM, NO<sub>x</sub>, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO<sub>x</sub> exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

**Enforcement Authority**

35. EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.

Date

3/28/19

Edward Nam

Director

Air and Radiation Division

**CERTIFICATE OF MAILING**

I certify that I sent a Finding of Violation, No. EPA-5-19-MOB-05, by Certified Mail,

Return Receipt Requested, to:

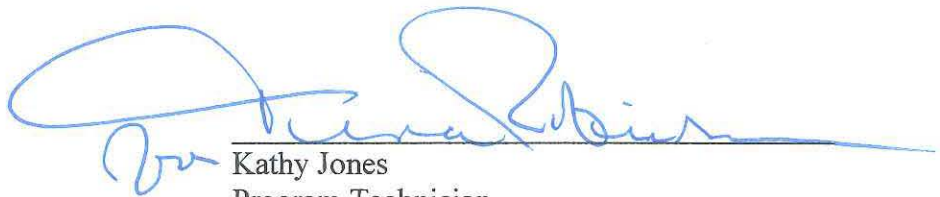
John C. Hellmann  
President and Chief Executive Officer  
Genesee & Wyoming Inc.  
13901 Sutton Park Drive South  
Suite 330  
Jacksonville, Florida 32224

I also certify that I sent copies by email to:

Allison M. Fergus  
G&W – General Counsel  
[afergus@gwrr.com](mailto:afergus@gwrr.com)

Catherine A. Pushchak  
G&W – General Counsel  
[catherine.pushchak@gwrr.com](mailto:catherine.pushchak@gwrr.com)

On the 29<sup>th</sup> day of March 2019.

  
Kathy Jones  
Program Technician  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7018183000054145878