UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
NORFOLK SOUTHERN RAILWAY COMPANY	:	**U.S. EPA Docket No. CAA-03-2025-0062**
650 West Peachtree Street NW	:	
Atlanta, GA 30308	:	**Proceeding under 203(a) and 213(d) of the Clean**
	:	**Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d)**
Respondent.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 ("Complainant") and Norfolk Southern Railway Company ("Respondent" or "NSRC") (collectively the "Parties"), pursuant to Sections 203(a) and 213(d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7522(a) and 7547(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Section 205 of the CAA, 42 U.S.C. § 7524, authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order") resolve Complainant's civil penalty claims against Respondent under the CAA for the violations alleged herein for this matter as docketed above ("Matter").

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency ("EPA") has jurisdiction over this Matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.

7. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.

9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

11. By signing this Consent Agreement, Respondent waives any rights or defenses that respondent has or may have in this Matter that otherwise could have been 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below in Paragraphs 13 through 80.

13. Respondent is a Class I railroad company (as defined by the Surface Transportation Board), incorporated and registered in the State of Virginia and is a wholly-owned subsidiary of Norfolk Southern Corporation. Based on information available to the EPA, at all times relevant to the violations alleged herein, Respondent's business includes owning and operating a freight railway network, including a fleet of over 3,200 locomotives, that operates in 22 states and the District of Columbia, including all states in EPA Region 3.

14. Respondent is a "person" as that term is defined in Section 302 of the CAA, 42 U.S.C. § 7602(e), and is subject to the assessment of civil penalties for the violations alleged herein.

15. Respondent's corporate office was, at times relevant to this matter: located at Three Commercial Place, Norfolk, Virginia until 2019, and thereafter and presently is located at 650 West Peachtree Street NW, Atlanta, Georgia.

Clean Air Act Title II

16. Title II of the CAA, 42 U.S.C. §§ 7521-7554, was enacted to reduce air pollution from mobile sources.

17. 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."

18. 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. *See* 42 U.S.C. § 7547(d).

19. 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); *see also* 42 U.S.C. § 7547(d) (making 42 U.S.C. § 7522 applicable to new locomotives) and 40 C.F.R. Part 1068.101(a)(1).

Emissions Regulations Applicable to Locomotives

20. 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.

21. 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.

22. 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. 34373.

23. On January 24, 2023, EPA promulgated amendments to the emission standards and regulatory requirements for locomotives and locomotive engines at 40 C.F.R. Part 1033. *See* 88 Fed. Reg. 4484.

24. 40 C.F.R. Part 1033 Subpart G provides, at 40 CFR § 1033.601: "Locomotive manufacturer/remanufacturers, as well as owners and operators of locomotives subject to the requirements of this part, and all other persons, must observe the provisions of this part, the requirements and prohibitions in 40 CFR part 1068, and the provisions of the Clean Air Act. The provisions of 40 CFR part 1068 apply for locomotives as specified in that part, except as otherwise specified in this section." *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]").

25. 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 40 C.F.R. § 1033.901). Further, the requirements of this part continue to apply as specified after locomotives cease to be new. *See* 40 C.F.R. § 1033.1(a); *see also* 40 C.F.R. § 92.1.

26. 40 C.F.R. § 1068.30 states: "New has the meaning we give it in the standard-setting part. Note that in certain cases, used and remanufactured engines/equipment may be 'new' engines/equipment." 40 C.F.R. Part 1033 is the "standard-setting part" applicable to this matter.

27. 40 C.F.R. § 1033.901 states, in pertinent part, that "a locomotive or engine becomes new if it is remanufactured or refurbished…" 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 this section)." 40 C.F.R. § 1033.901.

28. 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 (2020).

29. 40 C.F.R. § 1033.901 defines a "Manufacturer/remanufacturer" as "the manufacturer of a freshly manufactured locomotive or engine or the remanufacturer of a remanufactured locomotive or engine, as applicable."

30. 40 C.F.R. § 1033.115 states, in pertinent part: "Locomotives 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… "(g) Idle Controls. All new locomotives must be equipped with automatic engine stop/start as described in this Paragraph (g). 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. Note that it is a violation of 40 CFR 1068.101(b)(1) to circumvent the provisions of this paragraph (g)." 40 C.F.R. § 1033.115(g); *see also* 40 C.F.R. §§ 92.7 and 92.8 (2020).

31. In 2008, EPA added the idle controls requirements at 40 C.F.R. § 1033.115(g), with an effective date of December 8, 2008. 73 Fed. Reg. 37197 (June 30, 2008) and 73 Fed. Reg. 59034, 59189 (Oct. 8, 2008).

32. 40 C.F.R. § 1033.801 (Applicability) states, in pertinent part: "The requirements of the subpart are applicable to railroads and all other owners and operators of locomotives subject to the provisions of [Part 1033], except as otherwise specified."

33. 40 C.F.R. § 1033.805(a) 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." 40 C.F.R. § 1033.805(b) then provides, in pertinent part: "See the definition of 'new' in § 1033.901 to determine if remanufacturing your locomotive makes it subject to the requirements of this part. If the locomotive is considered to be new, it is subject to the certification requirements of this part, unless it is exempt under subpart G of this part."

34. 40 C.F.R. § 1033.805(c) states: "You may comply with the certification requirements of this part for your remanufactured locomotive by either obtaining your own certificate of conformity as specified in subpart C of this part or by having a certifying remanufacturer include your locomotive under its certificate of conformity. In either case, your remanufactured locomotive must be covered by a certificate before it is reintroduced into service." 40 C.F.R. § 1033.805(f) states that failure to comply with the requirements of 40 C.F.R. Part 1033, Subpart I is a violation of 40 C.F.R. §1068.101(a)(1).

35. 40 C.F.R. § 1033.601(e) provides that, unless it has a valid certificate of conformity for its model year and the required label, 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). *See also* 40 C.F.R. § 92.1103(a) (2020).

General Compliance Regulations Applicable to Locomotives

36. 40 C.F.R. Part 1068.1(a) provides, in pertinent part: "The provisions of this part apply to everyone with respect to the engine and equipment categories as described in this paragraph (a). The provisions of this part apply to everyone, including owners, operators, parts manufacturers, and persons performing maintenance. Where we identify an engine category, the provisions of this part also apply with respect to the equipment using such engines. This part applies to different engine and equipment categories as follows: […] (5) This part 1068 applies for locomotives that are subject to the provisions of 40 CFR part 1033."

37. 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."

38. 40 C.F.R. § 1068.101(a)(1)(i) provides, in pertinent part: "Engines/equipment are considered not covered by a certificate unless they are in a configuration described in the application for certification."

39. 40 C.F.R. § 1068.210 provides, in pertinent part, that, with respect to requirements for certificates of conformity, "We may exempt engines/equipment that you will use for research, investigations, studies, demonstrations, or training."

40. 40 CFR § 1068.125(b) provides that violations of the regulations allow the EPA to assess administrative penalties: "Instead of bringing a civil action, we may assess administrative penalties if the total is less than $356,312 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that a greater administrative penalty assessment is appropriate, or if the limit is adjusted under 40 CFR part 19. No court may review this determination. Before we assess an administrative penalty, you may ask for a hearing as described in subpart G of this part. The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section." 40 CFR § 1068.125(b).

41. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, 28 U.S.C. § 2461 note, Pub. L.114-74, and EPA's 2023 Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. 89,309 (Dec. 27, 2023), the maximum administrative penalty EPA is authorized to impose under CAA Section 205, 42 U.S.C. 7524(c)(1), for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025, has been adjusted to $472,901.

EPA Investigation

42. EPA Region 3 issued information request letters to Respondent on April 21, 2020, September 10, 2021 and March 18, 2024 (collectively, the "IRLs").

43. Respondent provided responses to the IRLs at various times between June 12, 2020 and April 8, 2025. These responses included narrative answers to questions in the IRLs as well as spreadsheets detailing information responsive to the requests.

44. In addition to formal IRLs and responses, the Parties had numerous written and oral exchanges about the IRLs.

45. On August 15, 2024, the EPA transmitted a CAA Notice to Show Cause to Respondent identifying the violations set forth herein and offering Respondent an opportunity to confer ("Show Cause Letter").

46. On August 28, 2024, Respondent provided a written response to the Show Cause Letter.

47. On September 26, 2024, the parties had a conference to discuss the Show Cause Letter.

Factual Allegations

48. Respondent is responsible for the management and maintenance of its locomotive fleet and is the sole member of Thoroughbred Emissions Research, LLC ("TER"), which researchers, tests, develops and manages NSRC's locomotive emissions equipment technologies, including applying for and holding any emissions certificates, exemptions or other regulatory documentation or permits required by or from the EPA.

49. At times, as part of its locomotive fleet maintenance, Respondent, either directly or through its wholly-owned subsidiaries, overhauls locomotives including through rebuilding or remanufacturing of engines.

50. Respondent, either directly or through its wholly-owned subsidiaries, is a re-manufacturer within the meaning of 40 C.F.R. § 1033.901.

51. At all relevant times Respondent, either directly or through its wholly-owned subsidiaries, is an owner/operator, within the meaning of 40 C.F.R. § 1033.801, of the

locomotives that are the subject of this Consent Agreement and Final Order, and it is subject to the remanufacturing requirements contained in 40 C.F.R. §1033.805.

52. On July 30, 2014, TER applied for a testing exemption pursuant to 40 C.F.R. § 92.905 for certain locomotives.

53. By letter dated August 14, 2014, the EPA issued to TER exemption 2014-AUGUST-NRCI-TEST-D-2408 ("Test Exemption D2408"), to cover up to 25 General Electric Dash 8 locomotives. The exemption included a set of "terms and conditions," any breach of which "shall cause the exemption to be void" and one of which provided:

> (e) At the end of the testing period, either request an extension of the exemption from EPA prior to the expiration date or remove the vehicle(s) or engine(s) from exempt status by performing one of the following for each vehicle(s) or engine(s) that is removed from exempt status:
> …
>
> (2) Regain physical possession of the subject vehicle(s) and/or engine(s) and remove from commerce by exporting or destroying the vehicle(s) and/or engine(s); or
>
> (3) Return the vehicle(s) and/or engine(s) to the original certified configuration or obtain a certificate and certify the vehicle(s) in their new configuration.

54. In a spreadsheet prepared by NSRC and provided to the EPA in response to the IRLs, NSRC identified locomotives with the unique identifying numbers NS8500 through NS8513 and NS8702, as having been permitted to operate pursuant to Test Exemption D2408.

55. On November 29, 2016, TER applied to extend the operative effect of Test Exemption D2408 to the subject locomotives.

56. By letter dated December 12, 2016, the EPA extended the exemption until August 14, 2017 and further explained: "Please note that this extension remains subject to the terms and conditions of the original approval and that 'at the end of the testing period, either request an extension of the exemption from the EPA prior to the expiration date or remove the engines, vehicles or equipment from exempt status.' Failure to do this may result in the exemption being void ab initio and lead to substantial penalties."

57. On August 17, 2017 TER notified the EPA of its intent to remove locomotives NS8500-NS8513 and NS8702 from Test Exemption D2408 and further stated that it "has applied for the Certificate of Conformity for these locomotives and will equip all test units with EPA locomotive and engine decals."

58. In response to the IRLs, NSRC identified locomotives NS8505 and NS8702 as taken out of service and sold for scrap, and NS8509 as taken out of service, before expiration of Test Exemption D2408, but provided no COCs for locomotives NS8500-NS8504, NS8506-NS8508, and NS8510-NS8513, or evidence that they had been returned to their original certified configuration, that would allow for operation, in compliance with the requirements of 40 C.F.R. § 1068.101(a)(1) and the terms and conditions of Test Exemption D2408, during the period after expiration of the exemption on August 14, 2017.

59. In response to the IRLs, NSRC stated in an accompanying spreadsheet that twelve locomotives previously subject to Test Exemption D2408 (NS8500-NS8504, NS8506-NS8508, NS8510-NS8513) were taken out of service and placed into storage from approximately four months to nearly two years after expiration of the exemption, until later being sold for scrap in 2020.

60. In a November 8, 2021 response to the IRLs, NSRC identified certain locomotives (NS1645, NS3284, NS3311, NS3335, NS6088, NS6091, NS6142, NS6143, NS6167, NS7110, NS7116, NS7132, NS7134, NS7136 and NS7140) as having been remanufactured on or after July 7, 2008 that, as of the date of the response, NSRC was unable to confirm installation of idle controls as required by 40 C.F.R. § 1033.115(g).

61. In a November 30, 2022 further response to the IRLs, NSRC explained in pertinent part: "For those engines set forth in Attachment B which **do not yet have idle controls installed**, SmartStart kits have been ordered and, through the process of additional special handling instructions, SmartStart will be installed as soon as practicable on each such locomotive." (Emphasis added.) Attachment B listed the same locomotives as enumerated in the preceding Paragraph 60.

62. In a May 24, 2024 further response to the IRLs, NSRC represented that, at least as of that date, locomotive NS6088 had "Automatic Engine Start/Stop ('AESS')" installed but that all other locomotives listed in Paragraph 60 had still not had idle controls installed.

63. In a April 8, 2025 further response to the IRLs, NSRC represented that by December 18, 2024 it had completed installation of all required idle control equipment in the locomotives identified in Paragraph 60 or, in the case of NS6143 and NS7132, that such locomotives were misidentified in the earlier correspondence and that they had, in fact, already had idle controls installed.

64. The engines in Paragraph 60 had been remanufactured between the December 8, 2008 effective date of the Idle Controls requirement as set forth in Paragraph 31, above, and December 11, 2009 in the initial period after that requirement first went into effect and, furthermore, the information provided by NSRC to EPA in response to the IRLs demonstrates that NSRC was in the regular practice of installing idle controls at all times after December 11, 2009 as required by 40 C.F.R. § 1033.115(g).

Count I
Operating Locomotives Without a Certificate of Conformity
(Violation of 40 C.F.R. § 1068.101(a)(1))

65. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

66. 40 C.F.R. § 1068.101(a)(1), in conjunction with 40 C.F.R. § 1068.601(e), requires that remanufactured locomotives placed back into service following remanufacturing must have valid COCs.

67. Following expiration of Test Exemption D2408 on August 14, 2017, Respondent placed Locomotives identified as NS8500-NS8504, NS8506-NS8508, and NS8510-NS8513 into service without valid COCs and maintained them in service until at least: December 18, 2017 (NS8500), January 21, 2018 (NS8504), October 20, 2018 (NS8506), December 4, 2018 (NS8511), December 6, 2018 (NS8502), December 20, 2018 (NS8507), December 24, 2018 (NS8510), December 30, 2018 (NS8512), January 11, 2019 (NS8513), January 16, 2019 (NS8508), April 1, 2019 (NS8501) and September 3, 2019 (NS8503).

68. In placing locomotives NS8500-NS8504, NS8506-NS8508, and NS8510-NS8513 into service without valid COCs, Respondent failed to comply with 40 C.F.R. § 1068.101(a)(1).

69. In failing to comply with 40 C.F.R. § 1068.101(a)(1) in the manner set forth in Paragraphs 67 to 68, Respondent violated Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and is subject to the assessment of penalties under Section 205 of the CAA, 42 U.S.C. § 7524.

Count II
Failure to Comply with Terms and Conditions of a Test Exemption
(Violation of 40 C.F.R. § 1068.101(a)(1))

70. The information and allegations in Paragraphs 1 to 64 of this Consent Agreement are incorporated herein by reference.

71. 40 C.F.R. § 1068.210 allows the EPA to issue exemptions from the requirement to otherwise obtain COCs as required by 40 C.F.R. § 1068.101(a)(1).

72. Respondent requested and obtained a test exemption, Test Exemption D2408, that imposed terms and conditions, any violation of which would void the exemption.

73. Following expiration of Test Exemption D2408, Respondent failed to comply with the exemption's terms and conditions, as applicable to locomotives NS8500-NS8504, NS8506-NS8508, and NS8510-NS8513, by failing to immediately remove them from commerce by exporting or destroying the vehicle(s) and/or engine, failing to

immediately return the engines to their original certified configuration, or failing to immediately obtain a valid COCs for the newly configured engine.

74. In failing to comply with Test Exemption D2408's terms and conditions, Respondent caused the exemption to be void, rendering all operation of locomotives pursuant to the exemption, from at least August 14, 2014 to August 28, 2020, a violation of 40 C.F.R. § 1068.101(a)(1).

75. In failing to comply with 40 C.F.R. § 1068.101(a)(1) in the manner set forth in the preceding Paragraphs 73 to 74, Respondent violated Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and is subject to the assessment of penalties under Section 205 of the CAA, 42 U.S.C. § 7524.

Count III
Operating Locomotives in Violation of Applicable Emissions Standards
(Violation of 40 C.F.R. § 1068.101(b)(1))

76. The information and allegations in Paragraphs 1 to 64 of this Consent Agreement are incorporated herein by reference.

77. 40 C.F.R. § 1033.115(g) requires locomotives remanufactured after July 7, 2008 to have automatic engine stop/start installed.

78. Respondent remanufactured locomotives identified as NS1645, NS3311, NS3335, NS6088, NS6091, NS6142, NS6167, NS7110, NS7116, NS7134, NS7136 and NS7140 after July 7, 2008 but failed to install any idle controls compliant with 40 C.F.R. § 1033.115(g) at the time of remanufacture. By December 18, 2024 all such locomotives had the required idle control equipment installed.

79. From the date of their being placed into service following remanufacture, until installation of the required idle controls, each of the locomotives identified in Paragraph 78 failed to comply with the requirements of 40 C.F.R. § 1033.115(g) and, in so doing, Respondent violated 40 CFR 1068.101(b)(1).

80. In failing to comply with 40 C.F.R. § 1068.101(b)(1) in the manner set forth in the preceding Paragraphs 78 to 79, Respondent violated Sections 203(a) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and 7547(d), and is subject to the assessment of penalties under Section 205 of the CAA, 42 U.S.C. § 7524.

CIVIL PENALTY

81. In settlement of the EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the

amount of ***TWO HUNDRED AND NINETY-NINE THOUSAND DOLLARS ($299,000)***, which Respondent shall be liable to pay in accordance with the terms set forth below.

82. The civil penalty is based upon the EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), *i.e.*, the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case, with specific reference to the EPA's Clean Air Act Title II Vehicle & Engine Civil Penalty Policy (dated January 2021) which reflects the statutory penalty criteria set forth at Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2), the appropriate Adjustment of Civil Monetary Penalties for Inflation at 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation.

83. 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. Any checks should be made payable to "Treasurer, United States of America."

84. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, CAA-03-2025-0062,

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously by email to:

Andrew Ingersoll
Assistant Regional Counsel
ingersoll.andrew@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@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 the EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

85. 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 any portion of the Assessed Penalty per this Consent Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owning, and the EPA is authorized to recover the following amounts.

a. Interest. Interest begins to accrue from the Effective 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 accrued 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 collection proceedings.

c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

86. 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 Consent Agreement, 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 the EPA or engaging in programs the 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.

87. 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.

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

89. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed the EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

90. The parties consent to service of the Final Order by e-mail at the following valid email addresses: ingersoll.andrew@epa.gov (for Complainant), and JVanOrden@cozen.com (for Respondent).

91. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the IRS annually, 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 the 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." The 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). 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. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:

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 the EPA's Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

i. notify the EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of the Final Order per Paragraph 98**;** and

ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

92. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

93. Respondent certifies that any information or representation it has supplied or made to the EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

94. Respondent certifies to the EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

95. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CAA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

96. This Consent Agreement and Final Order resolves only the EPA's claims for civil penalties for the specific violation alleged against Respondent in this Consent Agreement and Final Order. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). The EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

97. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

98. The effective date of this Consent Agreement and Final Order ("Effective Date") is the date on which the Final Order, signed by the Regional Administrator of the EPA, Region

3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

99. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: Norfolk Southern Railway Company

Date: May 12, 2025 By: [redacted]

Matthew A. Gerrard
General Counsel – Environmental

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: Melvin, Karen Digitally signed by Melvin, Karen Date: 2025.05.14 11:00:09 -04'00'

[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: ANDREW INGERSOLL Digitally signed by ANDREW INGERSOLL Date: 2025.05.13 07:52:56 -04'00'

[*Digital Signature and Date*]
Andrew Ingersoll
Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
NORFOLK SOUTHERN RAILWAY COMPANY	:	**U.S. EPA Docket No. CAA-03-2025-0062**
650 West Peachtree Street NW	:	
Atlanta, GA 30308	:	**Proceeding under 203(a) and 213(d) of the**
	:	**Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and**
Respondent.	:	**7547(d)**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, Norfolk Southern Railway Company have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the EPA's *Clean Air Act Title II Vehicle & Engine Civil Penalty Policy (dated January 2021)*, and the statutory factors set forth in Section 205(c)(2) of the CAA, 42 U.S.C. § 7524(c)(2).

NOW, THEREFORE, PURSUANT TO Section 205(c)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7524(c)(1), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***TWO HUNDRED AND NINETY-NINE THOUSAND DOLLARS ($299,000)***, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

By: JOSEPH LISA Digitally signed by JOSEPH LISA Date: 2025.05.14 13:41:17 -04'00'

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
NORFOLK SOUTHERN RAILWAY COMPANY	:	**U.S. EPA Docket No. CAA-03-2025-0062**
650 West Peachtree Street NW	:	
Atlanta, GA 30308	:	**Proceeding under 203(a) and 213(d) of the**
	:	**Clean Air Act (CAA), 42 U.S.C. §§ 7522(a) and**
Respondent.	:	**7547(d)**

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Matthew A. Gernand
Norfolk Southern
650 West Peachtree Street NW
Atlanta, GA 30308
matthew.gernand@nscorp.com

James Van Orden
Cozen O'Connor
One Liberty Place, 1650 Market Street
Suite 2800
Philadelphia, PA 19103
jvanorden@cozen.com

Andrew Ingersoll
Assistant Regional Counsel
U.S. EPA, Region 3
Ingersoll.andrew@epa.gov

Parmatma Adhikari
Environmental Engineer
U.S. EPA, Region 3
Adhikari.Parmatma@epa.gov

BEVIN ESPOSITO
Digitally signed by BEVIN ESPOSITO
Date: 2025.05.14 14:53:47 -04'00'

[*Digital Signature and Date*]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3