UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV 27 2007

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Helena E. Williams, President
Long Island Rail Road Company
Jamaica Station Building
9302 Sutphin Boulevard
Jamaica, N.Y. 11435

Re: **In the Matter of Long Island Rail Road**
Docket No. RCRA-02-2008-7101

Dear Ms.Williams:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within ***thirty (30)*** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference ***does not*** substitute for a written Answer, affect what you may choose to say in an

Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclose both an "Information sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and the nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of	:	
	:	**COMPLAINT, COMPLIANCE ORDER,**
Long Island Rail Road	:	**AND NOTICE OF OPPORTUNITY**
	:	**FOR HEARING**
	:	
	:	**Docket Number RCRA-02-2008-7101**
Respondent	:	
	:	
Proceeding under Section 3008 of the	:	
Solid Waste Disposal Act, as amended	:	

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260 - 273 and 279.

This COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING ("Complaint") serves notice of EPA's preliminary determination that the Long Island Rail Road has violated requirements of the authorized New York State hazardous waste program.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that EPA's Administrator may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the regulations comprising the federal hazardous waste program (the "Federal Program"). The State of New York received final authorization to administer its base hazardous waste program on May 29, 1986. Since 1986, New York State has been authorized for many other hazardous waste requirements promulgated by EPA pursuant to RCRA and /or HSWA. *See* 67 Fed. Reg. 49864 (August 1, 2002) and 72 Fed. Reg. 14044 (March 26, 2007). This includes most EPA regulations issued as of July 1999.

Section 3008(a)(2) of the Act, 42 U.S.C. § 6928(a)(2), authorizes EPA to enforce the regulations constituting the authorized state program and EPA retains primary responsibility for the enforcement of certain requirements promulgated pursuant to HSWA.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, who has been duly delegated the authority to institute this action, hereby alleges upon information and belief:

General Allegations

Jurisdiction

1. This Tribunal has jurisdiction over the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.1(a)(4).

2. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has given the State of New York prior notice of this action.

Respondent's Background

3. Long Island Rail Road Company ("Respondent" or "LIRR") is a commuter railroad service corporation primarily engaged in transporting passengers between the City of New York and the suburban counties of Nassau and Suffolk on Long Island.

4. Respondent is a public benefit subsidiary corporation of the Metropolitan Transportation Authority ("MTA").

5. LIRR's Hillside Maintenance Complex ("Hillside Maintenance Facility" or the "Facility") is located at 93-59 183rd Street, Hollis, New York 11423.

6. Respondent handles spent light bulbs at the Hillside Maintenance Facility, the Richmond Hill Sheridan Shop at 25-02 89th Avenue, Richmond Hill, NY 11418 and the West Side Storage Yard at 10th Avenue and 31st Street, New York, New York 10001.

7. Respondent is a "person"as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and in Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).

8. Each of Respondent's properties identified in paragraph 6 constitute a "facility" (collectively "Facilities") within the meaning of 6 NYCRR § 370.2(b).

9. Respondent has been and remains the "owner" and the "operator" of each Facility.

Respondent's Generation of Waste

10. Respondent performs maintenance of its railroad cars and other building maintenance operations at its Hillside Maintenance Facility and has been generating, and continues to generate, "solid waste," within the meaning of 6 NYCRR § 371.1 (c), at its Facilities.

11. Respondent performs maintenance of its railroad cars and other building maintenance operations at its Hillside Maintenance Facility and has been generating, and continues to generate "hazardous waste," (within the meaning of 6 NYCRR § 371.1(d)) at its Facilities.

12. At all times cited in this Complaint, Respondent has been a "generator" of "hazardous waste" as those terms are defined at 6 NYCRR §§ 370.2(b) and 374-3.1(i)(4) at its Hillside Maintenance Facility.

13. In or about February 2007, and prior to and after that date, Respondent has generated, and continues to generate, at least 1000 kilograms of hazardous waste in a calendar month at its Hillside Maintenance Facility.

14. Because Respondent generates at least 1000 kilograms of hazardous waste in a calendar month, it is referred to as a "large quantity generator" for its Hillside Maintenance Facility.

15. The requirements for generators are set forth in 6 NYCRR § 372.2. A large quantity generator may accumulate non-acute hazardous waste on-site for ninety (90) days or less without having a permit or interim status provided it complies with *all* applicable conditions set forth in 6 NYCRR § 372.2(a)(8), including but not limited to 6 NYCRR § 372.2(a)(8)(iii) - (v).

16. Respondent stores hazardous waste at its Hillside Maintenance Facility for a finite period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

17. At all times cited in this Complaint, Respondent's Hillside Maintenance Facility and each of the other Facilities cited in this Complaint were in operation before November 19, 1980. Each Facility has been, and continues to be, considered an "existing hazardous waste management facility" (or "existing facility") within the meaning of 6 NYCRR § 370.2(b).

Past Regulatory Filings

18. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent sent EPA a notification (EPA form 8700-12) ("Notification"), dated February 1, 1984, that stated that the LIRR generated hazardous waste at the Hillside Maintenance Facility.

19. In response to the Notification, EPA provided Respondent with EPA Identification Number NYD 986993830.

20. Respondent is a small quantity handler of Universal Waste as that term is defined at 6 NYCRR § 374-3.1(i)(9). Respondent does not accumulate 5,000 kilograms or more of total universal waste (batteries, pesticides, thermostats or lamps calculated collectively) at any time.

EPA's Investigative Activities

21. On or about February 20, 2007, a duly designated representative of EPA, conducted a Compliance Evaluation Inspection ("Inspection") of Respondent's Hillside Maintenance Facility, pursuant to Section 3007 of the Act, 42 U.S.C. § 6927.

22. At the time of the Inspection, Respondent was generating and storing solid wastes at its Facilities.

23. Prior to and at the time of the Inspection, Respondent was generating spent fluorescent, incandescent and metal halide bulbs that had been used for lighting its railway cars and buildings.

24. On or about March 23, 2007, EPA issued to Respondent a combined Notice of Violation ("NOV") and Request for Information ("IRL").

25. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Respondent that EPA had identified a number of RCRA violations at its Hillside Maintenance Facility including violations of 6 NYCRR §§ 374-3.2(d)(4)(i) and (ii), and asked the Respondent to provide EPA with explanations and documentation of subsequent actions it had taken to correct the violations.

26. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought information and documentation relating to hazardous waste activities, including but not limited to:

    a. locations where solid wastes were generated at the Facilities;
    b. determinations (either narrative or analytical) whether such solid waste streams were hazardous wastes or non-hazardous wastes; and
    c. hazardous waste manifests or other documentation relating to the off-site disposal of such hazardous or non-hazardous wastes to demonstrate the nature of Respondent's compliance with RCRA.

27. On or about April 26, 2007, Respondent submitted a certified response to the combined NOV and IRL ("Response"), referred to in paragraph "24" above.

28. In its Response, Respondent stated that it generated spent fluorescent, incandescent and metal halide bulbs for lighting in its railway cars and buildings.

29. In its Response, Respondent stated that it changed spent bulbs from LIRR train cars at its Richmond Hill Sheridan Shop and West Side Storage Yard.

30. LIRR's Richmond Hill Yard is a conditionally exempt small quantity generator as that term is defined in 6 NYCRR § 371.1(f).

31. LIRR's West Side Storage Yard is a conditionally exempt small quantity generator as that term is defined in 6 NYCRR § 371.1(f).

32. Pursuant to 6 NYCRR § 371.1(f), a person who generates 100 kgs. or less of non-acute hazardous waste in a calendar month (a conditionally exempt small quantity generator - CESQG) may accumulate hazardous waste on-site without being subject to full regulation under 6 NYCRR § 370 through 376, and the notification requirements of § 3010 of RCRA, 42 U.S.C. §6930, provided that it, *inter alia*, determines whether each solid waste generated at its facility is a hazardous waste as required by 6 NYCRR § 372.2(a)(2) in accordance with 6 NYCRR § 371.1(f)(6)(i).

33. In its Response, Respondent stated that prior to July 2005, the spent fluorescent bulbs generated at its Facilities were disposed as ordinary trash.

34. In its Response, Respondent stated that it implemented a Bulb Recycling Program in July 2005.

35. In its Response, Respondent stated that in 2003, it generated 108,324 spent light bulbs, including 102,324 spent fluorescent light bulbs at its Facilities identified in paragraphs 5 and 6, above. Respondent failed to make a hazardous waste determination about whether the spent bulbs were hazardous wastes.

36. In its Response, Respondent stated that in 2004, it generated 94,374 spent light bulbs, including 87,197 spent fluorescent light bulbs at its Facilities identified in paragraphs 5 and 6, above. Respondent failed to make a hazardous waste determination about whether the spent bulbs were hazardous wastes.

37. In its Response, Respondent stated that in 2005, it generated 76,266 spent light bulbs, including 68,166 spent fluorescent light bulbs at the Facilities cited in paragraphs 5 and 6, above. For the first half of 2005, Respondent generated about 38,166 spent light bulbs, including 34,083 spent fluorescent light bulbs. For the first half of 2005, Respondent

failed to make a hazardous waste determination about whether the spent bulbs were hazardous wastes.

COUNT 1 - Failure to Make Hazardous Waste Determinations

38. Complainant realleges each allegation contained in paragraphs "1" through "37, inclusive, as if fully set forth herein.

39. Pursuant to 6 NYCRR § 372.2(a)(2), a person who generates a solid waste must determine if that waste is a hazardous waste using the procedures specified in that provision.

40. Pursuant to 6 NYCRR § 371.1(c), "solid waste" is any "discarded material" that includes "abandoned," "recycled" or "inherently waste-like materials" as those terms are further defined therein.

41. Pursuant to 6 NYCRR § 371.1(c)(3) materials are "solid wastes" if they are "abandoned" by being "disposed of," "burned or incinerated," or "accumulated, stored or treated before, or in lieu of, being abandoned, disposed of, burned or incinerated."

42. In its Response, Respondent admitted that it had generated spent fluorescent bulbs at its Facilities at the time of the Inspection, and prior thereto.

43. Prior to July 2005, Respondent had been disposing of its spent fluorescent light bulbs as ordinary trash at the Hillside Maintenance Complex, Richmond Hill Yard and West Side Yard without making a determination about whether such solid waste constituted a hazardous waste.

44. Respondent's failure to make a determination about whether its spent bulbs were a hazardous waste is a violation of 6 NYCRR § 372.2(a)(2).

Count 2 - Failure to Prevent and/or Minimize Releases

45. Complainant realleges each allegation contained above in paragraphs "1" through "37", with the same force and effect as if fully set forth below.

46. At the time of EPA's Inspection and prior thereto, Respondent admitted to the IRL that it had generated spent fluorescent, incandescent, and metal halide lamps in its railway cars and buildings.

47. The spent fluorescent, incandescent, and metal halide lamps generated by Respondent were solid wastes.

48. Prior to July 2005, Respondent failed to make hazardous waste determinations about the spent fluorescent, incandescent, and metal halide lamps generated at its Facilities before it disposed of such spent lamps in a manner that did not prevent releases of any universal waste or component of universal waste to the environment.

49. Because Respondent failed to make hazardous waste determinations about the spent lamps it generated, and also failed to manage spent lamps as Universal Waste, Respondent was subject to full regulation under 6 NYCRR §§ 370 through 376.

50. Even if Respondent were to qualify as a "conditionally exempt small quantity generator," as that term is defined at 6 NYCRR § 371.1(f), at the Richmond Hill Yard and the West Side Storage Yard, Respondent's failure to determine whether the spent lamps it generated constituted a hazardous waste subjected Respondent to full regulation under 6 NYCRR § 370 through 376, and the notification requirement of § 3010 of RCRA, 42 U.S.C. § 6930.

51. Pursuant to 6 NYCRR § 373-3.3(b), facilities must be maintained and operated to minimize the possibility of any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to the air, soil, or surface water which could threaten human health or the environment.

52. Pursuant to 6 NYCRR § 372.2(a)(2)(iv), a generator of hazardous waste may refer to 6 NYCRR § 374-3 for alternate waste management standards for Universal Wastes which include lamps as defined in 6 NYCRR § 374-3.1(i). A used lamp becomes a waste on the date it is discarded. An unused lamp becomes a waste on the date the handler decides to discard it. 6 NYCRR § 374-3.1(e)(3).

53. 6 NYCRR § 374-3.2(d)(4) (applicable to a "Small Quantity Handler of Universal Waste") requires that lamps be managed in a way (specified in the regulations) that prevents releases of any universal waste or component of universal waste to the environment.

54. At the time of EPA's Inspection, and at times prior thereto, Respondent was not managing spent fluorescent lamps at its Facilities in compliance with the requirements set forth in 6 NYCRR §§ 374-3.2(d)(4)(i) and (ii).

55. Prior to July 2005, Respondent disposed of spent fluorescent, incandescent, and metal halide lamps in the ordinary trash at its Facilities. Such disposal increased the likelihood of releases of mercury to the air, soil or surface water which could threaten human health or the environment.

56. At the time of EPA's Inspection, at least ten containers with fluorescent lamps at the Hillside Maintenance Facility were not closed.

57. Most of the spent fluorescent, incandescent and metal halide lamps that Respondent generated, managed and disposed of are likely to have contained at least one contaminant in a concentration that would classify them as hazardous waste under 6 NYCRR § 371.3(e), due to the presence of lead in incandescent lamps and greater than 0.2 milligrams per liter of mercury by the Toxicity Characteristic Leaching Procedure in fluorescent lamps.

58. Respondent's failure to ensure that its spent lamps were managed in a way that prevented releases to the environment constitutes a violation of 6 NYCRR § 374-3.2(d)(4).

59. In the alternative, Respondent's failure to maintain and operate its Facilities to minimize the possibility of any unplanned sudden or non-sudden releases of hazardous waste or hazardous waste constituents to the air, soil, or surface water which could threaten human health or the environment also constitutes a violation of 6 NYCRR § 373-3.3.

II. PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: ***http: //www. epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf***. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required EPA to adjust its penalties for inflation on a periodic basis. The penalty amounts were amended for violations occurring on or after January 31, 1997. The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations occurring between January 31, 1997 and March 15, 2004 is $27,500 per day of violation. 40 C.F.R. Part 19 (2003). The maximum civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), for violations after March 15, 2004 is $32,500 per day of violation. 40 C.F.R. Part 19.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments I and II, below.

In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations and any good faith efforts by the Respondent to comply with applicable requirements, the Complainant herewith proposes the assessment of a civil penalty in the total amount of **fifty-eight thousand, four hundred and ninety-eight ($58, 498) dollars** as follows:

Counts 1 & 2	**$ 58, 498**
Total Proposed Penalty:	**$ 58, 498**

III. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, Complainant herewith issues the following Compliance Order to Respondent:

1. Commencing on the effective date of this Compliance Order, Respondent shall, to the extent it has not done so, make the required determinations about whether the spent fluorescent lamps it generated are hazardous wastes.

2. Respondent shall within ten (10) calendar days of the effective date of this Compliance Order, prevent and/or minimize potential releases by managing spent lamps either as hazardous waste or Universal Waste in accordance with applicable regulations.

3. Within thirty (30) days of the effective date of this Compliance Order, Respondent shall submit to EPA written notice of its compliance or noncompliance with each of the requirements cited in Paragraphs "1" and "2" of this Compliance Order. If Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving prompt compliance with the requirement.

4. The response and any supporting documentation and evidence submitted in response to this Compliance Order should be sent to:

Abdool Jabar, Environmental Engineer
Hazardous Waste Compliance Section
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

This Compliance Order shall take effect thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See* 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c).

Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or state) provisions, nor does such compliance release Respondent from liability for any violations at the Facility. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facility.

IV. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA and the Debt Collection Improvement Act of 1996, a violator failing to take corrective action within the time specified in a compliance order is liable for a civil penalty of up to $32,500 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by EPA or the State of New York.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint, Compliance Order and Notice of Opportunity for Hearing."

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15 (c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15 (c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17 (c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27 (c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27 (c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7 (c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27 (c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

VI. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Beverly Kolenberg
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866
212-637-3167

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15 (c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after

receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

Complainant:

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

Date 9/14/12

To: Helena E. Williams, President
Long Island Rail Road Company
Jamaica Station Building
9302 Sutphin Boulevard
Jamaica, NY 11435

cc: Thomas Killeen, Chief
Hazardous Waste Compliance Section
Bureau of Hazardous Waste Management
New York State Department of Environmental Conservation
625 Broadway, 8th Floor
Albany, New York 12233-7250

ATTACHMENT I

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT
Penalty Computation Worksheet (Counts 1 & 2)

Respondent: Long Island Rail Road

Facilities: Hillside Maintenance Complex, Richmond Hill and West Side Storage Yards

Requirements Violated:

Count 1 - 6 NYCRR § 372.2(a)(2). Failure to make a determination as to whether spent fluorescent light bulbs constituted a hazardous waste

Count 2 - 6 NYCRR § 374-3.2(d)(4) and 6 NYCRR § 373-3.3 - Failure to prevent and/or minimize releases

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix		$ 25,999
(a)	Potential for harm.	MAJOR
(b)	Extent of Deviation.	MODERATE

2.(a) Multiple sites (3 x $ 25,999)..... $77, 997
(b) Select an amount from the appropriate multi-day matrix cell. N/A

3. Add line 2 and 1..... $77, 997

4. Percent increase/decrease for good faith. -25 %

5. Percent increase for willfulness/negligence. N/A

6. Percent increase for history of noncompliance. N/A

7. Total lines 4 through 7. -25%

8. Multiply line 7 by line 3. -$19, 499

9. Calculate economic benefit. N/A

10. Subtract line 8 from line 3 for penalty amount to be inserted into the complaint. $58, 498

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

30. Gravity Based Penalty

a. Potential for Harm - The potential for harm is Major. When the owner/operator of a facility generating solid waste fails to perform the required hazardous waste determination, the adverse impact on the regulatory scheme is heightened because the owner/operator may be unaware that the facility is generating a hazardous waste. As a result, there is a much greater likelihood that the owner/operator will not comply with the applicable regulatory provisions.

With regard to risk of human and/or environmental exposure, many current and past manufactured lamps, when taken out of service for disposal, are "toxicity characteristic hazardous wastes" because of the concentration of metals such as mercury or lead. Fluorescent bulbs, when taken out of service for disposal, are "toxicity characteristic hazardous wastes" because of their mercury content. Mercury is a neurotoxin, and the human nervous system is very sensitive to all forms of mercury. Exposure to high levels of metallic, inorganic, or organic mercury can permanently damage the brain, kidneys, and a developing fetus.

At the Hillside Maintenance, Richmond Hill and West Side Yard Facilities, Respondent, in 2003, 2004 and through the end of June 2005, handled and disposed of a large number of spent fluorescent bulbs (approximately 223,600 bulbs) in the trash. Disposal in the ordinary trash may result in the release of mercury into the environment and may expose people to mercury vapor. Considering these factors, the potential for harm was deemed to be MAJOR.

b. Extent of Deviation - The extent of deviation present in these violations was determined to be MODERATE. Respondent failed to determine whether its spent fluorescent lamps were hazardous wastes prior to July 2005. Thereafter, although violations were still observed at the Hillside Maintenance Facility in February 2007, Respondent had adopted a waste management program to ship spent fluorescent bulbs to a recycling facility. Spent bulbs were one of five hazardous waste streams managed by Respondent; and it was the only waste stream that EPA believes was improperly managed.

The applicable cell ranges from $25, 999 to $19,500. The high-end point for the cell matrix was selected to reflect the large number of spent bulbs disposed of in the ordinary trash.

c. Multiple/Multi-day - A multi-day penalty is not being sought at this time. Since the violations occurred at three distinct locations, the penalty has been tripled.

Adjustment Factors

d. Good Faith - In July 2005, Respondent made a determination that its spent bulbs were Universal Wastes and implemented a Bulb Recycling Program. A 25 % reduction in penalty is granted because the program was in place for about 20 months prior to EPA's Inspection.

e. Willfulness/Negligence - Not applicable.

f. History of Compliance - Not applicable.

g. Ability to Pay - Not applicable.

h. Environmental Project - Not applicable.

i. Other Unique Factors - Not applicable or not assessed.

j. Economic Benefit - At this time, EPA is not seeking to recover the economic benefit.

ATTACHMENT II
GRAVITY BASED MATRIX

POTENTIAL FOR HARM	MAJOR	MODERATE	MINOR
MAJOR	$32,500 to 26,000	$25,999 to 19,500	$19,499 to 14,300
MODERATE	$14,299 to 10,400	$10,399 to 6,500	$6,499 to 3,900
MINOR	$3,899 to 1,950	$1,949 TO 650	$649 TO 130

CERTIFICATE OF SERVICE

This is to certify that on the day of NOV 28, 2007, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2008 - 7101, together with Attachments I and II (collectively henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to **Helena E. Williams, President, Long Island Railroad Company, Jamaica Station Building, 9302 Sutphin Boulevard, Jamaica, NY 11435.** I hand carried the original and a copy of the Complaint to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16th floor, New York, New York 10007-1866.

Dated: NOV 28, 2007
New York, New York

Mildred Baez