



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2008 APR -2 PM 3:35  
REGIONAL HEARING  
CLERK

March 31, 2008

CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED

Colleen Channer, Esq.  
Environmental Counsel  
Metropolitan Transportation Authority  
347 Madison Avenue  
New York, New York 10017

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

Dear Ms. Channer:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2 on March 28, 2008.

The schedule for payment of the penalty is set forth in Paragraph 4 of the Consent Agreement. Kindly arrange for the payment in accordance with the terms of the CA/FO. Thank you in advance for your cooperation in this matter.

If you have any questions, please contact me at (212) 637-3167.

Sincerely yours,

A handwritten signature in cursive script that reads "Beverly Kolenberg".

Beverly Kolenberg  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

-----X  
In the Matter of: :  
: **CONSENT AGREEMENT AND**  
: **FINAL ORDER**  
Long Island Rail Road :  
: :  
Respondent : Docket No. RCRA-02-2008-7101  
: :  
Proceeding Under Section 3008 :  
of the Solid Waste Disposal Act, :  
as amended. :  
-----X

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 APR -2 PM 3:35  
REGIONAL HEARING  
CLERK

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq. (referred to collectively as the "Act" or "RCRA").

The Complainant in these proceedings is the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2, who has been duly delegated the authority to institute and carry forward this proceeding. The Complainant issued a "Complaint, Compliance Order and Notice of Opportunity for Hearing" to the Long Island Rail Road, which is part of the Metropolitan Transportation Authority, ("Respondent") on November 27, 2007 bearing the docket number listed above. The Complaint alleged that Respondent had failed to comply with certain applicable requirements of the authorized New York State hazardous waste program, and had been improperly handling and disposing of spent fluorescent light bulbs in the trash at its Hillside Maintenance Complex in Hollis, New York, Richmond Hill Sheridan Shop in Richmond Hill, New York, and West Side Storage Yard in New York City.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order (“CA/FO”), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this matter without further litigation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is subject to the requirements of the Act, and its implementing regulations, including the authorized New York State hazardous waste regulations.
2. As more fully set forth in the allegations contained in the Complaint, Respondent has violated certain applicable federally enforceable authorized state regulations governing the management of hazardous waste at its facilities.
3. As a result of EPA’s Inspection on February 20, 2007 and Respondent’s response to an information request letter, the EPA Inspector documented that Respondent generated, handled and stored spent light bulbs at its Hillside Maintenance Facility at 93-59 183<sup>rd</sup> Street, Hollis, New York 11423, Richmond Hill Sheridan Shop at 25-02 89<sup>th</sup> Avenue, Richmond Hill, NY 11418, and West Side Storage Yard at 10<sup>th</sup> Avenue and 31<sup>st</sup> Street, New York, New York 10001 (collectively the “Facilities”).
4. 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.
5. At the time of EPA’s Inspection, Respondent was a Small Quantity Handler of Universal Waste as that term is defined at 6 NYCRR § 374-3.1(i)(9).
6. Prior to July 2005, Respondent generated and disposed of its spent fluorescent light bulbs as ordinary trash at the Facilities without making a determination about whether such

solid waste constituted a hazardous waste in violation of 6 NYCRR § 372.2(a)(2).

7. 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 pursuant to 6 NYCRR §§ 370 through 376.
8. 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.
9. Respondent admitted that in 2003, it generated 102,324 spent fluorescent light bulbs, in 2004, 87,197 spent fluorescent light bulbs and in 2005, 68,166 spent fluorescent light bulbs at the Facilities identified in Paragraph 3, above.
10. 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 and could threaten human health or the environment.
11. 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).
12. 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 constitutes a violation of 6 NYCRR § 373-3.3.
13. Respondent has informed EPA that it intends to manage its waste lamps under the Universal Waste standards set out in 6 NYCRR § 374-3.

14. Respondent has informed EPA that it accumulates less than 5,000 kilograms of total Universal Waste (batteries, pesticides, thermostats or lamps calculated collectively) at any time at each of the Facilities.

### CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928 and 40 C.F.R. § 22.18 (2007) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the parties hereby agree, as follows:

1. Respondent admits the jurisdictional allegations contained in the Complaint and neither admits nor denies the specific factual allegations contained in the Complaint.
2. Respondent consents to the payment of a civil penalty as set forth in this Consent Agreement, and agrees to comply with the compliance provisions of this Consent Agreement, and with its conditions.
3. This Consent Agreement and Final Order shall not relieve Respondent from its continuing obligation to comply with all applicable provisions of federal, state, or local law nor shall the Consent Agreement be construed of as a ruling on, or determination of, any issue related to any federal, state, or local permit.
4. Respondent shall pay a civil penalty to EPA in the total amount of **forty-three thousand eight hundred and seventy-five dollars (\$43,875)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

5. The check shall be identified with a notation listing the following: **In the Matter of Long Island Rail Road, and shall bear thereon the Docket Number RCRA-02-2008-7101.** Payment of the penalty must be received at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO (the “due date”).
6. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:
  - a. Amount of Payment
  - b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
  - c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
  - d. Federal Reserve Bank of New York ABA routing number: 021030004
  - e. Field Tag 4200 of the Fedwire message should read: “D 68010727 Environmental Protection Agency”
  - f. Name of Respondent: **Long Island Rail Road**
  - g. Case Number: **RCRA-02-2008-7101.**

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Beverly Kolenberg, Assistant Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, Room 1770  
New York, New York 10007-1866  
and  
Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866.

7. Failure to pay the amount in full within the time period set forth, above, may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
8. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
9. The civil penalty constitutes a penalty in the meaning of 26 U.S.C. § 162(f).
10. Commencing on the effective date of the Final Order, Respondent shall make a determination whether its spent bulbs are a hazardous waste pursuant to 6 NYCRR § 372.2(a)(2). Respondent shall also comply with applicable requirements in 6 NYCRR § 374-3.2 including those for management of waste lamps (as described in 6 NYCRR § 374-3.1(e)) set forth in 6 NYCRR § 374-3.2(d)(4) and labeling/marketing requirements set forth in 6 NYCRR § 374-3.2(e)(5).
11. Respondent shall submit to EPA within thirty (30) calendar days of the effective date of the Final Order, written notice of its compliance with each of the requirements in Paragraph 10, above. Notice shall be sent to:

Abdool Jabar, Environmental Engineer  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

12. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the civil and administrative claims alleged in the Complaint in this matter (upon full payment of the penalty). Nothing herein shall be read to preclude EPA or the United States from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
13. Respondent has read the foregoing Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
14. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
15. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with, and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
16. Respondent certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
17. Each party hereto agrees to bear its own costs and fees in this matter.
18. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA



employee other than the Regional Hearing Clerk.

19. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding, except one to enforce the terms of this CA/FO.
20. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives, successors and assigns.

RESPONDENT: **Long Island Rail Road**

BY: 

(Signature)

NAME: PAUL L. MANSKE

(PLEASE PRINT)

TITLE: SENIOR DIRECTOR - OCCUP. & ENVIR. SAFETY

DATE: 3/25/2008

COMPLAINANT: **United States Environmental Protection Agency  
Region 2**

BY: 

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

DATE: MARCH 26, 2008

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

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued pursuant to Section 3008 of RCRA and 40 C.F.R. 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.

DATE: 3-28-08

Alan J. Steinberg

Alan J. Steinberg  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

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

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy by Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency  
- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Colleen J. Channer, Esq.  
Environmental Counsel  
Metropolitan Transportation Authority  
347 Madison Avenue  
New York, New York 10017

Dated: APR - 2 2008

Smidwell Bay