

New York State Department of Environmental Conservation

50 Wolf Road, Albany, New York 12233 -5500



Thomas C. Jorling  
Commissioner

April 26, 1991

President  
Long Island Railroad  
Jamaica Station  
Jamaica, New York 11435

Dear Sir:

The New York State Department of Environmental Conservation has made a preliminary finding that Long Island Railroad has violated certain regulations pertaining to hazardous waste management promulgated under the authority of Environmental Conservation Law Article 27, Title 9. The alleged violations are fully set forth in the enclosed administrative Complaint which is hereby served upon you pursuant to §622.3 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Possible sanctions of violations of Title 9 and its regulations include a civil penalty of up to \$25,000 and an additional penalty of up to \$25,000 for each day of violation; for a second offense, a civil penalty of up to \$50,000 plus \$50,000 for each day of violation may be imposed.

Long Island Railroad is entitled by law to a full administrative hearing on this matter. Should Long Island Railroad decide to contest the Department's allegations, an Answer must be served within twenty days of receipt of the Complaint. Upon receipt of the Answer, I will contact the Office of Hearings for assignment of an administrative law judge and a date for hearing. If you wish to schedule an informal conference to discuss settlement, please contact me as soon as possible. A request for an informal conference does not extend the date by which an Answer must be served.

Sincerely,

Ilse Gruber  
Senior Attorney  
Division of Environmental  
Enforcement  
(518) 457-4346

Enclosure

bcc:

J. DeSai/B. Knapp  
D. Stephens, Reviewer  
H. Hussein, Inspector  
C. Ash, Regional Director ✓  
P. Galley, Regional Attorney  
S. Jagirdar, Regional Haz. Subst. Engineer

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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In the Matter of

Long Island Railroad                      Case Number C2-1625-91-04

Respondent  
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COMPLAINT

The New York State Department of Environmental Conservation (the "Department") in this administrative proceeding instituted pursuant to Title 27 of Article 71 of the Environmental Conservation Law complains against Long Island Railroad (the "Respondent") as follows:

1. Respondent operates a facility located at 91-53 121st Street, Richmond Hill, New York.

2. Respondent conducts operations at the facility which cause the generation of hazardous waste as defined in Section 27-0901(3) of the Environmental Conservation Law and Title 6 of the Codes, Rules and Regulations of the State of New York ("6 NYCRR") Part 371.

3. Respondent is subject to New York State laws and regulations governing hazardous waste. An inspection of Respondent's facility was conducted by an authorized representative of the New York State Department of Environmental Conservation on November 30, 1990. The inspection revealed that Respondent was in violation of the following sections of 6 NYCRR:

COUNT 1:     §372.2(a)(8)(ii)/373-1.1(d)(1)(iii) & (iv)

permit a generator to accumulate hazardous wastes on-site for a period of 90 days or less. Respondent stored fifty-two containers of hazardous wastes in its hazardous waste storage area and approximately 3,000 gallons of hazardous waste in its wastewater treatment tank for over 90 days. The Department seeks a fine of \$1,000 for this violation.

COUNT 2: §372.2(a)(8)(i)(b) requires that, where hazardous waste is accumulated at or near the point of generation in excess of 55 gallons, containers holding the excess waste must be marked with the date the excess amount began accumulating. Respondent accumulated more than 55 gallons of hazardous wastes in the accumulation area and failed to mark the containers with the date the amount in the accumulation area exceeded 55 gallons. The Department seeks a fine of \$500 for this violation.

COUNT 3: §372.2(a)(8)(ii) requires that the date upon which the period of accumulation begins be clearly marked and visible for inspection on each container, tank or storage area used to store hazardous wastes. Respondent failed to mark fifty-two drums, ten batteries, and two 16-gallon fiber containers storing hazardous wastes in the hazardous waste storage area with the accumulation start date. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$3,000 for this violation.

COUNT 4: §373-1.1(d)(1)(iv)(d)/373-1.1(d)(1)(iii)(c)(3) requires that each area and container used to accumulate hazardous waste in storage be identified with a sign or label stating "Hazardous Waste". Respondent failed to label ten waste batteries

in the hazardous waste storage area with the words "Hazardous Waste". Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$1,000 for this violation.

COUNT 5: §372.2(a)(8)(i)(a)(2) allows a generator to accumulate up to 55 gallons of hazardous waste near the point of generation provided that the containers are marked with the words "Hazardous Waste" or other words identifying the contents, and the generator complies with § 373-3.9(b)-(d). As a result of cleaning its painting equipment, Respondent accumulated spent solvents in two drums that were not labelled with the words "Hazardous Waste", or other words identifying their contents. The Department seeks a fine of \$1,000 for this violation.

COUNT 6: §373-3.9(d)(1) requires that containers holding hazardous waste be closed during storage, except when wastes are added or removed. Respondent failed to close two fiber containers storing corrosive wastes in the hazardous waste storage area. The Department seeks a fine of \$1,000 for this violation.

COUNT 7: §373-3.3(b) requires that facilities be maintained and operated in a manner which minimizes the possibility of a fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. Respondent operated its paint stripping operation in a manner which permitted the wastewater treatment tank to overflow, releasing wastewater which contained listed hazardous wastes into the surrounding soil. The facility is located in an area designated by the United States



Environmental Protection Agency as the recharge zone for the Kings and Queens aquifers, which are designated as the sole or principal source of drinking water for the southeastern portion of Queens County. Hazardous constituents from the wastewater may migrate through the recharge zone into these sources of residential drinking water. Respondent failed to prevent the overflow or to take steps to remove the overflowed wastes or the contaminated soil. The Department seeks a fine of \$25,000 for this violation.

COUNT 8: §373-3.2(g) requires that facility personnel complete a program of training, directed by a person trained in hazardous waste management procedures, that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of Part 373-3. In addition, §373-3.2(g) requires that certain records be maintained at the facility, including the job title and job description of, and the names of persons employed in, positions related to hazardous waste management at the facility, and documentation regarding personnel training. Respondent failed to provide personnel training and maintain personnel records as required by this regulation. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$3,000 for this violation.

COUNT 9: §373-3.3(g)(1) requires that the owner or operator of a hazardous waste management facility attempt to make arrangements with local police and fire departments, local emergency response teams and local hospitals to familiarize them with the facility, the properties and hazards of the waste handled

at the facility, and the types of injuries that could result from a fire, explosion or release at the facility. Respondent failed to make such arrangements with local authorities. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$3,000 for this violation.

COUNT 10: §373-3.4 requires that the owner or operator of a hazardous waste facility develop and maintain at the facility a contingency plan which includes a description of the actions facility personnel must take to comply with §373-3.4(b) and (g) in response to fires, explosions or any unplanned releases of hazardous waste which could threaten human health or the environment, a description of arrangements agreed to by local police and fire departments, hospitals and other emergency response services; the names, addresses, and phone numbers of emergency coordinators; a list of all emergency equipment with the description, location, and function of each item; an evacuation plan; and emergency procedures specified by §373-3.4(g). Respondent failed to maintain a contingency plan at its facility. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$11,000 for this violation.

COUNT 11: §373-3.4(g)(4)(ii)/373-3.4(10) requires that the operator or owner of a hazardous waste management facility immediately notify the Department whenever there is a release, fire, or explosion, and submit a written report on the incident to the Commissioner within fifteen days of the incident. Respondent

failed to immediately notify the Department and to submit a written report on the overflow of the underground tank in which wastewater from its paint stripping operation is treated. The Department seeks a fine of \$9,500 for this violation.

COUNT 12: §373-3.2(d)(2) requires that the owner or operator of a hazardous waste management facility develop and follow a written waste analysis plan which describes the procedure to be used to comply with the requirement for waste analysis. Respondent failed to develop a waste analysis plan. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$1,500 for this violation.

COUNT 13: §373-3.7(c) requires that an owner or operator of a hazardous waste management facility develop a written closure plan for its facility which, among other things, describes how each hazardous waste management unit will be closed and how closure will meet closure performance standards, provides an estimate of the maximum inventory of hazardous wastes at the site, and establishes a schedule for closure. Respondent failed to develop a closure plan for its facility. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$1,500 for this violation.

COUNT 14: §373-1.1(d)(1)(xii)(b) requires that units in which elementary neutralization units or wastewater treatment units be managed in accordance with §373-3.9 and 3.10(k) and (1); §373-3.10(1)(2)(iv) requires that, where hazardous waste is continuously fed into a tank, the tank must be equipped with a



means to stop this inflow. Respondent failed to provide a cutoff mechanism for the underground tank in which wastewater from its paint stripping operation is treated. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$1,500 for this violation.

COUNT 15: §373-1.1(d)(1)(xii)(b) & (c)/373-3.10(1)(2)(v) require that containers and tanks used to treat hazardous waste be marked with the words "Hazardous Waste" and other words that identify the contents; for underground tanks the markings must be placed on a sign in the area above the tank. Respondent failed to mark the area above its underground wastewater treatment tank with the words "Hazardous Wastes". Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$1,500 for this violation.

COUNT 16: §373-3.10(1)(3) sets forth the requirements for inspecting exempt elementary neutralization units and wastewater treatment units. Respondent failed to conduct daily inspections of wastewater treatment unit discharge control equipment and the level of waste in the tank, failed to conduct weekly inspections of the construction material of the wastewater treatment tanks, and failed to conduct weekly inspections of the construction materials of, and the area immediately surrounding the wastewater treatment unit for signs of leakage. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989. The Department seeks a fine of \$1,500 for this violation.

COUNT 17: §373-3.9(e) requires that areas where

containers of hazardous wastes are stored be inspected at least weekly to detect leaking containers and deterioration of the containers or the containment system caused by corrosion or other factors. Respondent failed to inspect the hazardous waste storage area in accordance with this provision.

COUNT 18: Under §373-1.1(d)(1)(iv)(c) Respondent must submit a written notification to the Department's Regional Office stating that its facility qualifies for the exemption from Part 373 permit requirements for the storage of liquid hazardous wastes generated in Queens. Respondent failed to submit notification of exemption to the Regional Office.

COUNT 19: §372.2(b)(2)(i) requires that, prior to shipment of hazardous wastes, the generator confirm by written communication from a designated treatment, storage or disposal facility ("TSD") that it is authorized and has capacity to accept the wastes, and that the ultimate disposal method will be followed. Respondent failed to obtain confirmations from the TSD's to which its wastes were shipped. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989.

COUNT 20: §372.2(b)(2)(ii) requires that, prior to shipment of hazardous wastes, the generator confirm by written communication from the designated transporter that it is authorized to deliver the waste to the designated TSD. Respondent failed to obtain written confirmations from the transporters of its hazardous wastes.

COUNT 21: §373-3.10(1)(2)(i)/373-3.2(h)(1) requires that the owner or operator of a hazardous waste management facility take

precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and place "No Smoking" signs wherever there is a hazard from ignitable or reactive wastes. Respondent failed to post "No Smoking" signs in the accumulation areas where ignitable wastes are handled and accumulated.

COUNT 22: §373-3.2(d)(1) requires that the owner or operator of a hazardous waste management facility obtain a detailed chemical and physical analysis of a representative sample of its wastes. Respondent failed to obtain an analysis of the contents of the wastewater treatment tank.

COUNT 23: §373-3.2(e)(2)(ii)(b) requires that the owner or operator of a hazardous waste management facility provide a means to control entry, at all times, through the gates or other entrances to the active portion of the facility unless the owner or operator can make a successful demonstration pursuant to §373-3.2(e)(1). Respondent failed to keep the gates to its facility closed or otherwise control entry into the active portions of the facility and failed to make a successful demonstration pursuant to §373-3.2(e)(1).

COUNT 24: §373-3.2(e)(3) requires that signs with the legend "Danger - Unauthorized Personnel Keep Out" be posted at each entrance to active portions of a hazardous waste management facility. Respondent failed to post such signs in its facility. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989.

COUNT 25: §373-3.2(f) requires that the owner or operator of a hazardous waste management facility inspect the

facility for malfunctions and deterioration, operator errors, and discharges; to develop and follow a written schedule for inspecting safety equipment; to remedy any deterioration; and to keep a record of inspections for a period of three years. Respondent failed to inspect its facilities in accordance with this regulation. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989.

COUNT 26: §373-3.5(c) requires the owner or operator of a hazardous waste management facility to keep a written operating record at his facility which records the location and quantity of hazardous waste within the facility, results of waste analyses, and records of facility inspections. Respondent failed to list the location and quantity of each hazardous waste within the facility; failed to include the records and results of waste analyses; failed to include reports of incidents requiring implementation of the contingency plan; and failed to record inspections. Respondent was previously cited for this violation in a Consent Order dated September 5, 1989.

COUNT 27: §373-1.1(d)(1)(xii)(d) requires that for batch treatment and equalization units the date that each period of accumulation begins be clearly marked and visible for inspection. Respondent failed to mark the date that the period of accumulation began for its wastewater treatment unit.

4. Section 71-2705 of the Environmental Conservation Law provides for civil sanctions for violations of Article 27, Title 9 and the regulations promulgated thereunder and Orders issued thereunder.



WHEREFORE, the Department of Environmental Conservation requests the following relief:

- I. Issuance of an Order finding Respondent in violation of the cited regulations.
- II. Assessment of a civil penalty in the amount of \$66,500.00 (Sixty-six thousand five hundred dollars).
- III. An order directing Respondent to comply with the cited regulations.
- IV. Such other relief the Commissioner deems appropriate.

DATED: *April 26, 1991*

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION

By: *Ilse Guber*