



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

APR 13 2011

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Alan P. Gerstman, Esq.
Assistant Corporation Counsel
City of Buffalo Department of Law
1100 City Hall
55 Niagara Square
Buffalo, NY 14202

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2011 APR 13 P 1:04
HEARINGS CLERK

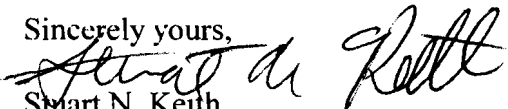
Re: In the Matter of The City of Buffalo
Docket Number RCRA-02-2010-7107

Dear Mr. Gerstman:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please arrange for payment of this penalty according to the instructions given in the Order.

Sincerely yours,


Stuart N. Keith
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosures

ccs:

Russ Brauksieck, Chief
Facility Compliance Section
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7251

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 APR 13 P 1:05
REGIONAL HEARING
CLERK

IN THE MATTER OF:	x	
	:	
The City of Buffalo	:	
	:	
Respondent.	:	<u>CONSENT AGREEMENT</u>
	:	AND
	:	<u>FINAL ORDER</u>
	:	
Proceeding under Section 3008 of the Solid Waste Disposal Act, 42 U.S.C. § 6928, as amended	:	Docket No. RCRA-02-2010-7107
	:	
	:	
	x	

PRELIMINARY STATEMENT

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, 42 U.S.C. §§ 6901, et seq. ("RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of the U.S. Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action. Complainant issued a "Complaint and Notice of Opportunity for Hearing" to the City of Buffalo on June 30, 2010, bearing the docket number listed above. The Complaint alleged violations of the requirements of RCRA and regulations concerning the management of hazardous waste.

The parties have reached an amicable resolution of this matter and have agreed to this Consent Agreement and Final Order as a resolution of this proceeding without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the City of Buffalo (hereinafter "City of Buffalo", "Buffalo" and/or "Respondent"). Respondent's main administrative offices are located at 65 Niagara Square, Buffalo, NY 14202.
2. Respondent owns and/or operates approximately 200 buildings, including but not limited to those utilized by the General Services Building; Department of Public Works, Parks, and Streets; Buffalo Police Precincts and Fire Departments, public libraries, public parks, hockey

area, skating rinks, community centers, museums, theaters, a zoo, and a marina located at various sites through the City; these buildings do not include those buildings operated and utilized by the Buffalo Board of Education.

3. Respondent is a "person," as defined at Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and Title 6 of the New York Codes, Rules, and Regulations ("6 NYCRR") § 370.2(b).
4. In the course of normal operations, Respondent generates "solid waste," as that term is defined at 6 NYCRR § 371.1(c).
5. In the course of normal operations, Respondent generates "hazardous waste," as that term is defined at 6 NYCRR § 371.1(d).
6. Respondent generates spent lamps, a solid and potentially hazardous waste stream, at all or most of its municipal buildings and from street lighting.
7. Spent lamps may be handled under the alternative standards provided under the Universal Waste Rules, codified in federal regulations at 40 C.F.R. Part 273 and in New York State regulations at 6 NYCRR Part 374-3.
8. Respondent notified EPA that it was a generator of lead (D008) and mercury (D009) hazardous waste.
9. On or about September 24, 2008, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, a duly authorized representative of EPA conducted an inspection of the City of Buffalo's Department of Public Works, Parks, and Streets and related offices at Buffalo's City Hall located at 65 Niagara Square.
10. At the time of the inspection, Buffalo had not implemented a spent lamp program. Spent lamps generated at the various Buffalo buildings were disposed of in the trash and handled as non-hazardous solid waste.
11. The types of lamps that were used at Respondent's buildings include the following: (1) incandescent lamps, (2) fluorescent lamps, (3) high pressure sodium vapor lamps, (4) mercury vapor lamps, and (5) metal halide lamps.
12. Prior to the date of EPA's inspection, Respondent had not determined, and did not have a third-party determine on its behalf, whether its spent fluorescent, high pressure sodium vapor, mercury vapor lamps, and metal halide lamps were hazardous wastes.
13. Respondent's failures to have made, or to have a third-party make on its behalf, a hazardous waste determination for its spent fluorescent, high pressure sodium vapor, mercury vapor lamps, and metal halide lamps constitute violations of 6 NYCRR § 372.2(a)(2).
14. Prior to the date of EPA's inspection, Respondent was not managing its spent lamps as

Universal Waste pursuant to 6 NYCRR § 374-3.2(d)(4) in a manner to prevent releases to the environment.

15. Prior to the date of EPA's inspection, Respondent was not maintaining and operating its facilities in such a manner as 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 in accordance with 6 NYCRR § 373-2.3(b) and/or 6 NYCRR § 373-3.3(b).
16. The parties have agreed to resolve this matter as provided in the Consent Agreement below.

CONSENT AGREEMENT

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the above EPA's Findings of Fact and/or EPA's Conclusions of Law; (c) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (d) waives its right to contest or appeal that Final Order.

Based upon the foregoing, and pursuant to Section 3008 of RCRA and 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent represents that it has complied with all of the terms of the Compliance Order that was included as part of the Complaint that was issued to Respondent in this matter on June 30, 2010. Respondent shall hereinafter comply with all applicable federal and state regulatory requirements for the management of hazardous waste by generators (6 NYCRR Parts 370 to 376) or by universal waste handlers (6 NYCRR 374-3) at all of Respondent's facilities.
2. Complainant shall mail to Respondent (or to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk
3. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement.
4. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state laws and regulations governing the generation, handling, treatment, storage, transport and disposal of

hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

5. If in the future EPA believes that Respondent is not in compliance with this Consent Agreement, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA.
6. 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. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
7. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information in any document submitted to EPA.
8. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
9. 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 proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
10. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.
11. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
12. Respondent voluntarily waives any right it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, or the Regional Judicial Officer, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
13. The signatory for the Respondent certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
14. Each party hereto shall bear its own costs and fees in this matter.

15. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when this CA/FO is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT:

The City of Buffalo

BY: 

(Authorized Signature)

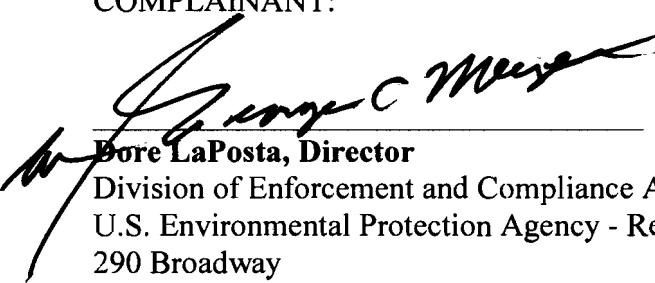
NAME: David Rodriguez

(PLEASE PRINT)

TITLE: Acting Corporation Counsel

DATE: March 29, 2011

COMPLAINANT:



Bore LaPosta, Director

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

DATE: 4/6/11

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, 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. Section 22.18(b)(3), as an Order, effective immediately upon filing with the Regional Hearing Clerk.

BY: 
Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: April 11, 2011

**Re: In the Matter of the City of Buffalo
Docket Number RCRA-02-2010-7107**

Certificate of Service

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number RCRA-02-2010-7107, 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
New York, New York 10007

Copy by Pouch Mail:

Barbara A. Gunning
Administrative Law Judge
EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460-2001

Copy by Certified Mail,
Return Receipt Requested

Alan P. Gerstman, Esq.
Assistant Corporation Counsel
City of Buffalo Dept. of Law
1100 City Hall
65 Niagara Square
Buffalo, NY 14202

Dated: New York, New York

APR 13 2011

Mildred N. Baer