



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 OCT 15 A 11:52  
REGIONAL HEARINGS  
CLERK

IN THE MATTER OF )  
 )  
CITY OF BUFFALO, )  
 )  
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 )  
RESPONDENT )

DOCKET NO. RCRA-02-2010-007

ORDER SEEKING CLARIFICATION AND DIRECTING SETTLEMENT CONFERENCE

As you previously have been notified, I have been designated by the October 12, 2010 Order of the Chief Administrative Law Judge to preside in the above-captioned matter.<sup>1/</sup> This proceeding arises under the authority of Section 3008(a) of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to as RCRA ("RCRA"), 42 U.S.C. § 6928(a), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

On July 8, 2010, the United States Environmental Protection Agency ("EPA" or "Complainant") filed a Complaint against the City of Buffalo ("Respondent"), alleging that Respondent violated certain requirements of the authorized New York State hazardous waste program and the federal hazardous waste program. The EPA issues a Compliance Order and seeks an unspecified civil

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<sup>1/</sup> In response to an inquiry from this office, Respondent agreed to participate in the Alternate Dispute Resolution ("ADR") process offered by this office. However, Complainant declined to participate in ADR. Thus, this case was assigned for litigation.

administrative penalty for the alleged violations. Respondent filed an Answer to the Complaint ("Answer") on September 21, 2010. In the Answer, Respondent denies the allegations but does not request a hearing.

Under Rule 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b), the answer must state whether a hearing is requested. However, subsection (c) of Section 22.15 further provides that if the respondent does not request a hearing, a hearing may be held by the Administrative Law Judge if issues appropriate for adjudication are raised in the answer. See *In re Green Thumb Nursery, Inc.*, FIFRA Appeal No. 95-4a, 6 E.A.D. 782, 786-94 (EAB, Mar. 6, 1997).

In view of Respondent's failure to request a hearing, Respondent is directed to clarify its position as to whether a hearing before an Administrative Law Judge is requested. Such clarification statement by Respondent shall be filed on or before **November 4, 2010**.

EPA policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

Further, the parties are directed to hold a settlement conference on this matter on or before **November 17, 2010**, to attempt to reach an amicable resolution of this matter. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). EPA shall file a status report regarding such conference and the status of settlement on or before **November 26, 2010**.

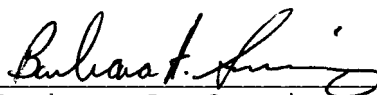
The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The statements and information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, if sent by mail, shall be addressed as follows:

The Honorable Barbara A. Gunning  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Hand-delivered packages transported by Federal Express or another delivery service that x-rays their packages as part of their routine security procedures, may be delivered directly to the Offices of the Administrative Law Judges at 1099 14th Street, NW, Suite 350, Washington, DC 20005.

Telephone contact may be made with my legal staff assistant, Mary Angeles at (202) 564-6281. The facsimile number is (202) 565-0044.

  
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Barbara A. Gunning  
Administrative Law Judge

Dated: October 13, 2010  
Washington, DC

**In the Matter of *City of Buffalo*, Respondent.  
Docket No. RCRA-02-2010-7107**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Seeking Clarification and Directing Settlement Conference**, dated October 13, 2010, was sent this day in the following manner to the addressees listed below.



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Mary Angeles  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples  
Regional Hearing Clerk  
US EPA, Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Pouch Mail to:

Stuart N. Keith, Esq..  
Office of Regional Counsel  
U.S. EPA  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Facsimile and Regular Mail to:

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

Dated: October 13, 2010  
Washington, DC