



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Alan P. Gerstman, Esq.
Assistant Corporation Counsel
City of Buffalo Department of Law
1112 City Hall
65 Niagara Square
Buffalo, NY 14202

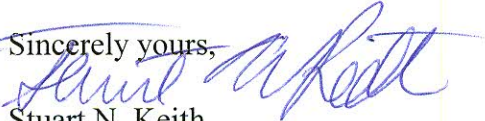
Re: In the Matter of The City of Buffalo
Docket Number RCRA-02-2013-7108

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:

The Honorable Christine D. Coughlin (ALJ)

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

REGIONAL HEARING
CLERK

2014 JUN 12 PM 3:45

U.S. Environmental
Protection Agency-Reg 2

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

_____X	:	
IN THE MATTER OF:	:	
	:	
The City of Buffalo	:	
	:	<u>CONSENT AGREEMENT</u>
	:	AND
Respondent.	:	<u>FINAL ORDER</u>
	:	
Proceeding under Section 3008	:	Docket No. RCRA-02-2013-7108
of the Solid Waste Disposal	:	
Act, 42 U.S.C. § 6928, as amended	:	
_____X	:	

U.S. Environmental
Protection Agency-Reg 2
2014 JUN 12 PM 3:45
REGIONAL HEARING
CLERK

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 September 30, 2013, 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 and other buildings.

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. Solid and hazardous wastes generated by the City of Buffalo include, but are not limited to waste paints, spent solvents, corrosive liquids, used oil, used automotive fluids and pharmaceutical wastes. In addition, 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 has notified EPA that it generates hazardous waste at approximately twenty-seven sites and was assigned hazardous waste identification numbers for those sites.
9. On or about September 13 and 14, 2011, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, a duly authorized representative of EPA conducted inspections of a number of buildings owned and/or operated by Respondent as described in paragraph 2 above.
10. At the time of these inspections, several hundred spent fluorescent lamps generated at the various Buffalo buildings were observed being stored in the basement of City Hall, in the Mechanical Services Building and other locations. None of the spent lamps were labeled as hazardous or universal waste, and many were being stored in open containers or without any containers at all.
11. At the time of these inspections, several hundred containers, which contained waste paints, paint thinners, solvents, and related waste unidentifiable due to obliterated labels, were observed in the former paint shop of the Mechanical Services Building. Many of the containers were extremely corroded, and some had already leaked their contents
12. EPA sent to Respondent a RCRA § 3007 Information Request Letter ("IRL") dated March 21, 2012, requiring the submission to EPA of information on whether hazardous waste determinations had been made on spent fluorescent lamps and waste paint materials being stored at Buffalo facilities and detailing the manner in which such wastes were managed.
13. Respondent submitted a response to the IRL dated April 26, 2012.

14. As a result of the inspections and the Respondent's response to the IRL, EPA determined that Respondent had: (1) failed to make timely hazardous waste determinations in violation of 6 NYCRR § 372.2(a)(2); (2) failed to keep containers in good condition and transfer hazardous waste from leaking containers in violation of 6 NYCRR § 373-2.9(b) or 6 NYCRR § 373-3.9(b); (3) failed to minimize the risks of fire, explosion, and releases in violation of 6 NYCRR § 373-2.3(b) or 6 NYCRR § 373-3.3(b) and (4) failed to comply with a previous EPA Consent Order issued to the City of Buffalo on April 11, 2011 for the same or similar types of violations.
15. 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 assessment of the civil penalty as set forth below; (d) agrees to perform and implement the Supplemental Environmental Project (SEP) in accordance with the terms and conditions set forth herein; (e) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (f) 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 shall, within thirty (30) days of the effective date of this Consent Agreement and Final Order, comply with paragraphs 1 through 3 of the Compliance Order that was issued to Respondent as part of the Complaint in this action and shall hereinafter comply with all applicable federal and state regulatory requirements for the management of hazardous waste by generators and universal waste handlers at all of Respondent's facilities including making hazardous waste determinations, storing hazardous waste in containers that are in good condition and maintaining its facilities so as to minimize the possibility of fire, explosion or release of hazardous waste or hazardous constituents.
2. Respondent shall pay a civil penalty to EPA in the total amount of **TWENTY ONE THOUSAND AND NINETY FOUR DOLLARS (\$21,094)**. 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**

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF THE CITY OF BUFFALO.*, and shall bear thereon the Docket Number RCRA-02-2013-7108. 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).

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read D 68010727
Environmental Protection Agency.
- 6) Name of Respondent: City of Buffalo
- 7) Case Number: RCRA-02-2013-7108.

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, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Stuart N. Keith, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866

- a. Failure to pay the requisite amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
 - b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall 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 date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
 - c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the date for which the payment was required hereto to have been made.
 - d. The effective date of this Consent Agreement and Final Order shall be the date it is filed with the Regional Hearing Clerk.
3. 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
 4. Except as provided in Paragraph 2, above, in this section (and except as the parties may otherwise in writing agree), all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

Ronald Voelkel
Compliance Officer
Division of Enforcement and Compliance Assistance
US Environmental Protection Agency
290 Broadway
21st Floor
New York, New York 10007

and

Stuart N. Keith, Esq.
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway
16th Floor
New York, New York 10007-1866

5. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement, consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above, consents to the stipulated penalties set forth below and consents to implement and complete a Supplemental Environmental Project (“SEP”) in accordance with the terms of this Consent Agreement.
6. 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 rules, 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.
7. As a SEP, Respondent will implement a program to recycle where allowed, or otherwise arrange for the proper disposal of fluorescent lamps, E-waste, and household hazardous waste by collecting these items from City residents. The recycling program will include holding 9 community based recycling events. One event will be held in each of the nine Common Council districts in the City of Buffalo. All spent fluorescent lamps will be placed into containers labeled “Universal Waste - Fluorescent Lamps” as soon as they are accepted from residents. Light ballast and E-waste items will be placed in designated DOT shipping containers as soon as they are accepted from residents. While on site, the items received shall be handled in a way that minimizes the possibility of breakage and the release of any hazardous waste or constituents to the environment. The City must immediately clean up and place into a container any fluorescent bulb that is broken and must place in a container any bulb that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. These containers must be closed, structurally sound, compatible with the contents of the bulbs and must lack evidence of leakage, spillage or damage that could cause releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions. Household hazardous wastes that the City plans on collecting include but are not limited to household pesticides, chemicals, paints and thinners, gasoline and antifreeze products, and mercury based thermometers and other items. Any household hazardous waste received must be appropriately managed. When publicizing the new recycling collection plan, the City will advise the residents that, when bringing items to the recycling events, it is important to handle bulbs and other items in a manner that avoids breakage or spillage. Bulbs and other items collected will be appropriately disposed of on a regular recurring schedule that will take into account the speed at which the items are accumulated and the practical and economic considerations associated with the offsite shipments (provided accumulation time periods are not excessive). The City will use an authorized hazardous waste transporter to send this waste to an authorized destination facility or to a RCRA TSD facility. In addition, the Respondent will publicize the recycling collection events in an effort to maximize public participation, including all appropriate City websites, the City’s Public Access Channel, any guidebooks and calendars designed for residents, and if possible, commercial radio stations. This SEP should result in a substantial reduction of these waste streams in the municipal trash.

8. Respondent shall spend not less than **SEVENTY-NINE THOUSAND AND ONE HUNDRED DOLLARS** (\$79,100) in creditable expenses for the SEP. Creditable expenses shall not include any expenses for which Buffalo has been or will be reimbursed by any entity (including but not limited to the State of New York).
9. Respondent agrees to commence the implementation of the above SEP within sixty (60) calendar days from the date of the signature of the Final Order and shall continue until Respondent has completed the nine recycling events. The SEP will be considered completed upon EPA's acceptance of the SEP Completion Report (as discussed below in Paragraph 11, below).
10. Respondent shall submit a SEP progress report to EPA in a form mutually agreeable to both parties (e.g. email) one hundred and eighty (180) calendar days after the effective date of the CA/FO and every 180 days thereafter until the recycling program has finished. In each progress report, Respondent shall document all expenditures made in connection with the SEP, identify any issues or problems that have arisen in connection with Respondent's implementation of the SEP or any of its components, and discuss how any such issues or problems were addressed. Unless otherwise agreed, the progress reports shall include for each reporting period the quantity and types of fluorescent bulbs, ballasts, other e-waste as well as other household hazardous wastes (as described in paragraph 7 above) collected during the reporting period and documentation showing that the materials are being properly managed and disposed of.
11. Respondent shall submit a SEP Completion Report within 90 days from the date when the recycling program(s) has been completed or when the minimum expenditure amount has been reached. This report shall contain at least the following information:
 - a. a detailed description of the SEP as implemented;
 - b. itemized costs incurred (i.e. materials, labor and/or other costs) which Respondent feels are eligible for SEP credit accompanied by copies of invoices, purchase orders, cancelled checks, receipts and/or other documentation that specifically identifies and itemizes the individual cost of the goods and services for which payment was made (if the itemization and documentation have been previously provided with the progress report, it will suffice to refer to the prior submittal);
 - c. a description of any problems encountered and the solutions thereto;
 - d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
 - e. a description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible). Unless otherwise agreed, the final report shall give, at a

minimum, the amount (in pounds or kilograms.) of fluorescent bulbs, ballasts, other e-waste and other household hazardous waste that is recovered/collected during the nine recycling events (if it is feasible to quantify this information), and a description of what the potential environmental benefits are from the recovery.

12. Following receipt of the Completion Report described in the paragraph above, EPA will notify Respondent in writing that it:

- a. accepts the Completion Report;
- b. rejects the Completion Report, with identification of any questions it has and/or deficiencies in the report, and EPA will grant Respondent an additional thirty (30) calendar days to answer any questions, to correct any deficiencies in the Completion Report, and to resubmit an amended report if required; or
- c. reject the report and seek stipulated penalties in accordance with Paragraph 26, below.

13. Respondent agrees that failure to submit any report required by this Consent Agreement in a timely manner shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties for such violation pursuant to the provisions set forth below, unless an extension has been granted as set forth in Paragraph 24.

14. If EPA elects to exercise option 12(c) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to that paragraph within 10 business days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 26 below.

15. Delays:

- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA in writing within 14 business days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to

comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in the completion of the SEP under this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
 - c. In the event that EPA does not agree that a delay in completing the SEP(s) in compliance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.
 - d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of the SEP required under this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.
16. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of its SEP, and documentation supporting information in reports submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA access to such documentation and shall provide copies of such documentation to EPA within ten (10) business days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO.
17. In all documents or reports, including, without limitation, any Progress Report and SEP Completion Report, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officials, officers, directors or agents, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are

significant penalties for submitting false information, including the possibility of fines and imprisonment.”

18. If in the future EPA believes that any of the information certified to, pursuant to Paragraphs 10, 11, 21, and 22 was inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA. If EPA later determines that Respondent was already required to perform the SEP, Respondent shall pay a stipulated penalty in the amount of \$68,281. This payment shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq., or any other applicable law.
19. 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 has made any material misrepresentations or has provided materially false information in any document submitted in compliance with the terms and conditions of this Consent Agreement.
20. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this administrative proceeding. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or state permit.
21. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, state or local law, regulation or other requirement; that with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP as set forth herein by any agreement, grant, or as injunctive relief in this or any other case; and that Respondent had not planned before September 2013 to perform any of the work that is part of this SEP. Furthermore, Respondent certifies that it in good faith believes that the SEP is in accordance with EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998).
22. Respondent further certifies that it has not received and is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

23. Respondent shall not use or expend any money received from the federal government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.
24. EPA, Region 2, may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to any of the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.
25. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether Respondent has complied with all the terms of the CA/FO and whether costs are creditable to the SEP shall be in the sole discretion of EPA.
26. Stipulated penalties will be calculated as follows:
- a. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described in Paragraph 7 above, and/or to the extent that the actual allowable expenditures for the SEP do not equal or exceed the required minimum expenditure for the SEP described in Paragraph 8 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) Except as provided in subparagraphs (ii) and (iii) immediately below, for a SEP which has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Sixty Eight Thousand and Two Hundred Eighty One Dollars (\$68,281)**. Payment shall be transmitted using the same procedure specified in Paragraph 2 above.
 - (ii) If the SEP is initiated, but is not completed for nine events, or if the residents do not utilize it, and:
 - a. EPA determines that Respondent made good faith and timely efforts to implement the project; and
 - b. Respondent certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, and EPA accepts that such expenditures are creditable to the SEP, Respondent shall not pay any stipulated penalty.
 - (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project,

Respondent shall pay a stipulated penalty in the amount determined as follows:

$$\text{Stipulated penalty} = \frac{[\$79,100 - \text{Creditable SEP Expenditure}] \times \$63,281}{\$79,100}$$

- b. Stipulated penalties shall accrue for failure to timely and accurately submit any Progress Report or SEP Completion Report. Respondent shall pay a stipulated penalty in the amount of \$200 per day for the first ten days, \$500 per day for days 11-30, and \$1000 per day after 30 days. Such penalties shall begin to accrue on the day after the Progress Report or Completion Report is due and shall continue to accrue until the report is submitted.
 - c. Unless Respondent writes EPA pursuant to Paragraph 26(d) below, Respondent shall pay stipulated penalties within 30 days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 2, herein. Interest and late charges shall be paid as stated in Paragraph 2, herein.
 - d. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).
 - e. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.
27. The Director, may, in his/her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA or for good cause as independently determined by the Complainant. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within twenty (20) calendar days of its receipt of such written notice from EPA.
28. Respondent agrees that EPA may inspect the nine locations of the community based recycling events at any time in order to confirm that the SEP has been initiated and is being implemented properly and in conformity with the requirements herein and any representations by Respondent. The provisions of this paragraph shall remain effective for the entire period that the SEP is being implemented.

29. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
30. Any public statement, oral or written, in print, film, or other media, made by Respondent, or by any officer, employee or agent of Respondent, that makes reference to the SEP under this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action initiated by the United States Environmental Protection Agency against the City of Buffalo, under the Resource Conservation and Recovery Act."
31. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) 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.
32. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
33. 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.
34. 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.
35. 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.
36. 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, 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.
37. 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.
38. Each party hereto shall bear its own costs and fees in this matter.

39. 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.

**Re: In the Matter of The City of Buffalo
Docket Number RCRA-02-2013-7108**

RESPONDENT:
The City of Buffalo


BY: 
(Authorized Signature)

NAME: Timothy A. Ball
(PLEASE PRINT)

TITLE: Corporation Counsel

DATE: 6/9/14

COMPLAINANT:


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

DATE: JUNE 10, 2014

Re: The City of Buffalo
Docket Number RCRA-02-2013-7108

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: Judith A. Enck
Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

DATE: June 11, 2014

Re: The City of Buffalo
Docket Number RCRA-02-2013-7108

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-02-2013-7108, 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 email:

and pouch mail

The Honorable Christine Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mail Code 1900R
Washington, DC 20460

Copy by Certified Mail,
Return Receipt Requested

Alan Gerstman, Esq.
Department of Law
City of Buffalo
65 Niagara Square
Buffalo, NY 14202-3379

Dated: New York, New York

June 12, 2014

Lynn Conway