



CITY OF BUFFALO  
DEPARTMENT OF LAW



BYRON W. BROWN  
MAYOR

TIMOTHY A. BALL  
CORPORATION COUNSEL

January 14, 2014

Regional Hearing Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Stuart N. Keith, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

RE: In the Matter of the CITY OF BUFFALO  
Proceeding under Section 3008 of the  
Solid Waste Disposal Act, as amended  
Docket No. RCRA-02-2013-7108

Dear Sirs:

Please find enclosed and herby served upon you, the Answer of the City of Buffalo in the above captioned proceeding.

Very truly yours,

TIMOTHY A. BALL  
Corporation Counsel

BY: ALAN P. GERSTMAN  
Assistant Corporation Counsel

cc.: Dore LaPosta, Director, Division of Enforcement and Compliance Assistance  
Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2014 JAN 15 P 12:16  
REGIONAL HEARING  
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2014 JAN 15 P 12:16  
REGIONAL HEARING  
CLERK

In the Matter of

ANSWER

**City of Buffalo**, Respondent

Docket No.  
RCRA-02-2013-7108

Proceeding Under Section 3008 of  
the Solid Waste Disposal Act, as  
amended.

---

The CITY OF BUFFALO, by its attorney, Timothy A. Ball, Corporation Counsel of the City of Buffalo, Alan P. Gerstman, Assistant Corporation Counsel, of counsel, as its ANSWER to the COMPLAINT of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, dated September 30, 2013, does hereby state as follows:

1. Admits the allegations numbered: 3, 6, 7, 8, 10, 13, 15, 16, 17, 18, 19, 20, 21, 32, 33, 35, 36, 43, 44, 45, 50, 51, 57, 58, 61, 62, 63, 64, and 65 therein.
2. Denies information or knowledge sufficient to form a belief as to the truth of paragraphs numbers 1, 2, .
3. Denies the allegations in paragraphs numbered 46, 52, 59, 66.
4. Admits so much of allegation 4, that states that the City of Buffalo is a city in Erie County, State of New York, denies information and knowledge sufficient to form a belief as to the estimate of the area of the city..
5. Denies so much of allegation 5 as alleges that the CITY owns or operates approximately 200 buildings, and further denies that it maintains any responsibility for any part of operation of libraries, museums, theaters or a zoo; the CITY

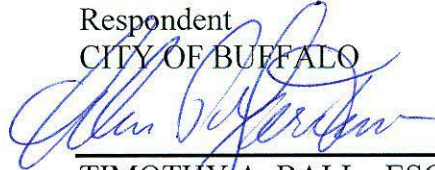
affirmatively states that with respect to such facilities the CITY has interests in real property upon which several such private not-for-profit enterprises operate; further alleges that it has no responsibility for operation of public libraries within the City pursuant to the New York State Cities and Counties Library Act of 1953; further alleges that it is unaware of a facility identified as a “hockey area”, but does admit that a building formerly known as the War Memorial Auditorium was used in part as a hockey arena until it was demolished prior to any period of time referred to in this Complaint or any prior consent decree, denies that the CITY has no interest in real property operated exclusively by the Buffalo School District under the provisions of New York State Education Law, but denies that the CITY has any authority or ability to manage, operate, oversee or in any manner exercise any authority of such buildings while in the use of the Buffalo School District; further alleges that various museum buildings and a zoo are located in parklands owned by the City, further alleges that such museums and zoo are private, not-for-profit or education corporations chartered by the New York State Department of Education and further alleges that the CITY has no authority to manage, operate or in any manner supervise and oversee the operations of such corporations; and denies knowledge as to the meaning of “General Service Buildings”.

6. Denies so much of allegation number 9 as alleges that the City of Buffalo generates pharmaceutical waste.
7. Denies so much of allegation 11 as characterizes waste streams as “significant”.
8. Denies so much of allegation 12 as refers to 200 buildings, restates and reiterates the matter related in paragraph 5, above, and admits the remainder.

9. Denies knowledge or information to form a belief as to the allegations numbered 22, 23, 24, 25, 28, 29, 30 and 31 as such relate to impressions, motivations, beliefs of an unnamed agent of the Complainant, and specifically deny so much of paragraph 22 as alleges that the EPA conducted inspections at “six municipal sites owned and operated by the City of Buffalo”.
10. Denies knowledge and information upon which to form to form a belief as to the hearsay contained allegation number 26
11. Denies knowledge and information upon which to form a belief with respect to allegation numbered 27 as it relates to a building under the exclusive custody, management, operation and control of the Buffalo Society of Natural Sciences, Inc.
12. Admit so much allegation 34 as states that “The IRL portion of the NOV-IRL was issued, and deny knowledge and information upon which to form a belief as to the Complainant’s reasons for issuance, and deny the characterizations contained in said paragraph;
13. Denies so much allegation 41 as states 200 buildings, and admit the remainder;
14. Admit so much of allegation 42 to the extent that an NOV-IRL dated March 21, 2012 making allegations was issued.
15. Decline to answer allegations numbered 14, 38, 39, and 40 as such constitute conclusions of law; Respondent refers the Court to the regulations cited for the actual texts of such.
16. Respondent further objects that the proposed penalties are arbitrary and capricious, unrelated to specific allegations in the complaint, disproportional to any violation alleged, and seek penalties for acts of corporations other than the Respondent.

WHEREFORE respondents pray that the complaint be dismissed in its entirety

Respondent  
CITY OF BUFFALO



---

TIMOTHY A. BALL., ESQ.  
Corporation Counsel City of Buffalo.  
ALAN P. GERSTMAN, Assistant  
Corporation Counsel, of Counsel

Office and Post Office Address

1100 City Hall  
65 Niagara Square,  
Buffalo, New York 14202  
Telephone: (716) 851-4315

Dated the 14th day of January 2014  
Buffalo, New York

TO: REGIONAL HEARING CLERK  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

DORE LAPOSTA, Director  
Division of Enforcement and Compliance Assistance  
Environmental Protection Agency, region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

STUART N. KEITH, ESQ.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866