



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 AUG 23 P 1:25  
REGIONAL HEARING  
CLERK

August 22, 2013

Craig A. Slater, Esq.  
The Slater Law Firm  
Attorney for Respondents  
26 Mississippi Street, Suite 400  
Buffalo, NY 14203-3014

Re: In the Matter of Amerimart Development Copr., et al.  
Docket No. RCRA-02-2012-7501  
Amended Complaint to Remove Commercial Realty Fund II

Dear Mr. Slater:

As we discussed, please find enclosed an Amended Complaint that removes references to Respondent, Commercial Realty Fund II, from the caption of the Complaint, as well as in paragraphs 4 c., 11, 20 and paragraphs 227 through 274 in Counts 12 and 13, because each of these paragraphs indicated that Respondent Commercial Realty Fund II was an owner of the UST systems at the A & M Gas Mart Facility in Buffalo, NY. The removal of this Respondent is based on the information and documentation you provided that demonstrates that Commercial Realty Fund II was not an owner or operator of the underground storage tanks (at the A & M Gas Mart Facility in Buffalo, NY) during the relevant time periods for which violations were alleged in the Complaint.

If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

Bruce Aber  
Assistant Regional Counsel

Enc.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
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**AMENDED COMPLAINT, COMPLIANCE**  
**ORDER**  
**AND NOTICE OF OPPORTUNITY**  
**FOR HEARING**

In the Matter of: Amerimart Development Company, Inc., Qual-Econ Lease Co., Inc., MJG Enterprises Inc., and Clear Alternative of Western NY, Inc. (dba G & G Petroleum)

Respondents.

Docket No. RCRA-02-2012-7501

Proceeding Under Section 9006 of the Solid Waste Disposal Act, as amended .

**AMENDED COMPLAINT**

Complainant hereby alleges as and for her complaint against Respondents:

1. This administrative proceeding is being instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Section 6901 et seq. (the "Act").
2. This proceeding seeks to assess a civil penalty against Respondents for violations of the requirements or standards promulgated by the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 9003 of the Act, 42 U.S. C. § 6991b, and to require compliance with said requirements or standards.
3. Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA"), has been duly delegated the authority to institute this action.
4. Respondents are:
  - a) Amerimart Development Company, Inc. (hereinafter "Amerimart"). The mailing addresses of Amerimart are: P.O. Box 473, Grand Island, NY 14072 and P.O. Box 811, Tonawanda, NY 14150. The street addresses of Amerimart are: 2320 W. Oakfield Rd., Grand Island, NY 14072 and 1066 Sheridan Drive, Tonawanda , N.Y. 14150.

b) Qual-Econ Lease Co., Inc. (also referred to as “Qual-Econ” or “Qual Econ Leasing Co.”). The mailing address of Qual-Econ is P.O. Box 473, Grand Island, NY 14072. The street addresses of Qual-Econ are: 2320 West Oakfield Road, Grand Island, NY 14072 and 14 Colonial Drive, Tonawanda, NY 14150.

c) MJG Enterprises, Inc., 14 Colonial Drive, Tonawanda, NY 14150; and

d) Clear Alternative of Western NY, Inc. (doing business as “G & G Petroleum”), 3109 Delaware Avenue, Kenmore, N.Y. 14217 (corporate address).

5. a) G & G Petroleum is a trade name for Clear Alternative of Western NY, Inc.

b) G & G Petroleum facility address is 1531-1543 Niagara Street, Buffalo, NY 14213.

6. Qual-Econ Lease Co., Inc. owns the property and the UST systems at the G & G’s Petroleum facility at 1531- 1543 Niagara Street, Buffalo, New York 14213, and at two Amerimart Development Co., Inc.-owned and/or operated service stations (Super Stop/Amerimart, 1545 Broadway, Buffalo, NY; and Amerimart, 5565 Millersport Highway, Amherst, NY).

7. Qual-Econ. Lease Co., Inc. owns the property at the Walden Convenient Mart, 599 Walden Avenue, Buffalo, NY 14150.

8. Qual-Econ Lease Co., Inc. has a legal relationship with Amerimart, as evidenced by:

(a) ownership of property and USTs at Amerimart-operated service stations: (Super Stop/Amerimart, 1545 Broadway, Buffalo, NY and Amerimart, 5565 Millersport Highway, Amherst, NY); and

(b) the appearance of Qual-Econ Lease Co., Inc.’s name on Invoices as the entity to be billed for the work performed by a contractor, Reid Petroleum, at several Amerimart-operated service stations.

9. Respondent Amerimart Development Company, Inc. (“Amerimart”) is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

10. Respondent Qual-Econ is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

11. Respondent MJG Enterprises, Inc. is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

12. Respondent Clear Alternative of Western NY, Inc. is, and has been, a for-profit corporation organized pursuant to the laws of the State of New York.

13. Each of the respondents is a “person” within the meaning of Section 9001(6) of the Act, 42 U.S.C. § 6991(6), and of 40 C.F.R. § 280.12.

14. Each of the respondents is, or has been for the times relevant to the matters alleged below, in the business of owning and/or operating retail gasoline stations in New York State.

15. Each of the respondents is, or has been for the times relevant to the matters alleged below, an “owner” and/or “operator” of underground storage tanks” (“USTs”) or “UST system”, as those terms are defined in Section 9001 of the Act, 42 U.S.C. Section 6991, and 40 C.F.R. Section 280.12, that are located at one or more of the following facilities identified within this Complaint:

- (1) Texas Gas Convenient Mart, 473 East Delavan Avenue, Buffalo, New York
- (2) Super Stop/Amerimart, 1545 Broadway, Buffalo, New York
- (3) Amerimart, 5565 Millersport Highway, Amherst, New York
- (4) A & M Gas Mart, 2756 Bailey Avenue, Buffalo, New York.
- (5) Sheridan Convenient Mart, 1066 Sheridan, Tonawanda, New York
- (6) Walden Convenient Mart, 599 Walden Avenue, Buffalo, New York
- (7) Herrscher’s Express Mart, 4291 Maple Road, Amherst, New York
- (8) G & G Petroleum, 1531-1543 Niagara Street, Buffalo, New York

16. Respondent Qual-Econ has been the owner and/or operator of the UST systems at a retail gasoline station, known as Super Stop/Amerimart, the address of which is 1545 Broadway, Buffalo, NY 14215.

17. Respondent Qual-Econ has been the owner and/or operator of the UST systems at a retail gasoline station, Amerimart, 5565 Millersport Highway, Amherst, NY 14226 (hereinafter “Amerimart-Amherst”)

18. Respondent Qual-Econ has been the owner and/or operator of the UST systems at a retail gasoline station, known as G & G Petroleum, the address of which is 1531-1543 Niagara Street, Buffalo, NY 14213.

19. Respondent MJG Enterprises, Inc. has been the owner and/or operator of the UST systems at a retail gasoline station, known as Herrscher’s Express Mart, the address of which is 4291 Maple Road, Amherst, NY 14226 (hereinafter “Herrscher’s Express Mart”).

20. Respondent Clear Alternative of Western NY, Inc, has been the owner and/or operator of the UST systems at a retail gasoline station, known as G & G Petroleum, the address of which is 1531-1543 Niagara Street, Buffalo, NY 14213.

21. Pursuant to 40 C.F.R. §280.12, EPA is the “implementing agency” responsible for enforcing the requirements of the Act and the regulations promulgated pursuant thereto which are the subject of this Complaint.

22. Pursuant to Sections 9003 of the Act, 42 U.S.C. §6991b, EPA promulgated rules setting forth requirements for owners and operators of UST systems, codified at 40 C.F.R. Part 280. These rules include but are not limited to release detection, record-keeping, and upgrade requirements.

23. Forty C.F.R. § 280.12 defines an underground storage tank or UST as any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

24. Forty C.F.R. § 280.12 defines an “existing tank system” as a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.

25. Forty C.F.R. § 280.12 defines a “new tank system” as a tank system used to contain an accumulation of regulated substances or for which installation has commenced after December 22, 1988.

26. Pursuant to 40 C.F.R. §280.20(c)(1)(ii), owners and operators of new UST systems must use overfill prevention equipment that will: (A) Automatically shut off flow into the tank when the tank is no more than 95% full; or (B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or (C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

27. Pursuant to 40 C.F.R. § 280.21(a), not later than December 22, 1998, all existing UST systems had to comply with: a) the new UST system performance standards set forth in 40 CFR § 280.20, b) the upgrading requirements set forth in 40 C.F.R. §§ 280.21(b) through 280.21(d), or the closure requirements of 40 C.F.R. Part 280, Subpart G.

28. Pursuant to 40 C.F.R. §280.21(d), all existing UST systems must comply with the new UST system overfill prevention equipment requirements specified in 40 C.F.R. §280.20(c).

29. Pursuant to 40 C.F.R. §280.34, owners and operators of UST systems must cooperate fully with inspections by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Act.

30. Pursuant to 40 C.F.R. §280.34(b)(4) owners and operators of UST systems must maintain records of recent compliance with release detection requirements (40 C.F.R. § 280.45).

31. Pursuant to 40 C.F.R. §280.34(c) owners and operators of UST systems must keep the records required either: (1) at the UST site and immediately available for inspection by the

implementing agency; or (2) at a readily available alternative site and be provided for inspection to the implementing agency.

32. Pursuant to 40 C.F.R. §280.45(a), owners and operators of UST systems must maintain, for 5 years from the date of installation, or another reasonable period of time determined by the implementing agency, records of all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer.

33. Pursuant to 40 C.F.R. §280.45(b), owners and operators of UST systems must maintain, for at least one year, the results of any sampling, testing or release detection monitoring.

34. Pursuant to 40 C.F.R. §280.41(a), owners and operators of petroleum UST systems must monitor tanks at least every 30 days for releases using one of the methods listed in 40 C.F.R. §280.43 (d) through (h), except that other methods may be used in circumstances that are inapplicable to the UST systems cited in this civil administrative proceeding.

35. The underground piping for which violations are alleged in the counts of this Complaint is the type referred to as “pressurized” piping.

36. Pursuant to 40 C.F.R. §280.41(b)(1), underground piping that conveys regulated substance under pressure must: i) be equipped with an automatic line leak detector conducted in accordance with §280.44(a); and ii) have an annual line tightness test conducted in accordance with §280.44(b) or have monthly monitoring conducted in accordance with §280.44(c).

37. On or about each of the following dates, EPA sent RCRA § 9005 Information Request Letters (hereinafter “IRLs”) to Bernard Ferer, President, Amerimart Development Company, Inc., or Michael J. Geiger, of G & G Petroleum, in order to determine each company’s compliance with the requirements of Act and 40 C.F.R. Part 280 pertaining to underground storage tanks at one or more of the following service stations: Texas Gas Convenient Mart, Super Stop/Amerimart, Amerimart-Amherst, A & M Gas Mart, Sheridan Convenient Mart, Walden Convenient Mart, Herrscher’s Express Mart, and G & G Petroleum facility. These IRLs were sent on the following dates:

- a) On January 7, 2008, to Bernard Ferer, seeking information on “Walden Convenient Mart” only;
- b) On July 2, 2008, to Bernard Ferer, seeking information on “All Amerimart Facilities”;
- c) On September 18, 2008, to Bernard Ferer, seeking follow-up information on “All Amerimart Facilities”;

- d) On June 8, 2009, August 11, 2009 and September 23, 2009 to Michael J. Geiger seeking information on "G & G Petroleum;"
- e) On January 6, 2010, to Bernard Ferer, seeking follow-up information on "All Amerimart Facilities;"
- f) On June 14, 2010, to Bernard Ferer, seeking follow-up information on "All Amerimart Facilities;"
- g) On September 30, 2011 to Bernard Ferer, seeking follow-up information on "All Amerimart Facilities;" and
- h) On January 25, 2012 to Bernard Ferer, seeking follow-up information on "Herrscher's Express Mart."

38. Respondent Amerimart's responses to the aforementioned Section 9005 IRLs were provided, on or about the following dates: a) February 8, 2008; b) August 7, 2008; c) October 7 & 11, 2008, d) December 8, 2009, e) March 26, 2010, f) July 5, 2010, g) October 15, 2011, and h) February 22, 2012.

39. In Respondent Amerimart's February 8, 2008, August 7, 2008, and March 26, 2010 responses to EPA's January 7, 2008, July 2, 2008 and/or January 6, 2010 Information Request Letters, Bernard Ferer, the President of the company, states that Amerimart owns all the USTs at each of the following facilities:

- (1) Texas Gas Convenient Mart, 473 East Delavan Avenue, Buffalo, New York
- (2) Super Stop/Amerimart, 1545 Broadway, Buffalo, New York
- (3) Amerimart, 5565 Millersport Highway, Amherst, New York
- (4) A & M Gas Mart, 2756 Bailey Avenue, Buffalo, New York.
- (5) Sheridan Convenient Mart, 1066 Sheridan Drive, Tonawanda, New York
- (6) Walden Convenient Mart, 599 Walden Avenue, Buffalo, New York
- (7) Herrscher's Express Mart, 4291 Maple Road, Amherst, New York

40. In Respondent Amerimart's February 8, 2008 response to questions 19 and 21 of EPA's January 7, 2008 IRL, Bernard Ferer states that Amerimart operates the UST systems at all the facilities identified in the paragraph above, except for Herrscher's Express Mart.

41. Each of the aforementioned IRL responses, in paragraph 41 above, was prepared and certified to be accurate by Bernard Ferer in the course of carrying out his duties and responsibilities with regard to the ownership and/or operation of the UST systems at the Facilities identified in paragraph 41 above.

42. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, authorized representatives of EPA inspected on September 28, 2006, December 11, 2007, August 14, 2007, March 21, 2008,

August 13-14, 2008, May 24, 2010, August 4, 2011, and August 18, 2011 one or more of the following eight facilities, in order to determine its compliance with the Act and 40 C.F.R. Part 280:

- (1) Texas Gas Convenient Mart, 473 East Delavan Avenue, Buffalo, New York
- (2) Amerimart, 5565 Millersport Highway, Amherst, New York
- (3) Super Stop/Amerimart, 1545 Broadway, Buffalo, New York
- (4) A & M Gas Mart, 2756 Bailey Avenue, Buffalo, New York.
- (5) Sheridan Convenient Mart, 1066 Sheridan Drive, Tonawanda, New York
- (6) Walden Convenient Mart, 599 Walden Avenue, Buffalo, New York
- (7) Herrscher's Express Mart, 4291 Maple Road, Amherst, New York
- (8) G & G Petroleum, 1531-1543 Niagara Street, Buffalo, New York

COUNTS 1 to 4

Respondent Amerimart Development Company, Inc.  
Texas Gas Convenient Mart  
473 East Delavan Avenue, Buffalo, NY 14215

**Count 1, Texas Gas - Failure to Use Overfill Prevention Equipment On New Tank System**

43. Complainant realleges paragraphs 1 through 42, above, with the same force and effect as if fully set forth below.

44. Respondent Amerimart has owned and/or operated and continues to own and/or operate three petroleum UST systems (two 10,000 gallon gasoline USTs and one 3,000 gallon kerosene UST) located at 473 East Delavan Avenue, Buffalo, NY 14215.

45. In Amerimart's August 7, 2008 response to EPA's July 2, 2008 IRL, Bernard Ferer states that Amerimart acquired ownership of the USTs at the Texas Gas Convenient Mart ("Texas Gas") facility on January 2, 1998.

46. Both the New York State Department of Environmental Conservation Petroleum Bulk Storage ("NYSPBS") Registration Certificate, dated August 16, 2007 and the NYSPBS Application form, dated July 20, 2007, for this facility were signed by Bernard Ferer, and both indicate that mailing and correspondence should be sent to Bernard Ferer, Amerimart Development Company, Inc., P.O. Box 811, 1066 Sheridan Drive, Tonawanda, NY 14150.

47. The NYSPBS Registration Certificate and NYSPBS Application form for this facility indicate that there are three UST systems (two 10,000 gallon gasoline USTs and one 3,000 kerosene UST). These tanks are also referred to as Tanks 1, 2 and 5, respectively.

48. An authorized inspector of EPA inspected this facility on August 14, 2008.

49. At the time of EPA's inspection of the Texas Gas facility, the UST systems were in use.

50. The 3,000 gallon kerosene UST at this facility was installed on or about November 1, 1989 and therefore is considered a "new tank system" pursuant to 40 C.F.R. §280.12.

51. Pursuant to 40 C.F.R. § 280.20(c)(1)(ii), owners and operators of new UST systems must use overfill prevention equipment on each UST system.

52. The NYSPBS Registration Certificate, dated August 16, 2007, and the NYSPBS Application form, dated July 20, 2007, indicate that there was no overfill device on the 3,000 gallon kerosene UST system at the Texas Gas facility.

53. The August 14, 2008 inspection of the Texas Gas facility found no evidence of overfill prevention on the 3,000 gallon kerosene UST.

54. Respondent Amerimart's August 7, 2008 response to EPA's July 2, 2008 IRL states that the type of overfill prevention equipment that Respondent Amerimart employed for each UST system at the Texas Gas facility was a "fill pipe device."

55. EPA's January 6, 2010 IRL letter, question 3, requested clarification on the overfill prevention for the three UST systems at the Texas Gas facility.

56. Respondent Amerimart's March 26, 2010 response to question 3 of EPA's January 6, 2010 IRL states "There has been no overfill device added because the device that does not allow the tank[s] to fill is presently working very well."

57. A "fill pipe device" is not an overfill prevention equipment as specified at 40 C.F.R. §280.20( c) (1)(ii)(A) thru (C).

58. Respondent Amerimart's March 26, 2010 response to EPA's January 6, 2010 IRL states: "We have proceeded to order three drop tubes with shut-off through Reed Petroleum for the . . . three tanks located at 473 East Delevan."

59. Respondent Amerimart's July 5, 2010 IRL response documents that an overfill device was installed on the 3,000 gallon kerosene tank (also referred to as "tank 5"), on June 26, 2010.

60. An Invoice, dated July 9, 2010, for the installation of the overfill equipment at the Texas Gas facility indicates that Qual-Econ Lease Co. was billed for payment of the work.

61. Between at least August 14, 2008 and June 26, 2010 there was no adequate overfill device for the 3,000 gallon tank (Tank 5) at the Texas Gas facility.

62. Respondent Amerimart's failure, between at least August 14, 2008 and June 26, 2010, to use overfill prevention equipment for the 3,000 gallon UST at the Texas Gas facility, constitutes a violation of 40 C.F.R. § 280.20(c)(1)(ii).

**Count 2, Texas Gas — Failure to Use Overfill Prevention Equipment On Existing Tank Systems**

63. Complainant realleges paragraphs 1 through 62, above, with the same force and effect as if fully set forth below.

64. The two 10,000 gallon gasoline UST systems at this facility were installed prior to 1988 and are considered "existing tank systems" within the meaning of 40 C.F.R. §280.12.

65. Pursuant to 40 C.F.R. §280.21(d), all existing UST systems must comply with new UST system spill and overfill prevention requirements specified in §280.20(c).

66. The NYSPBS Registration Certificate, dated August 16, 2007 and the NYSPBS Application form, dated July 20, 2007, indicate that there was no overfill device on the two 10,000 gallon UST systems at this facility.

67. The August 14, 2008 inspection of Texas Gas found no evidence of overfill prevention for the two gasoline USTs.

68. In Respondent Amerimart's July 5, 2010 IRL response, a July 9, 2010 Invoice (invoice #39923) from Reid Petroleum shows that overfill devices were installed on the two 10,000 gallon UST systems (also known as "Tanks 1 & 2") on one of the following dates: April 12, 201, April 26, 2010 or June 25, 2010.

69. Between at least August 14, 2008 and April 12, 2010 there was no adequate overfill device for the two 10,000 gallon tanks at the Texas Gas facility.

70. Respondent Amerimart's failure, between at least August 14, 2008 and April 12, 2010, to use overfill prevention equipment for the two 10,000 gallon USTs located at the Texas Gas facility, constitutes a violation of 40 C.F.R. § 280.21(d).

**Count 3, Texas Gas — Failure to Inspect Cathodic Protection System of the UST systems within 6 months of Installation and Every 3 years Thereafter and To Maintain Records of Results of Testing from Last 2 Triennial Inspections**

71. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

72. Forty C.F.R. § 280.31 provides, in part, that “[a]ll owners and operators of steel UST systems with corrosion protection must comply [with requirements specified in said regulation] to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances....”

73. Forty C.F.R. § 280.31(b)(1) provides in relevant part, that “[a]ll UST systems equipped with cathodic protection...must be tested [for proper operation] within 6 months of installation and at least every 3 years thereafter....”

74. The two 10,000 gallon tanks and the 3,000 gallon tank at the Texas Gas facility are “steel UST system[s] with corrosion protection...used to store [a] regulated substance[.]” within the meaning of 40 C.F.R. § 280.31.

75. The two 10,000 gallon gasoline tanks (also referred to as Tanks 1 and 2) at this facility use piping with metallic components to deliver gasoline to dispensers.

76. The two 10,000 gallon tanks at this facility were installed on or about October 1, 1971.

77. The piping on the two 10,000 gallon tanks (Tanks 1 & 2) at the Texas Gas facility was required to be equipped with cathodic protection by no later than December 22, 1998.

78. The 3,000 gallon kerosene tank (also referred to as Tank 5) at this facility is constructed of fiberglass coated steel with sacrificial anodes.

79. The 3,000 gallon tank (Tank 5) at the Texas Gas facility was installed on November 1, 1989 and was equipped with a cathodic protection system at that time.

80. Respondent Amerimart was required to test for the proper operation of the cathodic protection on the piping for the two 10,000 gallon tanks starting on or about June 22, 1999 and continuing at least every three years thereafter.

81. As of the date of EPA’s August 14, 2008 inspection at the Texas Gas facility, the last two cathodic protection tests for the piping of the two 10,000 gallon USTs systems were required by June 22, 2005 and June 22, 2008.

82. Respondent Amerimart was required to test for the proper operation of the cathodic protection on the tank of the 3,000 gallon UST system starting on or about May 1, 1990 and continuing at least every three years thereafter.

83. As of the date of EPA’s August 14, 2008 inspection at the Texas Gas facility, the last two cathodic protection tests for the tank of the 3,000 gallon UST system were required by May 1, 2005 and May 1, 2008.

84. During EPA's August 14, 2008 inspection at the Texas Gas facility, there was no evidence that corrosion protection tests had ever been performed on the steel piping of the two 10,000 gallon UST systems and on the tank of the 3,000 gallon UST system.

85. During EPA's August 14, 2008 inspection at the Texas Gas facility, Respondent's representative could not provide records of the results of the last two triennial inspections for the piping of the two 10,000 gallon UST systems and the tank of the 3,000 gallon UST system.

86. EPA's January 6, 2010 IRL asked whether there had been any CP testing done at this facility.

87. Respondent Amerimart's March 26, 2010 response to EPA's January 2010 IRL includes documentation that cathodic testing for the three UST systems was performed on March 19, 2010.

88. Respondent did not have a qualified cathodic protection tester inspect the cathodic protection system of the two 10,000 gallon tanks and the tank itself of the 3,000 gallon UST system within 6 months of installation.

89. Between at least May 1, 2008 (for the 3,000 gallon UST system) and March 19, 2010, Respondent Amerimart did not have a qualified cathodic protection tester inspect the cathodic protection system for the tank of the 3,000 gallon UST system at the Texas Gas facility.

90. Between at least June 22, 2008 (for the two 10,000 gallon UST systems) and March 19, 2010, Respondent Amerimart did not have a qualified cathodic protection tester inspect the cathodic protection system for the piping of the two 10,000 gallon UST systems at the Texas Gas facility.

91. Between at least May 1, 2008 (for the 3,000 gallon UST system) and March 19, 2010, Respondent Amerimart did not maintain records of the results of testing from the last two triennial inspections of the tank of the 3,000 gallon UST system at the Texas Gas facility.

92. Between at least June 22, 2008 (for the two 10,000 gallon UST systems) and March 19, 2010, Respondent Amerimart did not maintain records of the results of testing from the last two triennial inspections of the piping of the two 10,000 gallon UST systems at the Texas Gas facility.

93. Respondent Amerimart's failure to have a qualified cathodic protection tester inspect the cathodic protection system for piping of the two 10,000 gallon UST systems and the tank of the 3,000 gallon UST system within six months of installation and every 3 years thereafter constitutes a violation of 40 C.F.R. Section 280.31(b).

94. Respondent Amerimart's failure to maintain records of the results of testing from the last two triennial inspections of the piping of the two 10,000 gallon UST systems and the tank of the 3,000 gallon UST system constitutes a violation of 40 C.F.R. §280.31(d)(2).

**Count 4, Texas Gas — Failure to Conduct an Annual Test of the Operation of the Automatic Line Leak Detectors for Pressurized Piping for UST systems and to Maintain Records of the Test**

95. Complainant realleges paragraphs 1 through 94, above with the same force and effect as if fully set forth below.

96. Pursuant to 40 C.F.R. §280.41(b), owners and operators of underground piping that routinely contains regulated substances must monitor for releases in accordance with this section.

97. The two 10,000 gallon tanks at this facility had underground piping that routinely contained regulated substances.

98. The 3,000 gallon kerosene tank at this facility had suction piping.

99. The two 10,000 gallon USTs at this facility had pressurized piping.

100. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

101. As of December 22, 1999 the piping for the two 10,000 gallon USTs was equipped with automatic line leak detectors.

102. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

103. Amerimart was required to conduct an annual test of the operation of the automatic line leak detector for the two 10,000 gallon UST systems starting no later than December 22, 1999 and continuing every year thereafter.

104. Respondent Amerimart's August 7, 2008 response to question 14 of EPA's July 2, 2008 IRL states that the operation of the automatic line leak detectors (ALLDs) for the pressurized piping on the two 10,000 gallon tanks “are scheduled to be tested this [August 2008] month.”

105. Respondent Amerimart's October 7, 2008 IRL response provides ALLD test results for October 1, 2008, but no previous test result was provided.

