

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

REGIONAL HEARING
CLERK

2014 APR - 1 AM 9: 58

U.S. Environmental
Protection Agency-Reg 2

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

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-02-2012-7501

PRELIMINARY STATEMENT

This civil administrative proceeding for injunctive relief and the assessment of a civil penalty was initiated pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Section 6901 et seq. (hereinafter referred to as the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), issued a "Complaint, Compliance Order, and Notice of Opportunity for Hearing" (ie., "Complaint") on or about June 29, 2012 to the above-named Respondents. The Complaint alleged violations of the Act and the federal underground storage tank regulations promulgated at 40 C.F.R. Part 280. The Complaint was amended on August 21,

2013 for the sole purpose of removing a Respondent, Commercial Realty Fund II, from the original Complaint. Unless otherwise specified, references to the Complaint hereinafter refer to the amended Complaint.

The Complainant and the Respondent Amerimart Development Company, Inc, have been able to reach a settlement and both parties enter into this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. subsections 22.18(b)(2) &(3) of the CROP. Complainant and Respondent agree that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving EPA’s claims against Amerimart Development Company, Inc. without further litigation. The CA/FO does not resolve EPA’s claims against any other Respondent in this civil administrative matter.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the Amerimart Development Company, Inc. (hereinafter “Respondent” or “Respondent Amerimart” or “Amerimart”), whose corporate headquarters address is 1066 Sheridan Drive, Tonawanda, NY 14150. Respondent has at various times used the following other address: 2320 West Oakfield Road, Grand Island, NY 14072.
2. The Respondent is a “person” as that term is defined in Section 9001(5) of the Act, 42 U.S.C. Section 6991(5), and in 40 C.F.R. Section 280.12.

3. The Respondent Amerimart has been, for the times relevant to the violations for which the company is alleged to be liable in Counts 1 through 4 and 12 through 22 of the Complaint, 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.

4. Respondent Amerimart has in the past been the sole owner and operator of UST systems at the following four facilities identified in the Complaint as follows:
 - (a) Texas Gas Convenient Mart, 473 East Delavan Avenue, Buffalo, N.Y.
(PBS #9-221090) (Counts 1 through 4);
 - (b) A & M Gas Mart, 2756 Bailey Avenue, Buffalo, N.Y.
(PBS #9-222666) (Counts 12 and 13);
 - (c) Sheridan Convenient Mart, 1066 Sheridan, Tonawanda, N.Y.
(PBS #9-448427) (Counts 14 through 17); and
 - (d) Walden Convenient Mart, 599 Walden Avenue, Buffalo, N.Y.
(PBS # 9-459690) (Counts 18 through 22).

5. During 2006, 2007, 2008, 2010 and 2011, pursuant to Section 9005 of the Act, 42 U.S.C. Section 6991d, authorized representatives of EPA inspected federally regulated UST systems located at each of the four facilities (identified in paragraph 4 above) owned and operated by the Respondent Amerimart

Development Company, Inc., in Buffalo, NY and/or Tonawanda, NY, in order to determine compliance with subtitle I of the Act and 40 C.F.R. Part 280.

6. EPA sent information request letters (“IRLs”) to Respondent Amerimart in 2008, 2009, 2010, 2011 and 2012 to determine the status of Respondent’s compliance with the Act and federal UST regulations.
7. Respondent Amerimart submitted responses to EPA’s IRLs in 2008, 2009, 2010, 2011 and 2012.
8. Based on the findings of EPA’s inspections of Respondent’s UST systems located at the facilities identified in paragraph 4 above, and the information and documentation contained in the Respondent’s responses to EPA’s IRLs, EPA issued the original Complaint on June 29, 2012 (later amended on August 21, 2013) which alleged that Respondent Amerimart committed the following violations of UST requirements in 40 C.F.R. Part 280:
 - (i) Failure to perform release detection and to maintain release detection records for tanks (Sections 280.41(a), 280.34(b)(4), 280.34(c) and 280.45);
 - (ii) Failure to perform release detection and to maintain release detection records for pressurized piping (Sections 280.41(b)(1), 280.34(b)(4), 280.34(c), and 280.45);
 - (iii) Failure to use overfill prevention equipment for UST systems (Sections 280.20(c) (1)(ii) and 280.21(d)); and
 - (iv) Failure to conduct triennial testing of cathodic protection (280.31(b)) for steel UST systems.

