

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of :
Amerimart Development Company, :
Inc., Qual-Econ Lease Co., Inc., : **JOINT MOTION**
Commercial Realty Fund II, MJG : RCRA-02-2012-7501
Enterprises, Inc., and Clear :
Alternative of Western, NY, Inc. :
(d/b/a G & G Petroleum), :
: :
: :
Respondents :
: :
Proceeding Under Section 9006 :
Of the Solid Waste Disposal Act :
as amended. :
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Joint Motion for Reappointment of ADR Neutral and for Extension of time to file fully executed Consent Agreement/Final Order

This is in response to (i) your Honor's Report Recommending Termination of Alternative Dispute Resolution Process and Assignment of a Judge for Litigation, dated February 14, 2013 and (ii) your Honor's Initial Prehearing Order, dated February 25, 2013.

With respect to the Report Recommending Termination of Alternative Dispute Resolution (ADR), both parties file this motion pursuant to 40 C.F.R. Section 22.16(a) and 22.4(c)(2) requesting that your Honor reappoint the ADR neutral mediator, Judge Buschmann, for an additional forty-five(45) days, from March 18, 2013 to May 2, 2013.

The reason for this request is that progress towards settlement had been made during ADR, but additional time is needed. Moreover, during the end of the ADR period on or about February 14, 2013, Complainant's counsel spoke by phone with mediator Buschmann to request an additional 30 days (from February 18, 2013 to March 18, 2013), because both parties wanted the ADR neutral to hear each party's position with respect to liability of a particular Respondent. The parties would like the neutral

Judge to offer an opinion as to the strengths and/or weaknesses of the argument for or against liability of a particular respondent. Additionally, the parties needed some additional guidance with respect to some other complex issues pertaining to settlement. At the time of the phone call on February 14, 2013, the ADR neutral had indicated a willingness to extend ADR. Given the number of respondents, the ability to pay and complexity of issues involved, the additional time requested is warranted.

Another reason for reappointment of ADR is that the ADR process for the parties was negatively impacted by Hurricane Sandy and also the retirement of Judge Gunning, who had conducted a few ADR sessions with the parties pursuant to your Order of October 18, 2012, but left without being able to help the parties resolve the remaining issues. The Redesignation of mediator Buschmann commenced by Order of December 19, 2012. Given the holidays, the parties were not able to schedule a first session with Judge Buschmann until after the new year.

Based on the foregoing, the parties request that ADR be continued for an additional forty-five (45) days from March 18, 2013 to May 2, 2013. This would allow the parties to receive a little over the full four months (120 days) of ADR since the Redesignation Order of December 19, 2012 designated Judge Buschmann as mediator for this case.

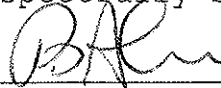
With respect to the Initial Prehearing Order, the parties move, pursuant to 40 C.F.R. Section 22.16(a) and 22.17(b) for an extension of time to file a fully executed Consent Agreement and Final Order, for an additional sixty (60) days, from March 25, 2013 until May 25, 2013.

The undersigned submits that the requisite good cause requirement of 40 C.F.R. Section 22.7(b) exists: neither party would suffer prejudice because the reappointment of ADR would allow both of the parties additional time to work through difficult issues towards settlement; and the Court should not be prejudiced, because the extension of the deadline to file a Consent Agreement and Final Order does not require the Court to alter its position (such as changing a prehearing schedule or a hearing date, both of which have not been scheduled yet).

Moreover, this Joint Motion is submitted well in advance of the March 25, 2013 deadline which your Honor set in the February 25, 2013 Order.

Dated: March 11, 2013
New York, New York

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "BA", is written above a horizontal line.

Bruce Aber
Counsel for Complainant

In the Matter of Amerimart Development Company, Inc., et al.
Docket No. RCRA-02-2012-7501

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Joint Motion for Reappointment of Alternative Dispute Resolution and Extension of time to file fully Executed CAFO, dated March 11, 2013, bearing the above-referenced docket number, in the following manner to the addressees listed below:

Original by Regular Mail

To: Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460


Copy by Facsimile
& Certified Mail/Return
Receipt Requested:

Honorable Susan L. Biro
Chief, Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900 L
1200 Pennsylvania Avenue, N.W.,
Washington, D.C. 20460

Copy by Facsimile &
Certified Mail/Return Receipt
Requested:

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

Dated: March 11, 2013
New York, New York


Mildred Baez, Administrative Assistant
Waste & Toxic Substance Branch