



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

RECEIVED BY OALJ 2013 AUG 27 AM 11:57

In the Matter of:
Amerimart Development Company, Inc.,
Qual-Econ Lease Co., Inc., Commercial
Realty Fund II, MJG Enterprises, Inc., and
Clear Alternative of Western, NY, Inc.,
(d/b/a G & G Petroleum),
Respondents.

Docket No. RCRA-02-2012-7501

ORDER GRANTING MOTION TO AMEND COMPLAINT

On July 16, 2012, the Director of the Division of Enforcement and Compliance Assistance for U.S. Environmental Protection Agency Region 2 ("Complainant"), initiated this action by filing a Complaint against Amerimart Development Company, Inc., Qual-Econ Lease Co., Inc., Commercial Realty Fund II, MJG Enterprises Inc., and Clear Alternative of Western NY, Inc., (dba G & G Petroleum) (collectively "Respondents"). Respondents filed their Answers to the Complaint on September 25, 2012. The parties then engaged in Alternative Dispute Resolution from October 18, 2012, to February 15, 2013, and again from March 22, 2013, to May 10, 2013.

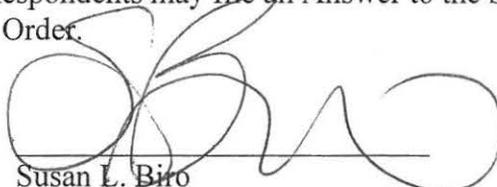
On August 22, 2013, Complainant served the undersigned with a Status Report and Motion to Amend Complaint ("Motion"), together with an Amended Complaint. Complainant reports that the parties have prepared a Consent Agreement and Final Order ("CAFO"), but implies that the CAFO is contingent upon the Complaint being amended. Mot. at 1. Complainant states "[t]he Amended Complaint includes the following changes:"

- 1) removal of 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 was an owner of the UST systems at the A & M Gas Mart facility in Buffalo, NY;
2) update allegations, including the above-mentioned paragraphs, where applicable, to indicate that Respondent Amerimart Development Corp. is both an owner and operator of the UST systems at the A & M Gas Mart facility in Buffalo, NY.

Mot. at 1. Complainant claims the amendments reflect new information provided by Respondents after the Complaint was filed. Mot. at 2. Complainant states that Respondents' concur with the Motion.

Section 22.14(c) of the Rules of Practice (40 C.F.R. § 22.14(c)) provides that once an answer has been filed, the complainant may amend the complaint only upon motion granted by the Presiding Officer. However, the Rules of Practice provide no standard for determining when leave to amend should be granted. Rule 15(a) of the Federal Rules of Civil Procedure concerning amended pleadings provides that "leave [to amend] shall be freely given when justice so requires." Fed. R. Civ. P 15(a). The United States Supreme Court has interpreted this Rule to mean that there should be a strong liberality in allowing amendments to pleadings. *Forman v. Davis*, 371 U.S. 178, 182 (1962). Leave to amend pleadings under Rule 15(a) should be given freely in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. *Id.*

There is no evidence in the record of any undue delay, bad faith, or other basis for denying the Motion. Therefore, the unopposed Motion is hereby, **GRANTED**. Because Respondents and the undersigned have received a copy of the Amended Complaint, it will be deemed filed as of the date of this Order. Respondents may file an Answer to the Second Amended Complaint within 21 days of this Order.



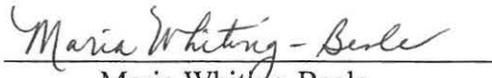
Susan L. Biro  
Chief Administrative Law Judge

Dated: August 27, 2013  
Washington, D.C.

In the Matter of Amerimart Development Company, Inc., Qual-Econ Lease Co., Inc., Commercial Realty Fund II, MJG Enterprises, Inc., and Clear Alternative or Western NY, Inc., (d/b/a G & G Petroleum), Respondents  
Docket No. RCRA-02-2012-7501

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Amend Complaint**, dated August 27, 2013, was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Maria Whiting-Beale  
Staff Assistant

Dated: August 27, 2013

Original And One Copy To:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900R  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

Copy By Regular Mail And E-Mail To:

Bruce Aber, Esquire  
Office of Regional Counsel  
U.S. EPA  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866  
[aber.bruce@epa.gov](mailto:aber.bruce@epa.gov)

Craig A. Slater, Esquire  
The Slater Law Firm, PLLC  
26 Mississippi Street, Suite 400  
Buffalo, NY 14203-3014  
[cslater@cslaterlaw.com](mailto:cslater@cslaterlaw.com)