

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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

Respondents.

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

**STATUS REPORT &
MOTION TO AMEND COMPLAINT**

Docket No. RCRA-02-2012-7501

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STATUS REPORT

This Status Report is filed pursuant to your Honor's Order of July 11, 2013 in the above-referenced matter and as a follow-up to the previous Status Report which Complainant's counsel filed on August 1, 2013. Subsequent to the filing of the August 1, 2013 Status Report, Complainant's counsel was able to obtain the Complainant's approval of the Consent Agreement and Final Order ("CA/FO"). The CA/FO was sent via overnight mail to Respondents' counsel on August 19, 2013. In addition, Complainant's counsel was able to obtain Complainant's approval to amend the Complaint in this action. Accordingly, please find below Complainant's Motion to Amend Complaint as well as an Amended Complaint.

MOTION TO AMEND COMPLAINT

Complainant respectfully requests permission to file an Amended Complaint in the above-captioned matter, said motion made pursuant to 40 C.F.R. §§ 22.14(c) and 22.16. The 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 allegation, 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.

Complainant requests leave to amend its Complaint in accordance with the liberal policy of Rule 15(a) of the Federal Rules of Civil Procedure ("FRCP"); the amendments will not result in any prejudice to Respondents or undue delay, are not the result of bad faith or dilatory motive, and are not futile. *See* Fed. R. Civ. P. 15(a) (leave [to amend] shall be freely given when justice so requires); *Foman v. Davis*, 371 U.S. 178 (1962).

Subsequent to the filing of the Complaint, Respondents' counsel, Mr. Craig Slater, provided new information and documentation that one of the Respondents, Commercial Realty Fund II, was not an owner or operator of the Underground Storage Tank (UST) systems (at the A & M Gas Mart facility in Buffalo, New York) during the relevant time periods for which violations were alleged in the Complaint. Another Respondent, Amerimart Development Company, Inc., has acknowledged ownership and operation of the USTs at the subject service station (i.e., A & M Gas Mart facility).

Complainant's counsel discussed this motion with Respondents' counsel, who concurs in this motion.

Complainant believes this amendment does not prejudice Respondents. No additional penalty is being sought; no new count is being added to the Complaint. Accordingly, Complainant requests that this Court provide the relief sought in this Motion.

Please find an Amended Complaint attached to this Motion. Today, Complainant's counsel spoke to Respondents' counsel, Mr. Craig Slater, and Mr. Slater has agreed to accept service of process of the Complaint on behalf of (and in lieu of) each of the Respondents.

Respectfully submitted,



Bruce H. Aber, Esq.
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Dated: August 22, 2013

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

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing STATUS REPORT, MOTION TO AMEND COMPLAINT, along with an AMENDED COMPLAINT, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Pouch Mail:

Sybil Anderson
Headquarters Hearing Clerk
Office of Administrative Law Judges
Ronald Reagan Building, Rm M1200
1300 Pennsylvania Ave., NW
Washington, D.C. 20460

Copy by
Pouch Mail:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900 R
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

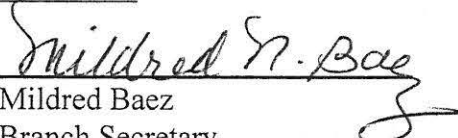
Copy by
First Class Mail:

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

In addition, I certify that a PDF version of the foregoing Status Report and Motion to Amend Complaint was sent electronically to each of the following email addresses:

Anderson.sybil@epa.gov, oaljfilings@epa.gov, cslater@cslaterlaw.com

Dated: August 22, 2013
New York, NY


Mildred Baez
Branch Secretary