



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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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 ON SECOND JOINT MOTION FOR EXTENSION OF TIME

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.

An Initial Prehearing Order was issued on May 17, 2013, directing the parties to file a fully-executed Consent Agreement and Final Order (“CAFO”) or a joint status report no later than July 19, 2013. On July 10, 2013, the undersigned received a Status Update and Joint Motion for Extension of Time (“First Motion”). In an order dated July 11, 2013, the First Motion was granted and the deadline for filing a CAFO extended to September 17, 2013.

On August 22, 2013, Complainant served the undersigned with a Status Report and Motion to Amend Complaint (“Motion to Amend”), together with an Amended Complaint. In the Motion to Amend, Complainant reported that the parties had prepared a CAFO, but implied that the CAFO was contingent upon the Complaint being amended. Mot. to Amend at 1. In an order dated August 27, 2013, the Motion to Amend was granted and the Respondents were given until September 17, 2013, to file an Answer to the Amended Complaint.

On September 17, 2013, Complainant filed a Status Report and second Joint Motion for Extension of Time (“Second Motion”). In this Second Motion for extension, Complainant states that Complainant had approved the CAFO and provided it to Respondents’ counsel on August 19, 2013. However, [o]n August 29, 2013, Respondents’ counsel informed Complainant’s

counsel that [while] the principals for each of the Respondents had conceptually approved of the terms and language of the CAFO, . . . they [had] a problem with language in one specific provision of the CAFO” and “declined to sign the CAFO at that time.” Second Mot. at 1. Complainant claims that during the past two weeks the parties have attempted to resolve the problem, but that “Respondents’ counsel has been unable to meet with his clients to discuss the proposed language for this specific issue.” Second Mot. at 1–2.

The parties request that the deadline for filing the CAFO be extended from September 17, 2013, to September 30, 2013. Second Mot. at 2. Complainant argues there is good cause for this extension because “both parties have been negotiating in good-faith for several months and . . . desire to reach a settlement agreement rather than litigate this case.” *Id.* Further, “revised language has been drafted” and Respondents’ counsel expects to review the language with Respondents’ principals next week. *Id.* Complainant contends that granting the requested extension “will allow the parties to focus resources during the last two weeks of the government’s fiscal year . . . to execute the CAFO rather than prepare prehearing exchanges.” Complainant claims that, “[a]s no prehearing deadlines or hearing date has yet been set, a grant of this extension request will not prejudice any of the parties.” *Id.* Complainant avers that Respondents concur with the Second Motion. *Id.*

The Rules of Practice that govern this proceeding, 40 C.F.R. Part 22, provide that the presiding officer may grant an extension of time for filing any document “upon timely motion . . . , for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.” 40 C.F.R. § 22.7(b). The second Joint Motion for Extension of Time is **GRANTED** for good cause shown in accordance with 40 C.F.R. § 22.7(b).

Therefore, the parties are hereby **ORDERED** to file either a joint status report or a fully-executed CAFO memorializing their settlement no later than **September 30, 2013**, and to send a copy to the office of the undersigned contemporaneously by e-mail (oaljfiling@epa.gov), or facsimile (202-565-0044). Status reports shall not include or state any specific settlement or project terms, offers, or counteroffers. In addition, the deadline by which Respondents may file an Answer to the Amended Complaint is extended to **September 30, 2013**.



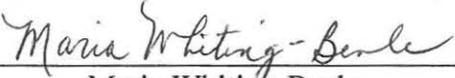
Susan L. Biro
Chief Administrative Law Judge

Dated: September 17, 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 On Second Joint Motion For Extension Of Time**, dated September 17, 2013, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: September 17, 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, 16th Floor
New York, NY 10007-1866
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