



U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 SEP 25 A 10:56
REGIONAL HEARING
CLERK

September 18, 2012

Regional Hearing Clerk
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Bruce H. Aber, Esq.
Asst. Regional Counsel
Office of the Regional Counsel
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: ANSWER In the Matter of Commercial Fund, II (Respondent)

Dear Sir or Madam:

Please find enclosed the Answer submitted herewith on behalf of my client, the above-captioned Respondent. You will note we have requested a hearing or mediation to resolve this matter.

Please contact me with any questions.

Very truly yours,

The Slater Law Firm, PLLC

Craig A. Slater

DIRECT DIAL: (716) 845-6760
E-MAIL: CSLATER@CSLATERLAW.COM

CAS : jp
Enclosures

STATE OF NEW YORK
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 SEP 25 A 10: 56
REGIONAL HEARING
CLERK

**IN THE MATTER OF
AMERIMART DEVELOPMENT COMPANY,
QUAL-ECON LEASE CO., INC., COMMERCIAL
REALTY FUND II, MJG ENTERPRISES, INC. and
CLEAR ALTERNATIVE OF WESTERN NY, INC.**

ANSWER

Docket No. RCRA-02-2012-759

*Proceeding Under Section 9006
of the Solid Waste Disposal Act*

The Respondent **COMMERCIAL REALTY FUND II** ("Respondent") by its attorney, The Slater Law Firm, PLLC, as and for its Answer to the Complaint (the "Complaint") in the above-captioned action, does hereby state as follows:

1. Admits the allegations in the Complaint contained only in paragraphs 2 and 11; denies all allegations contained in Count 12 and 13 (the only allegations contained in the Complaint made against Commercial Realty Fund II); and; denies having knowledge or information sufficient to form a belief as to the truth of all other the allegations contained in the Complaint.

2. Denies each and every other allegation not heretofore otherwise admitted or controverted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. Respondent does not, has not, and has not ever owned or operated the tanks, tank system, or retail gasoline dispensing equipment at the A&M Gas Mart facility and, therefore, is not an "operator" as defined under 42 USC §6991.

4. Respondent has not owned the real property upon which the A&M Gas Mart facility is located since June 2005 so was not an "owner" during any relevant period of time allege herein.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. Complainant has not provided the requisite notice of enforcement to the New York State Department of Environmental Conservation.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. This action is barred, in whole or in part, by governing statutes of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. That this action is barred by the doctrines of waiver and estoppel.

WHEREFORE, Respondent, Commercial Realty Fund II demands the following:

1. Dismissal of the Complaint in its entirety; and
2. Granting of such other and further relief as the court may deem just and proper.

PROPOSED CIVIL PENALTY

Respondents dispute and deny the Proposed Civil Penalty and the basis upon which it was computed and request the opportunity to submit a separate computation at the time of the hearing.

REQUEST FOR HEARING

Under the provisions of 40 CFR §22.15(c), Respondents request a hearing on the allegations of the Complaint and/or informal settlement conference prior to such hearing.

Dated: Buffalo, New York
September 18, 2012.

THE SLATER LAW FIRM, PLLC

By:



Craig A. Slater, Esq.
Attorneys for Respondents,
26 Mississippi Street, Suite 400
Buffalo, NY 14203-3014
Phone: (716) 845-6760

**TO: Regional Hearing Clerk
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866**

- and -

**Bruce H. Aber, Esq.
Asst. Regional Counsel
Office of the Regional Counsel
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866**