

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of

Amerimart Development Company,
Inc., Qual-Econ Lease Co., Inc., MJG
Enterprises, Inc., and Clear
Alternative of Western, NY, Inc. (dba
G & G Petroleum)

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

STATUS REPORT & JOINT MOTION

Docket No. RCRA-02-2012-7501

STATUS REPORT & JOINT MOTION FOR EXTENSION OF TIME

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 Complainant's second Status Report, dated August 22, 2013. Your Honor's July 11, 2013 Order ordered the parties to file either a joint status report or a fully executed CAFO memorializing their settlement no later than September 17, 2013, and to send a copy to your Honor's Office contemporaneously by e-mail or facsimile.

As mentioned in the previous Status Report, Complainant approved the CAFO and mailed it via overnight mail to Respondents' counsel on August 19, 2013, expecting that the principals for each of the Respondents would sign and return the CAFO within fourteen calendar days of receipt. On August 29, 2013, Respondents' counsel informed Complainant's counsel that the principals of each of the Respondents had conceptually approved of the terms and language of the CAFO, except that they have a problem with language in one specific provision of the CAFO. Given the apparent importance of this provision to the principals of the Respondents, they declined to sign the CAFO at that time. This is the first time that the principals of the Respondents have raised a concern about the provision in the CAFO.

During the past two weeks, Complainant's counsel and Respondents' counsel have had several phone calls and exchanged draft language in an attempt to resolve the problem that is of concern to the Respondents. However, Respondents' counsel has been unable to meet with his clients to

discuss the proposed language for this specific issue. It is expected that a meeting will take place within the next week.

JOINT MOTION FOR EXTENSION OF TIME

For the reasons set forth below, counsel for both parties file this joint motion for an extension of time pursuant to 40 C.F.R. Section 22.16(a), requesting that your Honor extend the deadline for filing of a fully executed CAFO from September 17, 2013 until September 30, 2013.

The reasons for this Joint Motion are as follows: First, counsel for both parties have been negotiating in good-faith for several months and they and their clients desire to reach a settlement agreement rather than litigate this case. Second, revised language has been drafted in an attempt to address the Respondents concern. Third, given the multiple (4) Respondents, they and their counsel have been unable to find a mutually convenient date and time when they are all available to discuss the proposed language. Respondents' counsel anticipates meeting with his clients within the next week, in order to review the proposed language with them and secure their signatures on the CAFO.

Based on the aforementioned reasons, the parties assert that good cause exists for granting the joint motion for extension of time. Both parties have expressed an interest in settling rather than proceeding to a hearing. A grant of this motion will allow the parties to focus resources during the last two weeks of the government's fiscal year, until September 30, 2013, to execute the CAFO rather than prepare prehearing exchanges. As no prehearing deadlines or hearing date has yet been set, a grant of this extension request will not prejudice any of the parties.

This afternoon the Complainant's counsel discussed this Status Report and Joint Motion for Extension of Time with Respondents' counsel, who concurs.

Dated: September 16, 2013
New York, New York

Respectfully submitted,



Bruce H. Aber
Counsel for Respondent

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

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Status Report and Joint Motion for Extension of Time, dated September 16, 2013, bearing the above-referenced docket number, in the following manner to the addressees listed below:

Copy by Overnight Mail Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
Ronald Reagan Building, Rm M1200
1300 Pennsylvania Ave, NW
Washington, D.C. 20460

Copy by First Class Mail: Craig Slater, Esq.
The Slater Law Firm
26 Mississippi Street, Suite 400
Buffalo, NY 14203

Original
And one copy by First Class Mail: Sybil Anderson
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Mail Code 1900 R
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

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

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

Dated: September 16, 2013
New York, New York



Bruce Aber
Assistant Regional Counsel