

**UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
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In the Matter of:

Aylin, Inc.,  
 Rt. 58 Food Mart, Inc.,  
 Franklin Eagle Mart Corp.,  
 Adnan Kiriscioglu d/b/a New Jersey  
 Petroleum Organization a/k/a NJPO

Administrative Complaint,  
 Compliance Order and Notice  
 of Right to Request Hearing

RESPONDENTS

Pure Gas Station  
 5703 Holland Road  
 Suffolk, VA 23437

U.S. EPA Docket No. RCRA-03-2013-0039

Rt. 58 Food Mart  
 8917 S. Quay Road  
 Suffolk, VA 23437

Proceeding under Section 9006 of the  
 Resource Conservation and Recovery Act,  
 as amended, 42 U.S.C. Section 6991e

Franklin Eagle Mart  
 1397 Carrsville Highway  
 Franklin, VA 23851

FACILITIES

**INTRODUCTION**

This Administrative Complaint, Compliance Order and Notice of Right to Request Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively, "RCRA"), 42 U.S.C. § 6991e, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 ("*Consolidated Rules of Practice*"), a copy of which is enclosed with this Complaint.

The Director of the Land and Chemicals Division, EPA, Region III ("Complainant"), hereby notifies Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., and Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO (collectively, "Respondents"), that EPA has reason to believe that Respondents have violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank ("UST") program with respect to the USTs located at certain facilities in Virginia.

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Virginia UST management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Virginia's authorized UST management program regulations are set forth in the Virginia Administrative Code as "Underground Storage Tanks: Technical Standards and Corrective Action Requirements" ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*, a copy of which is enclosed with this Complaint.

Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes EPA to take enforcement action, including issuing a compliance order or assessing a civil penalty, whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state UST program which has been authorized by EPA.

Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b (40 C.F.R. Part 280) or any requirement or standard of a State UST program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

In support of this Complaint, Complainant makes the following allegations, findings of fact and conclusions of law:

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. EPA and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
2. EPA has given the Commonwealth of Virginia Department of Environmental Quality ("VADEQ") notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

3. At all times relevant to this Complaint, Respondent Adnan Kiriscioglu has been the President of Aylin, Inc., Rt. 58 Food Mart, Inc., and Franklin Eagle Mart Corp.
4. At all times relevant to this Complaint, Respondent Adnan Kiriscioglu has conducted business in the Commonwealth of Virginia under the names of “New Jersey Petroleum Organization” and “NJPO” with a business address of 8012 Tonnelle Avenue, North Bergen, NJ 07047.
5. At all times relevant to this Complaint, Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., and Franklin Eagle Mart Corp. have each been Virginia corporations doing business in the Commonwealth of Virginia and “person[s]” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
6. At all times relevant to this Complaint, Respondent Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO (“Kiriscioglu”) has been a “person” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
7. At all times relevant to this Complaint, Respondent Aylin, Inc., has been the “owner” and/or “operator” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC 25-580-10, of the underground storage tanks (“USTs”) and “UST systems” as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located at Pure Gas Station, 5703 Holland Road, Suffolk, Virginia 23437 (“Pure Facility”).
8. At all times relevant to this Complaint, Respondent Rt. 58 Food Mart, Inc., has been the “owner” and/or “operator” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of the USTs and UST systems as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located at Rt. 58 Food Mart, 8917 S. Quay Road, Suffolk, Virginia 23437 (“Rt. 58 Facility”).
9. At all times relevant to this Complaint, Respondent Franklin Eagle Mart Corp. has been the “owner” and/or “operator” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of the USTs and UST systems as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located at Franklin Eagle Mart (aka Pure d/b/a Franklin Eagle Mart), 1397 Carrsville Highway, Franklin, Virginia 23851 (“Franklin Facility”).
10. At all times relevant to this Complaint, Respondent Kiriscioglu has been the “owner” and/or “operator” as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of the USTs and UST systems as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located at the Pure Facility, Rt. 58 Facility, and Franklin Facility (collectively, “Facilities”).

11. Each of the Facilities is a gas station, including the USTs and all associated equipment and structures.
12. Pursuant to 9 VAC § 25-580-10, the term “underground storage tank” or “UST” means, in pertinent part, any one or combination of tanks (including connected underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground.
13. On March 30, 2010, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, representatives of EPA conducted a compliance evaluation inspection (“CEI”) of the Pure Facility.
14. On March 30, 2010, and at all times relevant to the applicable violations alleged herein, the USTs described in the following subparagraphs were located at the Pure Facility:
  - a. Three 6,000-gallon steel tanks that were each installed on or about April 26, 1976, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST P1”, “UST P2” and “UST P4”).
  - b. One 6,000-gallon steel tank that was installed on or about April 26, 1976, and that, at all times relevant hereto, routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST P3”).
15. Each UST at the Pure Facility was “upgraded” within the meaning of subsection 2 of 9 VAC § 25-580-60 on or before December 31, 1990.
16. On March 31, 2010, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, representatives of EPA conducted a CEI of the Rt. 58 Facility.
17. On March 31, 2010, and at all times relevant to the applicable violations alleged herein, the USTs described in the following subparagraph were located at the Rt. 58 Facility:
  - a. Three 8,000-gallon steel tanks that were each installed on or about August 1, 1988, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST R1,” “UST R2,” and “UST R3”).
18. On March 31, 2010, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, representatives of EPA conducted a CEI of the Franklin Facility.
19. On March 31, 2010, and at all times relevant to the applicable violations alleged herein, the USTs described in the following subparagraph were located at the Franklin Facility:

- a. Two 8,000-gallon steel tanks that were each installed on or about January 1, 1988, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST F1” and “UST F2”).
20. At all times relevant to the applicable violations alleged herein, each UST at each Facility has been a “petroleum UST system” and an “existing tank system” as these terms are defined in 9 VAC § 25-580-10.
21. At all times relevant to the applicable violations alleged herein, none of the USTs at the Facilities was “empty” within the meaning of 9 VAC § 25-580-310.1.

**COUNT I**  
**(Failure to Furnish Information)**

22. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
23. Pursuant to Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), an owner or operator of an UST must, upon request by any duly designated representative of EPA, furnish, in relevant part, information and records with regard to such UST.
24. On September 15, 2010, a duly designated representative of EPA sent to Respondent Kiriscioglu, via United Parcel Service (“UPS”), an information request letter (“IRL”), which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Facilities, including the information described in Paragraph 46, below.
25. UPS delivery records confirm that the IRL identified in Paragraph 24, above, was received on September 16, 2010, by a person at the New Jersey Petroleum Organization address of 8012 Tonnelle Avenue, North Bergen, NJ 07047.
26. The IRL identified in Paragraph 24, above, required that Respondent Kiriscioglu provide a response to EPA within fifteen (15) calendar days after receipt of such IRL, rendering the response due on or before October 1, 2010.
27. On October 12, 2010, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, a letter advising Respondent that he was in violation of Section 9005 of RCRA, 42 U.S.C. § 6991d, for failing to respond to the IRL identified in Paragraph 24, above.
28. UPS delivery records confirm the letter referenced in Paragraph 27, above, was received on October 13, 2010, by a person at 8012 Tonnelle Avenue, North Bergen, NJ 07047.

29. To date, Respondent Kiriscioglu has not submitted a response to the IRL identified in Paragraph 24, above.
30. On June 6, 2011, a duly designated representative of EPA sent to Respondent Aylin, Inc., via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Pure Facility, including the information described in Paragraph 46, below.
31. UPS delivery records confirm that the IRL identified in Paragraph 30, above, was received on June 7, 2011, by a person at 1397 Carrsville Highway, Franklin, VA 23851.
32. On June 7, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Pure Facility, including the information described in Paragraph 46, below.
33. UPS delivery records confirm that the IRL identified in Paragraph 32, above, was received on June 8, 2011, by a person at 8012 Tonnelle Avenue, North Bergen NJ 07047.
34. On June 8, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Franklin Facility, including the information described in Paragraph 46, below.
35. UPS delivery records confirm that that IRL identified in Paragraph 34, above, was received on June 9, 2011, by a person at 8012 Tonnelle Avenue, North Bergen NJ 07047.
36. On June 8, 2011, a duly designated representative of EPA sent to Respondent Franklin Eagle Mart Corp., via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Franklin Facility, including the information described in Paragraph 46, below.
37. UPS delivery records confirm that the IRL identified in Paragraph 36, above, was received on June 9, 2011, by a person at 1397 Carrsville Highway, Franklin, VA 23851.
38. On June 8, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Franklin Facility, including the information described in Paragraph 46, below.
39. UPS delivery records confirm that the IRL identified in Paragraph 38, above, was received on June 9, 2010, by a person at 2664 Route 112, Medford, NY 11663.

40. On June 8, 2011, a duly designated representative of EPA sent to Respondent Rt. 58 Food Mart, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Rt. 58 Facility, including the information described in Paragraph 46, below.
41. UPS delivery records confirm that the IRL identified in Paragraph 40, above, was received on June 9, 2011, by a person at 8917 S. Quay Rd, Suffolk VA 23437.
42. On June 8, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Rt. 58 Facility, including the information described in Paragraph 46, below.
43. UPS delivery records confirm that the IRL identified in Paragraph 42, above, was received on June 9, 2011, by a person at 8012 Tonnelle Avenue, North Bergen NJ 07047.
44. The responses to the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above, were due on or before June 24, 2011.
45. On June 21, 2011, Atlantic Environmental Solutions, Inc., submitted a letter on behalf of Respondents (referred to as "NJPO Group"), requesting an extension of time to respond to the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above, until August 1, 2011. EPA granted such request, thereby extending the due date of each such IRL until August 1, 2011.
46. On July 29, 2011, Atlantic Environmental Solutions, Inc., submitted an IRL response on behalf of Respondents, that provided some, but not all, of the information requested in the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above. Specifically, the response failed to furnish the following requested information:
  - “2. The name and address of each owner (“owner” is defined in 9 VAC 25-580-10) of all USTs and/or UST systems . . . at the . . . [Facility], and the dates of their respective ownership of such USTs and/or UST systems for the past five (5) years to the present.
  3. The name and address of each operator (“operator” is defined in 9 VAC 25-580-10) of all USTs and UST systems . . . at the . . . [Facility] for the past five (5) years to the present and the dates of their respective operation of such USTs and/or UST systems.
  4. The name and address of each person that owned the property where the USTs and/or UST systems [at the Facility] are currently located for the past five (5) years to the present, and the dates of their respective ownership.”

47. To date, Respondents have not furnished the information described in Paragraph 46, above, to EPA.
48. From October 2, 2010, to the date of this Complaint, Respondent Kiriscioglu has failed to furnish any response, including the information identified in Paragraph 46, above, to EPA's request in the IRL identified in Paragraph 24, above.
49. From August 2, 2011, to the date of this Complaint, Respondents have failed to furnish the information identified in Paragraph 46, above, as requested by EPA in the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above.
50. The act and/or omission as alleged in Paragraph 48, above, constitutes a violation by Respondent Kiriscioglu of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).
51. The acts and/or omissions as alleged in Paragraph 49, above, constitute violations by Respondents of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).

**COUNT II**  
**(Failure to Provide Release Detection at Pure)**

52. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
53. 9 VAC § 25-580-140 requires that owners and operators of petroleum UST systems provide release detection for tanks and piping that meets the requirements described therein.
54. 9 VAC § 25-580-140.1 provides that, with exceptions not applicable to any UST at the Pure Facility, tanks must be monitored at least every thirty days for releases using one of the release detection methods listed in 9 VAC § 25-580-160(4)-(8).
55. From at least August 1, 2006, through at least June 2, 2011, the method of release detection selected by Respondents Aylin, Inc., and Kiriscioglu for the USTs at the Pure Facility was automatic tank gauging ("ATG") pursuant to 9 VAC § 25-580-160(4).
56. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Aylin, Inc., and Kiriscioglu documented a passing tank tightness test for each of UST P1, UST P2, and UST P3, dated June 3, 2011.
57. Subsequent to the CEI, in communications between EPA and VADEQ, VADEQ indicated that it had reviewed passing release detection records for June 2011 for UST P4.

58. From at least August 1, 2006, through May 31, 2011, Respondents Aylin, Inc., and Kiriscioglu failed to monitor each of USTs P1, P2, P3, and P4 at the Pure Facility for releases at least every thirty days as required by 9 VAC § 25-580.140.1.
59. The acts and/or omissions as alleged in Paragraphs 58, above, constitute violations by Respondents Aylin, Inc., and Kiriscioglu of 9 VAC § 25-580-140.1.

### **COUNT III**

#### **(Failure to Inspect Tank Impressed Current Cathodic Protection System at Pure)**

60. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
61. 9 VAC § 25-580-90.3 requires that steel UST systems with impressed current cathodic protection systems be inspected every 60 days to ensure that the equipment is running properly.
62. During the CEI at the Pure Facility, Respondents Aylin, Inc., and Kiriscioglu documented corrosion protection tests, as required by 9 VAC § 25-580-90.3, dated July 31, 2006, and April 4, 2008.
63. Subsequent to the CEI, in correspondence between EPA, Respondents, and VADEQ, Respondents Aylin, Inc., and Kiriscioglu or VADEQ documented corrosion protection tests, as required by 9 VAC § 25-580-90.3, dated August 4, 2011, and November 18, 2011.
64. From at least September 30, 2009, through August 3, 2011, Respondents Aylin, Inc., and Kiriscioglu failed to inspect the impressed current cathodic protection system for the USTs at the Pure Facility every 60 days, as required by 9 VAC § 25-580-90.3.
65. The acts and/or omissions as alleged in Paragraph 64, above, constitute violations by Respondents Aylin, Inc., and Kiriscioglu of 9 VAC § 25-580-90.

### **COUNT IV**

#### **(Failure to Provide Cathodic Protection for Piping at Pure)**

66. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
67. 9 VAC § 25-580-60.3 states that, for existing UST systems that have been upgraded, metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected and meet the requirements of subdivisions 2 b (2), (3) and (4) of 9 § VAC 25-580-50 or the codes and standards listed in the note following subdivision 2 b of 9 § VAC 25-580-50.

68. Subsequent to the CEI, in correspondence between EPA, VADEQ and Respondents, Respondents or VADEQ documented cathodic protection tests for the piping under the dispensers for the USTs at the Pure Facility dated August 4, 2011 (fail), and November 18, 2011 (pass).
69. In the record of the August 4, 2011, test, the tester noted that the cathodic protection was not adequate and recommended various repairs and/or modifications, including the installation of sacrificial anodes, to the cathodic protection system at the Pure Facility.
70. On or about November 18, 2011, Respondents undertook repairs and/or modifications to the cathodic protection system at the Pure Facility, including the installation of sacrificial anodes.
71. The underground piping described in Paragraph 68, above, is and has been at all times relevant to the violation alleged herein, metal piping that routinely conveys regulated substances and is contact with the ground.
72. From at least August 4, 2011, through November 17, 2011, the underground piping described in Paragraph 68, above, was not cathodically protected and did not meet the requirements of subdivision 2 b (1) of 9 VAC § 25-580-50, or the requirements of subdivisions 2 b (2), (3) and (4) of 9 VAC § 25-580-50, or the codes and standards listed in the note following subdivision 2 b of 9 VAC § 25-580-50.
73. From at least August 4, 2011, through November 17, 2011, Respondents Aylin, Inc., and Kiriscioglu failed to provide cathodic protection for the piping identified in Paragraph 68, above, as required by 9 VAC § 25-580-60.3.
74. The acts and/or omissions as alleged in Paragraph 73, above, constitute violations by Respondents Aylin, Inc., and Kiriscioglu of 9 VAC § 25-580-60.

#### **COUNT V**

#### **(Failure to Conduct Annual Line Tightness Testing or Monthly Monitoring at Pure)**

75. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
76. 9 VAC § 25-580-140.2 states that underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the requirements of either 9 VAC § 25-140.2.a. (for pressurized piping) or 9 VAC § 25-580-140.2.b. (for suction piping).
77. 9 VAC § 25-580-140.2.a(2) requires that underground piping that conveys regulated substances under pressure must have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC § 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.

78. The underground piping at the Pure Facility is, and has been at all times relevant to the violation alleged herein, piping that routinely conveys regulated substances under pressure.
79. Prior to the CEI, in correspondence between EPA and VADEQ, VADEQ provided a copy of a passing annual test of the operation of the automatic line leak detectors for the piping at the Pure Facility dated October 12, 2005.
80. During the CEI, Respondents Aylin, Inc., and Kiriscioglu documented a passing annual test of the operation of the automatic line leak detectors for the piping at the Pure Facility dated April 4, 2008.
81. During the CEI, Respondents Aylin, Inc., and Kiriscioglu documented two attempts to perform line tightness tests dated February 1, 2008, and March 24, 2009. In each such attempt, the tester was unable to conduct the test due to the presence of water covering the sumps.
82. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Aylin, Inc., and Kiriscioglu documented a passing line tightness test dated July 14, 2011, for UST P3.
83. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, VADEQ indicated it had reviewed a passing line tightness test dated July 14, 2011, for all the USTs at the Pure Facility.
84. From October 13, 2006, through April 3, 2008, and from April 4, 2009, through July 13, 2011, Respondents Aylin, Inc., and Kiriscioglu did not conduct alternative monthly monitoring in accordance with subdivision 3 of 9 VAC § 25-580-170 of the underground piping connected to USTs P1, P2, P3, and P4.
85. From October 13, 2006, through April 3, 2008, and from April 4, 2009, through July 13, 2011, Respondents Aylin, Inc., and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to USTs P1, P2, P3, and P4, as required by subdivision 2 of 9 VAC § 25-580-140 or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
86. The acts and/or omissions as alleged in Paragraph 85, above, constitute violations by Respondents Aylin, Inc., and Kiriscioglu of 9 VAC § 25-580-140.2.

## COUNT VI

### **(Failure to Conduct Annual Test of Line Leak Detectors at Pure)**

87. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
88. 9 VAC § 25-580-140.2.a(1) requires that underground piping that routinely contains regulated substances under pressure be equipped with an automatic line leak detector conducted [sic] in accordance with subdivision 1 of 9 VAC § 25-580-170.
89. 9 VAC § 25-580-170.1. requires that an annual test of the operation of the automatic line leak detector must be conducted in accordance with the manufacturer's requirements.
90. The pressurized underground piping at the Pure Facility is, and has been at all times relevant to this violation, equipped with automatic line leak detectors.
91. Prior to the CEI, in correspondence between EPA and VADEQ, VADEQ provided a copy of a passing annual test of the operation of the automatic line leak detectors for the piping at the Pure Facility dated October 12, 2005.
92. During the CEI, Respondents Aylin, Inc., and Kiriscioglu documented a passing annual test of the operation of the automatic line leak detectors for the piping at the Pure Facility dated April 4, 2008 (USTs P1, P2, P3 and P4).
93. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, Respondents Aylin, Inc., and Kiriscioglu documented attempted tests of the operation of the automatic line leak detectors for the piping at the Pure Facility dated February 1, 2008, and March 24, 2009. In each such attempt, the tester was unable to conduct the test due to the presence of water covering the sumps.
94. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, VADEQ indicated it had reviewed a passing annual test of the operation of the automatic line leak detectors for the piping at the Pure Facility dated July 14, 2011.
95. From October 13, 2006, through April 3, 2008, and from April 4, 2009, through July 13, 2011, Respondents Aylin, Inc., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detectors for the piping connected to the USTs at the Pure Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
96. The acts and/or omissions as alleged in Paragraph 95, above, constitute violations by Respondents Aylin, Inc., and Kiriscioglu of 9 VAC § 25-580-140.2.

## **COUNT VII**

### **(Failure to Demonstrate Financial Responsibility at Pure)**

97. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
98. 9 VAC § 25-590-40 states that owners or operators of petroleum UST systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
99. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Aylin, Inc., and Kiriscioglu documented insurance coverage for the USTs at the Pure Facility from October 20, 2005, through October 20, 2007, and from July 29, 2011, to November 27, 2011.
100. From October 21, 2007, through July 28, 2011, Respondents Aylin, Inc., and Kiriscioglu failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs at the Pure Facility as required by 9 VAC § 25-590-40.
101. The acts and/or omissions as alleged in Paragraph 100, above, constitute violations by Respondents Aylin, Inc., and Kiriscioglu of 9 VAC § 25-590-40.

## **Count VIII**

### **(Failure to Provide Release Detection at Rt. 58)**

102. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
103. 9 VAC § 25-580-140.1 provides that, with exceptions not applicable to any UST at the Rt. 58 Facility, tanks must be monitored at least every thirty days for releases using one of the release detection methods listed in 9 VAC § 25-580-160(4)-(8).
104. From August 1, 2006, through at least June 14, 2011, the method of release detection selected by Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu for the USTs at the Rt. 58 Facility was ATG pursuant to 9 VAC § 25-580-160(4).
105. During the CEI at the Rt. 58 Facility, the EPA inspector printed a "Tank Leak Test History" which documented the following passing ATG tests:

UST R1: June 25, 2006; August 19, 2007; September 16, 2007;

UST R2: September 3, 2006;

UST R3: April 9, 2006; December 17, 2006; September 30, 2007.

106. Subsequent to the CEI, in correspondence between EPA, VADEQ, and/or Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented passing tank tightness tests for all USTs at the Rt. 58 Facility dated July 26, 2011.
107. Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu failed to monitor each of USTs at the Rt. 58 Facility for releases at least every thirty days as required by 9 VAC § 25-580.140.1 as follows:
  - UST R1: October 2006, through August 18, 2007;  
October 17, 2007, through July 25, 2011;
  - UST R2: October 4, 2006, through July 25, 2011;
  - UST R3: October 2006, through December 16, 2006;  
January 17, 2007, through September 29, 2007;  
October 31, 2007, through July 25, 2011.
108. The acts or omissions as alleged in Paragraph 107, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu of 9 VAC § 25-580-140.1.

**COUNT IX**  
**(Failure to Provide Cathodic Protection for Piping at Rt. 58)**

109. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
110. During the CEI at the Rt. 58 Facility, the inspectors observed that a portion of piping for the USTs at the Rt. 58 Facility was in contact with the ground.
111. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu or VADEQ documented cathodic protection tests for the metal portions of piping in contact with the ground for the USTs at the Rt. 58 Facility dated December 6, 2007 (fail), November 25, 2008 (fail), November 3, 2009 (fail), and August 4, 2011 (pass).
112. The underground piping described in Paragraph 111, above, is and has been at all times relevant to the violation alleged herein, metal piping that routinely conveys regulated substances and is contact with the ground.
113. From at December 6, 2007, through August 3, 2011, the underground piping described in Paragraph 111, above, was not cathodically protected and did not meet the requirements of

subdivision 2 b (1) of 9 VAC § 25-580-50, or the requirements of subdivisions 2 b (2), (3) and (4) of 9 VAC § 25-580-50, or the codes and standards listed in the note following subdivision 2 b of 9 VAC § 25-580-50.

114. From December 6, 2007, through August 3, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu failed to provide cathodic protection for the piping identified in Paragraph 111, above, as required by 9 VAC § 25-580-60.3.
115. The acts and/or omissions as alleged in Paragraph 114, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu of 9 VAC § 25-580-60.

### **COUNT X**

#### **(Failure to Conduct Annual Line Tightness Testing or Monthly Monitoring at Rt. 58)**

116. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
117. The underground piping at the Rt. 58 Facility is, and has been at all times relevant to the violation alleged herein, piping that routinely conveys regulated substances under pressure.
118. During the CEI at the Rt. 58 Facility, and in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented passing line tightness tests dated December 6, 2007 (USTs R1, R2, and R3), November 25, 2008 (UST R2 and R3 only), November 3, 2009 (USTs R1, R2, and R3), and July 26, 2011 (USTs R1, R2 and R3).
119. From December 7, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu did not conduct alternative monthly monitoring of the underground piping connected to UST R1, conducted in accordance with subdivision 3 of 9 VAC 25-580-170.
120. From November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu did not conduct alternative monthly monitoring of the underground piping connected to USTs R2 and R3, conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
121. From December 7, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to UST R1, as required by subdivision 2 of 9 VAC § 25-580-140, or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.

122. From November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to USTs R2 and R3, as required by subdivision 2 of 9 VAC § 25-580-140, or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
123. The acts and/or omissions as alleged in Paragraphs 121 and 122, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu of 9 VAC § 25-580-140.2.

### **COUNT XI**

#### **(Failure to Conduct Annual Test of Line Leak Detectors at Rt. 58)**

124. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
125. The pressurized underground piping at the Rt. 58 Facility is, and has been at all times relevant to this violation, equipped with automatic line leak detectors.
126. During the CEI and/or in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented passing annual tests of the operation of the automatic line leak detectors for the piping at the Rt. 58 Facility dated December 6, 2007, November 25, 2008 (USTs R2 and R3 only), November 3, 2009, and July 26, 2011.
127. From December 7, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detectors for the piping connected to UST R1 at the Rt. 58 Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
128. From November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detectors for the piping connected to USTs R2 and R3 at the Rt. 58 Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
129. The acts and/or omissions as alleged in Paragraphs 127 and 128, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu of 9 VAC § 25-580-140.2.

## COUNT XII

### **(Failure to Demonstrate Financial Responsibility at Rt. 58)**

130. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
131. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented insurance coverage for the USTs at the Rt. 58 Facility from October 25, 2006, through February 4, 2008, and from July 29, 2011, to November 27, 2011.
132. From February 5, 2008, through July 28, 2011, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs at the Rt. 58 Facility as required by 9 VAC § 25-590-40.
133. The acts and/or omissions as alleged in Paragraph 132, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu of 9 VAC § 25-590-40.

## COUNT XIII

### **(Failure to Provide Release Detection at Franklin)**

134. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
135. 9 VAC § 25-580-140.1 provides that, with exceptions not applicable to any UST at the Franklin Facility, tanks must be monitored at least every thirty days for releases using one of the release detection methods listed in 9 VAC § 25-580-160(4)-(8).
136. From August 1, 2006, through at least July 25, 2011, the method of release detection selected by Respondents Franklin Eagle Mart Corp. and Kiriscioglu for the USTs at the Franklin Facility was ATG pursuant to 9 VAC § 25-580-160(4).
137. During the CEI at the Franklin Facility, the EPA inspector printed a "Tank Leak Test History" which documented passing ATG tests for UST F1 dated January 26, 2009, September 28, 2009, October 5, 2009, October 26, 2009, and January 25, 2010.
138. Subsequent to the CEI, in correspondence between EPA, VADEQ, and/or Respondents, Respondents Franklin Eagle Mart Corp. and Kiriscioglu documented passing tank tests for each UST at the Franklin Facility dated July 26, 2011.

139. Respondents Franklin Eagle Mart Corp. and Kiriscioglu failed to monitor each UST at the Franklin Facility for releases at least every thirty days as required by 9 VAC § 25-580.140.1 for the following periods:

UST F1: from at least August 1, 2006, through January 25, 2009;  
February 27, 2009, through September 27, 2009;  
November 27, 2009, through January 24, 2010;  
February 25, 2010, through July 25, 2011.

UST F2: from at least August 1, 2006, through July 25, 2011.

140. The acts and/or omissions as alleged in Paragraph 139, above, constitute violations by Respondents Franklin Eagle Mart Corp., and Kiriscioglu of 9 VAC § 25-580-140.1.

#### **COUNT XIV**

##### **(Failure to Provide Cathodic Protection for Piping at Franklin)**

141. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
142. During the March 31, 2010, CEI, the inspectors observed that a portion of piping for the USTs at the Franklin Facility was in contact with the ground.
143. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, Respondents Franklin Eagle Mart Corp. and Kiriscioglu or VADEQ documented cathodic protection tests for the metal portions of piping in contact with the ground for the USTs at the Franklin Facility dated December 5, 2007 (fail), December 11, 2008 (fail), November 3, 2009 (fail), and August 3, 2011 (pass).
144. The underground piping described in Paragraph 143, above, is and has been at all times relevant to the violation alleged herein, metal piping that routinely conveys regulated substances and is contact with the ground.
145. From at least December 5, 2007, through August 2, 2011, the underground piping described in Paragraph 144, above, was not cathodically protected and did not meet the requirements of subdivision 2 b (1) of 9 VAC 25-580-50, or the requirements of subdivisions 2 b (2), (3) and (4) of 9 VAC § 25-580-50, or the codes and standards listed in the note following subdivision 2 b of 9 VAC § 25-580-50.
146. From at least December 5, 2007, through August 2, 2011, Respondents Franklin Eagle Mart Corp. and Kiriscioglu failed to provide cathodic protection for the piping identified in Paragraph 143, above, as required by 9 VAC § 25-580-60-3.

147. The acts and/or omissions as alleged in Paragraph 146, above, constitute violations by Respondents Franklin Eagle Mart Corp. and Kiriscioglu of 9 VAC § 25-580-60.

**COUNT XV**

**(Failure to Conduct Annual Line Tightness Testing or Monthly Monitoring at Franklin)**

148. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
149. The underground piping at the Franklin Facility is, and has been at all times relevant to the violation alleged herein, piping that routinely conveys regulated substances under pressure.
150. During the CEI at the Franklin Facility, and in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Franklin Eagle Mart Corp. and Kiriscioglu documented passing line tightness tests for the Franklin Facility dated December 5, 2007, November 3, 2009, and July 26, 2011.
151. From December 6, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp. and Kiriscioglu did not conduct alternative monthly monitoring of the underground piping connected to USTs F1 and F2 conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
152. From December 6, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp. and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to USTs F1 and F2, as required by subdivision 2 of 9 VAC § 25-580-140, or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
153. The acts and/or omissions as alleged in Paragraph 152, above, constitute violations by Respondents Franklin Eagle Mart Corp. and Kiriscioglu of 9 VAC § 25-580-140.2.

**COUNT XVI**

**(Failure to Conduct Annual Test of Line Leak Detectors at Franklin)**

154. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
155. The pressurized underground piping at the Franklin Facility is, and has been at all times relevant to this violation, equipped with automatic line leak detectors.
156. During the CEI at the Franklin Facility and/or in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Franklin Eagle Mart Corp. and Kiriscioglu

documented annual tests of the operation of the automatic line leak detectors for the piping at the Franklin Facility dated December 5, 2007 (UST F1 - fail, UST F2 - pass), December 11, 2008 (USTs F1 and F2 pass), November 3, 2009 (USTs F1 and F2 pass), and July 26, 2011 (USTs F1 and F2 pass).

157. From at least December 5, 2007, through December 10, 2008, and from November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp. and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detector for the piping connected to UST F1 at the Franklin Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
158. From November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp. and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detector for the piping connected to UST F2 at the Franklin Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
159. The acts and/or omissions as alleged in Paragraphs 157 and 158, above, constitute violations by Respondents Franklin Eagle Mart Corp. and Kiriscioglu of 9 VAC § 25-580-140.2.

#### **COUNT XVII**

##### **(Failure to Demonstrate Financial Responsibility at Franklin)**

160. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
161. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents documented insurance coverage for the USTs at the Franklin Facility from July 29, 2011, to November 27, 2011.
162. From at least August 1, 2006, through July 28, 2011, Respondents Franklin Eagle Mart Corp. and Kiriscioglu failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs at the Franklin Facility as required by 9 VAC § 25-590-40.
163. The acts and/or omissions as alleged in Paragraph 162, above, constitute violations by Respondents Franklin Eagle Mart Corp. and Kiriscioglu of 9 VAC § 25-590-40.

## COMPLIANCE ORDER

164. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, within thirty (30) calendar days of the effective date of this Compliance Order, Respondent is hereby ordered to:
- a. Comply with the release detection requirements of 9 VAC § 25-580-130 for each UST at each Facility or close each such UST in accordance with 9 VAC § 25-580-320.
  - b. Complete measures to ensure that the corrosion protection system for each UST at each Facility is operated and maintained in accordance with 9 VAC § 25-580-90.1.
  - c. Complete measures to ensure that the impressed current cathodic protection system at the Pure Facility is inspected every 60 days in accordance with 9 VAC § 25-580-90.3.
  - d. Complete measures to ensure that all metal piping at each Facility that routinely contains product and that is in contact with the ground meets the corrosion protection requirements of 9 VAC § 25-580-60.3.
  - e. Conduct line tightness testing or monthly monitoring in accordance with 9 VAC § 25-580-170 for the underground piping that routinely contains regulated substances and thereafter remain in compliance with the release detection requirements of 9 VAC § 25-580-140.2.a(2).
  - f. Conduct a test of the operation of automatic line leak detectors for the underground piping that routinely contains regulated substances under pressure in accordance with 9 VAC § 25-580-170, and thereafter remain in compliance with line leak detector testing requirements of 9 VAC § 25-580-170.
  - g. Demonstrate compliance with the financial responsibility requirements in accordance with 9 VAC § 25-590-10 *et seq.* for each UST at each Facility.
  - h. Furnish the information requested by the IRLs referenced in Count I of this Complaint, in accordance with Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).
  - i. If Respondents elect to close any or all of the USTs subject to this Compliance Order, Respondents must submit to EPA, within fifteen (15) calendar days after the effective date of this Compliance Order, a notice of intent to permanently close, identifying which UST Respondents intend to close.
  - j. Within forty-five (45) days of the effective date of this Compliance Order, submit to EPA at the address in Paragraph 166, below, a report which documents and certifies Respondents' compliance with the terms of this Compliance Order.

165. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondents' compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible corporate officer or general partner, as appropriate, of Respondents.

The certification required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

166. All documents required by this to Compliance Order to be submitted to EPA shall be sent via certified mail, return receipt requested, addressed to:

Andrew Ma  
U.S. EPA, Region III  
Environmental Science Center (3LC70)  
701 Mapes Rd.  
Fort Meade, MD 20755-5350

One copy of all documents submitted to EPA shall also be submitted to:

Russell P. Ellison, III  
UST Program Coordinator  
Office of Spill Response & Remediation  
Division of Land Protection & Revitalization  
VA DEQ  
629 E. Main St.  
Richmond, VA 23219

167. Failure to comply with any of the terms of this Compliance Order may subject Respondents to the imposition of a civil penalty of up to \$32,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996 (“DCIA”), and the Civil Monetary Penalty Inflation Adjustment Rules, 61 *Fed. Reg.* 69360 (December 31, 1996), 69 *Fed. Reg.* 7121 (February 13, 2004), and 73 *Fed. Reg.* 75345 (December 11, 2008) (collectively, “Inflation Rules”), as codified at 40 C.F.R. Part 19.

### **PROPOSED CIVIL PENALTY**

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides, in relevant part, that any owner or operator of an UST who fails to comply with any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or part of an authorized state under-ground storage tank program shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. The statutory maximum penalty has been adjusted to account for inflation in accordance with the DCIA to \$11,000 for violations occurring after January 30, 1997, through January 12, 2009, and to \$16,000 for violations occurring after January 12, 2009. 40 C.F.R. § 19.4.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred in accordance with 40 C.F.R. § 22.19(a)(4).

For purposes of determining the amount of any penalty to be assessed, Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. In developing the proposed penalty for the violations alleged in this Complaint, Complainant will take into account the particular facts and circumstances of this case with specific reference to the November 1990 “U.S. EPA Penalty Guidance for Violations of UST Regulations” (“UST Penalty Policy”), a copy of which is enclosed. This policy provides a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases.

Complainant may adjust each gravity-based penalty upward or downward based upon the violator-specific and environmental sensitivity adjustment factors described in the UST Penalty Policy. In addition, Complainant may add a component to reflect any economic benefit gained by Respondents for failing to comply with the regulatory requirement. Complainant will also consider, if raised, Respondents’ ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with Respondents.

As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts and circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued.

Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), Complainant proposes the assessment of a civil penalty of up to \$11,000 per day against each Respondent for each of the applicable violations alleged in this Complaint. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to 40 C.F.R. Section 22.14(a)(4)(ii), an explanation of the severity of each violation is given below. Complainant intends to seek penalties for each day of violation alleged in each Count, except as to any day of violation that occurred more than five years before the date of filing of this Complaint.

### **Counts II, VIII, XIII - Failure to Provide Release Detection for Tanks**

Consistent with the UST Penalty Policy, this violation constitutes a “major” potential for harm and “major” extent of deviation from the requirements. Respondents’ failure to ensure that each UST at each Facility was monitored at least every thirty days for releases using one of the methods required pursuant to the federally authorized UST regulations for Virginia constitutes a major potential for harm, because without release detection monitoring, a release may go un-noticed with serious detrimental consequences. It is a fundamental goal of the UST regulations to ensure that an UST does not release substances that may harm human health or the environment. Respondents partially complied with the regulatory requirement by installing the release detection equipment. However, Respondents violated the regulatory requirement by failing to properly operate such release detection equipment for years. Further, the mechanism established by EPA to ensure releases are prevented and minimized is the release detection program. Thus, failure to comply with the release detection requirements also presents a major harm to the RCRA program. This violation is also a substantial deviation from the requirements of the federally authorized Virginia UST regulatory program.

The UST Penalty Policy suggests that the type of violation is the basis for determining whether to assess a penalty per tank or per facility. If the specific violation or requirement is clearly associated with one tank, the penalty will be assessed per tank. If, on the other hand, the requirement addresses the entire facility (e.g., financial responsibility,) the penalty will be assessed on a per-facility basis. Where the violation involves piping, the unit of assessment will depend on whether the piping is associated with one or more than one tank. For each of these counts, as there was an independent obligation to monitor for releases at each tank at each facility, the penalty for each violation will be assessed on a per-tank basis.

### **Count III - Failure to Inspect Tank Impressed Current Cathodic Protection Every 60 Days**

Consistent with the UST Penalty Policy, this violation constitutes a “moderate” potential for harm and “major” extent of deviation. As noted above, the prevention of leaks is one of the cornerstones of the UST regulatory program. Corrosion protection such as cathodic protection preserves the integrity of steel tanks, thereby greatly increasing tank life, reducing the likelihood of corrosion and the possibility of releases caused by such corrosion. Respondents’ failure to inspect the impressed current cathodic protection system at the Pure Facility once every 60 days to assure its proper operation posed a significant actual or potential harm to human health and the environment

and constitutes a substantial deviation from the requirements of federally authorized Virginia UST regulatory program. The unit of assessment will be per facility.

#### **Counts IV, IX, XIV - Failure to Provide Cathodic Protection for Piping**

Consistent with the UST Penalty Policy, this violation constitutes a “moderate” potential for harm and “major” extent of deviation. As described above, cathodic protection minimizes the corrosion of metal components that are in contact with the ground. In this case, portions of the piping that were in contact with the ground and routinely contained regulated substances did not have cathodic protection, thereby posing a significant risk to human health or the environment from a possible release from corroded piping and constituting a substantial deviation from the federally authorized Virginia UST regulatory program. The unit of assessment for each of these violations will be per tank associated with the piping.

#### **Counts V, X, XV - Failure to Perform Annual Line Tightness Testing or Monthly Monitoring**

Consistent with the UST Penalty Policy, this violation constitutes a “major” potential for harm and “major” extent of deviation. As noted above, preventing releases is the foundation of the UST regulatory program. Thus, it is critically important that UST owners and operators utilize effective methods of detecting releases from USTs as well as from the associated underground piping that routinely conveys regulated product to and from such USTs. Respondents’ failure to perform an annual line tightness test or monthly monitoring of underground piping at the Pure Facility posed a substantial risk to human health or the environment and was a substantial deviation from the requirements of the authorized Virginia UST regulatory program. The unit of assessment for each of these violations will be per tank associated with the piping.

#### **Counts VI, XI, XVI - Failure to Conduct Annual Test of Line Leak Detectors**

Consistent with the UST Penalty Policy, this violation constitutes a “major” potential for harm and “major” extent of deviation. For the reasons set forth above, Respondents’ failure to perform annual functionality tests of the automatic line leak detectors of the piping at the Pure Facility posed a substantial risk to human health or the environment from a leak going undetected and constitutes a substantial deviation from the requirements of the federally authorized Virginia UST regulatory program. The unit of assessment for each of these violations will be per tank associated with the piping.

#### **Counts VII, XII, XVII - Failure to Demonstrate Financial Responsibility**

Consistent with the UST Penalty Policy, this violation constitutes a “moderate” potential for harm and “major” extent of deviation. Financial responsibility is a key element of the UST regulatory system as it assures that an owner/operator of USTs has adequate financial resources to properly address and remediate any damage to human health and the environment that is caused by a release from an UST system. Respondents’ failure to demonstrate financial responsibility (assurance) poses a significant risk to human health and the environment and constitutes a substantial deviation

from the requirements of the federally authorized Virginia UST regulatory program. The unit of assessment for each of these violations will be per each facility, as per the UST Penalty Policy, the financial responsibility requirement addresses the entire facility.

### **NOTICE OF RIGHT TO REQUEST A HEARING**

Each Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact upon which the Complaint is based, contest the appropriateness of any compliance order or proposed penalty, and/or assert that the Respondent is entitled to judgment as a matter of law. To request a hearing, each Respondent must file a written answer ("Answer") within thirty (30) days after service of this Complaint as set forth in 40 C.F.R. § 22.15(a). The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

*Failure of any Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by that Respondent of such allegation. Failure to timely Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings. 40 C.F.R § 22.17.*

Any hearing requested and granted will be conducted in accordance with the *Consolidated Rules* (Enclosure A). Respondents must send any Answer to:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

In addition, please send a copy of any Answer to:

Janet E. Sharke (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

## SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondents may each request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **HOWEVER, A REQUEST FOR A SETTLEMENT CONFERENCE DOES NOT RELIEVE ANY RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER.**

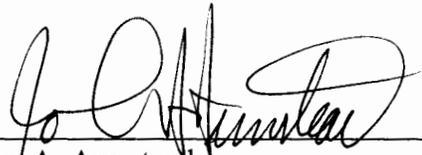
In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of the settling Respondent's right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please have your counsel contact Janet E. Sharke, Senior Assistant Regional Counsel, at (215) 814-2689, prior to the expiration of the thirty (30) day period following service of this Complaint. Once again, however, such a request for a settlement conference does not relieve any Respondent of its responsibility to file an Answer within thirty (30) days following service of this Complaint. Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding as the Complaint seeks a compliance order and does not contain a specific proposed penalty. 40 C.F.R. § 22.18(a)(1).

## SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent Complainant as the party in this case: the Region III Office of Regional Counsel; the Region III Land & Chemicals Division; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the *Consolidated Rules* prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Complaint.

Dated: 3.26.13

  
\_\_\_\_\_  
John A. Armstead  
Director, Land and Chemicals Division  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Administrative Complaint, Compliance Order and Notice of Right to Request Hearing, Docket No. RCRA-03-2013-0039 ("Complaint"), and further, that I caused true and correct copies of the foregoing Complaint to be transmitted via United Parcel Service overnight delivery and Certified Mail - Return Receipt Requested, to the following addressees:

Adnan Kiriscioglu  
President, Aylin, Inc.  
President, Franklin Eagle Mart Corp.  
President, Rt. 58 Food Mart, Inc.  
8012 Tonnelle Avenue  
North Bergen, NJ 07047

Adnan Kiriscioglu  
d/b/a New Jersey Petroleum Organization a/k/a NJPO  
8012 Tonnelle Avenue  
North Bergen, NJ 07047

Adnan Kiriscioglu  
President & Registered Agent, Aylin, Inc.  
1397 Carrsville Highway  
Franklin, VA 23851

Randolph A. Raines, Jr., Esq.  
Registered Agent, Franklin Eagle Mart Corp.  
Registered Agent, Rt. 58 Food Mart, Inc.  
Ferguson, Rawls & Raines P.C.  
332 West Constance Road  
Suffolk VA 23434

3/27/2013  
Date



Janet E. Sharke  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
Office of Regional Counsel (3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029