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CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Right to Hearing, Docket No. **RCRA-03-2011-0284**, has been filed with the EPA Region III Regional Hearing Clerk and that I caused copies to be sent, express mail, return receipt requested to:

Mr. Yaser Y. Atieh, CEO
Y & A Investments, LLC
trading and/or also doing business as
Y & A Enterprises Inc.
4222 Bonniebank Road
Suit 304
Richmond VA 23234

Mr. Yaser Y. Atieh, CEO
Oasis Food Mart Inc.
trading and/or also doing business as
Oasis Food Market and/or Q-Market # 333
6719 Janway Road
Richmond VA 23228

Jeff Zwerdling
Zwerdling Oppleman
5020 Monument Avenue
First Main Floor
Richmond, VA 23230

9/30/11 Date

Rodney Travis Carter
Senior Assistant Regional Counsel
United States
Environmental Protection Agency
Region III

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

2011 SEP 30 PM 5:07

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SEP 30 2011

Mr. Yaser Y. Atieh, CEO
Y & A Investments, LLC
trading and/or also doing business as
Y & A Enterprises Inc.
4222 Bonniebank Road
Suit 304
Richmond VA 23234

Re: Resource Conservation and Recovery Act Administrative Complaint,
Compliance Order and Notice of Right to Request Hearing
Docket No. RCRA-03-2011-0284

Dear Mr. Atieh:

Enclosed please find a Complaint, Compliance Order and Notice of Right to Request Hearing ("Complaint") concerning alleged violations of the Resource Conservation and Recovery Act ("RCRA"), as amended, specifically, Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and Commonwealth of Virginia's federally authorized underground storage tank program against Y & A Investments, LLC, ("Y&A" or "Respondent"). The violations concern the underground storage tanks ("USTs") at the facility, the Oasis Food Market and/or Q-Market # 333 (the "Facility"), operated by Y&A. The Facility is located at 3124 Broad Rock Road, Richmond Virginia,.

The Complaint should be read and analyzed carefully to determine the alternatives available to Respondent in responding to the alleged violations.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice by specific Answer within 30 days of Y&A's receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order against Respondent, imposing a civil penalty not to exceed \$16,000 for each tank for each day of violation, in accordance with the Adjustment of Civil Monetary Penalties for Inflation, promulgated pursuant to the Debt Collection Improvement Act of 1996 and codified at 40 C.F.R. Part 19 without further proceedings.

Respondent may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in Respondent's Answer to this Complaint. Whether or not a hearing is requested, Respondent may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in Respondent's Answer. If Respondent is not represented by legal counsel and have any questions or desire to arrange an informal conference to explore settlement, please contact Rodney Travis Carter, Senior Assistant Regional Counsel, at (215) 814-2478, before the expiration of the thirty (30) day period following Respondent's receipt of this Complaint.

EPA has determined that Respondent may be a "small business" under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 ("SBREFA"), 5 U.S.C. §§601 et seq. See the attachment to this letter. The attachment provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the attachment, any decision to participate in such program or to seek compliance assistance does not relieve Respondent of its obligation to respond in a timely matter to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue the enforcement action. To preserve Respondent's legal rights it must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

In addition, Respondent may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against Respondent under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether Respondent is subject to it.

If Respondent is represented by counsel, counsel may contact Mr. Carter before the expiration of the thirty (30) day period following Respondent's receipt of this Complaint to discuss questions or arrange settlement conferences.

Sincerely,

A handwritten signature in black ink, appearing to read "Abraham Ferdas". The signature is fluid and cursive, with the first name being more prominent.

Abraham Ferdas
Director for Enforcement
Land and Chemicals Division

Enclosure

cc: M. Toffel (3LC70)
Rodney Travis Carter (3RC50)
Jeff Zwerdling, Esq

RECEIVED UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

2011 SEP 30 PM 5:06

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

UPS Express Mail
RETURN RECEIPT REQUESTED

SEP 30 2011

Mr. Yaser Y. Atieh, CEO
Oasis Food Mart Inc.
trading and/or also doing business as
Oasis Food Market and/or Q-Market # 333
6719 Janway Road
Richmond VA 23228

Re: Resource Conservation and Recovery Act Administrative Complaint,
Compliance Order and Notice of Right to Request Hearing
Docket No. RCRA-03-2011-0284

Dear Mr. Atieh:

Enclosed please find a Complaint, Compliance Order and Notice of Right to Request Hearing ("Complaint") concerning alleged violations of the Resource Conservation and Recovery Act ("RCRA"), as amended, specifically, Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and Commonwealth of Virginia's federally authorized underground storage tank program against Oasis Food Mart, Inc. ("Oasis" or "Respondent"). The violations concern the underground storage tanks ("USTs") at the facility known as the Oasis Food Market and/or Q-Market # 333 (the "Facility") owned by Oasis. The Facility is located at 3124 Broad Rock Road, Richmond Virginia,.

The Complaint should be read and analyzed carefully to determine the alternatives available to Oasis in responding to the alleged violations.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice by specific Answer within 30 days of Respondent's receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order against Respondent, imposing a civil penalty not to exceed \$16,000 for each tank for each day of violation, in accordance with the Adjustment of Civil Monetary Penalties for Inflation, promulgated pursuant to the Debt Collection Improvement Act of 1996 and codified at 40 C.F.R. Part 19 without further proceedings.

Respondent may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in Respondent's Answer to this Complaint. Whether or not a hearing is requested, Respondent may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in Respondent's Answer. If Respondent is not represented by legal counsel and have any questions or desire to arrange an informal conference to explore settlement, please contact Rodney Travis Carter, Senior Assistant Regional Counsel, at (215) 814-2478, before the expiration of the thirty (30) day period following Respondent's receipt of this Complaint.

EPA has determined that Respondent may be a "small business" under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 ("SBREFA"), 5 U.S.C. §§601 et seq. See the attachment to this letter. The attachment provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the attachment, any decision to participate in such program or to seek compliance assistance does not relieve Respondent of its obligation to respond in a timely matter to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue the enforcement action. To preserve Respondent's legal rights it must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

In addition, Respondent may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against Respondent under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether Respondent is subject to it.

If Respondent is represented by counsel, counsel may contact Mr. Carter before the expiration of the thirty (30) day period following Respondent's receipt of this Complaint to discuss questions or arrange settlement conferences.

Sincerely,



Abraham Ferdas
Director for Enforcement
Land and Chemicals Division

Enclosure

cc: M. Toffel (3LC70)
Rodney Travis Carter (3RC50)
Jeff Zwerdling, Esq

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

RECEIVED

OCT 30 PM 4:56

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

IN THE MATTER OF:)

Oasis Food Mart Inc.)
trading and/or also doing business as)
Oasis Food Market and/or Q-Market # 333)
 6719 Janway Road)
 Richmond VA 23228)

**U.S. EPA Docket Number
RCRA-03-2011-0284**

Y & A Investments, LLC)
trading and/or also doing business as)
Y & A Enterprises Inc.)
 4222 Bonniebank Road)
 Suit 304)
 Richmond VA 23234)

**ADMINISTRATIVE COMPLAINT,
COMPLIANCE ORDER
AND NOTICE OF RIGHT
TO REQUEST HEARING**

RESPONDENTS

Oasis Food Market)
also known as)
 Q-Market #333)
 3124 Broad Rock Road)
 Richmond, VA 23224)

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

FACILITY

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” or the “Agency”) 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 (Enclosure “A”). The Director of the Land and Chemicals Division, U.S. EPA Region III, (“Complainant”) hereby notifies **Oasis Food Mart Inc.** and **Y & A Investments, LLC** (“Respondents”) that EPA has reason to believe that Respondents have violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-699m and the Commonwealth of Virginia’s federally authorized underground storage tank program with respect to the underground storage tanks (“USTs”) at Respondents’ facility located at 3124 Broad Rock Road, Richmond Virginia, (the “Facility”). 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

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. §§ 6991-699m. The provisions of the Commonwealth of 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. The Commonwealth of Virginia’s authorized UST 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 (Enclosure “B”).

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 underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c.

EPA has given the Commonwealth of Virginia notice of the issuance of this Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e (a)(2).

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

COMPLAINT

1. EPA's Office of Administrative Law Judges has jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, and Section 22.1(a)(4) and .4(c) of the CONSOLIDATED RULES OF PRACTICE. .
2. Respondent **Oasis Food Mart Inc.** ("Oasis" or "Respondent") is a Virginia corporation trading and/or also doing business as the Oasis Food Market, Q-Market and/or Q-Market #333 in the Commonwealth of Virginia.
3. Respondent **Y & A Investments, LLC** (" Y&A" or "Respondent") is a Limited Liability Company trading and/or also doing business as Y & A Enterprises LLC in the Commonwealth of Virginia.
4. Respondents are "persons" as defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and the Commonwealth of Virginia's UST Regulations, 9 VAC § 25-580-10.
5. Pursuant to 9 VAC § 25-580-10, a "Corrosion Expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be

accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

6. At all times relevant to this Complaint the Respondent Oasis Food Mart, Inc., operated a food market and gas station located at 3124 Broad Rock Road in Richmond, Virginia (“the Facility”).
7. On September 24, 2008, EPA conducted Compliance Evaluation Inspections (“CEIs”) of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
8. On May 23, 2011, EPA conducted an evaluation of the cathodic protection system of the USTs at the Facility.
9. Pursuant to Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and the Commonwealth of Virginia’s UST Regulations, 9 VAC § 25-580-10, the term "underground storage tank" or "UST" means, with exceptions not relevant here, any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.
10. Pursuant to the Commonwealth of Virginia’s UST Regulations, 9 VAC § 25-580-10, the term “Underground Storage Tank System” or “UST System” means an Underground Storage Tank, connected underground piping, underground ancillary equipment, and containment system, if any.

11. At the time of the CEIs, and at all times relevant to the applicable violations alleged herein, five ("5") USTs, as described in the following subparagraphs, were located at the Facility:
 - a. UST No.1 is a ten thousand ("10,000") gallon steel tank that was installed on/or about April of 1986 that, at all times relevant hereto, routinely contained diesel fuel, 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.
 - b. UST No. 2 is a ten thousand ("10,000") gallon steel tank that was installed on/or about April of 1986 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.
 - c. UST No. 3 is a ten thousand ("10,000") gallon steel tank that was installed on/or about April of 1986 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.
 - d. UST No. 4 is a ten thousand ("10,000") gallon steel tank that was installed on/or about April of 1986 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.
 - e. UST No. 5 is a four thousand ("4,000") gallon steel tank that was installed on/or about April of 1986 that, at all times relevant hereto, routinely contained kerosene, 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.

12. At all times relevant to the applicable violations alleged herein, the USTs at the Facility have been "existing UST systems" as that term is defined in 9 VAC § 25-580-10.

13. At all times relevant to the applicable violations alleged herein, the USTs at the Facility have been “petroleum UST systems” as that term is defined in 9 VAC §25-580-10.
14. The USTs referenced above, at all times relevant to applicable violations alleged in this Complaint have not been “empty” as that term is defined at 9 VAC §25-580-310.1.
15. Pursuant to Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and the Commonwealth of Virginia’s UST Regulations 9 VAC § 25-580-10, “operator” means any person in control of, or having responsibility for, the daily operation of the UST system.
16. From at least February 1, 2009, until the date of this Complaint, which includes the period of time when the violations alleged in this Complaint occurred, Respondent Oasis was the operator of the Facility and the UST Systems located at the Facility
17. Pursuant to Section 9001(4) of RCRA, 42 U.S.C. § 6991(4) and Commonwealth of Virginia’s UST Regulations 9 VAC § 25-580-10, “owner” means, in the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances.
18. From at least February 1, 2009, until the date of this Complaint, which includes the period of time when the violations alleged in this Complaint occurred, Respondent Y & A was the owner of the Facility and the UST Systems located at the Facility

COUNT I**(Failure to perform release detection on Facility USTs)**

19. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
20. Pursuant to 9 VAC § 25-580-130.A. and C., owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
21. 9 VAC § 25-580-140.1. provides, in pertinent part, that petroleum USTs shall be monitored at least every thirty days for releases using one of the methods listed in 9 VAC § 25-580-160.4.-8., or described in 9 VAC § 25-580-140.1(a)-(c).
22. From at least February 1, 2009 until December 31, 2009 Complaint, Respondents did not use any of the release detection methods specified in 9 VAC § 25-580-140.1.a.-c. and/or 9 VAC § 25-580-160.4.-8. on its USTs at the Facility in accordance with 9 VAC § 25-580-160.8.
23. Respondents' acts and/or omissions as alleged in Paragraph 22 above, constitute five violations by Respondents of 9 VAC § 25-580-130.A. and C. and 9 VAC § 25-580-140.1.

COUNT II**(Failure to perform automatic line leak detector testing annually on Facility USTs)**

24. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
25. Pursuant to 9 VAC § 25-580-130.A and C, owners and operators of new and existing UST systems must provide a method or combination of methods of release

detection monitoring that meets the requirements described therein.

26. 9 VAC § 25-580-140.2.a. provides, in pertinent part, that underground piping that routinely contains regulated substances and conveys regulated substances under pressure shall:
 - (1) Be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9 VAC § 25-580-170; and
 - (2) 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.
27. 9 VAC § 25-580-170.1. provides, in pertinent part, that an annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.
28. From at least February 1, 2009 until the date of this Complaint, the piping for the USTs at the Facility was underground and routinely contained regulated substances conveyed under pressure.
29. Respondents were required to perform an annual test of the automatic line leak detectors by February 1, 2009 or earlier. Respondents failed to perform an annual test of the automatic line leak detectors for the underground piping for the USTs from at least February 1, 2009 until July 29, 2009.
30. Respondents' acts and/or omissions as alleged in Paragraph 29, above, constitute violations by Respondent of 9 VAC § 25-580-140.2.a. and 9 VAC § 25-580-170.1.

COUNT III**(Failure to perform line tightness testing or monthly monitoring on piping for the Facility USTs)**

31. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
32. 9 VAC § 25-580-140.2.a. provides, in pertinent part, that underground piping that routinely contains regulated substances and conveys regulated substances under pressure shall:
 - (1) Be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9 VAC § 25-580-170; and
 - (2) 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.
33. The most recent line tightness test conducted by Respondent occurred prior to February 1, 2009, if at all. Respondent failed to conduct the line tightness testing of the piping associated with the USTs at the Facility from at least February 1, 2009 through July 29, 2009.
34. From February 1, 2009 to the date of this Complaint the piping for the USTs at the Facility were underground and routinely contained regulated substances conveyed under pressure.
35. Respondents failed to perform an annual line tightness testing in accordance with subdivision 2 of 9 VAC § 25-580-170 or, in the alternative, have monthly monitoring conducted in accordance with 3 of 9 VAC § 25-580-170 for the

underground piping associated with the USTs at the Facility from February 1, 2009, to the date of this Complaint.

36. Respondents' acts and/or omissions as alleged in Paragraph 35, above, constitute violations by Respondents of 9 VAC § 25-580-140.2.a.(2).

COUNT IV

(Failure to operate and maintain corrosion protection system continuously on the USTs at the Facility)

37. The foregoing allegations of this Complaint are incorporated herein by reference as though fully set forth at length.
38. 9 VAC § 25-580-90 provides that all owners and operators of steel UST systems with corrosion protection shall comply with certain requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.
39. 9 VAC § 25-580-90.1 provides that all corrosion protection systems shall be operated and maintained by owners and operators of UST systems to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contains regulated substances and are in contact with the ground.
40. The USTs at the Facility are and were, at all times relevant to the violations alleged herein, steel "USTs" and "UST systems" within the meaning of 9 VAC § 25-580-90.
41. Respondents, from at least February 1, 2009 until the date of this Complaint, failed to provide adequate corrosion protection for the metal components associated with

the USTs at the Facility that routinely contain regulated substances and are in contact with the ground, as required by 9 VAC § 25-580-50.2.(a)-(c).

42. Respondents' acts and/or omissions as alleged in Paragraph 41, above, constitute violations by Respondents of 9 VAC § 25-580-90.1.

CIVIL PENALTY ASSESSMENT

43. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides, in relevant part, that any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. §6991c, or that is part of an authorized state underground storage tank program shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. In accordance with the Adjustment of Civil Monetary Penalties for Inflation, promulgated pursuant to the Debt Collection Improvement Act of 1996 and codified at 40 C.F.R. Part 19, all violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), occurring on or before March 15, 2004 are subject to a 10% increase for inflation, all violations occurring after March 15, 2004 through January 12, 2009 are subject to a 17.23% increase for inflation, not to exceed \$11,000 per violation per day, and all violations occurring after January 12, 2009 are subject to a 9.83 % increase for inflation, not to exceed \$16,000 dollars per day per violation.

44. 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 certain factors including the seriousness of the violation and any good faith efforts to comply with the applicable requirements and Respondents' ability to remain in business after the payment of such penalty and completing such tasks as required by the Complaints. In this matter Respondents must also comply with the Compliance Tasks in the Complaint. 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, in association with the pre-hearing exchange of information. *See*

40 C.F.R. § 22.19(a)(4) at which time an explanation of the proposed penalty will be given. The civil penalty will be determined in accordance with Section 9006 of RCRA, 42 U.S.C. § 6991e and EPA's November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance"). Such penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412

COMPLIANCE ORDER

45. Pursuant to the authority of Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondents are hereby ordered to complete one of the three following Compliance Tasks set forth in paragraphs 45a., 45b., or 45c. below. Within fifteen ("15") calendar days after the effective date of this Compliance Order Respondents shall notify EPA, in writing, regarding which of the Compliance Tasks they intend to perform.

- a. Within forty five ("45") calendar days after this Compliance Order becomes final Respondents shall have a Corrosion Expert, as that term is defined by 9 VAC §25-580-10, determine the integrity of the USTs at the Facility, in accordance with 9 VAC 25-580-60(2)(b), and shall submit an UST Integrity Assessment Report, documenting the completion of UST Integrity Assessment and containing the Corrosion Expert's comments, to EPA at the address shown in Paragraph 49(1) of this Complaint.
 1. If, on the basis of the EPA's review of the UST Integrity Assessment Report, EPA concurs with the Corrosion Expert's assessment that the Facility USTs are currently structurally sound and free of corrosion holes and therefore UST integrity corrective actions, consistent with the technical standards and corrective action requirements of 9 VAC 25-580-60(2)(b), are not necessary, then the Respondents shall have no further obligations under paragraphs 45 and 46 of this Compliance Order. EPA shall notify the Respondents in writing of such determination. If EPA does not concur with the an UST Integrity Assessment Report, EPA will notify Respondents of

such nonconcurrency in writing and shall describe the basis for such nonconcurrency. Respondents shall submit a modified UST Integrity Assessment Report addressing EPA's comments within fourteen ("14") days of the receipt of EPA's notice of nonconcurrency. If EPA does not concur with such modified UST Integrity Assessment Report, Respondents shall comply with Paragraphs 45b or 45c.

2. If, on the basis of the EPA's review of the UST Integrity Assessment Report, EPA concurs with the Corrosion Expert's assessment that UST integrity corrective actions are needed to be consistent with the technical standards and corrective action requirements of 9 VAC 25-580-60(2)(b), EPA shall notify the Respondents in writing of such determination. Respondents shall submit to EPA an UST Integrity Assessment Corrective Action Plan within fourteen (14) calendar days of the receipt of such determination. EPA, in consultation with VADEQ, will approve or disapprove the UST Integrity Corrective Action Plan, and will provide written notice to Respondent of such disapproval or approval.

3. If EPA, in consultation with VADEQ, disapproves the UST Integrity Corrective Action Plan, EPA will notify Respondent of such disapproval in writing and shall describe any deficiencies found in the UST Integrity Corrective Action Plan. Respondents shall submit a modified UST Integrity Corrective Action Plan addressing the deficiencies identified by EPA within fourteen ("14") calendar days of the receipt of EPA's notification to Respondent of the disapproval. If EPA, in consultation with VADEQ, disapproves the modified UST Integrity Corrective Action Plan, EPA shall notify Respondents of such disapproval in writing and Respondents shall comply with Paragraphs 45b. or 45 c below.

4. If EPA, in consultation with VADEQ, approves the UST Integrity Corrective Action Plan, EPA shall notify Respondents in writing of such approval. Within fourteen ("14") calendar days of Respondents receipt of

EPA's approval, Respondents shall commence the recommended corrective actions set forth in the UST Integrity Corrective Action Plan.

5. All work set forth in the UST Integrity Corrective Action Plan, shall be completed no later than sixty ("60") calendar days after Respondents' receipt of EPA's approval of the UST Integrity Corrective Action Plan .

6. Notwithstanding the procedures set forth in Paragraph 45.a (1) through (5) above, if the UST Integrity Corrective Action Plan work has not commenced within one hundred and twenty ("120") calendar days of the effective date of this Compliance Order, Respondents must comply with Paragraph 45.b or Paragraph 45.c of this Compliance Order.

- b. Within thirty ("30") calendar days of the effective date of this Compliance Order, or within thirty ("30") calendar days of Respondents' receipt of EPA's notice of disapproval of Respondent's modified Corrective Action Plan pursuant to Paragraph 45.a, as applicable, Respondents shall empty the USTs and shall place all of the UST systems at the Facility into temporary closure status as described under 9 VAC 25-580-310(1). 9 VAC 25-580-310(1) allows temporary closure for a maximum of one year. After one year of temporary closure Respondent must permanently close the USTs pursuant to 9 VAC 25-580-320.
- c. Within sixty ("60") calendar days after the effective date of this Compliance Order, or within thirty ("30") calendar days of Respondents' receipt of EPA's notice of disapproval of Respondent's modified Corrective Action Plan pursuant to Paragraph 45.a, as applicable, Respondents must permanently close the USTs at the Facility in accordance with 9 VAC 25-580-320.
 - 1. Respondents shall notify EPA and VADEQ of Respondents' intent to conduct such action within fifteen ("15") calendar days after the effective date of this Compliance Order.
 - 2. Respondents must submit to VADEQ a written report of the permanent closure with a copy of such report to be submitted to EPA, at the addresses

set forth in Paragraph 49 of this Complaint within thirty ("30") calendar days after the permanent closure of the USTs at the Facility.

46. Unless Respondents permanently close the Facility USTs in accordance with 9 VAC 25-580-320, all metal piping components of the UST systems at the Facility must be assessed for their functionality and protection from corrosion.

a. Within one hundred and twenty ("120") calendar days after this Compliance Order becomes final Respondents shall have a Corrosion Expert, as that term is defined by 9 VAC §25-580-10, complete a determination of the integrity of the USTs piping at the Facility, in accordance with 9 VAC 25-580-50(2)(b). Respondents shall submit documentation of the performance of such UST Piping Integrity Assessment Report, containing the Corrosion Expert's recommendations, to EPA at the address shown in Paragraph 49(1) within one hundred and fifty ("150") calendar days of the effective date of this Compliance Order.

1. If, on the basis of the EPA's review of the UST Piping Integrity Assessment Report, EPA concurs with the Corrosion Expert's assessment that the Facility piping for the USTs are currently structurally sound and free of corrosion holes and therefore UST piping integrity corrective actions, consistent with the technical standards and corrective action requirements of 9 VAC 25-580-50(2)(a), are not necessary, then the Respondents shall have no further obligations under paragraph 46 of this Compliance Order. EPA shall notify the Respondents in writing of such determination. If EPA does not concur with the an UST Piping Integrity Assessment Report, EPA will notify Respondents of such nonconcurrency in writing and shall describe the basis for such nonconcurrency. Respondents shall submit a modified UST Piping Integrity Assessment Report addressing EPA's comments within fourteen ("14") days of the receipt of EPA's notice of nonconcurrency. If

EPA does not concur with such modified UST Piping Integrity Assessment Report, Respondents shall comply with Paragraphs 45.b or 45.c.

2. If, on the basis of the EPA's review of the UST Piping Integrity Assessment Report EPA concurs with the Corrosion Expert's assessment that UST piping integrity corrective actions are needed to be consistent with the technical standards and corrective action requirements of 9 VAC 25-580-50(2)(a), EPA shall notify the Respondents in writing of such determination. Respondent shall submit to EPA an UST Piping Integrity Assessment Corrective Action Plan within fourteen (14) calendar days of the receipt of such determination. EPA, in consultation with the VADEQ, will approve or disapprove the UST Piping Integrity Corrective Action Plan, and will provide written notice to Respondent of such disapproval or approval.

3. If EPA, in consultation with VADEQ, disapproves the UST Piping Integrity Corrective Action Plan, EPA will notify Respondent of such disapproval in writing and shall describe any deficiencies found in the UST Piping Integrity Corrective Action Plan. Respondents shall submit a modified UST Piping Integrity Corrective Action Plan addressing the deficiencies identified by EPA within fourteen ("14") calendar days of the receipt of EPA's notification to Respondent of the disapproval. If EPA, in consultation with VADEQ, disapproves the modified UST Piping Integrity Corrective Action Plan, EPA shall notify Respondents of such disapproval in writing and Respondents shall comply with Paragraphs 45.b, or 45.c below.

4. If EPA, in consultation with VADEQ, approves the UST Piping Integrity Corrective Action Plan, EPA shall notify Respondents in writing of such approval. Within fourteen ("14") calendar days of Respondents receipt of EPA's approval, Respondents shall commence the recommended corrective actions set forth in the UST Piping Integrity Corrective Action Plan.

5. All work set forth in the UST Piping Integrity Corrective Action Plan, shall be completed no later than sixty ("60") calendar days after Respondents'

receipt of EPA's approval of the UST Piping Integrity Corrective Action Plan 6. Notwithstanding the procedures set forth in Paragraph 46.b (1) through (5) above, if the UST piping integrity work set forth in the UST Piping Integrity Corrective Action Plan has not commenced within sixty ("60") calendar days of Respondent's receipt of EPA's written approval of the UST Piping Integrity Assessment Action Plan, Respondents shall comply with Paragraph 45.b or 45.c above.

47. Pursuant to Section 22.37 of the Consolidated Rules of Practice, 40 C.F.R. § 22.37, this Compliance Order shall automatically become a Final Order with respect to Respondents unless, no later than 30 days after this Compliance Order has been served, Respondents request a hearing in this matter as described below.

48. Any notice, report, certification, data presentation, or other document submitted by Respondent 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 Respondent. 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: _____

49. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

- (1) Documents to be submitted to EPA shall be sent via overnight delivery, signature required, to:

Melissa Toffel (3LC70)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029,

and;

Mr. Rodney Travis Carter
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA - Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

- (2) Documents required to be submitted to VADEQ, and one copy of all documents required to be submitted to EPA, shall be sent by overnight delivery or regular mail to:

Mr. Russell P. Ellison
Virginia Department of Environmental Quality
Office of Spill Response and Remediation
P.O. Box 1105
Richmond, Virginia 23218-1105

50. Respondents are hereby notified that failure to comply with any of the terms of this Compliance Order may subject them to 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).

51. The term “days” as used herein shall mean calendar days unless specified otherwise.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

52. Respondents have the right to request a hearing to contest any material fact alleged in this Complaint, the appropriateness of the penalty proposed herein, and/or the appropriateness of the Compliance Order herein. To request a hearing, Respondents must file, within thirty (“30”)

calendar days of receipt of this Complaint, a written Answer to the Complaint with the Regional Hearing Clerk, at the following address:

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

53. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer must state: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondents dispute; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure of Respondents to admit, deny, or explain any material factual allegation contained in this Complaint shall constitute an admission of the allegation.

54. **If Respondents fail to file a written Answer within thirty ("30") calendar days of receipt of this Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the relief sought herein without further proceedings.**

55. Any hearing requested and granted will be conducted in accordance with the CONSOLIDATED RULES OF PRACTICE, a copy of which has been enclosed with this Complaint. If the Presiding Officer schedules a hearing in this matter, the date and location will be determined at a later date pursuant to Section 22.21 of the CONSOLIDATED RULES OF PRACTICE.

56. A copy of Respondents' Answer and all other documents that Respondents file in this action should be sent to Mr. Rodney Travis Carter, Senior Assistant Regional Counsel, the attorney assigned to represent Complainant in this matter, at the following address: _____

Mr. Rodney Travis Carter
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

SETTLEMENT CONFERENCE

57. Complainant encourages settlement of the proceedings 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 request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **A request for a settlement conference does not relieve Respondents of their responsibility to file a timely Answer.**

58. In the event settlement is reached, the 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 Respondents' right to contest the allegations and to appeal the Final Order.

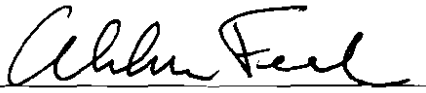
59. If you wish to arrange a settlement conference, please contact Mr. Carter, Senior Assistant Regional Counsel, at (215) 814-2478. Once again, however, such a request for a settlement conference does not relieve Respondents of their responsibility to file an Answer within thirty ("30") calendar days following his receipt of this Complaint.

60. The Quick Resolution procedures set forth in the Consolidated Rules of Practice at 40 C.F.R. § 22.18(a) do not apply to this Complaint because the Complaint seeks a compliance order.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

61. The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the 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 a unilateral or *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice also prohibit the Respondents from having any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 9/30/11


Abraham Ferdas, Director
Land and Chemicals Division