

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

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EPA REGION III, PHILA. PA

May 15, 2012

Transmitted by electronic facsimile and/or express or 1st class mail
In Reply Refer To Mailcode: (3RC50)

Honorable Susan L. Biro (1900L)
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, S.W.
Washington, D.C. 20460

In the Matter of: Oasis Food Mart Inc. et.al. USEPA Docket # RCRA-03-2011-0284

Dear Judge Biro:

I am enclosing a copy of the **Consent Agreement and Final Order** regarding the above captioned matters. The original has been filed with the Regional Hearing Clerk. Also included is a Certificate of Service.

Sincerely yours,



Rodney Travis Carter

Senior Assistant Regional Counsel

cc: Regional Hearing Clerk
Melissa Toffel (3LC71)
David S. Bailey Esq.

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”) as alleged in the Complaint, Compliance Order and Notice of Right to Request Hearing, RCRA-03-2011-0284 (“Complaint”) filed in the above captioned matter.

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.

I. GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondents admit to the jurisdictional allegations set forth in this CA/FO.
2. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CA/FO, except as provided in Paragraph 1, above.
3. Respondents agree not to contest EPA’s jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order (“FO”), or the enforcement of the CA/FO.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondents consent to the issuance of this CA/FO and agree to comply with its terms and conditions.
6. Respondents shall bear their own costs and attorney’s fees.
7. The person signing this CA on behalf of the Respondents certify to EPA by his/or her signature herein that Respondents, as of the date of this CA, are in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia’s federally authorized underground storage tank program 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. at the Facility referenced herein.

8. The provisions of this CA/FO shall be binding upon Respondents, and their officers, directors, employees, successors and assigns.
9. This CA/FO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CA/FO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.
10. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondents to EPA regarding matters at issue in this CA are false or, in any material respect, inaccurate. Respondents are aware that the submission of false or misleading information to the United States government may subject Respondents to separate civil and/or criminal liability.
11. Respondents agree not to deduct, for civil taxation purposes, the civil penalty specified in this Consent Agreement and the attached Final Order.
12. EPA has given the Commonwealth of Virginia prior notice of the issuance of this CA/FO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

13. EPA's Findings of Fact and Conclusions of Law set forth in the Complaint are hereby incorporated into this Consent Agreement as if set forth fully therein, subject to Paragraphs 2 and 3, above.

III. CIVIL PENALTY

14. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondents agrees to pay a civil penalty in the amount of One Hundred Dollars (\$100.00). The civil penalty amount is due and payable immediately upon Respondents' receipt of a true and correct copy of this CA/FO. If Respondents pays the entire civil penalty of One Hundred Dollars (\$100.00) within thirty (30) calendar days of the date on which this CA/FO is mailed or hand-delivered to Respondents, no interest will be assessed against Respondents pursuant to 40 C.F.R. § 13.11(a)(1).
15. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

16. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CA/FO begins to accrue on the date that a copy of the CA/FO is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
17. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
18. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
19. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondents's violations and any good faith efforts by Respondents to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.

IV. COMPLIANCE TASKS

20. Pursuant to the authority of Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondents shall complete the following Compliance Tasks set forth below
21. Within sixty (60) calendar days after the affective date of this CA/FO, Respondents shall empty and clean the above referenced USTs at the Facility in accordance with 9 VAC 25-580-320 and 40 C.F.R. 280.71(b) (Permanent Closure and changes-in-service) by removing all liquids and accumulated sludges.
22. Within one hundred and eighty (180) calendar days after the affective date of this CA/FO, Respondents shall have permanently closed the USTs at the Facility in accordance with all applicable sections of the Commonwealth of Virginia's federally authorized underground storage tank regulations, including but not limited to 9 VAC 25-580-320, 340, 350, 40 C.F.R. 280.71 and 40 C.F.R. 280.72.

23. Within two hundred (200) calendar days after the affective date of this CA/FO Respondents must submit to VADEQ a written report which documents and certifies the permanent closure of the USTs at the Facility with a copy of such report to be submitted to EPA, at the addresses set forth in Paragraph 30 of this CA/FO.
24. If activities undertaken by Respondents in connection with these Compliance Tasks indicate the release of a regulated substance from any UST systems at the Facility may have occurred, Respondents may be required to undertake responsive action pursuant to applicable regulations in 9 VAC 25-580-230 through 300 and 40 C.F.R. Part F.

V. FORCE MAJEURE

25. The Respondents's obligations under the Compliance Tasks section of this CA/FO shall be performed as set forth in this CA/FO unless performance is prevented or delayed by a force majeure event. For purposes of this CA/FO, "force majeure" is defined as any event arising from causes beyond the control of the Respondents or of entities controlled by the Respondents, including, but not limited to, contractors and sub-contractors, which could not be overcome by the due diligence of the Respondents or the entities controlled by the Respondents, which delays or prevents the performance of any obligation under this CA/FO, including acts of God or war, labor unrest, civil disturbance and any judicial orders which prevent compliance with the provisions of this CA/FO. Force majeure shall not include increased costs of performance of any activity required by this CA/FO, the failure of any customers to fund any activity necessary to achieve compliance with this CA/FO or the failure to apply for any required permits or approvals or to provide all information required therefore in a timely manner, nor shall it include the failure of contractors or employees to perform or the avoidable malfunction of equipment.
26. If the Respondents are having difficulty meeting their obligations as set forth in this CA/FO due to a force majeure event, they shall notify EPA promptly by telephone of any change in circumstances giving rise to the suspension of performance or the non-performance of any obligation under this CA/FO. In addition, within fourteen (14) calendar days of the occurrence of circumstances causing such difficulty, it shall provide a written statement to EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions shall constitute a waiver of any claims of force majeure. The Respondents shall take all reasonable steps to avoid and/or minimize any such delay.
27. The burden of proving that any delay is caused by circumstances beyond the control of the Respondents shall rest with the Respondents.

VI. MODIFICATIONS

28. The requirements, timetable and deadline under this CA/FO may be modified upon receipt of a timely request for modification and when good cause exists for the requested modification. Any request for modification by the Respondents shall be submitted in writing and shall specify: the requirement, timetable or deadline for which a modification is sought; the good cause for the extension; and any related requirement, timetable, deadline or schedule that would be affected if the modification were granted.
29. Good cause exists for a modification when sought in regard to: a force majeure event; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; a delay caused by failure of a regulatory agency to perform its duties in a timely manner where regulatory action is necessary to proceed with work and where the Respondents has made a timely and complete request for action from the regulatory agency; acceptable scientific data exists which demonstrates that another requirement, deadline or timetable would be adequate to achieve compliance with this CA/FO and the goals of such statute; and another event or series of events mutually agreed to by the Parties and constituting good cause.
30. Within twenty-one (21) calendar days of receipt of a request for a modification, EPA shall advise the Respondents of its position on the request. If EPA does not concur in the modification, it shall include in its statement of non-concurrence an explanation of the basis for its position.
31. In the event that a modification to any Compliance Task set forth above is required, EPA and the Respondents agree to negotiate with regard to such modification to the extent necessary for the Respondents to achieve compliance with RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, the Commonwealth of Virginia's federally authorized underground storage tank program and the Compliance Task set forth in this CA/FO.
32. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to this CA/FO which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondents' compliance or noncompliance with any requirement of this CA/FO shall be certified by each 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: _____

33. All documents and reports to be submitted pursuant to this CA/FO 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 (3RC30)
 Senior Assistant Regional Counsel
 Office of Regional Counsel
 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

34. Respondents are hereby notified that failure to comply with any of the terms of this CA/FO may subject them to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. §6991e(a)(3).

35. The term "days" as used herein shall mean calendar days unless specified otherwise.

36. Respondents shall remit the full penalty payment for the civil penalty and/or interest in accordance with paragraph 14 through 18, above, by sending a certified check or cashier's check, or by cashier's check, certified check, or electronic wire transfer, payable to "United States Treasury", in accordance with the following instructions:

a. All payments made by check and sent by U.S. Postal Service regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The customer service contact for this address is Heather Russell, who may be reached at 513-487-2044.

b. All payments made by check and sent by UPS, FedEx, or overnight mail delivery service (except as noted in section d, below) shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The U.S. Bank customer service contact number for overnight delivery is 314-418-1028.

c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- e. All electronic payments made through the Automated Clearinghouse ("ACH"), also known as Remittance Express ("REX"), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681

- f. On-line payment option

WWW.PAY.GOV

Enter "sfo 1.1" in the search field. Open and complete the form.

- g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- h. All payments by Respondents shall include Respondents' full name and address and the EPA Docket Number of this Consent Agreement (**RCRA-03-2011-0284**).

- I. At the time of payment, Respondents shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk

U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Rodney Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

VII. FULL AND FINAL SATISFACTION

37. This CA/FO constitutes a settlement by EPA of its claims for civil penalties pursuant to 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement.

VIII. RESERVATION OF RIGHTS

38. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

IX. OTHER APPLICABLE LAWS

39. Nothing in this CA/FO shall relieve Respondents of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

X. AUTHORITY TO BIND THE PARTIES

40. The undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondents hereto.

XI. ENTIRE AGREEMENT

41. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

XII. EFFECTIVE DATE

42. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.

For Respondents:

Oasis Food Mart Inc.

5/2/12
Date

Yaser Y. Atieh
by: Yaser Y. Atieh, CEO

Y & A Investments, LLC

5/8/12
Date

Yaser Y. Atieh
by: Yaser Y. Atieh, CEO

For Complainant:

U.S. Environmental Protection Agency,
Region III

5/4/12
Date

Rodney T. Carter
Rodney T. Carter
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the ,
Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or
the Regional Judicial Officer issue the Final Order attached hereto.

5/8/12
Date

By: Abraham Ferdas
Abraham Ferdas, Director,
Lands and Chemicals Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103

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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)

Y & A Investments, LLC)

trading and/or also doing business as)

Y & A Enterprises Inc.)

4222 Bonniebank Road)

Suit 304)

Richmond VA 23234)

) U.S. EPA Docket Number

) RCRA-03-2011-0284

) FINAL ORDER

) Proceeding under Section 9006

) of the Resource Conservation and

) Recovery Act, as amended,

) 42 U.S.C. § 6991e

RESPONDENTS)

Oasis Food Market)

also known as)

Q-Market #333)

3124 Broad Rock Road)

Richmond, VA 23224)

FACILITY)

FINAL ORDER

Complainant, the Director,, Land and Chemicals Division U.S. Environmental Protection Agency - Region III, **Y & A Investments, LLC.** and **Oasis Food Mart Inc.**, (“Respondents”), have executed a document entitled “Consent Agreement” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

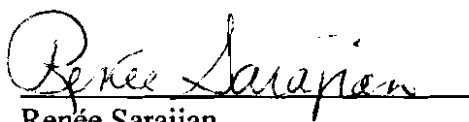
NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules of Practice and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(c)(“RCRA”), and having determined, based on the representations of the parties in the

attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) and (d) of RCRA, 42 U.S.C. § 6991e(c) and (d), **IT IS HEREBY ORDERED** that Respondents pay a civil penalty of One Hundred Dollars (\$100.00) in accordance with the payment provisions set forth in the attached Consent Agreement and comply with the terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date:

5/11/12



Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

Docket Number RCRA-03-2011-0284

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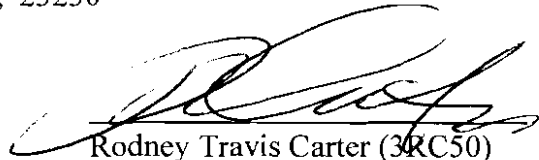
REGIONAL HEARING CLERK
EPA REGION III, PHILADELPHIA, PA

I certify that on the date noted below, the original Consent Agreement and Final Order for this matter (**RCRA-03-2011-0284**) was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that I caused true and correct copies of the Consent Agreement and Final Order to be transmitted by electronic facsimile and/or express or 1st class mail to the persons listed below:

Honorable Susan L. Biro (1900L)
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, S.W.
Washington, D.C. 20460

David S. Bailey Esq.
General Manager and Senior Counsel
The Environmental Law Group, PLLC
5803 Staples Mill Road
Richmond, VA, 23230

Date: May 15, 2012



Rodney Travis Carter (3RC50)
Senior Assistant Regional Counsel
U.S. EPA-Region III
1605 Arch Street
Philadelphia, PA 19103