

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

\_\_\_\_\_) )  
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, Virginia 23228 )

**Y&A Investments, LLC** )  
*trading and/as doing business as* )  
Y & A Enterprises, Inc. )  
4222 Bonniebank Road )  
Suite 304 )  
Richmond, Virginia 23234 )

**RESPONDENTS** )

Oasis Food Market )  
*also known as* )  
Q-Market #133 )  
3124 Broad Rock Road )  
Richmond, Virginia 23224 )

**FACILITY** )

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

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

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

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ADMINISTRATIVE COMPLAINTS

**CONSOLIDATED ANSWER OF RESPONDENT OASIS FOOD MARKET, AKA Q-  
MARKET #133 AND Y & A INVESTMENTS, LLC**

**INTRODUCTION**

The Introduction to the Complaint is a general statement of the law and EPA authority and does not require an answer; to the extent an answer is required it is denied. Respondent avers that this EPA action appears to be an "oversuit" of delegated authority to the Commonwealth of Virginia Department of Environmental Quality ("DEQ") and Respondent reserves all claims of compliance and affirmative defenses pursuant to compliance with DEQ authority.

## COMPLAINT

1. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required relative to the allegations further contained in this Complaint it is denied.

2. Admitted that Oasis Food Mart, Inc. is a Virginia Corporation registered with and in good standing with the Virginia State Corporation Commission ("SCC"). Admitted that Oasis Food Mart also trades as "Oasis Food Mart." Denied as to any SCC registration or trading as name under "Q-Market" or "Q-Market #333."

3. Admitted that Y & A Investments, LLC is a limited liability company registered with and in good standing with the SCC. Denied to the extent that Y & A Enterprises LLC is a "trading as" entity for Y & A Investments. Y & A Enterprises LLC' registration with the Virginia SCC was terminated in 2010 and is no longer a viable business or trading as name.

4. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required relative to the allegations further contained in this Complaint it is denied.

5. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

6. This allegation is denied at this time based on lack of information and knowledge. Respondent can admit that at least as of July 29, 2009 the Oasis market was owned by the Respondent. Investigation is continuing.

7. This allegation is denied at this time based on lack of information and knowledge. No EPA documents were provided with the Complaint.

8. Admitted.

9. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

10. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

11. Admitted except for the fact that Respondent asserts that tank 4 contained diesel and tank 1 contained gasoline, according to "BesTest" (July 2009) and "Totalsir" (2009) tank profile documents.

12. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

13. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

14. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

15. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

16. This allegation is denied as to ownership as of February 1, 2009 at this time based on lack of information and knowledge.

17. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

18. This allegation is denied at this time based on lack of information and knowledge. See answer to allegations 6 and 16, incorporated herein.

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

19. Paragraph 19 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied.

20. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

21. This allegation is a statement of law/authority and requires no answer. Which provisions of these sections apply to this case are disputed. To the extent any further answer is required it is denied. Further, there is no such Virginia regulation 9VAC25-580-140.1 or 9VAC25-580-140.1(a)-(c).

22. This allegation is denied at this time based on lack of information and knowledge.

23. Paragraph 23 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied.

## **COUNT II**

### **(Failure to perform automatic line leak detector testing annually on facility USTs)**

24. Paragraph 24 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied.

25. This allegation is a statement of law/authority and requires no answer. To the extent any further answer is required it is denied.

26. This allegation is a statement of law/authority and requires no answer. Which provisions of these sections apply to this case are disputed. To the extent any further answer is required it is denied. Further, there is no such Virginia regulation 9VAC25-580-140.2.a.

27. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

28. This allegation is denied to the extent that the exact date of ownership is still be investigated. Admitted as to July 29, 2009 to present.

29. The first sentence is denied at this time based on lack of information and knowledge, and further disputed as to whether such tests were required by the dates alleged. The second sentence is denied based on lack of information and knowledge.

30. Paragraph 30 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied. Further, there is no such Virginia regulation 9VAC25-580-140.2.a.

## **COUNT III**

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

31. Paragraph 31 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied.

32. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied. Further, there is no such Virginia regulation 9VAC25-580-140.2.a.

33. This allegation is denied at this time based on lack of information and knowledge. It is further disputed as to whether such tests were required by the dates alleged.

34. This allegation is denied to the extent that the exact date of ownership is still be investigated. Admitted as to July 29, 2009 to present.

35. This allegation is denied at this time based on lack of information and knowledge. It is further disputed as to whether such tests were required by the dates alleged.

36. Paragraph 36 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied.

#### **COUNT IV**

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

37. Paragraph 37 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied.

38. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

39. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

40. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied.

41. Denied. Respondent further asserts that the subject underground tanks passed cathodic protection survey requirements until 2009, at which time, after the first such failure, a tank integrity test was performed and passed, and an impressed current cathodic protection system was installed by a NACE certified individual and put into operation by early 2010.

42. Paragraph 42 is an incorporation paragraph which requires no answer. To the extent an answer is required, it is denied.

#### **CIVIL PENALTY ASSESSMENT**

43. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied. Respondent disputes whether any civil penalty is warranted in this case. Respondent asserts an inability to pay any civil penalty.

44. This allegation is a statement of law/authority and requires no answer. To the extent an answer is required it is denied. Respondent asserts an inability to pay any civil penalty.

#### **COMPLIANCE ORDER**

45-51. Paragraphs 45-51 make up a compliance order which is automatic unless a hearing or settlement conference is requested. Because such hearing and settlement conference is

requested, no answer is required not choice of compliance order response is required at this time. To the extent any answer is required to these paragraphs, the proposed penalty, if any, the Compliance Order, Correction Action Order, or Permit Action are inappropriate and Respondent is entitled to judgment as a matter of law. Respondent asserts an inability to pay any civil penalty and further asserts that should extensive further actions be required, may be unable to comply, for financial reasons, with any compliance order schedule.

### **OPPORTUNITY TO REQUEST HEARING**

52. Respondent requests a hearing on this matter. Note that Respondent is requesting a settlement hearing which may resolve this matter satisfactorily to all parties. Respondent has filed a timely answer (within 30 days of receipt of complaint) by federal express to the designated recipients as indicated in the Administrative Complaint.

53. Respondent has complied with the provisions of paragraph 53 by filing an answer which directly admits, denies or explains each of the factual allegations contained in the Complaint of which Respondents have any knowledge or are disputed, the basis for opposing relief, have requested a hearing, and are alleging grounds of defense below.

54. This paragraph is not applicable as Respondent has timely filed an answer.

55. This allegation is a statement of law/authority and requires no answer.

56. The answer and pertinent documents available to the Respondent at the time of filing have been attached to the answer and sent to Mr. Rodney Carter.

### **SETTLEMENT CONFERENCE**

57. A settlement conference is requested as Respondents only interest is to be in compliance with both state and federal requirements. An answer has been timely filed.

58. This allegation is a statement of law/authority and requires no answer.

59. A request to Mr. Carter will be made after the answer is timely filed.

60-61. This allegation is a statement of law/authority and requires no answer.

### **GROUND OF DEFENSE**

1. Respondent states that, at all times, Respondent has acted in good faith and contracted with parties representing their abilities to properly comply with all state and federal requirements; further, these contracted parties are qualified to perform their respective function under Virginia regulations.

2. Respondent contracted for, paid for and had conducted a cathodic protection survey in 2009, as prior survey was conducted in 2006 and had passed. When the 2009 survey failed, Respondent conducted, in accordance with Virginia regulations and Virginia Department of Environmental Quality Guidance memorandum of 2006, Appx. M, a tank integrity assessment (which passed) and then installed the required impressed current cathodic protection system in early March 2010 (which extension was granted by DEQ), which system was tested and surveyed on November 1, 2010 and certified as complete, operational and good for three more years. The report by Henkels & McCoy is attached hereto. Prior to this time, the installation of such leak detection devices should have performed by the previous owner, of which Respondent has no knowledge.

3. Respondents further asserts that since installation the impressed current cathodic protection system, Respondent has performed the proper monitoring in accordance with Virginia regulations, such as inventory control, bi-monthly testing of cathodic equipment and line tightness testing. Supporting documents are provided and will be supplemented.

4. Respondents further dispute the testing and evaluation by EPA's consultant as improper and incorrect application of the law and testing standards.

Respectfully submitted,

Oasis Food Mart, Inc. Y & A Investments,  
LLC,  
By Counsel



David S. Bailey, Esquire (Va Bar 24940; DC Bar 455518)  
Jennifer A. French, Esquire (Va Bar 81395)  
The Environmental Law Group, PLLC  
5803 Staples Mill Road  
P.O. Box 6236  
Richmond, Virginia 23230  
Telephone: 804-433-1980  
Facsimile: 804-433-1981  
email: dbailey@envirolawva.com

Tammy L. Belinsky, Esquire (V A 43424)  
The Environmental Law Group, PLLC  
9544 Pine Forest Road  
Copper Hill, Virginia 24079  
Telephone: 540-929-4222  
Facsimile: 540-929-9195  
Email: tambel@hughes.net

## CERTIFICATE OF SERVICE

I certify that the foregoing answer, together with attached documents, was sent by federal express, standard overnight delivery next business morning, signature confirmation required, to Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 (one original and one copy), and to Mr. Rodney Travis Carter, Senior Assistant Regional Counsel, Office of the Regional Counsel (3RC30), U.S. EPA- Region III, 1650 Arch Street, Philadelphia, 19103-2029, all this 28<sup>th</sup> day of October, 2011.



David S. Bailey