UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Aylin, Inc., Rt. 58 Food Mart, Inc.,	)	**Docket No. RCRA-03-2013-0039**
Franklin Eagle Mart Corp.,	)	
Adnan Kiriscioglu d/b/a New Jersey Petroleum	)	
Organization a/k/a NJPO,	)	
5703 Holland Road Realty Corp.,	)	
8917 South Quay Road Realty Corp., and	)	
1397 Carrsville Highway Realty Corp.	)	
	)	
Respondents.	)	

ORDER ON RESPONDENTS' MOTION IN LIMINE

I. RELEVANT PROCEDURAL HISTORY

On March 27, 2013, the United States Environmental Protection Agency ("EPA"), Director of the Land and Chemicals Division of Region 3 ("Complainant"), initiated this proceeding by filing an Administrative Complaint, Compliance Order and Notice of Right to Request Hearing against Aylin, Inc. ("Aylin"), Rt. 58 Food Mart, Inc. ("Rt. 58"), Franklin Eagle Mart Corp. ("Franklin Eagle"), and Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO ("Kiriscioglu") (collectively, "Original Respondents") for alleged violations of Section 9005(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991d(a), and certain provisions of the Commonwealth of Virginia's federally-authorized underground storage tank ("UST") regulations ("VA UST Rules").[1] The alleged violations arose from the Original Respondents' purported ownership and/or operation of the USTs located at three gas stations in the Commonwealth of Virginia: the Pure Gas Station in Suffolk, Virginia

[1] Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, EPA granted final authorization to the Commonwealth of Virginia effective on October 28, 1998, to administer and enforce its own UST management program in lieu of the federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991 *et seq.* 40 C.F.R. § 282.96. Set forth at 9 VAC §§ 25-580-10 *et seq.*, and 9 VAC §§ 25-590-10 *et seq.*, the provisions of the program became requirements of Subtitle I of RCRA upon final authorization by EPA, and EPA retains the authority to enforce the program and issue a compliance order and/or assess a civil penalty pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. *Id.*

("Pure Facility"), the Rt. 58 Food Mart in Suffolk, Virginia ("Rt. 58 Facility"), and the Franklin Eagle Mart in Franklin, Virginia ("Franklin Facility"). The Original Respondents filed a joint Answer to Administrative Complaint, Compliance Order and Notice of Right to Request a Hearing on April 29, 2013.

On November 5, 2013, I issued a Prehearing Order and Order on Motion to Stay Proceedings ("Prehearing Order"), which set deadlines for the parties' prehearing exchange process and for the filing of dispositive motions regarding liability. The parties subsequently filed their prehearing exchanges and engaged in extensive motions practice. By Order dated August 10, 2015, I ruled on several pending motions and established deadlines for a number of procedures.

By leave of this Tribunal, Complainant filed a First Amended Administrative Complaint, Compliance Order and Notice of Right to Request Hearing ("Amended Complaint") on August 12, 2015, alleging 17 counts of violation against Aylin, Rt. 58, Franklin Eagle, Kiriscioglu, 5703 Holland Road Realty Corp. ("Holland Road Realty"), 8917 South Quay Road Realty Corp. ("Quay Road Realty"), and 1397 Carrsville Highway Realty Corp. ("Carrsville Highway Realty") (collectively, "Respondents"). The Amended Complaint charges Respondents Holland Road Realty, Quay Road Realty, and Carrsville Highway Realty ("Respondent Realty Corporations") in their capacities as the owners of the subject USTs, and charges the remaining Respondents in their capacities as the operators of the subject USTs. Respondents filed a joint Answer to First Amended Complaint, Administrative Complaint, Compliane [sic] Order and Notice of Right to Request a Hearing ("Amended Answer") on August 31, 2015. The parties also supplemented their prehearing exchanges by leave of this Tribunal.

Thereafter, the parties again engaged in extensive motions practice. Of particular relevance to this Order, Respondents filed a Motion in Limine ("Motion") on February 26, 2016. Therein, Respondents move to exclude certain testimony that Respondents expect to be offered by Complainant's proposed witnesses at the hearing scheduled to begin in this matter on April 25, 2016, and to sequester a number of Complainant's proposed witnesses at all times during the hearing other than while they are testifying.[2] Complainant thereafter filed a Reply in Opposition to Respondents' Motion *in Limine* ("Response").

[2] Respondents also move to exclude two of Complainant's proposed exhibits. Motion at 9-10. Respondents initially requested to exclude the given exhibits in their response to Complainant's motion for leave to supplement its prehearing exchange with the exhibits, which was pending at the time Respondents filed the instant Motion. Since then, Complainant' motion for leave to supplement its prehearing exchange has been granted and Respondents' request to exclude the exhibits has been denied, which renders Respondents' request to exclude the exhibits in the context of the instant Motion moot.

II. STANDARD FOR ADJUDICATING RESPONDENTS' MOTION

Motions in limine are not referenced by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), set forth at 40 C.F.R. Part 22, which govern this proceeding. With respect to the admission of evidence, the Rules of Practice provide simply that "[t]he Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value . . . ." 40 C.F.R. § 22.22(a)(1). However, a motion in limine is the appropriate means of seeking exclusion of proposed testimony and exhibits prior to an evidentiary hearing on the basis that the proposed evidence does not satisfy the applicable standard of admissibility. Because the Rules of Practice are silent on this subject, this Tribunal may consult the Federal Rules of Civil Procedure, Federal Rules of Evidence, and related case law for guidance. *See, e.g.*, *Envtl. Prot. Servs., Inc.*, 13 E.A.D. 506, 560 n.65 (EAB 2008) (citing *J. Phillip Adams*, 13 E.A.D. 310, 330 n.22 (EAB 2007); *Lazarus, Inc.*, 7 E.A.D. 318, 330 n.25 (EAB 1997)); *Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002); *Asbestos Specialists, Inc.*, 4 E.A.D. 819, 827 n.20 (EAB 1993). For example, Chief Administrative Law Judge Susan L. Biro has observed:

> In Federal court practice, a motion in limine should be granted only if the evidence sought to be excluded is clearly inadmissible for any purpose. Motions in limine are generally disfavored. If evidence is not clearly inadmissible, evidentiary rulings may be deferred until trial so questions of foundation, relevancy, and prejudice may be resolved in context. Thus, denial of a motion in limine does not mean that all evidence contemplated by the motion will be admitted at trial. Rather, denial of the motion in limine means only that without the context of the trial the court is unable to determine whether the evidence in question should be excluded.

Zaclon, Inc., 2006 EPA ALJ LEXIS 21, at *11 (internal citations and quotation marks omitted).

The Rules of Practice also do not contemplate the sequestration of witnesses. Looking to the Federal Rules of Evidence ("FRE") for guidance, I note that it authorizes this practice as follows:

> At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:
>
> > (a) a party who is a natural person;
> > (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;
> > (c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or
> > (d) a person authorized by statute to be present.

Fed. R. Evid. 615. One of the explanatory notes following the rule advises that "[t]he efficacy of excluding or sequestering witnesses has long been recognized as a means of discouraging and exposing fabrication, inaccuracy, and collusion" and that it is recognized as "one of right," rather than being committed to the discretion of the tribunal. Fed. R. Evid. 615 Notes of Advisory Committee on Rules.

III. ARGUMENTS OF THE PARTIES

A. Respondents' Motion

In their Motion, Respondents first seek to bar particular testimony from being offered by one of Complainant's proposed fact witnesses, Leslie Beckwith, who was identified in Complainant's prehearing exchange as the Director of the Office of Financial Responsibility and Data Management in the Commonwealth of Virginia's Department of Environmental Quality ("VADEQ") and a potential witness who "may be called to testify to VADEQ's financial responsibility requirements for USTs and Respondents' compliance with same." Complainant's Second Supplemental Prehearing Exchange (Oct. 23, 2015), at 2. Specifically, Respondents seek to bar Ms. Beckwith from offering any testimony or lay opinions regarding any counts in the Amended Complaint other than Counts 7, 12, and 17, which charge Respondents with violations of the financial responsibility requirements contained in the VA UST Rules. Motion at 4. In support, Respondents argue that, based upon Complainant's representations to this Tribunal regarding Ms. Beckwith's credentials, she lacks expertise or training as to the technical standards underlying the other counts of the Amended Complaint (with the exception of Count 1), and to permit her to testify regarding any such matters "would be tantamount to elevating her to the status of an expert witness for which she is neither qualified nor has she been disclosed by the Complainant as an expert witness." *Id.* at 4-5. Respondents also seek to bar Ms. Beckwith from offering any testimony that she "agrees" with the testimony of any other witness called by Complainant for purposes of testifying about Counts 7, 12, and 17, arguing that such testimony would amount to "improper bolstering," which "creat[es] the false impression of redundant, favorable opinions [that] is prejudicial to Respondents," and would be improper without a foundation laid by Complainant that she conducted an independent investigation and analysis of the opinions offered by the witness(es) in question. *Id.* Respondents cite to the same reasoning to object to Ms. Beckwith offering any testimony or lay opinions regarding Respondent Kiriscioglu's purported status as an "operator" of the USTs. *Id.* at 6. Finally, Respondents seek to bar Ms. Beckwith from offering any testimony or lay opinions regarding the "consistency" or "appropriateness" of the penalty proposed by Complainant on account of that issue being within the purview of this Tribunal as the trier of fact. *Id.*

Respondents next seek to bar particular testimony from being offered by Andrew Ma, a proposed fact witness identified in Complainant's prehearing exchange as an Environmental Scientist in the Office of Land Enforcement, Land and Chemicals Division, Environmental Science Center, EPA, Region 3, who is expected to testify as to his inspections of the Facilities

during March of 2010 and his subsequent investigation, his interactions with Respondents or their representatives, and the calculation of the proposed penalty, among other matters. Complainant's Initial Prehearing Exchange (Mar. 14, 2014), at 2-3. As they requested for Ms. Beckwith, Respondents seek to bar Mr. Ma from offering any testimony or lay opinions regarding the "consistency" or "appropriateness" of the proposed penalty. Motion at 6. Respondents also object to Mr. Ma testifying that he "agrees" with the testimony of any other witness called by Complainant for the same reasons advanced with respect to Ms. Beckwith. *Id.* at 6-7.

Respondents next seek to bar Complainant "from introducing any speculation or argument about the substance of the testimony of any witness who is absent or unavailable, or whom Respondents did not call to testify at the hearing," and to exclude "[a]ny reference to Respondents' refusal to agree or stipulate to any matter." Motion at 10. Respondents argue that any such reference is irrelevant to the material issues of this proceeding. *Id.*

Turning to the issue of sequestration, Respondents urge that Ms. Beckwith, Mr. Ma, and each expert witness proposed by Complainant be excluded from the courtroom except when testifying. With regard to Ms. Beckwith, Respondents request that she be sequestered given that she is a non-party fact witness for Complainant. Motion at 4. As for Mr. Ma, while Respondents acknowledge the appropriateness of Complainant having a designated representative other than its counsel of record sit through the entirety of the hearing, Respondents urge that Mr. Ma not be allowed to serve as such a representative and that he be sequestered on account of his presence during the testimony of the other witnesses being prejudicial to Respondents. *Id.* at 7. Finally, Respondents object to the presence of the expert witnesses proposed by Complainant during the testimony of other witnesses. *Id.* at 7. Citing FRE 615 and related case law for support, Respondents argue that the rule "allows for sequestration of fact and expert witnesses as a matter of right, except in the most exceptional circumstances," and that none of the exceptions identified by the rule apply to the proposed expert witnesses at issue here. *Id.* at 7-9 (citing Fed. R. Evid. 615; *Jury v. Virginia*, 395 S.E.2d 213, 216 (Va. Ct. App. 1990); *United States v. Ell*, 718 F.2d 291, 292 (9th Cir. 1983); *NLRB v. Stark*, F2d 422, 428-29 (2d Cir. 1975); *Babcock v. Alaska*, 685 P.2d 721,724 (Alaska Ct. App. 1984); *Grace v. Delaware*, 314 A.2d 169, 170 n.2 (Del. 1973)). Respondents maintain that "[a]ny showing of need for Complainant's witnesses to be present in the hearing room throughout the hearing is outweighed by the prejudice to Respondents," especially Respondent Kiriscioglu if Complainant amends its prehearing exchange to add him as a proposed witness. Motion at 9.

B. Complainant's Response

Noting Respondents' contention that Complainant is unable to show that any of the exceptions to FRE 615 apply to its proposed expert witnesses, Complainant disagrees and counters that, "with the exception of Mr. Ma, each witness will testify on a separate and distinct issue, consistent with the written testimony in the record," and that any concern that its witnesses will engage in collusion or conform their testimony absent sequestration is misplaced. Response

at 3. To allay Respondents' concerns, however, Complainant "does not object to the sequestration of such witnesses during Mr. Ma's testimony." *Id.* at 3-4. Complainant emphasizes that it "*does* object to sequestration of *any* of its witnesses during the testimony of *any* of Respondents' witnesses." *Id.* at 4 (emphasis in original).

In particular, while Complainant concedes that any issues bearing on liability or penalty other than the financial responsibility requirements imposed by the VA UST Rules and Respondents' compliance with those requirements "are beyond the scope of [Leslie Beckwith's] intended testimony," it argues against the sequestration of Ms. Beckwith during any testimony by Respondents' witnesses regarding financial responsibility and interactions with VADEQ personnel supervised by Ms. Beckwith. Response at 4.

Complainant further objects to Respondents' request to sequester Mr. Ma, arguing that, "[a]s an investigative agent of EPA who is essential to presenting Complainant's claims," Mr. Ma clearly falls into the group covered by the third exception set forth in FRE 615.[3] *Id.* at 5. Complainant maintains that the detailed affidavit provided by Mr. Ma in support of an unrelated motion filed by Complainant demonstrates that he "best knows the facts of the alleged violations and the details of the relief sought." *Id.* at 5. Complainant further argues that "it is vital that Mr. Ma be present throughout the hearing in order to rebut any testimony by Respondents' witnesses that bears on liability or penalty, particularly testimony offered by Adnan Kiriscioglu or Ezgi Kiriscioglu regarding Mr. Ma's interactions with them or any other representatives of Respondents." *Id.* As for Respondents' request to bar Mr. Ma from offering any testimony or lay opinions as to the "appropriateness" or "consistency" of the proposed penalty, Complainant argues that a witness who calculated the proposed penalty as part of his or her official duties is appropriately treated in administrative enforcement proceedings as an expert witness allowed to present opinion testimony on the appropriateness of the proposed penalty and its consistency with the relevant penalty policy. *Id.* at 6 (citing *Carbon Injection Systems*, 2012 ALJ LEXIS 28, at *6-7). Complainant thus urges that none of Mr. Ma's testimony be excluded. *Id.*

Finally, Complainant objects to Respondents' request to sequester two of Complainant's expert witnesses, Gail Coad and John Cignatta. Response at 7. In support, Complainant argues that they fit into the third exception set forth in FRE 615 on account of being essential to Complainant for proving its claims, as demonstrated by the record. *Id.* Complainant further argues that they are experts "'necessary for counsel to manage the litigation,' in order for counsel to assess and develop cross-examination of those portions of the testimony of Respondents'

[3] Complainant contends that Mr. Ma arguably could be designated as its representative by counsel, and thus be excepted from FRE 615 under the second exception contained in the rule, but for the fact that Complainant is the Director of the Land and Chemicals Division and thus a natural person. Response at 6. Complainant then points to the explanatory note accompanying FRE 615 from the Senate Committee on the Judiciary, which construes the second exception as including investigative agents such as Mr. Ma. *Id.* at 6 n. 3 (citing Fed. R. Evid. 615, Notes of Committee on the Judiciary, Senate Report No. 93-1277).

witnesses regarding [the topics bearing on liability and penalty to which those witnesses are expected to testify]." *Id.* (quoting Fed. R. Evid. 615 Notes of Advisory Committee on Rules).

IV. DISCUSSION

I will first address Respondents' request for an order excluding Ms. Beckwith from the courtroom other than while she is testifying and then barring her from testifying as to certain subjects. Respondents argue in favor of the sequestration of Ms. Beckwith on account of her being proffered as a non-party fact witness for Complainant. Complainant does not appear to object to her exclusion during the testimony of Mr. Ma. It explicitly objects, however, to her exclusion during any testimony offered by Respondents' proposed witnesses regarding financial responsibility and their interactions with VADEQ personnel supervised by Ms. Beckwith. Upon consideration of the positions of the parties, I am inclined to rule in favor of Respondents on this issue. As acknowledged by Complainant in its Response, the narrative summary of Ms. Beckwith's expected testimony set forth in Complainant's prehearing exchange and the affidavit of Ms. Beckwith submitted as part of an unrelated motion each reflect that Ms. Beckwith is expected to testify on a distinct topic differing from those expected to be covered by other witnesses proposed by Complainant – namely, "how an owner or operator of underground storage tanks and systems ('USTs') in Virginia must demonstrate financial responsibility in accordance with 9 VAC § 25-590-10 *et seq.*" and "Respondents' compliance with Virginia's requirements." Response at 4. Thus, any concern that she will conform her testimony to that of other witnesses appears to be negligible. While it is conceivable that Ms. Beckwith's presence in the courtroom during the testimony of Respondents' witnesses on this topic could prove helpful to Complainant as it prepares its cross-examination of Respondents' witnesses and any rebuttal, Complainant has not argued that Ms. Beckwith falls within an exception to the rule of exclusion set forth at FRE 615. In the absence of any compelling arguments to the contrary, Respondents' request to sequester Ms. Beckwith is granted.

As for Respondents' request to preclude Ms. Beckwith from offering testimony regarding certain subjects, I note that this request is based, in part, on the representations of Complainant as to the parameters of Ms. Beckwith's expected testimony. As discussed above, Complainant acknowledges in its Response that her expected testimony is limited solely to the issue of financial responsibility, even going so far as to state that "any other issues bearing on liability or penalty are beyond the scope of her intended testimony." Response at 4. The Rules of Practice essentially bar the admission of testimonial evidence the substance of which was not disclosed to an opposing party at least 15 days in advance of the hearing. 40 C.F.R. §§ 22.19(a)(1), 22.22(a)(1). This rule serves as a means of eliminating the element of surprise to parties and allowing for a meaningful opportunity to prepare for hearing. While it is unlikely that Complainant would seek to amend its prehearing exchange at this stage to modify the substance of Ms. Beckwith's proposed testimony to include any issue other than financial responsibility, Respondents' request to bar her from offering any testimony or lay opinions regarding the alleged violations of the technical standards governing USTs set forth in Counts 2-6, 8-11, and 13-16 of the Amended Complaint, as well as the "consistency" or "appropriateness" of the

proposed penalty, still appears to be premature and even unnecessary given the operation of the Rules of Practice. Accordingly, those two aspects of Respondents' request are denied. While Complainant does not respond to Respondents' request to bar Ms. Beckwith from offering any testimony that she "agrees" with the testimony of other witnesses called by Complainant for purposes of testifying about Counts 7, 12, and 17 on the basis that such testimony would constitute "improper bolstering," I am unable to conclude that this broad request is warranted outside the context of an evidentiary hearing. As for Respondents' request to preclude Ms. Beckwith from offering "any testimony or lay opinions" regarding Respondent Kiriscioglu's purported status as an "operator" of the USTs at issue, Complainant notes in its Response that "portions of her testimony may support Complainant's contention that Respondent Kiriscioglu is an 'operator' of the USTs at the Facilities." Response at 4 n.2. Based upon this representation, I am unable to conclude at this time that any testimony from Ms. Beckwith in this regard is clearly inadmissible for any purpose. Accordingly, those two aspects of Respondents' request are also denied.

I now turn to Respondents' request for an order excluding Mr. Ma from the courtroom other than while he is testifying and then precluding him from testifying as to certain subjects. While Respondents argue against Mr. Ma being allowed to serve as a designated representative for Complainant and urge that he be sequestered on account of his presence during the testimony of other witnesses being prejudicial to Respondents, Complainant argues more persuasively that, as the agent responsible for investigating the conduct underlying the Amended Complaint and the individual who "best knows the facts of the alleged violations and the details of the relief sought" as evidenced by the detailed affidavit that he provided as part of an unrelated motion, Mr. Ma is essential to Complainant's prosecution of this matter and thus falls into at least one of the groups excepted from the rule of exclusion set forth at FRE 615. Accordingly, Respondents' request to sequester Mr. Ma is denied.

Complainant is also persuasive in its arguments against Respondents' request to bar Mr. Ma from offering any testimony or lay opinions as to the "appropriateness" or "consistency" of the proposed penalty. To support its position, Complainant relies upon an order denying a similar request in *Carbon Injection Systems*, where Chief Judge Biro observed that, for purposes of this type of proceeding, a witness tasked with calculating the proposed penalty as part of his or her official duties is akin to an expert witness allowed to present opinion testimony as to the reasoning behind the proposed penalty. *Carbon Injection Systems*, 2012 ALJ LEXIS 28, at *6-7 (citing *Kuhlman Diecasting Co.*, 1983 EPA ALJ LEXIS 10; *Ocean State Asbestos Removal, Inc.*, 7 E.A.D. 522 (EAB 1998)). Noting that the Environmental Appeals Board has recognized that a complainant bears the burden of demonstrating the appropriateness of the proposed penalty and that consistency in the application of penalty policies is a relevant topic to cover by a penalty witness in his or her testimony, Chief Judge Biro held that a presiding Administrative Law Judge may find such testimony to be "helpful" in understanding the complainant's position with respect to the proposed penalty. *Id.* at *9 (citing *New Waterbury, Ltd.*, 5 E.A.D. 529, 538 (EAB 1994); *FRM Chem, Inc., a/k/a Indus. Specialties*, 12 E.A.D. 739, 754 (EAB 2006)). I too find that the testimony of Mr. Ma on this subject may be of assistance to this Tribunal in considering whether

Complainant has carried its burden of demonstrating the appropriateness of the proposed penalty in the event that liability is established. Meanwhile, Respondents' contention that such testimony is self-serving and prejudicial to Respondents is far less compelling. Accordingly, this aspect of Respondents' request is denied. As for Respondents' request to preclude Mr. Ma from offering any testimony that he "agrees" with other witnesses called by Complainant on account of such testimony amounting to "improper bolstering," Complainant does not respond to this request in its Response. However, as I found with respect to Ms. Beckwith, without the context of an evidentiary hearing, I am unable to conclude that any testimony as to Mr. Ma's agreement with other witness is clearly inadmissible for any purpose. Accordingly, this aspect of Respondents' request is also denied.

Respondents request that I preclude Complainant generally "from introducing any speculation or argument about the substance of the testimony of any witness who is absent or unavailable, or whom Respondents did not call to testify at the hearing," and that I exclude "[a]ny reference to Respondents' refusal to agree or stipulate to any matter," on the basis that those matters are irrelevant to this proceeding. Complainant did not present any objection on this issue. Nevertheless, I believe it is inappropriate, at this juncture, to make a ruling regarding hypothetical actions by Complainant that may not occur during the course of the scheduled evidentiary proceeding. Accordingly, at this time Respondents' request is denied, however Respondents may renew such objections during the hearing should it become appropriate to do so.

Finally, I turn to Respondents' objection to the presence in the courtroom of any expert witnesses proffered by Complainant other than while they are testifying. Complainant identified four proposed expert witnesses in its prehearing exchange – Joel Hennessey, who is expected to testify about his analysis of groundwater use and vulnerability to any potential release from the USTs at the Facilities; Elizabeth Quinn, who is expected to testify about the toxicity of petroleum and the pathways through which a petroleum release at each Facility could result in human exposure; John V. Cignatta, who is expected to testify about the release detection and corrosion prevention violations alleged; and Gail B. Coad, who is expected to testify about Respondents' financial conditions and ability to pay the proposed penalty – and Respondents appear to seek an order of exclusion applying to each of them on account of their presence in the courtroom being prejudicial to Respondents. In its Response, Complainant argues that, with the exception of Mr. Ma, each of its proposed witnesses is expected to address a different topic at hearing, thereby rendering the collusion of its witnesses impossible. Nevertheless, Complainant agrees to the sequestration of its expert witnesses during the testimony of Mr. Ma to "allay Respondents' concerns" that those witnesses would conform their testimony to his. Complainant proceeds to object, however, to "sequestration of *any* of its witnesses during the testimony of *any* of Respondents' witnesses." Response at 4. Complainant focuses its objection on Mr. Cignatta and Ms. Coad, arguing that, as evidenced by the record, they are essential to Complainant's presentation of its claims and "'necessary for counsel to manage the litigation,' in order for counsel to assess and develop its cross-examination of those portions of the testimony of Respondents' witnesses regarding [topics about which Mr. Cignatta and Ms. Coad are expected

to testify]." Response at 7 (quoting Fed. R. Evid. 615, Notes of Advisory Committee on Rules). As observed by Complainant, the explanatory notes accompanying FRE 615 advise that the third exception to the rule of exclusion, which excepts "a person whose presence a party shows to be essential to presenting the party's claim or defense," has been construed to include "an expert needed to advise counsel in the management of the litigation." Fed. R. Evid. 615, Notes of Advisory Committee on Rules. While Complainant's arguments regarding the importance of Mr. Cignatta and Ms. Coad to its presentation of its claims lack detail, I find that Complainant has nevertheless shown that they fall within the third exception to the rule of exclusion set forth at FRE 615, and thus, Respondents' request to exclude them from the courtroom other than while they are testifying is denied. Complainant has not advanced any argument to support the notion that Mr. Hennessey and Ms. Quinn fall within an exception to the rule of exclusion. Accordingly, Respondents' request with respect to those witnesses, Mr. Hennessey and Ms. Quinn, is granted.

V. ORDER

Respondents' Motion in Limine is hereby **GRANTED IN PART**, and **DENIED IN PART**, as set forth above.

Christine Donelian Coughlin
Administrative Law Judge

Dated: April 4, 2016
Washington, D.C.

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, 5703 Holland Road Realty Corp., 8917 South Quay Road Realty Corp., and 1397 Carrsville Highway Realty Corp.*, Respondents.
Docket No. RCRA-03-2013-0039

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order on Respondents' Motion in Limine, dated April 4, 2016, was sent this day in the following manner to the addresses listed below.

Mary Angeles
Paralegal

Original and One Copy by Hand Delivery to:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA / Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

One Copy by Electronic and Regular Mail to:

Janet E. Sharke, Esq.
Sr. Assistant Regional Counsel
Louis Ramalho, Esq.
Assistant Regional Counsel
ORC, U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Email: sharke.janet@epa.gov
Email: ramalho.louis@epa.gov

One Copy by Electronic and Regular Mail to:

Jeffrey L. Leiter, Esq.
Bassman, Mitchell, Alfano, & Leiter, Chartered
1707 L Street, NW, Suite 560
Washington, DC 20036
Email: jleiter@bmalaw.net

Dated: April 4, 2016
Washington, D.C.