

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Via Electronic Filing

August 12, 2015

Sybil Anderson  
Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Avenue, NW  
Washington, DC 20004

Re: In the Matter of Aylin, Inc., et al  
Docket No. RCRA-03-2013-0039

Dear Ms. Anderson,

Enclosed for filing please find a First Amended Administrative Complaint, Compliance Order, and Notice of Right to Request Hearing, in accordance with the Order on Motions issued by Administrative Law Judge Coughlin on August 10, 2015, and the procedures set forth in the Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, issued by Chief Administrative Law Judge Biro on August 11, 2014.

Thank you in advance for your assistance. Please contact me at 215-814-2689 or at [sharke.janet@epa.gov](mailto:sharke.janet@epa.gov) should you have any questions.

Sincerely,



Janet E. Sharke  
Sr. Assistant Regional Counsel

cc: Jeffrey L. Leiter, Esq.  
Louis F. Ramalho, Esq.  
Jennifer Nearhood, Esq.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

VIA UPS OVERNIGHT  
AND CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED

August 12, 2015

Adnan Kiriscioglu  
8012 Tonelle Avenue  
North Bergen, NJ 07047

Jeffrey L. Leiter, Esq.  
Leiter & Cramer PLLC  
1707 L Street N.W., Suite 560  
Washington, DC 20006

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

RE: Subtitle I, Resource Conservation and Recovery Act,  
First Amended Administrative Complaint, EPA Docket No. RCRA-03-2013-0039

Dear Sirs:

As you may know, on August 10, 2015, Administrative Law Judge Coughlin issued an Order on Motions, granting, *inter alia*, Complainant's Motion to File its First Amended Administrative Complaint, Compliance Order and Notice of Right to Request Hearing, EPA Docket No. RCRA-03-2013-0039 ("Complaint"), and directing that Complainant file and serve such Complaint on Respondents on or before August 17, 2015. Accordingly, enclosed is a true and correct copy of the First Amended Complaint filed electronically with the Headquarters Hearing Clerk today.

The Complaint alleges violations of Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6991-6991i ("RCRA"), and the Commonwealth of Virginia's federally authorized underground storage tank ("UST") program with respect to certain USTs owned and/or operated by Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., Adnan Kiriscioglu d/b/a/ New Jersey Petroleum Organization, 5703 Holland Road Realty Corp., 8917 South Quay Road Realty Corp. and 1397 Carrsville Highway Realty Corp. ("Respondents" or "you") located in Suffolk or Franklin, Virginia.

The Order on Motions directs that Respondents Aylin, Rt. 58, Franklin Eagle and Kiriscioglu have 20 additional days from the date of service of the amended Complaint in which to file their Answers and further directs that the newly added Respondents Realty Corporations have 30 days in which to file their Answers. Order on Motions at 8. Each Answer must be filed with the Headquarters Hearing Clerk either as paper copy at the address specified in the Complaint or as electronic copy consistent with Chief Administrative Law Judge Biro's Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, dated August 11, 2014.

Each Answer must specifically respond to each of the allegations in the Complaint. Failure to timely respond to the Complaint by specific written Answer will constitute an admission of the allegations in the Complaint. In addition, failure to timely Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalty proposed in the Complaint without further proceedings.

In your Answer, you may choose to request a hearing to contest any matter set forth in the Complaint. Whether or not a hearing is requested, you may request an informal settlement conference to discuss resolution of the case. Please note that the Order on Motions requires that the parties engage in a settlement conference on or before September 25, 2015, and attempt to reach amicable resolution. A request for settlement may be included in your answer or your attorney may contact the undersigned attorney at 215-814-2689 or [sharke.janet@epa.gov](mailto:sharke.janet@epa.gov) before the expiration of the applicable response period following your receipt of the Complaint. Regardless of whether you request an informal settlement conference, you must still file an Answer to the Complaint.

Sincerely,



Janet E. Sharke (3RC50)  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
Counsel for Complainant

Enclosures

cc: Russell Ellison (VADEQ)  
A. Ma (3LC70)

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

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.  
1397 Carrsville Highway Realty Corp.

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

**RESPONDENTS**

Pure Gas Station  
5703 Holland Road  
Suffolk, VA 23437

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

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

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

Franklin Eagle Mart  
1397 Carrsville Highway  
Franklin, VA 23851

**FACILITIES**

**INTRODUCTION**

This First Amended Administrative Complaint, Compliance Order and Notice of Right to Request Hearing ("Amended Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively, "RCRA"),

2 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 Amended Complaint.

The Director of the Land and Chemicals Division, EPA, Region III (“Complainant”), hereby notifies Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., 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 Corp. (collectively, “Respondents”), that EPA has reason to believe that Respondents have violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia’s federally authorized underground storage tank (“UST”) program with respect to the USTs located at certain facilities in Virginia.

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

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

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

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

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

1. EPA and EPA’s Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).

2. EPA has given the Commonwealth of Virginia Department of Environmental Quality (“VADEQ”) notice of the issuance of this Amended Complaint in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).
3. At all times relevant to this Amended Complaint, Respondent Adnan Kiriscioglu has been the President of Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., 5703 Holland Road Realty Corp., 8917 South Quay Road Realty Corp., and 1397 Carrsville Highway Corp.
4. At all times relevant to this Amended Complaint, Respondent Adnan Kiriscioglu has conducted business in the Commonwealth of Virginia under the names of “New Jersey Petroleum Organization” and “NJPO” with a business address of 8012 Tonnelle Avenue, North Bergen, NJ 07047.
5. At all times relevant to this Amended Complaint, Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., 5703 Holland Road Realty Corp., 8917 South Quay Road Realty Corp., and 1397 Carrsville Highway Corp. have each been Virginia corporations doing business in the Commonwealth of Virginia and “person[s]” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
6. At all times relevant to this Amended Complaint, Respondent Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO (“Kiriscioglu”) has been a “person” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
7. At all times relevant to this Amended Complaint, Respondent Aylin, Inc., has been an “operator” and Respondent 5703 Holland Road Realty Corp. has been the “owner” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC 25-580-10, of the underground storage tanks (“USTs”) and “UST systems” as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located at Pure Gas Station, 5703 Holland Road, Suffolk, Virginia 23437 (“Pure Facility”).
8. At all times relevant to this Amended Complaint, Respondent Rt. 58 Food Mart, Inc., has been an “operator” and Respondent 8917 S. Quay Road Realty Corp. has been the “owner” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of the USTs and UST systems as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located at Rt. 58 Food Mart, 8917 S. Quay Road, Suffolk, Virginia 23437 (“Rt. 58 Facility”).
9. At all times relevant to this Amended Complaint, Respondent Franklin Eagle Mart Corp. has been an “operator” and Respondent 1397 Carrsville Highway Realty Corp. has been the “owner” as those terms are defined by Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of the USTs and UST systems as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located

at Franklin Eagle Mart (aka Pure d/b/a Franklin Eagle Mart), 1397 Carrsville Highway, Franklin, Virginia 23851 (“Franklin Facility”).

10. At all times relevant to this Amended Complaint, Respondent Kiriscioglu has been an “operator” as that term is defined in Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), and 9 VAC § 25-580-10, of the USTs and UST systems as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, that are located at the Pure Facility, Rt. 58 Facility, and Franklin Facility (collectively, “Facilities”).
11. Each of the Facilities is a gas station, including the USTs and all associated equipment and structures.
12. Pursuant to 9 VAC § 25-580-10, the term “underground storage tank” or “UST” means, in pertinent part, any one or combination of tanks (including connected underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground.
13. On March 30, 2010, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, representatives of EPA conducted a compliance evaluation inspection (“CEI”) of the Pure Facility.
14. On March 30, 2010, and at all times relevant to the applicable violations alleged herein, the USTs described in the following subparagraphs were located at the Pure Facility:
  - a. Three 6,000-gallon steel tanks that were each installed on or about April 26, 1976, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST P1”, “UST P2” and “UST P4”).
  - b. One 6,000-gallon steel tank that was installed on or about April 26, 1976, and that, at all times relevant hereto, routinely contained diesel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST P3”).
15. Each UST at the Pure Facility was “upgraded” within the meaning of subsection 2 of 9 VAC § 25-580-60 on or before December 31, 1990.
16. On March 31, 2010, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, representatives of EPA conducted a CEI of the Rt. 58 Facility.
17. On March 31, 2010, and at all times relevant to the applicable violations alleged herein, the USTs described in the following subparagraph were located at the Rt. 58 Facility:

- a. Three 8,000-gallon steel tanks that were each installed on or about August 1, 1988, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST R1,” “UST R2,” and “UST R3”).
18. On March 31, 2010, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, representatives of EPA conducted a CEI of the Franklin Facility.
19. On March 31, 2010, and at all times relevant to the applicable violations alleged herein, the USTs described in the following subparagraph were located at the Franklin Facility:
  - a. Two 8,000-gallon steel tanks that were each installed on or about January 1, 1988, and that, at all times relevant hereto, routinely contained gasoline, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (“UST F1” and “UST F2”).
20. At all times relevant to the applicable violations alleged herein, each UST at each Facility has been a “petroleum UST system” and an “existing tank system” as these terms are defined in 9 VAC § 25-580-10.
21. At all times relevant to the applicable violations alleged herein, none of the USTs at the Facilities was “empty” within the meaning of 9 VAC § 25-580-310.1.

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

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

26. The IRL identified in Paragraph 24, above, required that Respondent Kiriscioglu provide a response to EPA within fifteen (15) calendar days after receipt of such IRL, rendering the response due on or before October 1, 2010.
27. On October 12, 2010, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, a letter advising Respondent that he was in violation of Section 9005 of RCRA, 42 U.S.C. § 6991d, for failing to respond to the IRL identified in Paragraph 24, above.
28. UPS delivery records confirm the letter referenced in Paragraph 27, above, was received on October 13, 2010, by a person at 8012 Tonnelle Avenue, North Bergen, NJ 07047.
29. As of March 27, 2013, Respondent Kiriscioglu had not submitted a response to the IRL identified in Paragraph 24, above.
30. On June 6, 2011, a duly designated representative of EPA sent to Respondent Aylin, Inc., via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Pure Facility, including the information described in Paragraph 46, below.
31. UPS delivery records confirm that the IRL identified in Paragraph 30, above, was received on June 7, 2011, by a person at 1397 Carrsville Highway, Franklin, VA 23851.
32. On June 7, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Pure Facility, including the information described in Paragraph 46, below.
33. UPS delivery records confirm that the IRL identified in Paragraph 32, above, was received on June 8, 2011, by a person at 8012 Tonnelle Avenue, North Bergen NJ 07047.
34. On June 8, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Franklin Facility, including the information described in Paragraph 46, below.
35. UPS delivery records confirm that that IRL identified in Paragraph 34, above, was received on June 9, 2011, by a person at 8012 Tonnelle Avenue, North Bergen NJ 07047.
36. On June 8, 2011, a duly designated representative of EPA sent to Respondent Franklin Eagle Mart Corp., via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Franklin Facility, including the information described in Paragraph 46, below.

37. UPS delivery records confirm that the IRL identified in Paragraph 36, above, was received on June 9, 2011, by a person at 1397 Carrsville Highway, Franklin, VA 23851.
38. On June 8, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Franklin Facility, including the information described in Paragraph 46, below.
39. UPS delivery records confirm that the IRL identified in Paragraph 38, above, was received on June 9, 2010, by a person at 2664 Route 112, Medford, NY 11663.
40. On June 8, 2011, a duly designated representative of EPA sent to Respondent Rt. 58 Food Mart, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Rt. 58 Facility, including the information described in Paragraph 46, below.
41. UPS delivery records confirm that the IRL identified in Paragraph 40, above, was received on June 9, 2011, by a person at 8917 S. Quay Rd, Suffolk VA 23437.
42. On June 8, 2011, a duly designated representative of EPA sent to Respondent Kiriscioglu, via UPS, an IRL which requested, pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, certain information and records regarding the USTs at the Rt. 58 Facility, including the information described in Paragraph 46, below.
43. UPS delivery records confirm that the IRL identified in Paragraph 42, above, was received on June 9, 2011, by a person at 8012 Tonnelle Avenue, North Bergen NJ 07047.
44. The responses to the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above, were due on or before June 24, 2011.
45. On June 21, 2011, Atlantic Environmental Solutions, Inc., submitted a letter on behalf of Respondents Aylin, Inc., Rt. 58 Food Mart Inc., Franklin Eagle Mart Corp., and Kiriscioglu (referred to as "NJPO Group"), requesting an extension of time to respond to the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above, until August 1, 2011. EPA granted such request, thereby extending the due date of each such IRL until August 1, 2011.
46. On July 29, 2011, Atlantic Environmental Solutions, Inc., submitted an IRL response on behalf of Respondents Aylin Inc. Rt. 58 Food Mart Inc., Franklin Eagle Mart Corp. and Adnan Kiriscioglu that provided some, but not all, of the information requested in the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above. Specifically, the response failed to furnish the following requested information:

“2. The name and address of each owner (“owner” is defined in 9 VAC 25-580-10) of all USTs and/or UST systems . . . at the . . . [Facility], and the dates of their respective ownership of such USTs and/or UST systems for the past five (5) years to the present.

3. The name and address of each operator (“operator” is defined in 9 VAC 25-580-10) of all USTs and UST systems . . . at the . . . [Facility] for the past five (5) years to the present and the dates of their respective operation of such USTs and/or UST systems.

4. The name and address of each person that owned the property where the USTs and/or UST systems [at the Facility] are currently located for the past five (5) years to the present, and the dates of their respective ownership.”

47. As of March 27, 2013, Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., and Franklin Eagle Mart Corp. had not furnished the information described in Paragraph 46, above, to EPA.
48. From October 2, 2010, through at least March 27, 2013, Respondent Kiriscioglu failed to furnish any response, including the information identified in Paragraph 46, above, to EPA’s request in the IRL identified in Paragraph 24, above.
49. From August 2, 2011, through at least March 27, 2013, Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., and Adnan Kiriscioglu failed to furnish the information identified in Paragraph 46, above, as requested by EPA in the IRLs identified in Paragraphs 30, 32, 34, 36, 38, 40, and 42, above.
50. The act and/or omission as alleged in Paragraph 48, above, constitutes a violation by Respondent Kiriscioglu of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).
51. The acts and/or omissions as alleged in Paragraph 49, above, constitute violations by Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., and Franklin Eagle Mart Corp. of Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).

## **COUNT II**

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

52. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
53. 9 VAC § 25-580-140 requires that owners and operators of petroleum UST systems provide release detection for tanks and piping that meets the requirements described therein.
54. 9 VAC § 25-580-140.1 provides that, with exceptions not applicable to any UST at the Pure Facility, tanks must be monitored at least every thirty days for releases using one of the release detection methods listed in 9 VAC § 25-580-160(4)-(8).

55. From at least April 1, 2008, through at least June 2, 2011, the method of release detection selected by Respondents Aylin, Inc., and Kiriscioglu for the USTs at the Pure Facility was automatic tank gauging ("ATG") pursuant to 9 VAC § 25-580-160(4).
56. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Aylin, Inc., and Kiriscioglu documented a passing tank tightness test for each of UST P1, UST P2, and UST P3, dated June 3, 2011.
57. Subsequent to the CEI, in communications between EPA and VADEQ, VADEQ indicated that it had reviewed passing release detection records for June 2011 for UST P4.
58. From at least April 1, 2008, through May 31, 2011, Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu failed to monitor each of USTs P1, P2, P3, and P4 at the Pure Facility for releases at least every thirty days as required by 9 VAC § 25-580.140.1.
59. The acts and/or omissions as alleged in Paragraphs 58, above, constitute violations by Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-140.1.

### **COUNT III**

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

60. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
61. 9 VAC § 25-580-90.3 requires that steel UST systems with impressed current cathodic protection systems be inspected every 60 days to ensure that the equipment is running properly.
62. During the CEI at the Pure Facility, Respondents Aylin, Inc., and Kiriscioglu documented corrosion protection tests, as required by 9 VAC § 25-580-90.3, dated July 31, 2006, and April 4, 2008.
63. Subsequent to the CEI, in correspondence between EPA, Respondents, and VADEQ, Respondents Aylin, Inc., and Kiriscioglu or VADEQ documented corrosion protection tests, as required by 9 VAC § 25-580-90.3, dated August 4, 2011, and November 18, 2011.
64. From at least September 30, 2009, through August 3, 2011, Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu failed to inspect the impressed current cathodic protection system for the USTs at the Pure Facility every 60 days, as required by 9 VAC § 25-580-90.3.

65. The acts and/or omissions as alleged in Paragraph 64, above, constitute violations by Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-90.

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

66. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
67. 9 VAC § 25-580-60.3 states that, for existing UST systems that have been upgraded, metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected and meet the requirements of subdivisions 2 b (2), (3) and (4) of 9 § VAC 25-580-50 or the codes and standards listed in the note following subdivision 2 b of 9 § VAC 25-580-50.
68. Subsequent to the CEI, in correspondence between EPA, VADEQ and Respondents, Respondents or VADEQ documented cathodic protection tests for the piping under the dispensers for the USTs at the Pure Facility dated August 4, 2011 (fail), and November 18, 2011 (pass).
69. In the record of the August 4, 2011, test, the tester noted that the cathodic protection was not adequate and recommended various repairs and/or modifications, including the installation of sacrificial anodes, to the cathodic protection system at the Pure Facility.
70. On or about November 18, 2011, Respondents undertook repairs and/or modifications to the cathodic protection system at the Pure Facility, including the installation of sacrificial anodes.
71. The underground piping described in Paragraph 68, above, is and has been at all times relevant to the violation alleged herein, metal piping that routinely conveys regulated substances and is contact with the ground.
72. From at least August 4, 2011, through November 17, 2011, the underground piping described in Paragraph 68, above, was not cathodically protected and did not meet the requirements of subdivision 2 b (1) of 9 VAC § 25-580-50, or the requirements of subdivisions 2 b (2), (3) and (4) of 9 VAC § 25-580-50, or the codes and standards listed in the note following subdivision 2 b of 9 VAC § 25-580-50.
73. From at least August 4, 2011, through November 17, 2011, Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu failed to provide cathodic protection for the piping identified in Paragraph 68, above, as required by 9 VAC § 25-580-60.3.
74. The acts and/or omissions as alleged in Paragraph 73, above, constitute violations by Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-60.

**COUNT V**

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

75. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
76. 9 VAC § 25-580-140.2 states that underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the requirements of either 9 VAC § 25-140.2.a. (for pressurized piping) or 9 VAC § 25-580-140.2.b. (for suction piping).
77. 9 VAC § 25-580-140.2.a(2) requires that underground piping that conveys regulated substances under pressure must have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC § 25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
78. The underground piping at the Pure Facility is, and has been at all times relevant to the violation alleged herein, piping that routinely conveys regulated substances under pressure.
79. Prior to the CEI, in correspondence between EPA and VADEQ, VADEQ provided a copy of a passing annual test of the operation of the automatic line leak detectors for the piping at the Pure Facility dated October 12, 2005.
80. During the CEI, Respondents Aylin, Inc., and Kiriscioglu documented a passing annual test of the operation of the automatic line leak detectors for the piping at the Pure Facility dated April 4, 2008.
81. During the CEI, Respondents Aylin, Inc., and Kiriscioglu documented two attempts to perform line tightness tests dated February 1, 2008, and March 24, 2009. In each such attempt, the tester was unable to conduct the test due to the presence of water covering the sumps.
82. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Aylin, Inc., and Kiriscioglu documented a passing line tightness test dated July 14, 2011, for UST P3.
83. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, VADEQ indicated it had reviewed a passing line tightness test dated July 14, 2011, for all the USTs at the Pure Facility.
84. From April 4, 2009, through July 13, 2011, Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu did not conduct alternative monthly monitoring in accordance with subdivision 3 of 9 VAC § 25-580-170 of the underground piping connected to USTs P1, P2, P3, and P4.

85. From April 4, 2009, through July 13, 2011, Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to USTs P1, P2, P3, and P4, as required by subdivision 2 of 9 VAC § 25-580-140 or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
86. The acts and/or omissions as alleged in Paragraph 85, above, constitute violations by Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-140.2.

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

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

95. From April 4, 2009, through July 13, 2011, Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detectors for the piping connected to the USTs at the Pure Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
96. The acts and/or omissions as alleged in Paragraph 95, above, constitute violations by Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-140.2.

**COUNT VII**  
**(Failure to Demonstrate Financial Responsibility at Pure)**

97. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
98. 9 VAC § 25-590-40 states that owners or operators of petroleum UST systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
99. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Aylin, Inc., and Kiriscioglu documented insurance coverage for the USTs at the Pure Facility from October 20, 2005, through October 20, 2007, and from July 29, 2011, to November 27, 2011.
100. From April 1, 2008, through July 28, 2011, Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs at the Pure Facility as required by 9 VAC § 25-590-40.
101. The acts and/or omissions as alleged in Paragraph 100, above, constitute violations by Respondents Aylin, Inc., 5703 Holland Road Realty Corp., and Kiriscioglu of 9 VAC § 25-590-40.

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

102. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
103. 9 VAC § 25-580-140.1 provides that, with exceptions not applicable to any UST at the Rt. 58 Facility, tanks must be monitored at least every thirty days for releases using one of the release detection methods listed in 9 VAC § 25-580-160(4)-(8).

104. From August 1, 2006, through at least June 14, 2011, the method of release detection selected by Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu for the USTs at the Rt. 58 Facility was ATG pursuant to 9 VAC § 25-580-160(4).
105. During the CEI at the Rt. 58 Facility, the EPA inspector printed a "Tank Leak Test History" which documented the following passing ATG tests:
  - UST R1: June 25, 2006; August 19, 2007; September 16, 2007;
  - UST R2: September 3, 2006;
  - UST R3: April 9, 2006; December 17, 2006; September 30, 2007.
106. Subsequent to the CEI, in correspondence between EPA, VADEQ, and/or Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented passing tank tightness tests for all USTs at the Rt. 58 Facility dated July 26, 2011.
107. Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu failed to monitor each of the USTs at the Rt. 58 Facility for releases at least every thirty days as required by 9 VAC § 25-580.140.1 from at least April 1, 2008, through July 25, 2011.
108. The acts or omissions as alleged in Paragraph 107, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-140.1.

### **COUNT IX**

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

109. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
110. During the CEI at the Rt. 58 Facility, the inspectors observed that a portion of piping for the USTs at the Rt. 58 Facility was in contact with the ground.
111. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu or VADEQ documented cathodic protection tests for the metal portions of piping in contact with the ground for the USTs at the Rt. 58 Facility dated December 6, 2007 (fail), November 25, 2008 (fail), November 3, 2009 (fail), and August 4, 2011 (pass).
112. The underground piping described in Paragraph 111, above, is and has been at all times relevant to the violation alleged herein, metal piping that routinely conveys regulated substances and is contact with the ground.
113. From at least April 1, 2008, through August 3, 2011, the underground piping described in Paragraph 111, above, was not cathodically protected and did not meet the requirements of

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

114. From at least April 1, 2008, through August 3, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu failed to provide cathodic protection for the piping identified in Paragraph 111, above, as required by 9 VAC § 25-580-60.3.
115. The acts and/or omissions as alleged in Paragraph 114, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-60.

### **COUNT X**

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

116. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
117. The underground piping at the Rt. 58 Facility is, and has been at all times relevant to the violation alleged herein, piping that routinely conveys regulated substances under pressure.
118. During the CEI at the Rt. 58 Facility, and in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented passing line tightness tests dated December 6, 2007 (USTs R1, R2, and R3), November 25, 2008 (UST R2 and R3 only), November 3, 2009 (USTs R1, R2, and R3), and July 26, 2011 (USTs R1, R2 and R3).
119. From December 7, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu did not conduct alternative monthly monitoring of the underground piping connected to UST R1, conducted in accordance with subdivision 3 of 9 VAC 25-580-170.
120. From November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu did not conduct alternative monthly monitoring of the underground piping connected to USTs R2 and R3, conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
121. From December 7, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to UST R1, as required by subdivision 2 of 9 VAC § 25-580-140, or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.

122. From November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to USTs R2 and R3, as required by subdivision 2 of 9 VAC § 25-580-140, or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
123. The acts and/or omissions as alleged in Paragraphs 121 and 122, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-140.2.

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

124. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
125. The pressurized underground piping at the Rt. 58 Facility is, and has been at all times relevant to this violation, equipped with automatic line leak detectors.
126. During the CEI and/or in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented passing annual tests of the operation of the automatic line leak detectors for the piping at the Rt. 58 Facility dated December 6, 2007, November 25, 2008 (USTs R2 and R3 only), November 3, 2009, and July 26, 2011.
127. From December 7, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detectors for the piping connected to UST R1 at the Rt. 58 Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
128. From November 4, 2010, through July 25, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detectors for the piping connected to USTs R2 and R3 at the Rt. 58 Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
129. The acts and/or omissions as alleged in Paragraphs 127 and 128, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu of 9 VAC § 25-580-140.2.

## COUNT XII

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

130. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
131. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents Rt. 58 Food Mart, Inc., and Kiriscioglu documented insurance coverage for the USTs at the Rt. 58 Facility from October 25, 2006, through February 4, 2008, and from July 29, 2011, to November 27, 2011.
132. From at least April 1, 2008, through July 28, 2011, Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs at the Rt. 58 Facility as required by 9 VAC § 25-590-40.
133. The acts and/or omissions as alleged in Paragraph 132, above, constitute violations by Respondents Rt. 58 Food Mart, Inc., 8917 South Quay Road Realty Corp., and Kiriscioglu of 9 VAC § 25-590-40.

## COUNT XIII

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

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

139. Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu failed to monitor each UST at the Franklin Facility for releases at least every thirty days as required by 9 VAC § 25-580.140.1 for the following periods:
- UST F1: from at least April 1, 2008, through January 25, 2009;  
February 27, 2009, through September 27, 2009;  
November 27, 2009, through July 25, 2011.
- UST F2: from at least April 1, 2008, through July 25, 2011.
140. The acts and/or omissions as alleged in Paragraph 139, above, constitute violations by Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu of 9 VAC § 25-580-140.1.

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

141. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
142. During the March 31, 2010, CEI, the inspectors observed that a portion of piping for the USTs at the Franklin Facility was in contact with the ground.
143. Subsequent to the CEI, in correspondence between EPA, VADEQ, and Respondents, Respondents Franklin Eagle Mart Corp. and Kiriscioglu or VADEQ documented cathodic protection tests for the metal portions of piping in contact with the ground for the USTs at the Franklin Facility dated December 5, 2007 (fail), December 11, 2008 (fail), November 3, 2009 (fail), and August 3, 2011 (pass).
144. The underground piping described in Paragraph 143, above, is and has been at all times relevant to the violation alleged herein, metal piping that routinely conveys regulated substances and is contact with the ground.
145. From at least April 1, 2008, through August 2, 2011, the underground piping described in Paragraph 144, above, was not cathodically protected and did not meet the requirements of subdivision 2 b (1) of 9 VAC 25-580-50, or the requirements of subdivisions 2 b (2), (3) and (4) of 9 VAC § 25-580-50, or the codes and standards listed in the note following subdivision 2 b of 9 VAC § 25-580-50.
146. From at least April 1, 2008, through August 2, 2011, Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu failed to provide cathodic protection for the piping identified in Paragraph 143, above, as required by 9 VAC § 25-580-60-3.

147. The acts and/or omissions as alleged in Paragraph 146, above, constitute violations by Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp. and Kiriscioglu of 9 VAC § 25-580-60.

**COUNT XV**

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

148. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
149. The underground piping at the Franklin Facility is, and has been at all times relevant to the violation alleged herein, piping that routinely conveys regulated substances under pressure.
150. During the CEI at the Franklin Facility, and in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Franklin Eagle Mart Corp. and Kiriscioglu documented passing line tightness tests for the Franklin Facility dated December 5, 2007, November 3, 2009, and July 26, 2011.
151. From December 6, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu did not conduct alternative monthly monitoring of the underground piping connected to USTs F1 and F2 conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
152. From December 6, 2008, through November 2, 2009, and from November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu failed to have an annual line tightness test for the underground piping connected to USTs F1 and F2, as required by subdivision 2 of 9 VAC § 25-580-140, or have alternative monthly monitoring of such piping conducted in accordance with subdivision 3 of 9 VAC § 25-580-170.
153. The acts and/or omissions as alleged in Paragraph 152, above, constitute violations by Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp. and Kiriscioglu of 9 VAC § 25-580-140.2.

**COUNT XVI**

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

154. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
155. The pressurized underground piping at the Franklin Facility is, and has been at all times relevant to this violation, equipped with automatic line leak detectors.

156. During the CEI at the Franklin Facility and/or in subsequent correspondence between EPA, VADEQ, and Respondents, Respondents Franklin Eagle Mart Corp. and Kiriscioglu documented annual tests of the operation of the automatic line leak detectors for the piping at the Franklin Facility dated December 5, 2007 (UST F1 - fail, UST F2 - pass), December 11, 2008 (USTs F1 and F2 pass), November 3, 2009 (USTs F1 and F2 pass), and July 26, 2011 (USTs F1 and F2 pass).
157. From at least April 1, 2008, through December 10, 2008 and from November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detector for the piping connected to UST F1 at the Franklin Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
158. From November 4, 2010, through July 25, 2011, Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu failed to conduct an annual test of the operation of the automatic line leak detector for the piping connected to UST F2 at the Franklin Facility in accordance with subdivision 1 of 9 VAC § 25-580-170.
159. The acts and/or omissions as alleged in Paragraphs 157 and 158, above, constitute violations by Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu of 9 VAC § 25-580-140.2.

#### **COUNT XVII**

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

160. The preceding Paragraphs are incorporated by reference as though fully set forth herein.
161. Subsequent to the CEI, in correspondence between EPA and Respondents, Respondents documented insurance coverage for the USTs at the Franklin Facility from July 29, 2011, to November 27, 2011.
162. From at least April 1, 2008, through July 28, 2011, Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs at the Franklin Facility as required by 9 VAC § 25-590-40.
163. The acts and/or omissions as alleged in Paragraph 162, above, constitute violations by Respondents Franklin Eagle Mart Corp., 1397 Carrsville Highway Corp., and Kiriscioglu of 9 VAC § 25-590-40.

## COMPLIANCE ORDER

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

noncompliance with any requirement of this Compliance Order shall be certified by a responsible corporate officer or general partner, as appropriate, of Respondents.

The certification required above shall be in the following form:

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

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

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

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

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

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

167. Failure to comply with any of the terms of this Compliance Order may subject Respondents to the imposition of a civil penalty of up to \$32,500 for each day of continued noncompliance,

pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), the Debt Collection Improvement Act of 1996 (“DCIA”), and the Civil Monetary Penalty Inflation Adjustment Rules, 61 *Fed. Reg.* 69360 (December 31, 1996), 69 *Fed. Reg.* 7121 (February 13, 2004), and 73 *Fed. Reg.* 75345 (December 11, 2008) (collectively, “Inflation Rules”), as codified at 40 C.F.R. Part 19.

### **PROPOSED CIVIL PENALTY**

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

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

Complainant has adjusted each gravity-based penalty upward based upon the environmental sensitivity adjustment factors described in the UST Penalty Policy, but to date, has made no adjustments for any violator-specific factors. In addition, where appropriate, Complainant has added a component to reflect any economic benefit gained by Respondents for failing to comply with the regulatory requirement. Complainant will also consider, if raised, Respondents’ ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with Respondents.

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

Pursuant to Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), Complainant proposes the assessment of a civil penalty of up to \$11,000 per day against each Respondent for each of the applicable violations alleged in this Amended Complaint for a total of \$401,221. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Consistent with the Prehearing Order of the Court, Complainant set forth a detailed explanation of the proposed penalty in its Rebuttal Prehearing Exchange, filed on May 21, 2014. For ease of reference, it is included herein.

## Explanation of Proposed Penalty

In determining a penalty for violations of the federal or, as here, authorized state UST regulations, EPA takes into account the statutory factors required by Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), by evaluating the particular facts and circumstances of each case using the methodology set forth in the UST Penalty Policy, excerpted at <http://www.epa.gov/oust/directiv/od961012.htm> (only selected violations are included on Appendix A.) An overview of the methodology, with case-specific references, is set forth below.

Under the Policy, an initial penalty figure is derived by adding the economic benefit component to the gravity-based component. This is expressed in a formula as:

$$\text{Initial Penalty} = \text{Economic Benefit} + \text{Gravity (MV} \times \text{\# T/P/F} \times \text{DSM} \times \text{ESM} \times \text{Inflation Adjustment Factor)}$$

The economic benefit component "represents the economic advantage that a violator has gained by delaying capital and/or non-depreciable costs and by avoiding operational and maintenance costs associated with compliance," consists of avoided costs (such as operation and maintenance costs) and delayed costs (such as delay of equipment costs). Typically, enforcement personnel use a software program called BEN with various inputs, including compliance dates, to estimate the economic benefit component.

The gravity-based component is the product of the matrix value, any violator-specific adjustments to the matrix, the days of noncompliance multiplier (DSM), and the environmental sensitivity multiplier (ESM).

EPA determines the gravity or seriousness of the violation by assessing two criteria: 1) the extent to which the violation deviates from the UST statutory or regulatory requirement and; 2) the actual or potential harm to human health or the environment and/or the actual or potential adverse effect on the regulatory program. The levels range from major, moderate and minor. Table 4 of the policy depicts a matrix indicating graduated penalty amounts for various combinations of these two criteria. Appendix A sets forth suggested criteria factors and commensurate matrix values for selected violations of 40 C.F.R. Part 280 as well as the suggested unit of assessment (i.e., tank, facility or pipe). For example, a violation of the release detection requirements (40 C.F.R. 280) is characterized as a major extent of deviation and major potential for harm, with an appropriate matrix value of \$1500 per tank (unadjusted for inflation). (Because Appendix A is based on the federal regulations, the federal analog to each Virginia regulation is cited parenthetically on each worksheet.)

The matrix value is then adjusted upward or downward for any applicable violator-specific factors, for example, cooperation or lack thereof. In assessing the penalty proposed in this matter, no violator specific adjustments were applied.

The adjusted matrix value is then multiplied by the *unit of assessment*, that is, tank, facility or pipe, as appropriate. The Penalty Policy suggests that the type of violation is the basis for determining whether to assess a penalty per tank or per facility. If the specific violation or

requirement is clearly associated with one tank, the penalty is assessed per tank. If, on the other hand, the requirement addresses the entire facility (e.g., financial responsibility,) the penalty is assessed on a per-facility basis. Where the violation involves piping, the unit of assessment will depend on whether the piping is associated with one or more than one tank. Table 4 of the Penalty Policy suggests the appropriate unit of assessment.

The *environmental sensitivity multiplier* (ESM) is a factor unique to each facility achieved by evaluating the sensitivity of the local environment and public health to potential or actual leaks or releases from the tanks and piping at each facility (as opposed to the potential for harm factor which takes into account the probability that a release would occur because of the violation). Penalty Policy § 3.3. Note that while the ESM may be neutral (i.e., a value of 1), it does not decrease the penalty (i.e., a value of 0.5).

In order to determine the appropriate environmental sensitivity multipliers in this case, consistent with Region III's past practice, EPA evaluated the hydrogeology of each facility site as well as the risk to public health from potential or (as at Pure Gas Station) actual petroleum releases from the USTs at each facility. In its initial Prehearing Exchange, Complainant identified its experts, Joel Hennessy and Elizabeth Ann Quinn, who will testify, as necessary, to their evaluations set forth in their reports filed as part of Complainant's Rebuttal Prehearing Exchange (CX 78 and CX 79, respectively).

After reviewing the evaluations of Mr. Hennessy and Ms. Quinn, Andrew Ma took into account the size and number of tanks at each facility to determine an ESM of moderate value (1.7, 1.6 and 1.4 for Pure Gas Station, Rt. 58 Food Mart and Franklin Eagle Mart, respectively). This value is consistent with the Penalty Policy which states that a "moderate sensitivity value may be given if: several tanks were in violation; the geology of the site would allow for some movement of a plume of released substance; and several drinking water wells could have been affected." Penalty Policy at § 3.3.

The *days of noncompliance multiplier* accounts for the duration of the violation. For example, a violation of 90 days or less has a DNC of 1; 180 days or less a DNC of 1.5; 270 days or less 2.0; and 365 days or less 2.5. For each 6 months (or fraction thereof) of duration thereafter an additional 0.5 is added to the DNC. Penalty Policy at § 3.4. As noted in the Complaint, Complainant is not seeking penalties for any day of violation that occurred on or before five years prior to the date of filing of the Complaint. In other words, Complainant is not proposing a penalty for any day of violation that occurred prior to April 1, 2008.

The Debt Collection Improvement Act of 1996 and EPA's Civil Monetary Penalty Inflation Adjustment Rules increased the statutory maximum penalty for violations of RCRA to account for inflation from \$10,000 to \$11,000 (for violations occurring after January 30, 1997, through January 12, 2009,) and to \$16,000 (for violations occurring after January 12, 2009). 40 C.F.R. Part 19. The corresponding *inflation adjustment factors* are 1.2895 for violations that occurred prior to January 13, 2009, and 1.4163 for violations that occurred on or after January 13, 2009. See CX 77.

The total proposed penalty of \$401,221 is tabulated as follows:

Count I	No penalty
Pure Gas Station	
Count II	\$ 68,997
Count III	\$ 6,320
Count IV	\$ 5,417
Count V	\$ 45,911
Count VI	\$ 43,338
Count VII	\$ 10,704
<b>[Subtotal]</b>	<b>\$180,687]</b>
Rt. 58 Food Mart	
Count VIII	\$ 48,704
Count IX	\$ 24,691
Count X	\$ 25,968
Count XI	\$ 25,187
Count XII	\$ 10,196
<b>[Subtotal]</b>	<b>\$134,746]</b>
Franklin Eagle Mart	
Count XIII	\$ 26,921
Count XIV	\$ 14,544
Count XV	\$ 20,807
Count XVI	\$ 14,337
Count XVII	\$ 9,179
<b>[Subtotal]</b>	<b>\$ 85,788]</b>
<b>TOTAL</b>	<b>\$401,221</b>

In the following narrative explanation, like violations are grouped together (e.g., release detection, financial responsibility). As noted in the Complaint, no penalty is sought for Count I.

*Failure to Provide Release Detection for Tanks (Counts II, VIII, XIII)*

Consistent with the UST Penalty Policy, this violation constitutes a “major” extent of deviation from the requirements and “major” potential for harm, which is a matrix value of \$1500. Respondents’ failure to ensure that each UST at each Facility was monitored at least every thirty days for releases using one of the methods required pursuant to the federally authorized UST regulations for Virginia constitutes a major potential for harm, because without release detection monitoring, a release may go unnoticed with serious detrimental consequences. (In fact there was a release at some time from Pure Gas Station, resulting in contamination. See CX 42). It is a fundamental goal of the

UST regulations to ensure that an UST does not release substances that may harm human health or the environment. Further, the mechanism established by EPA to ensure releases are prevented and minimized is the release detection program. Thus, failure to comply with the release detection requirements also presents a major harm to the RCRA program. This violation is also a substantial deviation from the requirements of the federally authorized Virginia UST regulatory program. The economic benefit was deemed incidental due to the presence of automatic tank gauging equipment (ATG) and accordingly not included in the penalty calculation for these counts. (Although such ATGs were theoretically capable of performing in tank monthly monitoring, it appears that, at most, Respondents were using the ATGs to measure the volume and levels of product in the tanks for inventory and/or SIR purposes.) For each of these counts, as there was an independent obligation to monitor for releases at each tank at each facility, the penalty for each violation is assessed on a per-tank basis.

#### Count II – Pure Gas Station - \$68,997

The first noncompliance period was 286 days (4/1/08 through 1/12/09), for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 4 USTs multiplied by 2.5 DNC multiplied by 1.7 ESM multiplied by 1.2895 inflation yielding a subtotal of \$32,882.

The second noncompliance period was 868 days (1/13/09 through 5/31/11), for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 4 USTs multiplied by 2.5 DNC multiplied by 1.7 ESM multiplied by 1.4163 inflation yielding a subtotal of \$36,115 and a total penalty of \$68,997.

#### Count VIII – Rt. 58 Food Mart - \$48,704

The first noncompliance period was 286 days (4/1/08 through 1/12/09), for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 3 USTs multiplied by 2.5. DNC multiplied by 1.6 ESM multiplied by 1.2895 inflation yielding a subtotal of \$23,211.

The second noncompliance period was 924 days (1/13/09 through 7/25/11) for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 3 USTs multiplied by 2.5. DNC multiplied by 1.6 ESM multiplied by 1.4163 inflation yielding a subtotal of \$25,493 and a total of \$48,704.

#### Count XIII – Franklin Eagle Mart - \$26,921

As the two tanks at Franklin Eagle Mart had different periods of noncompliance they are calculated separately.

#### Tank F1

The first noncompliance period was 286 days (4/1/08 through 1/12/09), for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 1 UST multiplied by 2.5. DNC multiplied by 1.4 ESM multiplied by 1.2895 inflation yielding a subtotal of \$6,769.

The second noncompliance period was 828 days (1/13/09 through 1/25/09; 2/27/09 to 9/27/09; 11/27/09 to 7/25/11) for a DNC of 2.0 (the second year and beyond of noncompliance). The resulting calculation is a matrix value of \$1500 multiplied by 1 UST multiplied by a DNC of 2.0 multiplied by 1.4 ESM multiplied by 1.4163 inflation yielding a subtotal of \$5,948.

#### Tank F2

The first noncompliance period was 286 days (4/1/08 through 1/12/09), for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 1 UST multiplied by 2.5. DNC multiplied by 1.4 ESM multiplied by 1.2895 inflation yielding a subtotal of \$6,769.

The second noncompliance period was 924 days (1/13/09 to 7/25/11) for a DNC of 2.5 (the second year and beyond of noncompliance). The resulting calculation is a matrix value of \$1500 multiplied by 1 UST multiplied by a DNC of 2.5 multiplied by 1.4 ESM multiplied by 1.4163 inflation yielding a subtotal of \$7,435, for a total penalty of \$26,921.

#### *Failure to Inspect Tank Impressed Current Cathodic Protection Every 60 Days (Count III) - \$6,320*

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

The period of noncompliance for this count was 672 days (9/30/09 through 8/3/11), for a DNC of 3.5. The resulting calculation is a matrix value of \$750 multiplied by 1 facility multiplied by 3.5 DNC multiplied by 1.7 ESM multiplied by 1.4163 inflation for a total penalty of \$6,320.

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

Consistent with the UST Penalty Policy, this violation constitutes a “major” extent of deviation and a “moderate” potential for harm for a matrix value of \$750. As described above, cathodic protection minimizes the corrosion of metal components that are in contact with the ground. In this case, portions of the piping that were in contact with the ground and routinely contained regulated substances did not have cathodic protection, thereby posing a significant risk to human health or the environment from a possible release from corroded piping and constituting a substantial deviation from the federally authorized Virginia UST regulatory program. The unit of assessment for each of these violations is per pipe (associated with each tank). The economic benefit for Counts IV and IX was deemed incidental but the delay in installing cathodic protection (at a cost estimate of \$800) at

Franklin Eagle was not, and thus an economic benefit component of \$340 was included in Count XIV.

Count IV – Pure Gas Station - \$5,417

The period of noncompliance was 105 days (8/4/11 through 11/17/11), for a DNC of 1.5. The resulting calculation is a matrix value of \$750 multiplied by 2 pipes multiplied by 1.5 DNC multiplied by 1.7 ESM multiplied by 1.4163 inflation yielding a total penalty of \$5,417.

Count IX – Rt. 58 Food Mart - \$24,691

The first period of noncompliance was 286 days (4/1/08 through 1/12/09) for a DNC of 2.5. The resulting calculation is a matrix value of \$750 multiplied by 3 pipes multiplied by 2.5 DNC multiplied by 1.6 ESM multiplied by 1.2895 inflation yielding a subtotal of \$11,605.

The second period of noncompliance was 933 days (1/13/09 through 8/3/11), for a DNC of 2.5. The resulting calculation is a matrix value of \$750 multiplied by 3 lines multiplied by 2.5 DNC multiplied by 1.6 ESM multiplied by 1.4163 inflation yielding a subtotal of \$12,746 for a total of \$24,691.

Count XIV – Franklin Eagle Mart - \$14,544

The first period of noncompliance was 286 days (4/1/08 through 1/12/09) for a DNC of 2.5. The resulting calculation is a matrix value of \$750 multiplied by 2 pipes multiplied by 2.5 DNC multiplied by 1.4 ESM multiplied by 1.2895 inflation yielding a subtotal of \$6,769.

The second period of noncompliance was 932 days (1/13/09 through 8/2/11), for a DNC of 2.5. The resulting calculation is a matrix value of \$750 multiplied by 2 lines multiplied by 2.5 DNC multiplied by 1.4 ESM multiplied by 1.4163 inflation yielding a subtotal of \$7,435, which, together with an economic benefit component of \$340, yields a total of \$14,544.

*Failure to Perform Annual Line Tightness Testing (Counts V, X, XV)*

Consistent with the UST Penalty Policy, this violation constitutes a “major” potential for harm and “major” extent of deviation. As noted above, preventing releases is the foundation of the UST regulatory program. Thus, it is critically important that UST owners and operators utilize effective methods of detecting releases from underground piping (or lines) that routinely conveys regulated product to and from the USTs. The importance of monitoring piping should not be underestimated as releases from underground piping, particularly pressurized piping, can be as problematic, if not more so, than releases from tanks. Respondents’ failure to perform an annual line tightness test or monthly monitoring of underground piping at each Facility posed a substantial risk to human health or the environment and was a substantial deviation from the requirements of the authorized Virginia UST regulatory program. The unit of assessment for each of these violations will be per tank associated with the piping. An economic benefit component for Respondents’ avoided cost of annual line tightness testing and annual functionality testing of the automatic line leak

detectors (Counts VI, XI, XVI) was calculated for each of these counts as \$500 per line per year.

Count V – Pure Gas Station - \$45,911

The period of noncompliance was 830 days (4/4/09 through 7/13/11), for a DNC of 4. The resulting calculation is a matrix value of \$1500 multiplied by 3 lines multiplied by 4 DNC multiplied by 1.7 ESM multiplied by 1.4163 inflation yielding a subtotal of \$43,338, which, together with an economic benefit component of \$2,573, yields a total of \$45,911.

Count X – Rt. 58 Food Mart - \$25,968

Because there were different periods of noncompliance for the underground pipes connected to the three tanks at Rt. 58, the calculation is separated accordingly.

#### Line R1

For the underground piping connected to Tank R1, the first period of noncompliance was 37 days (12/7/08 through 1/12/09), for a DNC of 1.0. The resulting calculation is a matrix value of \$1500 multiplied by 1 line multiplied by 1.0 DNC multiplied by 1.6 ESM multiplied by 1.2895 inflation for a subtotal of \$3,094.

The second period of noncompliance for the underground piping connect to Tank R1 was 557 days (1/13/09 through 11/2/09; 11/4/10 through 7/25/11) for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 1 line multiplied by 2.5 DNC multiplied by 1.6 ESM multiplied by 1.4163 Inflation yields a subtotal of \$8,497.

#### Lines R2 and R3

For the underground piping connected to Tanks R2 and R3, the period of noncompliance was 263 days (11/4/10 through 7/25/11) for a DNC of 2.0. The resulting calculation is a matrix value of \$1500 multiplied by 2 lines multiplied by 1.6 ESM multiplied by 1.4163 inflation, for a subtotal of \$13,596. Together with an economic benefit component of \$781, the total penalty for this count is \$25,968.

Count XV – Franklin Eagle Mart - \$20,807

The first period of noncompliance was 37 days (12/6/08 through 1/12/09) for a DNC of 1.0. The resulting calculation is a matrix value of \$1500 multiplied by 2 lines multiplied by 1.0 DNC multiplied by 1.4 ESM multiplied by 1.2895 inflation for a subtotal of \$5,415.

The second period of noncompliance was 557 days (1/13/09 through 11/2/09; 11/4/10 through 7/25/11), for a DNC of 2.5. The resulting calculation is a matrix value of \$1,500 multiplied by 2 lines multiplied by 2.5 DNC multiplied by 1.4 ESM multiplied by 1.4163 inflation, yielding a subtotal of \$14,871, and, with a benefit of \$521, totals \$20,807.

*Failure to Conduct Annual Test of Line Leak Detectors (Counts VI, XI, XVI)*

Consistent with the UST Penalty Policy, this violation constitutes a “major” extent of deviation and “major” potential for harm for a matrix value of \$1500. For the reasons set forth above, Respondents’ failure to perform annual functionality tests of the automatic line leak detectors of the piping at each facility posed a substantial risk to human health or the environment from a leak going undetected and constitutes a substantial deviation from the requirements of the federally authorized Virginia UST regulatory program. Again, the annual requirement is not once per calendar year, but twelve months from the last passing test. The unit of assessment for each of these violations is per tank associated with the piping. As noted above, the economic benefit component for each of these counts is included in the line tightness testing counts.

Count VI – Pure Gas Station - \$43,338

The period of violation was 830 days (4/4/09 through 7/13/11) for a DNC of 4. The resulting calculation is a matrix value of \$1500 multiplied by a 3 lines multiplied by 4 DNC multiplied by 1.7 ESM multiplied by 1.4163 inflation yields a total penalty of \$43,338.

Count XI – Rt. 58 Food Mart - \$25,187

As in Count X, there are different periods of noncompliance for the pipes connected to the tanks at Rt. 58, hence the calculation is divided accordingly.

Line R1

For the underground piping connected to Tank R1, the first period of noncompliance was 37 days (12/7/08 through 1/12/09), for a DNC of 1.0. The resulting calculation is a matrix value of \$1500 multiplied by 1 line multiplied by 1.0 DNC multiplied by 1.6 ESM multiplied by 1.2895 inflation for a subtotal of \$3,094.

The second period of noncompliance for the underground piping connect to Tank R1 was 557 days (1/13/09 through 11/2/09; 11/4/10 through 7/25/11) for a DNC of 2.5. The resulting calculation is a matrix value of \$1500 multiplied by 1 line multiplied by 2.5 DNC multiplied by 1.6 ESM multiplied by 1.4163 Inflation yields a subtotal of \$8,497.

Lines R2 and R3

For the underground piping connected to Tanks R2 and R3, the period of noncompliance was 263 days (11/4/10 through 7/25/11) for a DNC of 2.0. The resulting calculation is a matrix value of \$1500 multiplied by 2 lines multiplied by 1.6 ESM multiplied by 1.4163 inflation, for a subtotal of \$13,596. The total penalty for this count is \$25,187.

Count XVI – Franklin Eagle Mart - \$14,337

Because there were different periods of noncompliance for the piping connected to the tanks at Franklin Eagle Mart, the calculation is divided accordingly.

### Tank F1

For the underground piping connected to Tank F1, the first period of noncompliance was 253 days (4/1/08 to 12/10/08) for a DNC of 2.0. The resulting calculation is a matrix value of \$1500 multiplied by 1 line multiplied by 2.0 DNC multiplied by 1.4 ESM multiplied by 1.2895 inflation for a subtotal of \$5,415.

The second period of noncompliance was 263 days (11/4/10 to 7/25/11) for a DNC of 1.0. The resulting calculation is a matrix value of \$1500 multiplied by 1 line multiplied by 1.4 ESM multiplied by 1.4163 inflation for a subtotal of \$2,974.

### Tank F2

For the underground piping connected to Tank F2, the period of noncompliance was 263 days (11/4/10 to 7/25/11), for a DNC of 2.0. The resulting calculation is a matrix value of \$1500 multiplied by 1 line multiplied by 2.0 DNC multiplied by 1.4 ESM multiplied by 1.4163 inflation for a subtotal of \$5,948, yielding a total penalty of \$14,337.

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

Consistent with the UST Penalty Policy, this violation constitutes a “major” extent of deviation and a “moderate” potential for harm for a matrix value of \$750. Financial responsibility is a key element of the UST regulatory system as it assures that an owner/operator of USTs has adequate financial resources to properly address and remediate any damage to human health and the environment that is caused by a release from an UST system. Respondents’ failure to demonstrate financial responsibility (assurance) poses a significant risk to human health and the environment and constitutes a substantial deviation from the requirements of the federally authorized Virginia UST regulatory program. The unit of assessment for each of these violations is per each facility, as the financial responsibility requirement addresses the entire facility. An economic benefit component was calculated for each count based on the avoided estimated cost of an annual insurance premium of \$750.

#### Count VII – Pure Gas Station - \$10,704

The first period of noncompliance was 286 days (4/1/08 through 1/12/09) for a DNC of 2.5. The resulting penalty calculation is a matrix value of \$750 multiplied by one facility multiplied by 2.5 DNC multiplied by 1.7 ESM multiplied by 1.2895 inflation for a subtotal of \$4,110.

The second period of noncompliance was 927 days (1/13/09 through 7/28/11) for a DNC of 2.5. The resulting penalty calculation is a matrix value of \$750 multiplied by one facility multiplied by 2.5 DNC multiplied by 1.7 ESM multiplied by 1.4163 inflation for a subtotal of \$4,514. Together with an economic benefit component of \$2080, the total penalty for this count is \$10,704.

#### Count XII – Rt. 58 Food Mart - \$10,196

The first period of noncompliance was 286 days (4/1/08 through 1/12/09) for a DNC of 2.5. The resulting penalty calculation is a matrix value of \$750 multiplied by one facility multiplied by 2.5

DNC multiplied by 1.6 ESM multiplied by 1.2895 inflation for a subtotal of \$3,868.

The second period of noncompliance was 927 days (1/13/09 through 7/28/11) for a DNC of 2.5. The resulting penalty calculation is a matrix value of \$750 multiplied by one facility multiplied by 2.5 DNC multiplied by 1.6 ESM multiplied by 1.4163 inflation for a subtotal of \$4,248. Together with an economic benefit component of \$2080, the total penalty for this count is \$10,196.

Count XVII – Franklin Eagle Mart - \$9,179

The first period of noncompliance was 286 days (4/1/08 through 1/12/09) for a DNC of 2.5. The resulting penalty calculation is a matrix value of \$750 multiplied by one facility multiplied by 2.5 DNC multiplied by 1.4 ESM multiplied by 1.2895 inflation for a subtotal of \$3,384.

The second period of noncompliance was 927 days (1/13/09 through 7/28/11) for a DNC of 2.5. The resulting penalty calculation is a matrix value of \$750 multiplied by one facility multiplied by 2.5 DNC multiplied by 1.4 ESM multiplied by 1.4163 inflation for a subtotal of \$3,717. Together with an economic benefit component of \$2078, the total penalty for this count \$9,179.

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

Each Respondent may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact upon which the Amended Complaint is based, contest the appropriateness of any compliance order or proposed penalty, and/or assert that the Respondent is entitled to judgment as a matter of law. To request a hearing, each Respondent must file a written answer ("Answer") within twenty (20) days after service of this Amended Complaint as set forth in 40 C.F.R. § 22.14(c). The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Amended Complaint of which the Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

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

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

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

Any Answer filed **via overnight delivery or courier service** shall be sent to:

Sybil Anderson, Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. EPA, Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., NW  
Washington, D.C. 20460

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

Janet E. Sharke, Senior Asst. Regional Counsel  
U.S. EPA, Region III, Mail Code 3RC50  
1650 Arch Street  
Philadelphia, PA 19103-2029

### **SETTLEMENT CONFERENCE**

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

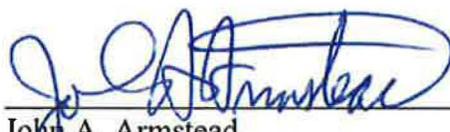
In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver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

If you wish to arrange a settlement conference, please have your counsel contact Janet E. Sharke, Senior Assistant Regional Counsel, at (215) 814-2689, prior to the expiration of the twenty (20) day period following service of this Amended Complaint. Once again, however, such a request for a settlement conference does not relieve any Respondent of its responsibility to file an Answer within twenty (20) days following service of this Amended Complaint. Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding as the Amended Complaint seeks a compliance order. 40 C.F.R. § 22.18(a)(1).

**SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

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

Dated: 2.26.15



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



**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, in accordance with the procedures set forth in the Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, dated August 11, 2014, I filed electronically one copy of the First Amended Complaint, Compliance Order and Notice of Right to Request Hearing, Docket No. RCRA-03-2013-0039 (Complaint), for service to:

Sybil Anderson, Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900R  
William Jefferson Clinton Building  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

The Hon. Christine D. Coughlin  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Mail Code 1900R  
William Jefferson Clinton Building  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

I further certify that on the date set forth below, I served via UPS overnight delivery and certified mail, return receipt requested, a true and correct copy of the attached Complaint to:

Jeffrey Leiter, Esq.  
Counsel for Respondents  
Leiter & Cramer, PLLC  
1707 L Street, NW, Ste. 560  
Washington, DC 20036

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Randoph A. Raines, Jr., Esq.  
Registered Agent  
Ferguson, Rawls & Raines PC  
332 West Constance Road  
Suffolk VA 23434

8/12/2015  
Date



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