

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

Via electronic filing

March 19, 2015

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

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

Dear Ms. Anderson:

Please find enclosed a copy of a Complainant's Motion for Leave to File First Amended Complaint and accompanying Memorandum of Law and Complainant's Second Supplemental Prehearing Exchange, Docket No. RCRA-03-2013-0039, in the above-referenced matter, filed electronically via the Office of Administrative Law Judge's electronic filing system.

Sincerely,



Janet E. Sharke
Senior Assistant Regional Counsel (3RC50)
sharke.janet@epa.gov
215-814-2689

cc: Jeffrey Leiter, Esq., Counsel for Respondents

**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

Motion for Leave to File
First Amended Complaint

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

**COMPLAINANT'S MOTION FOR
LEAVE TO FILE FIRST AMENDED COMPLAINT**

Complainant requests permission to file an amended complaint in the above-captioned matter, pursuant to 40 C.F.R. §§ 22.14(c) and 22.16. The primary purpose of amending the complaint is to add three corporate Respondents who are and, at the time of the relevant alleged violations, were the owners in fact of the underground storage tanks (USTs) and UST systems at issue in this proceeding, as admitted to by the sole shareholder, director, and officer of each such entity during a deposition taken on December 18, 2014. The proposed additional Respondents are: 5703 Holland Road Realty Corp.; 8917 South Quay Road Realty Corp.; and 1397 Carrsville Highway Realty Corp. Simultaneously, Complainant seeks to revise the Complaint to clarify that the currently named corporate Respondents are not owners of the USTs at issue, but are and, at the time of the relevant alleged violations, were operators of such USTs.

Should the Court grant its motion, Complainant seeks to make the following additional amendments to update the complaint: revise the starting dates of certain periods of violations to April 1, 2008 (thereby reflecting the five-year statute of limitations and conforming the pleading to the penalty explanation set forth in Complainant's Rebuttal Prehearing Exchange); correct an error as to the duration of the release detection violation of UST F1 at Franklin Eagle Mart (adding 30 days to the period of violation, without affecting the proposed penalty), and update the allegations of Count I to reflect the date of filing of the Complaint. In addition, because, as allowed pursuant to 40 C.F.R. § 22.14(a)(4)(ii), no specific penalty was pleaded in the original Complaint, Complainant has revised the Complaint to incorporate the penalty explanation set forth in its Rebuttal Prehearing Exchange, filed with the Court on May 20, 2014.

A proposed First Amended Complaint is attached as Attachment A. A redline/strikeout version is attached as Attachment B. Among other things, the proposed amendments will revise:

¶ 7 to indicate that 5703 Holland Road Realty Corp. is and was, at the time of the alleged violations, the owner of the USTs at Pure Gas Station and that Aylin, Inc., is an operator of the USTs at Pure Gas Station;

¶ 8 to indicate that 8917 South Quay Road Realty Corp. is and was, at the time of the alleged violations, the owner of the USTs at Rt. 58 Food Mart and that Rt. 58 Food Mart Corp. is an operator of the USTs at Rt. 58 Food Mart;

¶ 9 to indicate that 1397 Carrsville Highway Realty Corp. is and was, at the time of the alleged violations, the owner of the USTs at Franklin Eagle Mart and that Franklin Eagle Mart, Inc., is an operator of the USTs at Franklin Eagle Mart;

¶ 10 to clarify that Adnan Kiriscioglu is and was, at the time of the alleged violations, an operator of the USTs at Pure Gas Station, Rt. 58 Food Mart, and Franklin Eagle Mart;

¶¶ 137 and 139 to delete the date of January 25, 2010, cited erroneously as a date on which UST F1 at Franklin Eagle passed a release detection test, and revise the period of violation accordingly;

Count I to reflect the date of filing of the original Complaint;

Counts II, III, IV, V, VI and VII to reflect that 5703 Holland Road Realty Corp. is and was, at the time of the alleged violations, the owner of the UST systems at Pure Gas Station;

Counts VIII, IX, X, XI and XII to reflect that 8917 South Quay Road Realty Corp. is and was, at the time of the alleged violations, the owner of the UST systems at Rt. 58 Food Mart, Inc.; and

Counts XIII, XIV, XV, XVI, and XVII to reflect that 1397 Carrsville Highway Realty Corp. is and was, at the time of the alleged violations, the owner of the UST systems at Franklin Eagle Mart.

For the reasons set forth in the attached Memorandum of Law, Complainant requests leave to amend its Complaint in accordance with 40 C.F.R. §§ 22.14(c) and 22.16 and Rule 15(a)

of the Federal Rules of Civil Procedure (the court should freely give leave [to amend] when justice so requires). *Foman v. Davis*, 371 U.S. 178 (1962).

In support thereof, as more fully explained in the attached Memorandum of Law, Complainant avers that there is no apparent or declared reason to deny Complainant's motion as the proposed amendments do not unduly prejudice Respondents, because Complainant is not adding any new counts or seeking additional penalties. In addition the proposed amendments are not the result of any dilatory motive or bad faith on the part of Complainant, nor are they proposed in order to cause undue delay to the proceedings. Rather, the proposed amendments serve to correct the pleadings to reflect the facts, previously unknown to EPA, regarding the actual owners of the USTs at issue. The proposed amendments are not futile and not a mere formality but add liable parties, especially important, where, as here, ability to pay is in issue. Each proposed respondent owns the USTs at issue at each station as well as the real property, structures and fixtures that comprise such facility.

Counsel for Complainant has informed Respondent's counsel, who objects to the granting of this Motion. Accompanying this Motion is Complainant's Memorandum of Law and attachments thereto in support of its Motion for Leave to File First Amended Complaint.

WHEREFORE, for the reasons set forth above and in the attached Memorandum of Law, Complainant respectfully requests that this Court issue an Order granting Complainant's Motion for Leave to File First Amended Complaint.

Respectfully submitted,

3/13/2015

Date



Janet E. Sharke
Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Attachment A

**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
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Proceeding under Section 9006 of the
Resource Conservation and Recovery Act,
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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
[Subtotal]	\$180,687]
Rt. 58 Food Mart	
Count VIII	\$ 48,704
Count IX	\$ 24,691
Count X	\$ 25,968
Count XI	\$ 25,187
Count XII	\$ 10,196
[Subtotal]	\$134,746]
Franklin Eagle Mart	
Count XIII	\$ 26,921
Count XIV	\$ 14,544
Count XV	\$ 20,807
Count XVI	\$ 14,337
Count XVII	\$ 9,179
[Subtotal]	\$ 85,788]
TOTAL	\$401,221

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

Attachment B

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

In the Matter of:

Aylin, Inc.,	:	<u>First Amended</u>
Rt. 58 Food Mart, Inc.,	:	Administrative Complaint,
Franklin Eagle Mart Corp.,	:	Compliance Order and Notice
Adnan Kiriscioglu d/b/a New Jersey	:	of Right to Request Hearing
Petroleum Organization a/k/a NJPO	:	
5703 Holland Road Realty Corp.	:	
8917 South Quay Road Realty Corp.	:	
1397 Carrsville Highway Realty Corp.	:	

RESPONDENTS

Pure Gas Station	:	U.S. EPA Docket No. RCRA-03-2013-0039
5703 Holland Road	:	
Suffolk, VA 23437	:	
 	:	
Rt. 58 Food Mart	:	Proceeding under Section 9006 of the
8917 S. Quay Road	:	Resource Conservation and Recovery Act,
Suffolk, VA 23437	:	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

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., and 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., ~~and 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., ~~and 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" ~~and/or "operator"~~ 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" ~~and/or "operator"~~ 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" ~~and/or "operator"~~ 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

9. 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 the ~~"owner" and/or an~~ "operator" as ~~those terms are~~ that term is defined in 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 the Pure Facility, Rt. 58 Facility, and Franklin Facility (collectively, "Facilities").

10.

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.
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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.
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- ~~To date~~
29. As of March 27, 2013, Respondent Kiriscioglu ~~has~~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.”

~~To date~~

47. As of March 27, 2013, Respondents have 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, ~~to the date of this Complaint~~ through at least March 27, 2013, Respondent Kiriscioglu ~~has~~ 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, ~~to the date of this Complaint, Respondents have~~ 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 ~~August~~ April 1, 2006 ~~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 ~~August~~April 1, 2006~~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.
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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~~Respon-dents 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 October 13, 2006, through April 3, 2008, and from~~ 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 October 13, 2006, through April 3, 2008, and from~~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.
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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.

~~From October 13, 2006, through April 3, 2008, and from _____~~

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.
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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 ~~October 21, 2007~~ 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~~ 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 as follows: from at least April 1, 2008, through July 25, 2011.

~~UST R1: October 2006, through August 18, 2007;
October 17, 2007, through July 25, 2011;~~

~~UST R2: October 4, 2006, through July 25, 2011;~~

~~UST R3: October 2006, through December 16, 2006;
January 17, 2007, through September 29, 2007;
October 31, 2007, 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 December 6, 2007~~ least April 1, 2008, through August 3, 2011, the underground

pipng described in Paragraph 111, above, was not cathodically protected and did not meet the requirements of

113. 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 ~~December 6, 2007~~ 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 ~~February 5~~ 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, ~~and January 25, 2010~~.
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 ~~August~~April 1, 2006~~2008~~, through January 25, 2009;
February 27, 2009, through September 27, 2009;
November 27, 2009, through ~~January 24, 2010~~July 25, 2011.
~~February 25, 2010, through July 25, 2011.~~

UST F2: from at least ~~August~~April 1, 2006~~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 ~~December 5, 2007~~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 ~~December 5, 2007~~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
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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 ~~December 5, 2007~~ 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 ~~August~~ April 1, 2006 ~~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, ~~Respondent is~~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. Furnish the information requested by the IRLs referenced in Count I of this Complaint, in accordance with Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a).~~
 - i.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.
 - j.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~~, demonstrates, or supports any finding or makes any representation concerning Respondents' compliance or

165. 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 ~~under-ground~~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.

~~Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred in accordance with 40 C.F.R. § 22.19(a)(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~~proposed penalty for the violations alleged in this Amended Complaint, Complainant ~~will take~~took into account the particular facts and circumstances of this case with specific reference to the November 1990 "U.S. EPA 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 ~~may adjust~~has adjusted each gravity-based penalty upward ~~or downward~~ based upon the ~~violator-specific and 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 ~~may add~~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. Pursuant to 40 C.F.R. Section 22.14(a)(4)(ii), an explanation of the severity of each violation is given below. Complainant intends to seek penalties for each day of violation alleged in each Count, except as to any day of violation that occurred more than five years before the date of filing of this Complaint. 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.

Counts 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
<u>Pure Gas Station</u>	
Count II,	\$ 68,997
Count III	\$ 6,320
Count IV	\$ 5,417
Count V	\$ 45,911
Count VI	\$ 43,338
Count VII	\$ 10,704
[Subtotal]	\$180,687
<u>Rt. 58 Food Mart</u>	
Count VIII,	\$ 48,704
Count IX	\$ 24,691
Count X	\$ 25,968
Count XI	\$ 25,187
Count XII	\$ 10,196
[Subtotal]	\$134,746
<u>Franklin Eagle Mart</u>	
Count XIII --	\$ 26,921
Count XIV	\$ 14,544
Count XV	\$ 20,807
Count XVI	\$ 14,337
Count XVII	\$ 9,179
[Subtotal]	\$ 85,788
TOTAL	\$401,221

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" ~~potential for harm and "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 ~~un-noticed~~ ~~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 than an UST does not release substances that may harm human health or the ~~environ-ment~~. ~~Respondents partially complied with the regulatory requirement by installing the release detection equipment. However, Respondents violated the regulatory requirement by failing to properly operate such release detection equipment for years.~~ 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.)

~~The UST 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 will be assessed per tank. If, on the other hand, the requirement addresses the entire facility (e.g., financial responsibility,) the penalty will be 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. 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 will be assessed on a per-tank basis.~~

Count ~~III~~—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 and ~~“major” extent of deviation~~. 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 Facility 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 ~~will be~~ is per facility and economic benefit was deemed incidental.

~~Counts IV, IX, XIV~~—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 ~~and “major” extent~~ for a matrix value of deviation. \$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 ~~will be per tank associated with the piping. 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.

~~Counts V, X, XV~~—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 or Monthly Monitoring (Counts V, X, XV)

Consistent with the UST Penalty Policy, this violation constitutes a “major” potential for harm and “major” extent of deviation.

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 USTs as well as from the associated underground piping (or lines) that routinely conveys regulated product to and from such USTs 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 the Pureeach 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.

Counts VI, XI, XVI – 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” potential for harm and “major” extent of deviation.~~

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 the Pure Facility 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 will be 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.

~~Counts VII, XII, XVII~~ 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 and “major” extent for a matrix value of deviation \$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 will be per each facility, as per the UST Penalty Policy, 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 ~~thirty (30)~~twenty (20) days after service of this Amended Complaint as set forth in 40 C.F.R. § 22.15(a)(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 to: sent via regular mail to:

Regional_____

Sybil Anderson, Headquarters Hearing Clerk-(3RC00)
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

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

Janet E. Sharke (3RC50)

Senior Assistant Regional Counsel

U.S. EPA, Region III

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 ~~thirty~~ (30) 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 ~~thirty~~ (30) twenty (20) days following service of this Amended Complaint. Please note that the Quick Resolution ~~settle-ment~~ 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 ~~and does not contain a specific proposed penalty~~. 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~~ Environ-mental 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: _____

John A. Armstead

Director, Land and Chemicals Division
U.S. EPA, Region III

**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

Motion for Leave to File
First Amended Complaint

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

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

In accordance with 40 C.F.R. §§ 22.14(c) and 22.16(a) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice)*, Complainant hereby submits this Memorandum of Law in support of its Motion for Leave to File First Amended Complaint. As set forth in the Motion attached hereto, the primary purpose of amending the

Complaint is to add three corporate Respondents who are and were, at the time of the relevant violations alleged in the Complaint, the actual owners of the underground storage tanks and tank systems (USTs) at issue in this proceeding, as admitted to by the sole shareholder, director, and officer of each such entity during a deposition taken on December 18, 2014, in Philadelphia.

Owners *and* operators of USTs are subject to the requirements of Subtitle I of RCRA.¹

The proposed additional Respondents are: 5703 Holland Road Realty Corp.; 8917 South Quay Road Realty Corp.; and 1397 Carrsville Highway Realty Corp. (collectively, “Realty Corporations”), which, respectively, own the USTs at Aylin Gas Station, Rt. 58 Food Mart, and Franklin Eagle Mart (collectively, “Facilities”). Simultaneously, Complainant seeks to revise the Complaint to clarify that the currently named corporate Respondents are not owners of the USTs at issue but are and were, at the time of the relevant violations alleged in the Complaint, operators of such USTs.

I. Relevant Procedural Background

On March 27, 2013, Complainant filed an Administrative Complaint, Compliance Order, and Notice of Right to Request Hearing (Complaint) commencing this proceeding.

On or about April 29, 2013, Respondents filed an Answer.

The Parties participated in Alternative Dispute Resolution (ADR), but could not achieve settlement. On September 26, 2013, ADR was terminated.

¹ Any owner or operator who fails to comply with, *inter alia*, any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or any requirement or standard of a State program approved by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. Section 6991e shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation. RCRA § 9006(d)(2), 42 U.S.C. § 6991e(d)(2).

On October 31, 2013, the Parties filed a Joint Status Report and Motion to Stay Proceedings.

On November 5, 2013, this Court issued a Prehearing Order and Order on Motion to Stay Proceedings (Prehearing Order), which, *inter alia*, granted in part and denied in part the Motion to Stay Proceedings, and set forth deadlines by which the parties were to exchange information.

On February 20, 2014, Complainant filed a Motion for Discovery seeking, *inter alia*, information about Respondents' finances and Respondent Kiriscioglu's involvement in the operation of the USTs at the facilities.

On March 12, 2014, this Court issued an Order on Complainant's Motion for Discovery (Discovery Order), granting Complainant's motion and ordering Respondents to file responses to all requested discovery together with their Prehearing Exchange due April 4, 2014.

On March 14, 2014, Complainant filed its Prehearing Exchange.

On March 31, 2014, Respondents filed a Consent Motion for Extension of Time to respond to the Discovery Order (Consent Motion).

On April 2, 2014, this court issued an Order granting Respondents' Motion for Extension of Time, setting May 5, 2014 as the new due date for Respondents' discovery responses.

On April 7, 2014, Respondents filed their Initial Prehearing Exchange.

On April 7, 2014, Complainant filed its Response to Respondents' Consent Motion and Motion for Extension of Time in which to file its Rebuttal Prehearing Exchange.

On April 10, 2014, the Court granted Complainant's Motion for Extension of Time setting May 20, 2014, as the new due date for Complainant's Rebuttal Prehearing Exchange.

On May 6, 2014, Respondents filed a partial response to the Discovery Order.

On May 6, 2014, Respondent Adnan Kiriscioglu filed a Motion for Partial Accelerated Decision and a Motion to Defer Discovery Response.

On May 20, 2014, Complainant filed its Rebuttal Prehearing Exchange.

On May 21, 2014, Complainant filed its Motion to Strike Respondent Adnan Kiriscioglu's Motion for Partial Accelerated Decision.

On June 10, 2014, the Parties filed a Joint Motion for Extension of Time, seeking additional time in which to file dispositive motions pending this Court's ruling on Respondent Adnan Kiriscioglu's Motion for Partial Accelerated Decision and Complainant's Motion to Strike.

On August 21, 2014, Complainant filed a Motion to Compel Discovery and Impose Sanctions.

On August 25, 2014, the Court issued a Notice of New Electronic Filing Procedures.

On August 25, 2014, Complainant filed electronically (in accordance with the August 25, 2014, filing procedures) a copy of its Motion to Compel Discovery and Impose Sanctions, originally filed August 21, 2014.

On or about September 10, 2014, Respondents filed an Opposition to Complainant's Motion to Compel Discovery and Impose Sanctions.

On September 19, 2014, Respondents filed Respondents' Supplemental Discovery Exchange.

On September 30, 2014, Complainant filed a Status Report.

On December 4, 2014, Complainant filed a Status Report.

On December 31, 2014, Complaint filed its first Supplemental Prehearing Exchange.

II. Legal Analysis

This proceeding is governed by the *Consolidated Rules of Practice* which provide that, after an answer has been filed, the complainant may amend the complaint only upon motion granted by the Presiding Officer. 40 C.F.R. § 22.14(c). The *Consolidated Rules of Practice*, however, do not provide a standard for determining when such a motion should be granted. Where interpretation of a Part 22 Rule is at issue, EPA's Environmental Appeals Board (EAB or Board) and administrative law judges have looked to the Federal Rules of Civil Procedure for guidance. *In Re Env'tl. Prot. Servs., Inc.*, 13 E.A.D. 506, 560 n.65 (EAB 2008) (citing *In re J. Phillip Adams*, 13 E.A.D. 310, 330 n.22 (EAB 2007); *In re Lazarus, Inc.* 7 E.A.D. 318, 330 n.25 (EAB 1997)).

Rule 15(a)(2) -- the counterpart to 40 C.F.R. § 22.14(c) -- provides that courts "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). In 1962, the United States Supreme Court stated that leave to amend pleadings under Rule 15(a) should be given freely in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Consistent with this opinion, Courts have construed Rule 15(a)(2) liberally, especially in the administrative context, as has the EAB. *Env'tl. Prot. Servs.*, 13 E.A.D. at 561 n.67 (citations omitted). "The Board adheres to the generally accepted legal principle that 'administrative pleadings are intended to be liberally construed and easily amended' and that permission to amend a complaint will ordinarily be freely granted." *In re Port of Oakland*, 4 E.A.D. 170, 205 (EAB 1992)(quoting *Yaffe Iron and Metal Co. v. U.S. EPA*, 774 F.2d 1008, 1012 (10th Cir.

1985)). Indeed, the “Board has on several occasions followed the liberal pleading policy enunciated by the Federal Rules and *Foman*.” *In re Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002) (citing *In re Asbestos Specialists*, 4 E.A.D. 819, 830 (EAB 1993); *In re Wego Chem. & Mineral Corp.*, 4 E.A.D. 513, 525 n.11 (EAB 1993); *In re Port of Oakland*, 4 E.A.D. 170, 205 (EAB 1992)).

In considering whether to grant or deny motions to amend, EPA’s administrative law judges also examine the *Foman* criteria. “... [T]he standard enunciated in *Foman* has been applied in a multitude of administrative proceedings.” *In re Hanson’s Window and Constr. Inc.*, Docket No. TSCA-05-2010-0013 (EPA ALJ, Dec. 1, 2010) at 7 (citing *In Re San Pedro Forklift*, Docket No. CWA-09-2009-0006 (EPA ALJ Aug. 11, 2010); *In Re City of St. Charles*, Docket No. CWA-04-2008-5192 (EPA ALJ Apr. 8, 2008); *In Re City of W. Chicago*, Docket No. CWA-5-99-013 (EPA ALJ Feb. 25, 2000)). See, also, *In Re Bug Bam Product, LLC*, Docket No. FIFRA-09-2009-0013 (EPA ALJ Jan. 7, 2010) (granting motion to amend complaint to, *inter alia*, add additional party based on new information provided by answer); *In Re Energy Gases, Inc.*, Docket No. EPCRA-02-2000-4002 (EPA ALJ Oct. 31, 2001)(denying motion to amend complaint to add parent company as party because no evidence that such party was “owner” within the meaning of EPCRA § 311 or 312).

Notwithstanding that the burden is on the opponent to demonstrate the *Foman* factors², Complainant submits that none of the *Foman* factors exists in this case. There is no bad faith or dilatory motive on the part of Complainant. There is no undue delay in seeking to amend or

²The “burden is on the party opposing the amendment to show prejudice, bad faith, undue delay or futility.” *In re FRM Chem, Inc.*, Docket No. FIFRA-07-2008-0035 (EPA ALJ May 27, 2010), at 4 n.4 (citing *Chancellor v. Pottsgrove School Dist.*, 501 F. Supp. 2d 695, 700 (E.D. Pa. 2007)).

repeated failure to cure pleading deficiencies. The proposed amendment is not futile. Lastly, opponents will not be unduly prejudiced by the proposed amendment.

A. Undue Delay, Failure to Cure, Bad Faith, Dilatory Motive

The new information prompting the filing of this motion was only revealed to EPA last December during the voluntary deposition of Respondent Kiriscioglu, during which the deponent admitted that the Realty Corporations own the USTs at issue in this matter.³ Respondent Kiriscioglu's admissions are as follows:

Q: Now, who owns the real estate where Aylin, Inc. is located, sir?

A. 5703 Holland Road. I don't remember whether it's inc. or corporation.

Kiriscioglu Dep. 28:16-19, Dec. 18, 2014 (CX 92 EPA 1472).

Q: So does it [5703 Holland Road] own the gasoline dispensers?

A: Gasoline dispensers, yes.

Q: Does it own the underground storage tanks?

A. Yes.

Q. It does?

A. Yes.

Q. So 5703 Holland Road owns the dispensers and gas tanks, correct?

A. Yes.

Id. at 33:24, 34:1-10 (EPA 1477-78).

Q. Does your corporation 1397 Carrsville Highway Corp., besides owning the real estate at this location [Franklin Eagle Mart], does it own any other real estate?

A. No.

Q. Does it own the tanks in this location?

A. Yes.

Id. at 47:5-12 (EPA 1491).

Q. I understand. So 1397 Carrsville Highway Realty Corp. is the owner of the existing dispensers there [at Franklin Eagle Mart]?

A. That's correct.

³Such excerpts (and additional excerpts for context) are attached hereto as Exhibit 1 and also included as part of Complainant's Second Supplemental Prehearing Exchange filed concurrently with the instant Motion.

Q. They're also the owners of the submerged pumps?

A. Yes.

Q. And the petroleum tanks, the USTs?

A. Yes.

Id. at 52:23-24; 53:1-7 (EPA 1496-97).

Q: So, is it true, sir, that the owner of the underground storage tanks
[at Rt. 58 Food Mart] is 89[17] South Quay Realty Corp?

A: That's correct.

Id. at 67:4-7 (EPA 1511).

Prior to these admissions, Respondents had represented throughout this proceeding to Complainant and this Court that the owners of the USTs at the Facilities were Aylin, Inc., Rt 58 Food Mart, Inc., and Franklin Eagle Mart Corp. as attested to by Respondent Kiriscioglu in his affidavit⁴ dated May 5, 2014, submitted to this Court as an exhibit to Respondent Adnan Kiriscioglu's Motion for Partial Accelerated Decision. Thus, prior to discovering this information last December by deposing Respondent Kiriscioglu, Complainant simply had no basis to seek to amend the Complaint due to its reliance on the false information provided by Respondent Kiriscioglu. As to the timing of this motion, Complainant submits it is timely filed, given that no order scheduling the hearing (or disposing of pending motions) has yet been issued. Hence Complainant is acting in good faith to amend the pleadings to conform to the new ownership information. As the record demonstrates, there is no undue delay, failure to cure, bad faith or dilatory motive on the part of Complainant in seeking to amend.

⁴" . . . Aylin, Inc., Rt. 58 Food Mart, Inc. and Franklin Eagle Mart Corp. became the owners of the underground storage systems at the three outlets . . ." Kiriscioglu Aff. ¶ 12 (May 5, 2014). This affidavit is attached as Exhibit 2.

B. Futility

The proposed amendment is not futile and not a mere formality but adds liable parties, especially important where, as here, ability to pay is in issue. “A proposed amendment *is* futile if it could not withstand a motion to dismiss If there is a colorable basis for the amendment, it *is not* futile.” *In re Zaclon, Inc.*, Docket No. RCRA-05-2004-0019) (EPA ALJ April 21, 2006), at 6 (citations omitted) (emph. added); *accord, In re FRM Chem, Inc.*, Docket No. FIFRA-07-2008-0035 (EPA ALJ May 27, 2010), at 7 n.8 (citations omitted). The proposed amendment clearly states a colorable claim of the Realty Corporations as respondents on the basis that they were owners of the USTs in question. Complainant has alleged facts and cited to evidence in the record supporting a finding that the Realty Corporations were and are “owners” of USTs as defined by RCRA § 9001(3) and 9 VAC § 25-580-10 and therefore subject to a civil penalty for failure to comply with requirements or standards of Subtitle I of RCRA or of the authorized Virginia UST management program. RCRA § 9006(d)(2), 42 U.S.C. § 6991e(d)(2).

C. Prejudice to Opponents

Of the *Foman* factors, undue prejudice to the opponent is the most significant. *Carroll Oil*, 10 E.A.D. at 650 (citations omitted).

Examples of circumstances of “undue” prejudice include that the motion to amend comes on the eve of trial after many months or years of pretrial activity, would cause undue delay in the final disposition of the case, brings entirely new and separate claims, new parties, or at least entails more than an alternative claim or change in the allegations of the complaint, and would require expensive and time-consuming discovery.

Zaclon at 4 (*quoting Boyd v. Ill. State Police*, Civil No. 98C 8348, 2001 US Dist. LEXIS 8899 *7-8 (N.D. Ill. June 27, 2001)).

As the Board has noted, “[p]rejudice is usually manifested by a lack of opportunity to respond or need for additional pre-hearing fact-finding and preparation that cannot be readily accommodated.” *Lazarus*, 7 E.A.D. at 330. Granting the amendment in this case will not unduly prejudice opponents as Complainant is advancing no new theories or claims, obviating the need for any additional investigation, fact-finding, discovery, or delay to the proceedings. No further factual inquiry is needed where, as here, the proposed parties’ UST ownership has been admitted. Indeed Complainant proposes to narrow the issues for trial by pursuing the current Respondents as operators only, consistent with the new ownership information. Again, because no new legal theories are at issue here, no undue prejudice will result.

D. Prejudice to the Movant

In considering a motion to amend, the reasons for the errors in the original pleading and prejudice to the movant must be weighed against any prejudice to the opponent. *Zaclon* at 4 (citation omitted). In the instant matter, any possible prejudice to opponents fails to outweigh the harm to Complainant, who repeatedly sought to obtain from Respondents the very information that forms the basis of the proposed amendment, and in fact cited Respondents for their failure to furnish such information. Compl. Count I. To deny Complainant’s motion would penalize EPA who has expended considerable energy and resources over many years to obtain the answer to the very simple question of who owns the USTs. The record demonstrates that EPA availed itself of all investigative means available under RCRA § 9005 and the *Consolidated Rules of Practice* to clarify the ownership question. But for Respondents’ failure to identify the Realty Corporations as owners when EPA originally sought such information more than four years ago, Complainant would not find itself in this present posture.

Denying Complainant's motion could have implications beyond this case, in that it could encourage evasion by parties from whom EPA seeks information under RCRA or any other statute, rather than encourage timely, thorough and forthcoming disclosures to EPA. Moreover, such a ruling would be contrary to the liberal administrative pleading practice favored by EPA's administrative law judges and the EAB.

As the Supreme Court noted in *Foman*,

It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48. The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action." Rule 1.

Foman at 182.

Granting Complainant's motion will be consistent with the *Consolidated Rules of Practice*, the Federal Rules of Civil Procedure, *Foman*, EAB and ALJ jurisprudence and "facilitate a proper decision on the merits."

II. Conclusion

For the reasons set forth above, Complainant respectfully requests that this Court grant Complainant's Motion for Leave to File First Amended Complaint, in accordance with 40 C.F.R. §§ 22.14(c) and 22.16.

3/13/2015
Date

Respectfully Submitted,



Janet E. Sharke
Louis F. Ramalho
Counsel for Complainant
U.S. EPA, Region III

Exhibit 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
US EPA DOCKET NO. RCRA-03-2013-0039

- - -

IN THE MATTER OF

AYLIN, INC., :
RT. 58 FOOD MART, INC., : Proceeding Under
FRANKLIN EAGLE : Section 9006 of
MART CORP., ADNAN : The Resource
KIRISCIOGLU d/b/a NEW : Conservation and
JERSEY PETROLEUM : Recovery Act, as
ORGANIZATION a/k/a NJPO: Amended, 42 U.S.C
Section 6991e

- - -

Philadelphia, Pennsylvania
December 18, 2014

- - -

Deposition of ADNAN

KIRISCIOGLU, taken pursuant to notice, held
at the ENVIRONMENTAL PROTECTION AGENCY
REGION III, on the above date at 10:00 a.m.,
before Jen Szombathy, a Certified
Professional Reporter.

- - -

ACE REPORTERS, INC.
The Bourse, Suite 1030
111 South Independence Mall
Philadelphia, Pennsylvania 19106
(215) 627-6701 (866) ACE-7003
Fax (215) 627-6788

CX 93

1 APPEARANCES:

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5 Philadelphia, Pennsylvania 19130
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7 Counsel for the Environmental Protection
8 Agency

9 LEITER & CRAMER, PLLC
10 BY: JEFFREY L. LEITER, ESQUIRE
11 1707 L. Street
12 Suite 560
13 Washington, D.C. 20036
14 (202) 386-7670
15 Counsel for Aylin, Inc., Rt. 58 Food Mart,
16 Inc., Franklin Eagle Mart Corp., Adnan
17 Kiriscioglu d/b/a New Jersey Petroleum
18 Organization a/k/a NJPO

12 ALSO PRESENT:

13 Janet E. Sharke
14 Jennifer Nearhood

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I N D E X

- - -

EXHIBIT	DESCRIPTION	PAGE
CX-91	Photograph	28

(Exhibit maintained by Counsel)

- - -

QUESTIONING BY:	PAGE
MR. RAMALHO	4
MS. NEARHOOD	176

1 Q. So the answer is no?

2 A. No. Actually, I don't know if it's
3 no or yes because I'm making decisions for the
4 corporation.

5 Q. Do you record those decisions in
6 writing?

7 A. No.

8 Q. Let's turn our attention to Aylin,
9 Inc., let's talk about Aylin, Inc., for now.
10 What does the facility consist of?

11 A. It's a gas station.

12 Q. A gas station located at 5703
13 Holland Road in Suffolk, Virginia. What does it
14 consist of?

15 A. Meaning you're talking about the
16 buildings?

17 Q. What does it have on this location?
18 What do you have there?

19 A. Gas tanks, gas pumps, canopy,
20 building, one other building and that's
21 property.

22 Q. You're talking about the property?

23 A. Yes.

24 Q. So you have how many gas pumps

1 there?

2 A. Gas pumps I think two.

3 Q. Do you do any automobile service
4 out of that location?

5 A. No.

6 Q. You have a convenience store,
7 correct?

8 A. No.

9 Q. There's no convenience store there?

10 A. My last tenant was a butcher.

11 Q. And the butcher would also dispense
12 gasoline?

13 A. He was collecting the money for us.
14 It was a self-service location.

15 Q. So let me -- I'm trying to get a
16 clear picture of this operation.

17 You had two gasoline dispensers,
18 correct?

19 A. Yes.

20 Q. And you didn't have a convenience
21 store?

22 A. Yes.

23 Q. But you had a building there,
24 correct?

1 A. Yes.

2 Q. And from that building you had a
3 butcher?

4 A. As a tenant.

5 Q. And that same butcher was the one
6 that collected the receipts for the sale of
7 gasoline?

8 A. Correct.

9 Q. Was there any other buildings
10 besides this one?

11 A. There's one other building you can
12 say like storage building, but nothing used.

13 Q. There's another building there but
14 for storage only, correct?

15 A. Correct.

16 Q. Now, who owns the real estate where
17 Aylin, Inc. is located, sir?

18 A. 5703 Holland Road. I don't
19 remember whether it's inc. or corporation.

20 MR. RAMALHO: I'm going to ask
21 you to mark this for me as Exhibit 91.

22 (Exhibit CX-91 is marked for
23 identification.)

24 BY MR. RAMALHO:

1 Q. Can you identify for me what this
2 picture depicts?

3 A. This is the location.

4 Q. Of what, sir?

5 A. Gas station 5703 Holland Road.

6 Q. And do you see the sign there that
7 says Pure?

8 A. That's correct.

9 Q. And underneath it it says L&L
10 Country Meats?

11 A. That's correct.

12 Q. Is that the butcher you were
13 talking about, sir?

14 A. Yes.

15 Q. And do you recall when that butcher
16 started out as a tenant?

17 A. I don't remember.

18 Q. Okay. Is he still there?

19 A. No.

20 Q. He's closed?

21 A. He's closed.

22 Q. Do you know when he closed down?

23 A. I want to say about a year.

24 Q. About a year?

1 A. Yes.

2 Q. We'll come back to the butcher a
3 little bit later, okay?

4 Now, you said the real estate is
5 owned by 5703 Holland Road Realty Corp.,
6 correct?

7 A. That's correct.

8 Q. Okay. And who owns that
9 corporation, sir?

10 A. I do.

11 Q. You do?

12 A. Yes.

13 Q. And are you the sole shareholder of
14 that corporation?

15 A. Yes.

16 Q. And are you also the president of
17 that corporation?

18 A. Yes.

19 Q. Are you also the secretary of that
20 corporation?

21 A. Yes.

22 Q. And you're also the treasurer of
23 that corporation, correct?

24 A. Yes.

1 Q. And are you the sole director of
2 that corporation?

3 A. Technical --

4 MR. LEITER: Again, I think we
5 can probably stipulate.

6 BY MR. RAMALHO:

7 Q. Just one follow-up question, sir.
8 When you make decisions on behalf of this 5703
9 Holland Road Realty Corporation, do you
10 memorialize those decisions in the form of
11 minutes or meetings?

12 A. Memorialized, yes.

13 Q. So for this corporation you hold
14 meetings with the shareholder?

15 A. The previous question you had like
16 we're talking about did you write it down. If I
17 make a decision for having a tenant, yes, we
18 sign a lease or we can call that it's signed.

19 Q. But the authorization to the -- the
20 decision by the corporation and the
21 authorization given to the officers of the
22 corporation are not memorialized in any
23 documentation; is that correct? Besides a legal
24 document like a lease agreement for a purchase

1 agreement. Just say yes or no. If you don't
2 remember, say you don't recall, that's fine.

3 A. I'm thinking, but I don't recall.
4 Maybe time to time I write. I'm sure I take
5 notes. I cannot remember everything. I take
6 notes to myself.

7 Q. So from whom did 5703 Holland Road,
8 your corporation, from whom did it purchase the
9 real estate, sir, do you remember?

10 A. I don't remember the exact
11 corporation, but I bought it from my jobber,
12 which is Crossroads Fuel. I don't know who
13 owned the --

14 Q. Who was the seller?

15 A. Maybe it's not the correct answer.
16 I was dealing with the jobber Crossroads Fuel,
17 but I don't remember who owns the real estate.

18 Q. I misunderstood a word. You were
19 dealing with?

20 A. A jobber.

21 Q. What's a jobber for us?

22 A. My supplier. This was originally
23 Amoco Station when I take it over and my
24 supplier was local company, which is Crossroads.

1 I bought it from them, but I don't know if I
2 bought it from Crossroads, Inc. or the
3 individual who is the partner of that
4 corporation. I don't remember exactly who I
5 bought it from.

6 Q. And does your corporation 5703
7 Holland Road own any other assets besides the
8 real estate at this location?

9 A. No.

10 MR. LEITER: Clarify in terms
11 of what you mean by assets.

12 BY MR. RAMALHO:

13 Q. Does it own any other real estate,
14 sir?

15 A. No.

16 Q. Does it own the two dispensers in
17 that photograph, sir?

18 A. It owns the buildings.

19 Q. It owns the buildings?

20 A. Whatever's on the property it owns,
21 other than, what do you call it, doesn't own the
22 convenience items, it doesn't own the gas.

23 Strictly the property and improvements.

24 Q. So does it own the gasoline

1 dispensers?

2 A. Gasoline dispensers, yes.

3 Q. Does it own the underground storage
4 tanks?

5 A. Yes.

6 Q. It does?

7 A. Yes.

8 Q. So 5703 Holland Road owns the
9 dispensers and the gasoline tanks, correct?

10 A. Yes.

11 Q. And it owns the store, correct?

12 A. The building.

13 Q. And what's inside the building it
14 owns also, correct?

15 A. If it's a walk-in cooler, it owns
16 it. If it's a cook cooler, it doesn't own it.

17 Q. I want you to open up Volume 1.
18 I'll put that in front of you. I want you to
19 turn to CX-9, page 46. Let me know when you're
20 there so you've had an opportunity to look at
21 that.

22 A. Yes.

23 Q. Are you familiar with this
24 document, sir?

1 A. Yes. Two pages, right?

2 Q. There's two pages, EPA 46 and EPA
3 47 and also take a look at EPA 48 and EPA 49.

4 A. Yes.

5 Q. Correct me if I'm wrong, sir, this
6 is a settlement sheet for your purchase of the
7 real estate and equipment at 5703 Holland Road,
8 correct?

9 A. Yes.

10 Q. And the buyer here is 5703 Holland
11 Road Realty Corporation, correct?

12 A. Yes.

13 Q. And that is your corporation,
14 correct?

15 A. Yes.

16 Q. And the seller here is Crossroads
17 Properties, Inc., correct?

18 A. Yes.

19 Q. And that was your jobber as you put
20 it to us?

21 A. Yes.

22 Q. Your supplier. And the date of
23 settlement was April 1, 2001; is that correct?

24 A. Correct.

1 Q. And from reading this it was signed
2 by you at the end; is that correct?

3 A. That's correct.

4 Q. That's your signature, correct?

5 A. Yes.

6 Q. Do you recall that the seller held
7 a note for \$100,000, sir?

8 A. Now looking at the document, yes.

9 Q. You remember that, sir? Do you
10 remember that?

11 A. Yes.

12 Q. And if you look at EPA 48, sir, the
13 purchase consists of not only the real estate
14 but also what's listed on this bill of sale?

15 A. 49, you mean?

16 Q. 48 and 49. I'm at 48 right now.
17 The settlement for the purchase consisted not
18 only of the real estate, sir, but also what's
19 attached to this bill of sale, correct? EPA 48
20 is the bill of sale. Do you see that, sir?

21 A. Yes.

22 Q. That was part of the transaction,
23 correct, sir?

24 A. Just reading it, yes.

1 Q. If you turn the next page EPA 49,
2 sir. Could you read to me what's listed in
3 Exhibit A.

4 A. One, two MPDs.

5 Q. What are MPDs?

6 A. MPDs are the pumps. One canopy,
7 one TLS 350 tank monitoring system, Veeder-Root,
8 four 6,000 gallon tanks, three submerged pumps,
9 two 550 above ground tank and suction.

10 Q. And so your corporation 5703
11 Holland Road Realty Corp. purchased the real
12 estate and purchased this equipment, correct?

13 A. Correct.

14 Q. And it's still the owner today of
15 this equipment, correct?

16 A. Yes.

17 Q. I want you to now turn to
18 Complaint's Exhibit 10. 52, sir. Are you
19 there, sir?

20 A. Yes.

21 Q. This is a notification, and correct
22 me if I'm wrong again, that you submitted to
23 Virginia Department of Environmental Quality on
24 July 16, 2003, correct?

1 A. The question was?

2 Q. You submitted this form, this
3 notification form to the Virginia Department of
4 Environmental Quality on June 25, 2003, correct?

5 MR. LEITER: You said you.

6 THE WITNESS: Me personally, I
7 don't think so.

8 BY MR. RAMALHO:

9 Q. Well, let me ask you this. You see
10 the owner certification part under part 7, sir?

11 A. Part 7?

12 Q. At the very bottom of the page. Do
13 you see that?

14 A. Yes.

15 Q. Is that your signature on there,
16 sir?

17 A. Yes.

18 Q. Is it fair to say that you prepared
19 this form, sir?

20 A. I signed it, but I didn't prepare
21 it because this is not my handwriting.

22 Q. But you signed it, correct?

23 A. Yes.

24 Q. And it was signed by you on June

1 25, 2003, correct?

2 A. Correct.

3 Q. Now, if we look at this
4 notification, sir, there's a check mark at the
5 top that says new owner.

6 Do you see that at the top?

7 A. Yes.

8 Q. And it then for the ownership of
9 tanks it has listed Aylin, Inc., as the owner,
10 correct?

11 A. Yes.

12 Q. But based on your testimony today
13 that's not correct?

14 A. That's not correct.

15 Q. That's not correct?

16 A. Yes.

17 Q. 5703 is the actual owner of the
18 tanks?

19 A. That's correct.

20 Q. Thank you, sir. So with respect to
21 Aylin, Inc., sir, does it have any assets?

22 A. One minute. Can I --

23 Q. Do you want to take a break? Do
24 you want to talk?

1 A. I can talk. Look at EPA 53, tank
2 8,000 gallons each and the other document you
3 told me when I was looking at it four tanks is
4 6,000 gallons. Exhibit A on page 49 we bought
5 four, 6,000 gallon tanks and here page 53
6 there's 8,000 gallons, four tanks listed.

7 Q. And I agree with you, sir, so my
8 question to you is, did you rip up the
9 preexisting four, 6,000 gallon tanks to install
10 the 8,000 gallon tanks?

11 A. No.

12 Q. Would you agree with me that EPA
13 053, the tank capacity of gallons of 8,000 is
14 incorrect but it should be 6,000; is that
15 correct?

16 A. Right. Now I'm really confused. I
17 don't remember whether it was 6,000 or 8,000 to
18 tell you the truth.

19 Q. There's a discrepancy with respect
20 to the gallonage?

21 A. Yes.

22 Q. But the tanks do exist?

23 A. I never take the tanks out. I
24 never replace it.

1 Q. Aylin, Inc. does not have any
2 assets, that's correct?

3 A. Also, if you look at this page, it
4 says tanks like amended. Whoever filled out
5 this form, amendment means on the tanks or? I
6 don't know what the question was.

7 Q. So you signed this form, correct?

8 A. Sir.

9 Q. But you didn't fill it out; is that
10 what you're saying?

11 A. No.

12 Q. Do you recall who filled it out for
13 you?

14 A. I don't remember.

15 Q. So Aylin, Inc. is the operator of
16 the facility?

17 A. That's correct.

18 Q. And it has no assets, really
19 doesn't own anything?

20 A. As far as the property, no.

21 Q. We already established what 5703
22 Holland Road owns?

23 MR. LEITER: Assets include
24 inventory, product in the tanks.

1 any third party?

2 A. From? We're talking about Franklin

3 Eagle Mart?

4 Q. Yes.

5 A. Is the tenant of that location.

6 Q. And Franklin Eagle Mart is your

7 corporation?

8 A. That's correct.

9 MR. LEITER: For clarity, were
10 you asking there's like an L&L
11 butcher, there's a subtenant or
12 sublessee?

13 MR. RAMALHO: He said no.

14 BY MR. RAMALHO:

15 Q. There's no tenant there besides
16 Franklin Eagle Mart, correct?

17 A. Correct.

18 Q. Now, who owns the real estate, sir,
19 here?

20 A. 1397 Carrsville Highway. I don't
21 remember, either Inc. or corp.

22 Q. Do you recall from whom 1397
23 Carrsville Highway Corp. purchased the real
24 estate from?

1 A. Similar like Pure, either
2 Crossroads or one of the shareholders or
3 partners from Crossroads, which was my jobber at
4 the time.

5 Q. Does your corporation 1397
6 Carrsville Highway Corp., besides owning the
7 real estate at this location, does it own any
8 other real estate?

9 A. No.

10 Q. Does it own the tanks in this
11 location?

12 A. Yes.

13 Q. And it owns the dispensers,
14 correct?

15 A. Yes.

16 Q. And the convenience store, correct?

17 A. Convenience store, meaning there is
18 a walk-in cooler, yes.

19 Q. I'd like to show you Exhibit 90. I
20 want you to turn to Exhibit 90 and --

21 MR. LEITER: Are we looking at
22 a settlement statement?

23 MR. RAMALHO: Do you have
24 copies?

1 MS. SHARKE: I think I have
2 some upstairs.

3 (A short break was taken.)

4 BY MR. RAMALHO:

5 Q. I want you to take a look at EPA
6 CX-90, EPA 1422.

7 Can you identify this document for
8 me, sir?

9 A. It was just one page you're talking
10 about.

11 Q. The document that starts out EPA
12 1422 through 23, just those two pages.

13 A. Yes. What was the question?

14 Q. Do you recognize this document,
15 sir?

16 A. Yes.

17 Q. Is that your signature at the
18 bottom of EPA 1423?

19 A. Yes.

20 Q. And this is an agreement of sale,
21 correct?

22 A. Yes.

23 Q. It's entitled agreement for sale of
24 assets, correct?

1 A. Assets means the real property.

2 Q. Well, the title of the document
3 says agreement for sale of assets, correct, at
4 the very top of the page?

5 A. Agreement for sale of assets, yes.

6 Q. And this agreement is dated
7 November 3, 2000, correct?

8 A. That's correct.

9 Q. It's by and between you and
10 Keffer-Rose, Inc., correct?

11 A. Correct.

12 Q. It's between you individually and
13 this corporation, correct?

14 A. Yes.

15 Q. And you're the buyer, correct?

16 A. In this document, yes.

17 Q. And look at the assets to be
18 purchased -- let me back up here. The next
19 paragraph says, the whereas clause, it says
20 Keffer-Rose, Inc. desires to sell and Adnan
21 desires to purchase real estate located at 1397
22 Highway, Olive, White County, Virginia, known as
23 Eagle Mart; is that correct, sir?

24 A. That's correct.

1 Q. And then if you look down further
2 it says assets to be purchased.

3 Do you see that, sir?

4 A. Yes.

5 Q. And it has under item A, existing
6 petroleum equipment.

7 Do you see that?

8 A. Yes.

9 Q. It says Keffer-Rose, Inc. will sell
10 to Adnan existing dispensers, submerged pumps,
11 petroleum tanks, console, leak detection
12 equipment and any other miscellaneous related
13 equipment owned by Keffer-Rose at that location.

14 Is that a true and accurate
15 reading of that paragraph?

16 A. Reading of that paragraph, yes.

17 Q. Then I want you to take a look at
18 EPA 1435, the last two pages of that exhibit.

19 A. Yes.

20 Q. Can you identify for me what this
21 is, sir?

22 A. Settlement statement.

23 Q. For what property, sir?

24 A. 1397 Carrsville Highway.

1 Q. This is the same property that was
2 reflected in the previous agreement of sale,
3 correct, that we spoke about at EPA 1422,
4 correct?

5 A. Yes.

6 Q. Now, the buyer here is 1397
7 Carrsville Highway Realty Corporation.

8 Do you see that, sir?

9 A. That's correct.

10 Q. And the seller is Keffer-Rose,
11 Inc., correct?

12 A. Yes.

13 Q. And you already told us that 1397
14 Carrsville Highway is your corporation?

15 A. That's right.

16 Q. My question to you, sir, is how did
17 you transfer the assets -- let me ask you this.

18 Did you ever consummate the
19 purchase of this real estate and the dispensers
20 and the gasoline tanks under your name
21 personally, sir?

22 A. I did not buy it under my name,
23 that was the agreement of the sale. At the time
24 probably I didn't have the corporation for the

1 real estate, then I formed the corporation and
2 the settlement statement reflects the property
3 bought under 1397 Carrsville Highway.

4 Q. So you assigned the agreement of
5 sale to your own corporation, correct?

6 A. I don't remember technically if
7 it's correct term. But at the time I was the
8 tenant under Aloska, whatever, Inc. And when we
9 decide to buy, probably I didn't have the
10 corporation ready. I'm sure one part it should
11 say -- this agreement should be -- you know, I
12 have to form the corporation. At one point if
13 it's in or not, I don't remember.

14 Q. So you transferred the rights under
15 this agreement that you signed individually to
16 your corporation Carrsville Highway Realty
17 Corp., correct?

18 A. Technical point, I'm not sure. But
19 I make the decision to buy the property with the
20 assets under the corporation name. I never put
21 on my name personally. I don't own tanks. I
22 don't own --

23 Q. I understand. So 1397 Carrsville
24 Highway Realty Corp. is the owner of the

1 existing dispensers there?

2 A. That's correct.

3 Q. They're also the owners of the
4 submerged pumps?

5 A. Yes.

6 Q. And the petroleum tanks, the USTs?

7 A. Yes.

8 Q. And the console?

9 A. Yes.

10 Q. And the leak detection equipment,
11 correct?

12 A. That's correct.

13 Q. Sir, can I have you take a look at
14 Exhibit 27, EPA 487. So that will be in Volume
15 2. Let me know when you're there, sir.

16 A. 27 or 28?

17 Q. 27, EPA 487.

18 A. Yes.

19 Q. Sir, this is a notification form,
20 correct, that you submitted to the state?

21 A. Yes.

22 Q. And is that your signature at the
23 bottom, sir?

24 A. On page 486, yes.

1 MR. LEITER: 486 or 487.

2 MR. RAMALHO: 487, I'm on 487,

3 sir.

4 THE WITNESS: Yes.

5 BY MR. RAMALHO:

6 Q. And this document was dated by you
7 on June 25, 2003, correct?

8 A. That's correct.

9 Q. And it appears it has -- let me
10 strike that.

11 Now, this document at very top it
12 says, new owner.

13 Do you see that, sir?

14 A. Yes.

15 Q. And it has the ownership of the
16 tanks as Franklin Eagle Mart Corporation.

17 Do you see that, sir?

18 A. Yes.

19 Q. Based on your testimony today,
20 that's incorrect?

21 A. That's incorrect.

22 Q. Franklin Eagle Mart is the
23 operator?

24 A. That's correct.

1 either.

2 Q. So you don't know who's filling out
3 these forms for you; is that correct?

4 A. 489, apparently he filled it out.
5 That's his handwriting.

6 Q. But the other amendment of
7 information is somebody else's handwriting?

8 A. It's not his handwriting and it's
9 not mine.

10 Q. So you don't know where he got this
11 information from?

12 A. No.

13 Q. But he's your manager, correct?

14 A. Yes.

15 Q. Did he communicate with you on a
16 daily basis?

17 A. I don't remember on this case. But
18 he shouldn't be filling out asking to office.
19 He doesn't have the right information to begin
20 with. And who is coming in every two years with
21 these forms and hand it to him --

22 Q. I want to change subjects now to
23 Route 58 Food Mart.

24 And with respect to that facility,

1 what does it consist of, sir?

2 A. We are back on --

3 Q. Route 58. How many dispensers does
4 it have, sir?

5 A. I believe two dispensers.

6 Q. Two buildings?

7 A. One building. I'm going to say
8 three tanks, a canopy, tank.

9 Q. Do you have a convenience store at
10 this location?

11 A. Yes.

12 Q. Was that convenience store leased
13 out to a third party?

14 A. No.

15 Q. So you ran the convenience store,
16 correct?

17 A. Route 58 Food Mart, Inc. run it,
18 yes.

19 Q. Now, who owns the real estate at
20 that location, sir?

21 A. 8917 South Quay Road Realty, either
22 Inc. or corp.

23 Q. And like the other two real estate
24 companies that owned the real estate at the

1 other two facilities, you are the sole
2 shareholder of this corporation as well,
3 correct, sir?

4 A. Real estate company, that's
5 correct.

6 Q. And you're also the president of
7 this corporation, correct?

8 A. Yes.

9 Q. And the treasurer of this
10 corporation?

11 A. Yes.

12 Q. And the secretary, correct?

13 A. Yes.

14 Q. Do you know from whom 8917 Quay
15 Road Realty purchased their real estate from?

16 A. I don't remember the exact name but
17 that's another jobber in the area. Griffith Oil
18 could be.

19 Q. Let me turn your attention to
20 Complainant's Exhibit 89, EPA page number 1416.

21 A. Okay.

22 Q. Got it, sir?

23 A. Yes.

24 Q. Take a minute to look at that

1 document, sir.

2 A. Yes.

3 Q. Could you identify this document
4 for me, sir?

5 A. Just looking at it, it's a purchase
6 agreement.

7 Q. And what is the date of this
8 agreement, sir?

9 A. I'm trying to read it. I want to
10 say 13th day of November 2001.

11 Q. And the agreement is between your
12 corporation, correct, 8917 South Quay Realty
13 Corp.?

14 A. That's correct.

15 Q. As the buyer, correct?

16 A. Yes.

17 Q. And the seller is Suffolk Energies,
18 Inc.?

19 A. That's correct.

20 Q. If you turn to the last page 1421
21 -- let me strike that question.

22 The agreement was for the purchase
23 of the real estate, correct, at 8917 South Quay
24 Road, correct?

1 A. Yes.

2 Q. If you look at the first page, EPA
3 1416, the description of the sale is for the
4 real estate, correct?

5 A. Where do you read it?

6 Q. On the first paragraph, paragraph
7 number 1, it says agreement to sell property.

8 Do you see that, sir?

9 A. Okay. Agreement to sell property.

10 Q. And it has the description of what
11 you're buying.

12 Do you see that, sir?

13 A. Description 8917 South Quay Road,
14 Suffolk, Virginia.

15 Q. That's the real estate, correct?

16 A. Yes.

17 Q. And then it also has together with
18 set improvements there are, including but not
19 limited to the following.

20 Do you see that, sir?

21 A. That's correct.

22 Q. And it says, all canopies, pumps,
23 tanks, lines and all fixtures, I'm not sure what
24 the next word is, and except one aboveground

1 propane tank.

2 Do you see that, sir?

3 A. That's correct.

4 Q. So is it true, sir, that the owner
5 of the underground storage tanks is 89 South
6 Quay Road Realty Corp.?

7 A. That's correct.

8 Q. And the owner of the two dispensers
9 is also 8917 South Quay, correct?

10 A. That's correct.

11 Q. And the canopy as well?

12 A. Yes.

13 Q. And if you turn to page EPA 1421,
14 sir, is that your signature at the bottom of
15 this page, on top of this page?

16 A. Yes.

17 Q. And that's you executing the sale
18 agreement, correct?

19 A. That's correct. But there is no
20 signature for seller.

21 Q. But you have testified that this
22 corporation is yours, correct?

23 A. Corporation is mine. The last page
24 we have 1421, I only have my corporation name,

Exhibit 2

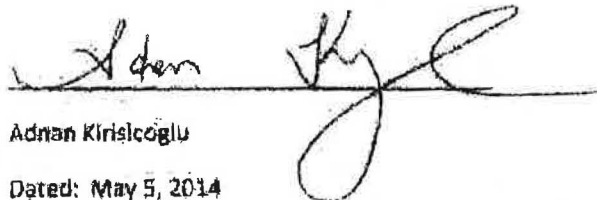
Affidavit of Adnan Kirisicoglu

I, Adnan Kirisicoglu, state and affirm the following:

1. I am the president and owner of Aylin, Inc., Rt. 58 Food Mart, Inc., and Franklin Eagle Mart Corp. The three companies, along with me individually, are the Respondents in the Administrative Complaint filed by EPA Region III.
2. My home address is: 29 Waterview Drive, Port Jefferson, New York 11777.
3. My work address is: 8012 Tonnelle Avenue, North Bergen, New Jersey 07047.
4. I am the owner of corporations that own and operate 22 retail gasoline outlets, including the three facilities in the Tidewater area of Virginia that are the subject of the Administrative Complaint. All but four of the retail gasoline outlets are located in EPA Region II (New York and New Jersey).
5. The major oil companies, such as ExxonMobil, Shell and BP, have virtually exited the ownership and direct operation of retail gasoline outlets. Distributors and petroleum marketers like myself now own and operate these locations, as well as historical owned sites. It is common practice in the petroleum marketing business for the real estate of a retail gasoline outlet to be held by one corporate entity, while a second corporate entity operates the retail gasoline outlet, marketing motor fuels and automotive and food-related products. Individuals, such as me, do not take title to the real estate or ownership of the underground storage tank systems primarily for liability reasons.
6. It also is common in the petroleum marketing business for owners and operators of a chain of retail gasoline outlets like mine to have one or more services groups to provide services to the locations, such as back-end accounting, employee training, and fuel inventory. In addition to myself, I have a small staff of three persons located at the North Bergen, New Jersey address to assist in providing these services to the 22 retail gasoline outlets. Contrary to assertions made by EPA Region III, there is no entity called "New Jersey Petroleum Organization" or "NJPO." While "NJPO" is used in the corporate names of a number of retail gasoline outlets in New Jersey owned by my corporations, vendors and third-parties typically use "NJPO" as a moniker to describe the small, office staff based in North Bergen, New Jersey.
7. The facilities operated by Aylin, Inc., Rt. 58 Food Mart, Inc. and Franklin Eagle Mart Corp. were purchased in 2000 and 2001. Since 2008, all three retail gasoline outlets had to be closed at different times because of economic conditions in the Tidewater area of Virginia. The three retail gasoline outlets have remained closed since last year, and the properties have been listed for sale. The Virginia Department of Environmental Quality has been notified that the underground storage tanks at these three retail gasoline outlets are in "temporary closure."
8. Because the three facilities subject to the Administrative Complaint are geographically close to one another, and because I am physically located several hundred miles away, a manager was hired to oversee all of the day-to-day operations of the three facilities, except setting the street or selling prices for the motor fuels. During the period covered by the Administrative Complaint, the successive managers who oversaw the three facilities were: Tamer Arklan, Osman Mehter, and Kim Borin. At this time, I do not know the whereabouts of these three individuals.

9. The manager for the three facilities was assigned authority and responsibility by me for a number of matters, including the setting of prices for in-store merchandise, hiring and firing of employees, ordering fuel and day-to-day environmental compliance activities. The environmental compliance activities include daily fuel level measurements (including testing for the presence of water) in each underground storage tank, other release detection/prevention activities, physically inspecting pumps and equipment for signs of releases and maintenance, and arranging with third-party vendors for periodic tests and maintenance.
10. My personal involvement at the three facilities generally was limited to setting the street or retail selling prices for the motor fuels and consulting regularly with the manager to ensure that the three facilities were being operated in a financially-proper manner. Because of the distance from my office in Northern New Jersey, I made periodic trips to the three facilities. I was not present at the three facilities on a daily or even weekly basis.
11. I had little involvement with routine underground storage tank compliance activities for the three facilities. From time to time, I would be advised of an issue. I would be involved with the periodic decisions on the renewal of underground storage tank leak insurance. As a small businessman, the better part of my day after retail gasoline pricing decisions are made is spent on larger management issues, such as assessing competitive and overall financial matters.
12. When Aylit, Inc., Rt. 58 Food Mart, Inc. and Franklin Eagle Mart Corp. became the owners of the underground storage tank systems at the three outlets, I signed as president of each entity the notification forms submitted to the Virginia Department of Environmental Quality ("VADEQ"), notifying the State of the change in ownership. I was not aware until EPA Region III produced the document that one of the managers, Tamer Arklan, had signed and had filed an amended tank notification form with VADEQ, in part, changing the tank ownership information for the Franklin Eagle Mart Corp. facility from the corporation to me. I would never take title to the underground storage tanks primarily for liability reasons. I have attached a copy of a further amendment recently submitted to VADEQ, correcting what likely was an inadvertent mistake on the part of Mr. Arklan.
13. I do not know from EPA Region III's Administrative Complaint how I am personally considered to be an "owner" or "operator" of the underground storage tanks at the three facilities. My assumption is that EPA Region III named me personally as a Respondent because it was aware prior to the filing of the Administrative Complaint that the three corporations would assert an inability to pay any civil penalty that might be assessed in the proceeding.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING STATEMENTS AND REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.


Adnan Kirişcioglu
Dated: May 5, 2014

**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

Complainant's Second
Supplemental Prehearing
Exchange

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

Complainant's Second Supplemental Prehearing Exchange

Pursuant to Rule 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.19(f), and the Presiding Officer's Order of November 5, 2013, as modified by this Court's Order of April 10, 2014, Complainant hereby submits its Second Supplemental Prehearing Exchange ("PHE") in the above-captioned matter.

This Second Supplemental PHE consists of an additional two exhibits not previously provided by Complainant in its prior prehearing exchanges filed on March 14, 2014, May 20, 2014, and December 31, 2014. This information bears directly on the ownership of the USTs at the facilities.

Complainant respectfully reserves its right to further supplement its prehearing exchanges in accordance with 40 C.F.R. § 22.19(f), particularly additional excerpts from the transcript of the deposition of Mr. Adnan Kiriscioglu that occurred on December 18, 2014.

COMPLAINANT'S SECOND SUPPLEMENTAL PREHEARING EXCHANGE INDEX

CX 91	Email from Jeffrey Leiter to Janet Sharke attaching Supplemental IRL Response: (4/29/13)	EPA 1441-1444
CX 92	Excerpts from Transcript of Deposition of Adnan Kiriscioglu (selected pages) (12/18/14)	EPA 1445-1447, EPA 1470-1485, EPA 1490-1498, EPA 1506-1511

Sharke, Janet

From: Jeffrey Leiter <jll@leitercramer.com>
Sent: Monday, April 29, 2013 4:04 PM
To: Sharke, Janet
Subject: Aylin, Inc.; Rt. 58 Food Mart, Inc.; and Franklin Eagle Mart Corp.
Attachments: Aylin-Supplemental IRL Response (04 29 13).pdf

Janet,

In follow-up to our April 15, 2013, meeting, Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., and Adnan Kiriscioglu supplement their prior responses to the Agency's Information Request Letters. As we discussed, the parties agreed to submit the missing IRL information identified in EPA's Administrative Complaint.

Regards,

Jeff Leiter

CX 92

SUPPLEMENTAL INFORMATION SUBMISSION

In follow-up to the April 15, 2013, meeting among Andrew Ma, Janet Sharke, Jeffrey Letter and Adnan Kirtiscoglu, Rt. 58 Food Mart, Inc., Aylin, Inc. and Franklin Eagle Mart Corp. submit the following supplemental information in response to the information request letters ("IRLS") previously addressed to them by the U.S. Environmental Protection Agency Region III.

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

- (1) The name and address of each owner ("owner" defined in 9 VAC-25-580-10) of all USTs and/or UST systems at the above-referenced facility for the past five (5) years to the present is:

Rt. 58 Food Mart, Inc.
8012 Tonnelle Avenue
North Bergen, New Jersey 07047

- (2) The name and address of each operator ("operator" is defined in 9 VAC-25-580-10) of all USTs and/or UST systems at the above-referenced facility for the past five (5) years to the present is:

Rt. 58 Food Mart, Inc.
8012 Tonnelle Avenue
North Bergen, New Jersey 07047

- (3) The name and address of each person that owned the property where the USTs and/or UTS system at the above-referenced facility are currently located for the past five (5) years to the present is:

8917 South Quay Road Realty Corp
8012 Tonnelle Avenue
North Bergen, New Jersey 07047

Pure Gas Station
5703 Holland Road
Suffolk, VA 23437

- (1) The name and address of each owner ("owner" defined in 9 VAC-25-580-10) of all USTs and/or UST systems at the above-referenced facility for the past five (5) years to the present is:

Aylin, Inc.
8012 Tonnelle Ave
North Bergen, NJ 07047

- (2) The name and address of each operator ("operator" is defined in 9 VAC-25-580-10) of all USTs and/or UST systems at the above-referenced facility for the past five (5) years to the present is:

Aylin, Inc.
8012 Tonnelle Ave
North Bergen, NJ 07047

- (3) The name and address of each person that owned the property where the USTs and/or UTS system at the above-referenced facility are currently located for the past five (5) years to the present is:

5703 Holland Road Realty Corp.
8012 Tonnelle Avenue
North Bergen, New Jersey 07047

Franklin Eagle Mart
1397 Carraville Highway
Franklin, VA 23851

- (1) The name and address of each owner ("owner" defined in 9 VAC-25-580-10) of all USTs and/or UST systems at the above-referenced facility for the past five (5) years to the present is:

Franklin Eagle Mart Corp.
8012 Tonnelle Avenue
North Bergen, New Jersey 07047

- (2) The name and address of each operator ("operator" is defined in 9 VAC-25-580-10) of all USTs and/or UST systems at the above-referenced facility for the past five (5) years to the present is:

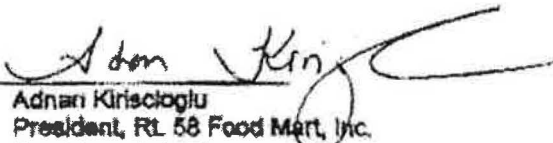
Franklin Eagle Mart Corp.
8012 Tonnelle Avenue
North Bergen, New Jersey 07047

- (3) The name and address of each person that owned the property where the USTs and/or UTS system at the above-referenced facility are currently located for the past five (5) years to the present is:

1397 Carrsville Highway Realty Corp.
8012 Tonnelle Avenue
North Bergen, New Jersey 070347

I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to those identified portions of this submission for which I cannot personally verify their accuracy, I certify under penalty of law that this 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: _____


Adnan Kirsicoglu
President, Rt. 58 Food Mart, Inc.
President, Aylin, Inc.
President, Franklin Eagle Mart Corp.

Date: April 29, 2013

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
US EPA DOCKET NO. RCRA-03-2013-0039
- - -

IN THE MATTER OF

AYLIN, INC., :
RT. 58 FOOD MART, INC., : Proceeding Under
FRANKLIN EAGLE : Section 9006 of
MART CORP., ADNAN : The Resource
KIRISCIOGLU d/b/a NEW : Conservation and
JERSEY PETROLEUM : Recovery Act, as
ORGANIZATION a/k/a NJPO: Amended, 42 U.S.C
Section 6991e
- - -

Philadelphia, Pennsylvania
December 18, 2014
- - -

Deposition of ADNAN

KIRISCIOGLU, taken pursuant to notice, held
at the ENVIRONMENTAL PROTECTION AGENCY
REGION III, on the above date at 10:00 a.m.,
before Jen Szombathy, a Certified
Professional Reporter.

- - -
ACE REPORTERS, INC.
The Bourse, Suite 1030
111 South Independence Mall
Philadelphia, Pennsylvania 19106
(215) 627-6701 (866) ACE-7003
Fax (215) 627-6788

CX 93

1 APPEARANCES:

2 ENVIRONMENTAL PROTECTION AGENCY REGION III
3 BY: LOUIS R. RAMALHO, ESQUIRE
4 1650 Arch Street, 3RC30
5 Philadelphia, Pennsylvania 19130
6 (215) 814-2681
7 Counsel for the Environmental Protection
8 Agency

9 LEITER & CRAMER, PLLC
10 BY: JEFFREY L. LEITER, ESQUIRE
11 1707 L. Street
12 Suite 560
13 Washington, D.C. 20036
14 (202) 386-7670
15 Counsel for Aylin, Inc., Rt. 58 Food Mart,
16 Inc., Franklin Eagle Mart Corp., Adnan
17 Kiriscioglu d/b/a New Jersey Petroleum
18 Organization a/k/a NJPO

12 ALSO PRESENT:

13 Janet E. Sharke
14 Jennifer Nearhood

15

16

17

18

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20

21

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23

24

25

I N D E X

- - -

EXHIBIT	DESCRIPTION	PAGE
CX-91	Photograph	28

(Exhibit maintained by Counsel)

- - -

QUESTIONING BY:	PAGE
MR. RAMALHO	4
MS. NEARHOOD	176

1 Q. So the answer is no?

2 A. No. Actually, I don't know if it's
3 no or yes because I'm making decisions for the
4 corporation.

5 Q. Do you record those decisions in
6 writing?

7 A. No.

8 Q. Let's turn our attention to Aylin,
9 Inc., let's talk about Aylin, Inc., for now.
10 What does the facility consist of?

11 A. It's a gas station.

12 Q. A gas station located at 5703
13 Holland Road in Suffolk, Virginia. What does it
14 consist of?

15 A. Meaning you're talking about the
16 buildings?

17 Q. What does it have on this location?
18 What do you have there?

19 A. Gas tanks, gas pumps, canopy,
20 building, one other building and that's
21 property.

22 Q. You're talking about the property?

23 A. Yes.

24 Q. So you have how many gas pumps

1 there?

2 A. Gas pumps I think two.

3 Q. Do you do any automobile service
4 out of that location?

5 A. No.

6 Q. You have a convenience store,
7 correct?

8 A. No.

9 Q. There's no convenience store there?

10 A. My last tenant was a butcher.

11 Q. And the butcher would also dispense
12 gasoline?

13 A. He was collecting the money for us.
14 It was a self-service location.

15 Q. So let me -- I'm trying to get a
16 clear picture of this operation.

17 You had two gasoline dispensers,
18 correct?

19 A. Yes.

20 Q. And you didn't have a convenience
21 store?

22 A. Yes.

23 Q. But you had a building there,
24 correct?

1 A. Yes.

2 Q. And from that building you had a
3 butcher?

4 A. As a tenant.

5 Q. And that same butcher was the one
6 that collected the receipts for the sale of
7 gasoline?

8 A. Correct.

9 Q. Was there any other buildings
10 besides this one?

11 A. There's one other building you can
12 say like storage building, but nothing used.

13 Q. There's another building there but
14 for storage only, correct?

15 A. Correct.

16 Q. Now, who owns the real estate where
17 Aylin, Inc. is located, sir?

18 A. 5703 Holland Road. I don't
19 remember whether it's inc. or corporation.

20 MR. RAMALHO: I'm going to ask
21 you to mark this for me as Exhibit 91.

22 (Exhibit CX-91 is marked for
23 identification.)

24 BY MR. RAMALHO:

1 Q. Can you identify for me what this
2 picture depicts?

3 A. This is the location.

4 Q. Of what, sir?

5 A. Gas station 5703 Holland Road.

6 Q. And do you see the sign there that
7 says Pure?

8 A. That's correct.

9 Q. And underneath it it says L&L
10 Country Meats?

11 A. That's correct.

12 Q. Is that the butcher you were
13 talking about, sir?

14 A. Yes.

15 Q. And do you recall when that butcher
16 started out as a tenant?

17 A. I don't remember.

18 Q. Okay. Is he still there?

19 A. No.

20 Q. He's closed?

21 A. He's closed.

22 Q. Do you know when he closed down?

23 A. I want to say about a year.

24 Q. About a year?

1 A. Yes.

2 Q. We'll come back to the butcher a
3 little bit later, okay?

4 Now, you said the real estate is
5 owned by 5703 Holland Road Realty Corp.,
6 correct?

7 A. That's correct.

8 Q. Okay. And who owns that
9 corporation, sir?

10 A. I do.

11 Q. You do?

12 A. Yes.

13 Q. And are you the sole shareholder of
14 that corporation?

15 A. Yes.

16 Q. And are you also the president of
17 that corporation?

18 A. Yes.

19 Q. Are you also the secretary of that
20 corporation?

21 A. Yes.

22 Q. And you're also the treasurer of
23 that corporation, correct?

24 A. Yes.

1 Q. And are you the sole director of
2 that corporation?

3 A. Technical --

4 MR. LEITER: Again, I think we
5 can probably stipulate.

6 BY MR. RAMALHO:

7 Q. Just one follow-up question, sir.
8 When you make decisions on behalf of this 5703
9 Holland Road Realty Corporation, do you
10 memorialize those decisions in the form of
11 minutes or meetings?

12 A. Memorialized, yes.

13 Q. So for this corporation you hold
14 meetings with the shareholder?

15 A. The previous question you had like
16 we're talking about did you write it down. If I
17 make a decision for having a tenant, yes, we
18 sign a lease or we can call that it's signed.

19 Q. But the authorization to the -- the
20 decision by the corporation and the
21 authorization given to the officers of the
22 corporation are not memorialized in any
23 documentation; is that correct? Besides a legal
24 document like a lease agreement for a purchase

1 agreement. Just say yes or no. If you don't
2 remember, say you don't recall, that's fine.

3 A. I'm thinking, but I don't recall.
4 Maybe time to time I write. I'm sure I take
5 notes. I cannot remember everything. I take
6 notes to myself.

7 Q. So from whom did 5703 Holland Road,
8 your corporation, from whom did it purchase the
9 real estate, sir, do you remember?

10 A. I don't remember the exact
11 corporation, but I bought it from my jobber,
12 which is Crossroads Fuel. I don't know who
13 owned the --

14 Q. Who was the seller?

15 A. Maybe it's not the correct answer.
16 I was dealing with the jobber Crossroads Fuel,
17 but I don't remember who owns the real estate.

18 Q. I misunderstood a word. You were
19 dealing with?

20 A. A jobber.

21 Q. What's a jobber for us?

22 A. My supplier. This was originally
23 Amoco Station when I take it over and my
24 supplier was local company, which is Crossroads.

1 I bought it from them, but I don't know if I
2 bought it from Crossroads, Inc. or the
3 individual who is the partner of that
4 corporation. I don't remember exactly who I
5 bought it from.

6 Q. And does your corporation 5703
7 Holland Road own any other assets besides the
8 real estate at this location?

9 A. No.

10 MR. LEITER: Clarify in terms
11 of what you mean by assets.

12 BY MR. RAMALHO:

13 Q. Does it own any other real estate,
14 sir?

15 A. No.

16 Q. Does it own the two dispensers in
17 that photograph, sir?

18 A. It owns the buildings.

19 Q. It owns the buildings?

20 A. Whatever's on the property it owns,
21 other than, what do you call it, doesn't own the
22 convenience items, it doesn't own the gas.
23 Strictly the property and improvements.

24 Q. So does it own the gasoline

1 dispensers?

2 A. Gasoline dispensers, yes.

3 Q. Does it own the underground storage
4 tanks?

5 A. Yes.

6 Q. It does?

7 A. Yes.

8 Q. So 5703 Holland Road owns the
9 dispensers and the gasoline tanks, correct?

10 A. Yes.

11 Q. And it owns the store, correct?

12 A. The building.

13 Q. And what's inside the building it
14 owns also, correct?

15 A. If it's a walk-in cooler, it owns
16 it. If it's a cook cooler, it doesn't own it.

17 Q. I want you to open up Volume 1.
18 I'll put that in front of you. I want you to
19 turn to CX-9, page 46. Let me know when you're
20 there so you've had an opportunity to look at
21 that.

22 A. Yes.

23 Q. Are you familiar with this
24 document, sir?

1 A. Yes. Two pages, right?

2 Q. There's two pages, EPA 46 and EPA
3 47 and also take a look at EPA 48 and EPA 49.

4 A. Yes.

5 Q. Correct me if I'm wrong, sir, this
6 is a settlement sheet for your purchase of the
7 real estate and equipment at 5703 Holland Road,
8 correct?

9 A. Yes.

10 Q. And the buyer here is 5703 Holland
11 Road Realty Corporation, correct?

12 A. Yes.

13 Q. And that is your corporation,
14 correct?

15 A. Yes.

16 Q. And the seller here is Crossroads
17 Properties, Inc., correct?

18 A. Yes.

19 Q. And that was your jobber as you put
20 it to us?

21 A. Yes.

22 Q. Your supplier. And the date of
23 settlement was April 1, 2001; is that correct?

24 A. Correct.

1 Q. And from reading this it was signed
2 by you at the end; is that correct?

3 A. That's correct.

4 Q. That's your signature, correct?

5 A. Yes.

6 Q. Do you recall that the seller held
7 a note for \$100,000, sir?

8 A. Now looking at the document, yes.

9 Q. You remember that, sir? Do you
10 remember that?

11 A. Yes.

12 Q. And if you look at EPA 48, sir, the
13 purchase consists of not only the real estate
14 but also what's listed on this bill of sale?

15 A. 49, you mean?

16 Q. 48 and 49. I'm at 48 right now.
17 The settlement for the purchase consisted not
18 only of the real estate, sir, but also what's
19 attached to this bill of sale, correct? EPA 48
20 is the bill of sale. Do you see that, sir?

21 A. Yes.

22 Q. That was part of the transaction,
23 correct, sir?

24 A. Just reading it, yes.

1 Q. If you turn the next page EPA 49,
2 sir. Could you read to me what's listed in
3 Exhibit A.

4 A. One, two MPDs.

5 Q. What are MPDs?

6 A. MPDs are the pumps. One canopy,
7 one TLS 350 tank monitoring system, Veeder-Root,
8 four 6,000 gallon tanks, three submerged pumps,
9 two 550 above ground tank and suction.

10 Q. And so your corporation 5703
11 Holland Road Realty Corp. purchased the real
12 estate and purchased this equipment, correct?

13 A. Correct.

14 Q. And it's still the owner today of
15 this equipment, correct?

16 A. Yes.

17 Q. I want you to now turn to
18 Complaint's Exhibit 10. 52, sir. Are you
19 there, sir?

20 A. Yes.

21 Q. This is a notification, and correct
22 me if I'm wrong again, that you submitted to
23 Virginia Department of Environmental Quality on
24 July 16, 2003, correct?

1 A. The question was?

2 Q. You submitted this form, this
3 notification form to the Virginia Department of
4 Environmental Quality on June 25, 2003, correct?

5 MR. LEITER: You said you.

6 THE WITNESS: Me personally, I
7 don't think so.

8 BY MR. RAMALHO:

9 Q. Well, let me ask you this. You see
10 the owner certification part under part 7, sir?

11 A. Part 7?

12 Q. At the very bottom of the page. Do
13 you see that?

14 A. Yes.

15 Q. Is that your signature on there,
16 sir?

17 A. Yes.

18 Q. Is it fair to say that you prepared
19 this form, sir?

20 A. I signed it, but I didn't prepare
21 it because this is not my handwriting.

22 Q. But you signed it, correct?

23 A. Yes.

24 Q. And it was signed by you on June

1 25, 2003, correct?

2 A. Correct.

3 Q. Now, if we look at this
4 notification, sir, there's a check mark at the
5 top that says new owner.

6 Do you see that at the top?

7 A. Yes.

8 Q. And it then for the ownership of
9 tanks it has listed Aylin, Inc., as the owner,
10 correct?

11 A. Yes.

12 Q. But based on your testimony today
13 that's not correct?

14 A. That's not correct.

15 Q. That's not correct?

16 A. Yes.

17 Q. 5703 is the actual owner of the
18 tanks?

19 A. That's correct.

20 Q. Thank you, sir. So with respect to
21 Aylin, Inc., sir, does it have any assets?

22 A. One minute. Can I --

23 Q. Do you want to take a break? Do
24 you want to talk?

1 A. I can talk. Look at EPA 53, tank
2 8,000 gallons each and the other document you
3 told me when I was looking at it four tanks is
4 6,000 gallons. Exhibit A on page 49 we bought
5 four, 6,000 gallon tanks and here page 53
6 there's 8,000 gallons, four tanks listed.

7 Q. And I agree with you, sir, so my
8 question to you is, did you rip up the
9 preexisting four, 6,000 gallon tanks to install
10 the 8,000 gallon tanks?

11 A. No.

12 Q. Would you agree with me that EPA
13 053, the tank capacity of gallons of 8,000 is
14 incorrect but it should be 6,000; is that
15 correct?

16 A. Right. Now I'm really confused. I
17 don't remember whether it was 6,000 or 8,000 to
18 tell you the truth.

19 Q. There's a discrepancy with respect
20 to the gallonage?

21 A. Yes.

22 Q. But the tanks do exist?

23 A. I never take the tanks out. I
24 never replace it.

1 Q. Aylin, Inc. does not have any
2 assets, that's correct?

3 A. Also, if you look at this page, it
4 says tanks like amended. Whoever filled out
5 this form, amendment means on the tanks or? I
6 don't know what the question was.

7 Q. So you signed this form, correct?

8 A. Sir.

9 Q. But you didn't fill it out; is that
10 what you're saying?

11 A. No.

12 Q. Do you recall who filled it out for
13 you?

14 A. I don't remember.

15 Q. So Aylin, Inc. is the operator of
16 the facility?

17 A. That's correct.

18 Q. And it has no assets, really
19 doesn't own anything?

20 A. As far as the property, no.

21 Q. We already established what 5703
22 Holland Road owns?

23 MR. LEITER: Assets include
24 inventory, product in the tanks.

1 any third party?

2 A. From? We're talking about Franklin
3 Eagle Mart?

4 Q. Yes.

5 A. Is the tenant of that location.

6 Q. And Franklin Eagle Mart is your
7 corporation?

8 A. That's correct.

9 MR. LEITER: For clarity, were
10 you asking there's like an L&L
11 butcher, there's a subtenant or
12 sublessee?

13 MR. RAMALHO: He said no.

14 BY MR. RAMALHO:

15 Q. There's no tenant there besides
16 Franklin Eagle Mart, correct?

17 A. Correct.

18 Q. Now, who owns the real estate, sir,
19 here?

20 A. 1397 Carrsville Highway. I don't
21 remember, either Inc. or corp.

22 Q. Do you recall from whom 1397
23 Carrsville Highway Corp. purchased the real
24 estate from?

1 A. Similar like Pure, either
2 Crossroads or one of the shareholders or
3 partners from Crossroads, which was my jobber at
4 the time.

5 Q. Does your corporation 1397
6 Carrsville Highway Corp., besides owning the
7 real estate at this location, does it own any
8 other real estate?

9 A. No.

10 Q. Does it own the tanks in this
11 location?

12 A. Yes.

13 Q. And it owns the dispensers,
14 correct?

15 A. Yes.

16 Q. And the convenience store, correct?

17 A. Convenience store, meaning there is
18 a walk-in cooler, yes.

19 Q. I'd like to show you Exhibit 90. I
20 want you to turn to Exhibit 90 and --

21 MR. LEITER: Are we looking at
22 a settlement statement?

23 MR. RAMALHO: Do you have
24 copies?

1 MS. SHARKE: I think I have
2 some upstairs.

3 (A short break was taken.)

4 BY MR. RAMALHO:

5 Q. I want you to take a look at EPA
6 CX-90, EPA 1422.

7 Can you identify this document for
8 me, sir?

9 A. It was just one page you're talking
10 about.

11 Q. The document that starts out EPA
12 1422 through 23, just those two pages.

13 A. Yes. What was the question?

14 Q. Do you recognize this document,
15 sir?

16 A. Yes.

17 Q. Is that your signature at the
18 bottom of EPA 1423?

19 A. Yes.

20 Q. And this is an agreement of sale,
21 correct?

22 A. Yes.

23 Q. It's entitled agreement for sale of
24 assets, correct?

1 A. Assets means the real property.

2 Q. Well, the title of the document
3 says agreement for sale of assets, correct, at
4 the very top of the page?

5 A. Agreement for sale of assets, yes.

6 Q. And this agreement is dated
7 November 3, 2000, correct?

8 A. That's correct.

9 Q. It's by and between you and
10 Keffer-Rose, Inc., correct?

11 A. Correct.

12 Q. It's between you individually and
13 this corporation, correct?

14 A. Yes.

15 Q. And you're the buyer, correct?

16 A. In this document, yes.

17 Q. And look at the assets to be
18 purchased -- let me back up here. The next
19 paragraph says, the whereas clause, it says
20 Keffer-Rose, Inc. desires to sell and Adnan
21 desires to purchase real estate located at 1397
22 Highway, Olive, White County, Virginia, known as
23 Eagle Mart; is that correct, sir?

24 A. That's correct.

1 Q. And then if you look down further
2 it says assets to be purchased.

3 Do you see that, sir?

4 A. Yes.

5 Q. And it has under item A, existing
6 petroleum equipment.

7 Do you see that?

8 A. Yes.

9 Q. It says Keffer-Rose, Inc. will sell
10 to Adnan existing dispensers, submerged pumps,
11 petroleum tanks, console, leak detection
12 equipment and any other miscellaneous related
13 equipment owned by Keffer-Rose at that location.

14 Is that a true and accurate
15 reading of that paragraph?

16 A. Reading of that paragraph, yes.

17 Q. Then I want you to take a look at
18 EPA 1435, the last two pages of that exhibit.

19 A. Yes.

20 Q. Can you identify for me what this
21 is, sir?

22 A. Settlement statement.

23 Q. For what property, sir?

24 A. 1397 Carrsville Highway.

1 Q. This is the same property that was
2 reflected in the previous agreement of sale,
3 correct, that we spoke about at EPA 1422,
4 correct?

5 A. Yes.

6 Q. Now, the buyer here is 1397
7 Carrsville Highway Realty Corporation.

8 Do you see that, sir?

9 A. That's correct.

10 Q. And the seller is Keffer-Rose,
11 Inc., correct?

12 A. Yes.

13 Q. And you already told us that 1397
14 Carrsville Highway is your corporation?

15 A. That's right.

16 Q. My question to you, sir, is how did
17 you transfer the assets -- let me ask you this.

18 Did you ever consummate the
19 purchase of this real estate and the dispensers
20 and the gasoline tanks under your name
21 personally, sir?

22 A. I did not buy it under my name,
23 that was the agreement of the sale. At the time
24 probably I didn't have the corporation for the

1 real estate, then I formed the corporation and
2 the settlement statement reflects the property
3 bought under 1397 Carrsville Highway.

4 Q. So you assigned the agreement of
5 sale to your own corporation, correct?

6 A. I don't remember technically if
7 it's correct term. But at the time I was the
8 tenant under Aloska, whatever, Inc. And when we
9 decide to buy, probably I didn't have the
10 corporation ready. I'm sure one part it should
11 say -- this agreement should be -- you know, I
12 have to form the corporation. At one point if
13 it's in or not, I don't remember.

14 Q. So you transferred the rights under
15 this agreement that you signed individually to
16 your corporation Carrsville Highway Realty
17 Corp., correct?

18 A. Technical point, I'm not sure. But
19 I make the decision to buy the property with the
20 assets under the corporation name. I never put
21 on my name personally. I don't own tanks. I
22 don't own --

23 Q. I understand. So 1397 Carrsville
24 Highway Realty Corp. is the owner of the

1 existing dispensers there?

2 A. That's correct.

3 Q. They're also the owners of the
4 submerged pumps?

5 A. Yes.

6 Q. And the petroleum tanks, the USTs?

7 A. Yes.

8 Q. And the console?

9 A. Yes.

10 Q. And the leak detection equipment,
11 correct?

12 A. That's correct.

13 Q. Sir, can I have you take a look at
14 Exhibit 27, EPA 487. So that will be in Volume
15 2. Let me know when you're there, sir.

16 A. 27 or 28?

17 Q. 27, EPA 487.

18 A. Yes.

19 Q. Sir, this is a notification form,
20 correct, that you submitted to the state?

21 A. Yes.

22 Q. And is that your signature at the
23 bottom, sir?

24 A. On page 486, yes.

1 MR. LEITER: 486 or 487.

2 MR. RAMALHO: 487, I'm on 487,
3 sir.

4 THE WITNESS: Yes.

5 BY MR. RAMALHO:

6 Q. And this document was dated by you
7 on June 25, 2003, correct?

8 A. That's correct.

9 Q. And it appears it has -- let me
10 strike that.

11 Now, this document at very top it
12 says, new owner.

13 Do you see that, sir?

14 A. Yes.

15 Q. And it has the ownership of the
16 tanks as Franklin Eagle Mart Corporation.

17 Do you see that, sir?

18 A. Yes.

19 Q. Based on your testimony today,
20 that's incorrect?

21 A. That's incorrect.

22 Q. Franklin Eagle Mart is the
23 operator?

24 A. That's correct.

1 either.

2 Q. So you don't know who's filling out
3 these forms for you; is that correct?

4 A. 489, apparently he filled it out.
5 That's his handwriting.

6 Q. But the other amendment of
7 information is somebody else's handwriting?

8 A. It's not his handwriting and it's
9 not mine.

10 Q. So you don't know where he got this
11 information from?

12 A. No.

13 Q. But he's your manager, correct?

14 A. Yes.

15 Q. Did he communicate with you on a
16 daily basis?

17 A. I don't remember on this case. But
18 he shouldn't be filling out asking to office.
19 He doesn't have the right information to begin
20 with. And who is coming in every two years with
21 these forms and hand it to him --

22 Q. I want to change subjects now to
23 Route 58 Food Mart.

24 And with respect to that facility,

1 what does it consist of, sir?

2 A. We are back on --

3 Q. Route 58. How many dispensers does
4 it have, sir?

5 A. I believe two dispensers.

6 Q. Two buildings?

7 A. One building. I'm going to say
8 three tanks, a canopy, tank.

9 Q. Do you have a convenience store at
10 this location?

11 A. Yes.

12 Q. Was that convenience store leased
13 out to a third party?

14 A. No.

15 Q. So you ran the convenience store,
16 correct?

17 A. Route 58 Food Mart, Inc. run it,
18 yes.

19 Q. Now, who owns the real estate at
20 that location, sir?

21 A. 8917 South Quay Road Realty, either
22 Inc. or corp.

23 Q. And like the other two real estate
24 companies that owned the real estate at the

1 other two facilities, you are the sole
2 shareholder of this corporation as well,
3 correct, sir?

4 A. Real estate company, that's
5 correct.

6 Q. And you're also the president of
7 this corporation, correct?

8 A. Yes.

9 Q. And the treasurer of this
10 corporation?

11 A. Yes.

12 Q. And the secretary, correct?

13 A. Yes.

14 Q. Do you know from whom 8917 Quay
15 Road Realty purchased their real estate from?

16 A. I don't remember the exact name but
17 that's another jobber in the area. Griffith Oil
18 could be.

19 Q. Let me turn your attention to
20 Complainant's Exhibit 89, EPA page number 1416.

21 A. Okay.

22 Q. Got it, sir?

23 A. Yes.

24 Q. Take a minute to look at that

1 document, sir.

2 A. Yes.

3 Q. Could you identify this document
4 for me, sir?

5 A. Just looking at it, it's a purchase
6 agreement.

7 Q. And what is the date of this
8 agreement, sir?

9 A. I'm trying to read it. I want to
10 say 13th day of November 2001.

11 Q. And the agreement is between your
12 corporation, correct, 8917 South Quay Realty
13 Corp.?

14 A. That's correct.

15 Q. As the buyer, correct?

16 A. Yes.

17 Q. And the seller is Suffolk Energies,
18 Inc.?

19 A. That's correct.

20 Q. If you turn to the last page 1421
21 -- let me strike that question.

22 The agreement was for the purchase
23 of the real estate, correct, at 8917 South Quay
24 Road, correct?

1 A. Yes.

2 Q. If you look at the first page, EPA
3 1416, the description of the sale is for the
4 real estate, correct?

5 A. Where do you read it?

6 Q. On the first paragraph, paragraph
7 number 1, it says agreement to sell property.

8 Do you see that, sir?

9 A. Okay. Agreement to sell property.

10 Q. And it has the description of what
11 you're buying.

12 Do you see that, sir?

13 A. Description 8917 South Quay Road,
14 Suffolk, Virginia.

15 Q. That's the real estate, correct?

16 A. Yes.

17 Q. And then it also has together with
18 set improvements there are, including but not
19 limited to the following.

20 Do you see that, sir?

21 A. That's correct.

22 Q. And it says, all canopies, pumps,
23 tanks, lines and all fixtures, I'm not sure what
24 the next word is, and except one aboveground

1 propane tank.

2 Do you see that, sir?

3 A. That's correct.

4 Q. So is it true, sir, that the owner
5 of the underground storage tanks is 89 South
6 Quay Road Realty Corp.?

7 A. That's correct.

8 Q. And the owner of the two dispensers
9 is also 8917 South Quay, correct?

10 A. That's correct.

11 Q. And the canopy as well?

12 A. Yes.

13 Q. And if you turn to page EPA 1421,
14 sir, is that your signature at the bottom of
15 this page, on top of this page?

16 A. Yes.

17 Q. And that's you executing the sale
18 agreement, correct?

19 A. That's correct. But there is no
20 signature for seller.

21 Q. But you have testified that this
22 corporation is yours, correct?

23 A. Corporation is mine. The last page
24 we have 1421, I only have my corporation name,

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, in accordance with the Office of Administrative Law Judge's electronic filing system, effective August 11, 2014, I filed electronically one copy of Complainant's Motion for Leave to File First Amended Complaint and Second Supplemental Prehearing Exchange, Docket No. RCRA-03-2013-0039, 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
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Washington, DC 20460

I further certify that on the date set forth below, I served via registered mail, return receipt requested, a copy of the attached Complainant's Motion for Leave to File First Amended Complaint and Second Supplemental Prehearing Exchange, Docket No. RCRA-03-2013-0039, to:

Jeffrey Leiter, Esq.
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1707 L Street, NW, Ste. 560
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