

April 29, 2013

By Email & Overnight Courier

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RE: In the Matter of Aylin, Inc., Rt. 58 Food Mart, Inc.,
Franklin Eagle Mart Corp., and Adnan Kiriscioglu
U.S. EPA Docket No.: RCRA 03-2013-0039

Dear Ms. Guy:

Enclosed for filing in connection with the above-referenced matter, pursuant to 40 C.F.R. §§ 22.5 and 22.7(b), please find the original and two (2) copies of Respondents' Answer to Administrative Complaint.

Kindly date and time stamp one of the copies and return it to me in the enclosed, self-addressed and stamped envelope.

Sincerely,



Jeffrey L. Leiter

cc: Janet E. Sharke, Esq.
Adnan Kiriscioglu

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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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In the Matter of)
)
Aylin, Inc.,)
Rt. 58 Food Mart, Inc.,)
Franklin Eagle Mart Corp.,)
Adnan Kiriscioglu,)
)
RESPONDENTS.)
)
Proceeding under Section 9006)
of the Resource Conservation and)
Recovery Act, as amended,)
42 U.S.C. Section 6991e)

U.S. EPA DOCKET NO.: RCRA 03-2013-0018

**RESPONDENTS' ANSWER TO
ADMINISTRATIVE COMPLAINT,
COMPLIANCE ORDER AND NOTICE
OF RIGHT TO REQUEST A HEARING**

Now comes the respondents Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp., and, Adnan Kiriscioglu (the "Respondents") with their answer (the "Answer") to the allegations in the Administrative Complaint, Compliance Order and Notice of Right to Request Hearing (the "Complaint") served on the Respondents by the United States Environmental Protection Agency Region III (the "EPA").

INTRODUCTION

The statements in the Introduction are conclusions of law for which no response is required.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The statement in paragraph 1 is a conclusion of law for which no response is required.
2. The statement in paragraph 2 is a conclusion of law for which no response is required.
3. Paragraph 3 is admitted.

4. Paragraph 4 is denied. While Respondent Adnan Kiriscioglu has a business address at 8012 Tonnelle Avenue, North Bergen, New Jersey 07047, "New Jersey Petroleum Organization" and "NJPO" are not corporate entites and did not and do not transact business in the Commonwealth of Virginia. Mr. Kiriscioglu does not conduct business under the names "New Jersey Petroleum Organization" and/or "NJPO."
5. Respondents admit that portion of paragraph 5 that Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., and Franklin Eagle Mart Corp. are Virginia Corporations doing business in the Commonwealth of Virginia. The remainder of paragraph 5 is a conclusion of law for which no response is required.
6. The statement in paragraph 6 is a conclusion of law for which no response is required.
7. The statements in paragraph 7 are conclusions of law for which no response is required.
8. The statements in paragraph 8 are conclusions of law for which no response is required.
9. The statements in paragraph 9 are conclusions of law for which no response is required.
10. The statements in paragraph 10 are conclusions of law for which no response is required. To the extent that a response is required, paragraph 10 is denied.
11. Paragraph 11 is admitted.
12. The statement in paragraph 12 is a conclusion of law for which no response is required.
13. Paragraph 13 is neither admitted nor denied, as Respondents cannot verify what the EPA inspector observed.
14. The statements in paragraph 14 are conclusions of law for which no response is required.
15. The statement in paragraph 15 is a conclusion of law for which no response is required.
16. Paragraph 16 is neither admitted nor denied, as Respondents cannot verify what the EPA inspector observed.
17. The statement in paragraph 17 is a conclusion of law for which no response is required.
18. Paragraph 18 is neither admitted nor denied, as Respondents cannot verify what the EPA inspector observed.
19. The statement in paragraph 19 is a conclusion of law for which no response is required.
20. The statement in paragraph 20 is a conclusion of law for which no response is required.

21. The statement in paragraph 21 is a conclusion of law for which no response is required.

COUNT I

(Failure to Furnish Information)

22. Respondents incorporate by reference paragraphs 1-21, above.

23. The allegation in paragraph 23 is a conclusion of law for which no response is required.

24. Respondent Kiriscioglu admits the allegation in paragraph 24.

25. The allegation in paragraph 25 is neither admitted nor denied for lack of sufficient knowledge or information. To the extent a person accepted the UPS delivery of the IRL, there is no New Jersey Petroleum Organization.

26. The allegation in paragraph 25 is a legal assertion or a conclusion of law for which no response is required.

27. The allegation in paragraph 27 is neither admitted nor denied for lack of sufficient knowledge or information.

28. The allegation in paragraph 28 is neither admitted nor denied for lack of sufficient knowledge or information.

29. Paragraph 29 is denied. Respondents have submitted considerable amounts of responsive information to EPA.

30. Paragraph 30 is admitted.

31. The allegation in paragraph 31 is neither admitted nor denied for lack of sufficient knowledge or information.

32. Paragraph 32 is admitted.

33. The allegation in paragraph 33 is neither admitted nor denied for lack of sufficient knowledge or information.

34. Paragraph 34 is admitted.

35. The allegation in paragraph 35 is neither admitted nor denied for lack of sufficient knowledge or information.

36. Paragraph 36 is admitted.

37. The allegation in paragraph 37 is neither admitted nor denied for lack of sufficient knowledge or information.
38. Paragraph 38 is admitted.
39. The allegation in paragraph 39 is neither admitted nor denied for lack of sufficient knowledge or information.
40. Paragraph 40 is admitted.
41. The allegation in paragraph 41 is neither admitted nor denied for lack of sufficient knowledge or information.
42. Paragraph 42 is admitted.
43. The allegation in paragraph 43 is neither admitted nor denied for lack of sufficient knowledge or information.
44. The allegation in paragraph 44 is a legal assertion or a conclusion of law for which no response is required.
45. Paragraph 45 is admitted.
46. Respondents admit that Atlantic Environmental Solutions, Inc., submitted an IRL response on behalf of the Respondents to EPA on July 28, 2011. The remainder of the allegation in paragraph 46 is a legal assertion or conclusion of law for which no response is required. To the extent an answer is required, the information EPA alleges Respondents failed to furnish was, at all times relevant to the Complaint, publicly available to EPA or available to EPA from the Virginia Department of Environmental Quality (the "VADEQ"). Moreover, given the scope of EPA's IRLs sent to three very small businesses, any failure to submit the requested information was not intentional on the Respondents' part.
47. Paragraph 47 is denied. Subsequent to the issuance of the Complaint, the Respondents met with EPA on April 15, 2013, and have since that time submitted the information described in Paragraph 46.
48. The allegation in paragraph 48 is a conclusion of law for which no response is required.
49. The allegation in paragraph 49 is a conclusion of law for which no response is required.
50. The allegation in paragraph 50 is a conclusion of law for which no response is required.
51. The allegation in paragraph 51 is a conclusion of law for which no response is required.

COUNT II

(Failure to Provide Release Detection at Pure)

52. Respondents incorporated by reference paragraphs 1-51, above.
53. The allegation in paragraph 53 is a conclusion of law for which no response is required.
54. The allegation in paragraph 54 is a conclusion of law for which no response is required.
55. Paragraph 55 is admitted. EPA has failed in the Complaint to take into account the inventory control performed throughout all periods relevant to the Complaint as set forth in 9VAC§25-580-160(4)(b).
56. Paragraph 56 is admitted.
57. Paragraph 57 is neither admitted nor denied for lack of sufficient knowledge or information.
58. The allegation in paragraph 58 is a conclusion of law for which no response is required. To the extent a response is required, Respondents deny paragraph 58.
59. The allegation in paragraph 59 is a conclusion of law for which no response is required.

COUNT III

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

60. Respondents incorporate by reference paragraphs 1-59, above.
61. The allegation in paragraph 61 is a conclusion of law for which no response is required.
62. Paragraph 62 admitted.
63. Paragraph 63 is admitted.
64. The allegation in paragraph 64 is a conclusion of law for which no response is required. To the extent a response is required, Respondents deny paragraph 64.
65. The allegation in paragraph 65 is a conclusion of law for which no response is required.

COUNT IV

(Failure to Provide Cathodic Protection in Piping at Pure)

66. Respondents incorporate by reference paragraphs 1-65, above.
67. The allegation in paragraph 67 is a conclusion of law for which no response is required.
68. Paragraph 68 is admitted to the extent the information was provided by the Respondents to EPA. Respondents lack sufficient knowledge or information about any communications between EPA and VADEQ.
69. Paragraph 69 is admitted to the extent that the cathodic protection tester recommended repairs and/or modifications.
70. Paragraph 70 is admitted.
71. The allegation in paragraph 71 is a conclusion of law for which no response is required.
72. The allegation in paragraph 72 is a conclusion of law for which no response is required. To the extent that a response is required, Respondents deny paragraph 72.
73. The allegation in paragraph 73 is a conclusion of law for which no response is required. To the extent response is required, Respondents deny paragraph 73..
74. The allegation in paragraph 74 is a conclusion of law for which no response is required.

COUNT V

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

75. Respondents incorporate by reference paragraph 1-74, above.
76. The allegation in paragraph 76 is a conclusion of law for which no response is required.
77. The allegation in paragraph 77 is a conclusion of law for which no response is required.
78. Paragraph 78 is admitted to the extent that the piping operates under pressure.
79. Paragraph 79 is neither admitted nor denied for lack of sufficient knowledge or information.
80. Paragraph 80 is admitted.
81. Paragraph 81 is admitted.
82. Paragraph 82 is admitted.

83. Paragraph 83 is admitted to extent the information was provided by the Respondents to EPA. Respondents lack sufficient knowledge of informaton about any communications between EPA and VADEQ.
84. The allegation in paragraph 84 is a conclusion of law for which no response is required.
85. The allegation in paragraph 85 is a conclusion of law for which no response is required.
86. The allegation in paragraph 86 is a conclusion of law for which no response is required.

COUNT VI

(Failure to Conduct Annual Test of Line Leak Detectors of Pure)

87. Respondents incorporate by reference paragraphs 1-86, above.
88. The allegation in paragraph 88 is a conclusion of law for which no response is required.
89. The allegation in paragraph 89 is a conclusion of law for which no response is required.
90. Paragraph 90 is admitted.
91. The allegation in paragraph 91 is neither admitted nor denied for lack of sufficient knowledge or information.
92. Paragraph 92 is admitted.
93. Paragraph 93 is admitted to the extent the information was provided by Respondents to EPA. Respondents lack sufficient knowledge or information about any communications between EPA and VADEQ.
94. Paragraph 94 is admitted.
95. The allegation in paragraph 95 is a conclusion of law for which no response is required.
96. The allegation in paragraph 96 is a conclusion of law for which no response is required.

COUNT VII

(Failure to Demonstrate Financial Responsibility at Pure)

97. Respondents incorporated by reference paragraphs 1-96, above.
98. The allegation in paragraph 98 is a conclusion of law for which no response is required.
99. Paragraph 99 is admitted.

100. The allegation in paragraph 100 is a conclusion of law for which no response is required. To the extent that a response is required, Respondents deny paragraph 100. At all times relevant to the Complaint, Respondents were eligible to use the Virginia Petroleum Storage Tank Fund to satisfy the financial responsibility requirement at 9VAC§25-590-40.
101. The allegation in paragraph 101 is a conclusion of law for which no response is required.

COUNT VIII

(Failure to Provide Release Detection at Rt. 58)

102. Respondents incorporate by reference paragraphs 1-101, above.
103. The allegation in paragraph 103 is a conclusion of law for which no response is required.
104. Paragraph 104 is admitted. EPA has failed in the Complaint to take into account the inventory control performed throughout all periods relevant to the Complaint as set forth in 9VAC§25-580-160(4)(b).
105. Paragraph 105 is neither admitted nor denied as Respondents did not observe the CEI by the EPA inspector.
106. Paragraph 106 is admitted to the extent that the information was provided to EPA by Respondents. Respondents lack sufficient knowledge or information about any communications between EPA and VADEQ.
107. The allegations in paragraph 107 are conclusions of law for which no response is required. To the extent a response is required, Respondents deny paragraph 107.
108. The allegation in paragraph 108 is a conclusion of law for which no response is required.

COUNT IX

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

109. Respondents incorporate by reference paragraphs 1-108, above.
110. Respondents neither admit nor deny paragraph 110 as they did not observe the CEI by the EPA inspector.
111. Respondents admit paragraph 111 to the extent the Respondents provided the information to EPA. The Respondents do not have sufficient knowledge or information about any communications between EPA and VADEQ.
112. The allegation in paragraph 112 is a conclusion of law for which no response is required.
113. The allegation in paragraph 113 is a conclusion of law for which no response is required.

114. The allegation in paragraph 114 is a conclusion of law for which no response is required.

115. The allegation in paragraph 115 is a conclusion of law for which no response is required.

COUNT X

(Failure to Conduct Annual Line Tightness Testing or Monthly Monitoring of Rt. 58)

116. Respondents incorporate by reference paragraphs 1-115, above.

117. Respondents admit that the piping operates under pressure.

118. Paragraph 118 is admitted.

119. The allegation in paragraph 119 is a conclusion of law for which no response is required.

120. The allegation in paragraph 120 is a conclusion of law for which no response is required.

121. The allegations in paragraph 121 are conclusions of law for which no response is required.

122. The allegations in paragraph 122 are conclusions of law for which no response is required.

123. The allegation in paragraph 123 is a conclusion of law for which no response is required.

COUNT XI

(Failure to Conduct Annual Test of Line Leak Detctors at Rt. 58)

124. Respondents incorporate by reference paragraphs 1-123, above.

125. Paragraph 125 is admitted.

126. Paragraph 126 is admitted.

127. The allegation in paragraph 127 is a conclusion of law for which no response is required.

128. The allegation in paragraph 128 is a conclusion of law for which no response is required.

129. The allegation in paragraph 129 is a conclusion of law for which no response is required.

COUNT XII

(Failure to Demonstrate Financial Responsibility at Rt. 58)

- 130. Respondents incorporate by reference paragraphs 1-129, above.
- 131. Paragraph 131 is admitted.
- 132. The allegation in paragraph 132 is a conclusion of law for which no response is required. To the extent that a response is required, Respondents deny paragraph 132. At all times relevant to the Complaint, Respondents were eligible to use the Virginia Petroleum Storage Tank Fund to satisfy the financial responsibility requirement at 9 VAC §25-590-40.
- 133. The allegation in paragraph 133 is a conclusion of law for which no response is required.

COUNT XIII

(Failure to Provide Release Detection at Franklin)

- 134. The Respondents incorporate by reference paragraphs 1-133, above.
- 135. The allegation in paragraph 135 is a conclusion of law for which no response is required.
- 136. Paragraph 136 is admitted. EPA has failed to take into account the inventory control performed by Respondents throughout all periods relevant to the Complaint as set forth in 9 VAC §25-580-160(4)(b).
- 137. Paragraph 137 is neither admitted nor denied for lack of sufficient knowledge or information.
- 138. Paragraph 138 is admitted to the extent the information was provided by the Respondents to EPA. Respondents lack sufficient knowledge or information about any communications between EPA and VADEQ.
- 139. The allegations in paragraph 139 are conclusions of law for which no response is required.
- 140. The allegation in paragraph 140 is a conclusion of law for which no response is required.

COUNT XIV

(Failure to Provide Cathodic Protection for Piping at Franklin)

- 141 Respondents incorporate by reference paragraphs 1-140, above.
- 142. Paragraph 142 is neither admitted nor denied for lack of sufficient knowledge or information.
- 143. Paragraph 143 is admitted.
- 144. The allegation in paragraph 144 is a legal assertion or conclusion of law for which no response is

required.

145. The allegations in paragraph 145 are conclusions of law for which no response is required.

146. The allegation in paragraph 146 is a conclusion of law for which no response is required.

147. The allegation in paragraph 147 is a conclusion of law for which no response is required.

COUNT XV

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

148. Respondents incorporate by reference paragraphs 1-147, above.

149. Respondents admit, as part of paragraph 149, that the piping operates under pressure.

150. Paragraph 150 is admitted.

151. The allegation in paragraph 151 is a conclusion of law for which no response is required.

152. The allegations in paragraph 152 are conclusions of law for which no response is required.

153. The allegation in paragraph 153 is a conclusion of law for which no response is required.

COUNT XVI

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

154. Respondents incorporate by reference paragraphs 1-153, above.

155. Paragraph 155 is admitted.

156. Paragraph 156 is admitted.

157. The allegation in paragraph 157 is a conclusion of law for which no response is required.

158. The allegation in paragraph 158 is a conclusion of law for which no response is required.

159. The allegation in paragraph 159 is a conclusion of law for which no response is required.

COUNT XVII

(Failure to Demonstrate Financial Responsibility at Franklin)

160. Respondents incorporate by reference paragraphs 1-159, above.

161. Paragraph 161 is admitted.

162. The allegation in paragraph 162 is a conclusion of law for which no response is required. To the extent that a response is required, Respondents deny paragraph 162. At all times relevant to the Complaint, Respondents were eligible to use the Virginia Petroleum Storage Tank Fund to satisfy the financial responsibility requirement at 9 VAC §25-590-40.
163. The allegation in paragraph 163 is a conclusion of law for which no response is required.

COMPLIANCE ORDER

164. Respondents will comply with the requirements in this paragraph 164, sections (a)-(g),(i) and (j). Respondents already have complied with section (h).
165. Respondents will comply with paragraph 165.
166. Respondents will comply with paragraph 166.
167. Paragraph 167 is a conclusion of law for which no response is required.

PROPOSED CIVIL PENALTY

Each Respondent denies that the proposed penalties are appropriate for the violations alleged. The Respondents did not receive any economic benefit from the alleged violations; rather, it has expended considerable resources on its compliance activities. The Respondents denies that EPA has fairly assessed the proposed penalties.

The Respondents contest the proposed penalties for failure to conduct monthly release detection for the UST systems. Respondents will put at issue that EPA has misinterpreted and/or misapplied VADEQ's release detection regulations for UST systems as they apply to Respondents.

The Respondents contest the proposed penalties for failure to provide financial responsibility for their UST systems. Respondents will put at issue that EPA has failed to take into account the Respondents' eligibility for the Virginia Petroleum Storage Tank Fund throughout all times relevant to the Complaint.

NOTICE OF RIGHT TO REQUEST A HEARING

Each Respondent requests a hearing before an EPA Administrative Law Judge to contest material facts upon which the Complaint is based, the appropriateness of any compliance order or proposed penalty, and/or assert other matters, including ability to pay, related to the Complaint under EPA's 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.

SETTLEMENT CONFERENCE

Each Respondent has made a request for a settlement conference with Janet E. Sharke, EPA Senior Assistant Counsel. An initial settlement conference was held between the Respondents and EPA on April 15, 2013.

AFFIRMATIVE DEFENSES

EPA has failed to state a claim upon which relief can be granted as to Respondent Adnan Kiriscioglu. No activities alleged in the Complaint was conducted by Mr. Kiriscioglu individually. He is not the "owner" or "operator" of the UST systems in the Complaint as set forth in VADEQ's UST regulations.

EPA has not taken the enforcement action covered by the Complaint consistent with the interpretations of the Commonwealth of Virginia's UST regulations by VADEQ.

Based on the facts and circumstances of this matter, the proposed penalty is excessive, unreasonable and otherwise not in accordance with the EPA Penalty Policy, including adjustment factors, especially considering (a) Respondents' history of no prior violations; (b) the size and financial condition of the Respondents; (c) the lack of participation of Respondent Adnan Kiriscioglu individually; and (d) the limited extent and environmental impacts of the activity.

The proposed penalty is not consistent with precedent established by past penalty assessments for UST violations in EPA Region III.

Respondents have an inability to pay the proposed penalty.

Respondents acted in good faith at all times, and to the extent that any violation of state or federal law is alleged, Respondents at no time knowingly or willfully violated the law.

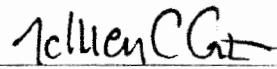
Respondents, at all times relevant to the Complaint, complied with the release detection and financial responsibility provisions in the Commonwealth of Virginia's UST regulations.

OTHER MATTERS

Respondents request Alternative Dispute Resolution pursuant to 40 C.F.R. § 22.18(d).

Respondents intend to file a Motion pursuant to 40 C.F.R. § 22.16, to dismiss Respondent Adnan Kiriscioglu in his capacity as an individual.

Dated: April 29, 2013



Jeffrey L. Leiter
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Counsel to Aylin, Inc., Rt. 58 Food Mart, Inc.,
Franklin Eagle Mart Corp., and Adnan Kiriscioglu

CERTIFICATE OF SERVICE

I hereby satisfy that Respondents Answer to Administrative Complaint, Compliance Order, and Notice of Right to Request a Hearing, EPA Docket No. RCRA 03-2013-0039 (The "Answer") was transmitted via electronic mail and overnight courier service to the following addressees:

Regional Hearing Clerk (3RC00)
US EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Janet E. Sharke, Esq. (3RC50)
Senior Assistant Regional Counsel
US EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: April 29, 2013



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