



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

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In the Matter of:

**Aylin, Inc., Rt. 58 Food Mart, Inc.,
Franklin Eagle Mart Corp., and
Adnan Kiriscioglu,**

Docket No. RCRA-03-2013-0039

Respondents

**PREHEARING ORDER AND
ORDER ON MOTION TO STAY PROCEEDINGS**

As you are aware, I have been designated to preside over this matter. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice” or “Rules”). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. An informal Practice Manual, Citizen’s Guide to proceedings before the EPA Office of Administrative Law Judges, and significant decisions issued by the Office are accessible on the Office’s website at: <http://www.epa.gov/oalj>.

Settlement and abbreviated settlement history. Agency policy strongly supports settlement, and the procedures regarding settlements are set forth in Section 22.18 of the Rules of Practice, 40 C.F.R. § 22.18. The record shows that this office offered the parties the opportunity to participate in an Alternative Dispute Resolution (“ADR”) process. The parties participated in ADR following an order dated May 23, 2013, initiating ADR. The ADR process was extended once on July 19, 2013, and again on August 15, 2013, but the process was terminated when a final agreement was not reached by the parties.

On October 31, 2013, the parties filed a Joint Status Report and Motion to Stay Proceedings (“Motion”). The parties jointly note that the partial federal government furlough from October 1, 2013, through October 17, 2013, delayed Complainant’s analysis of Respondents’ financial information. Motion at 1-2. The parties further note that they are hopeful this analysis will aid settlement discussions and that they may engage in mediation. Motion at 2. The parties then request a stay of proceedings in this matter as a result of a key witness of the Complainant suffering the tragic personal loss of a stillborn child. *Id.* Complainant seeks a stay of 180 days,

arguing that the witness's integral role in this matter and current state of mind warrant such a stay. *Id.*

While the undersigned is strongly sympathetic to such a loss, a 180-day stay of all proceedings in this matter is not essential to allow the bereaved individual substantial time to recover. The next procedural step in this matter is the prehearing exchange, generally an eleven- to twelve-week process commencing only upon the issuance of a prehearing order. Any hearing at which the witness would be required to appear would not be scheduled until after completion of the prehearing exchange. Nonetheless, to provide additional time for the witness to recover, the dates of the prehearing schedule provided below have been set well further into the future than is typical for a prehearing order. Consequently, the Motion is **GRANTED IN PART** and **DENIED IN PART**.

Each party is reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away. If settlement is achieved, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, and a copy shall be submitted to the office of the undersigned by **March 14, 2014**. Nevertheless, the parties must prepare for hearing.

The below outlines the prehearing requirements of this Order.

The mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to strictly comply with the following prehearing exchange requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the judge, excuses noncompliance with filing deadlines.

Prehearing Exchange. This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. Accordingly, it is directed that the following prehearing exchange take place between the parties:

1. Each party¹ shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the Presiding Judge:
 - (A) a list of names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness,

¹ Respondents may choose to file a joint Prehearing Exchange, or each Respondent may file separately.

or a statement that no witnesses will be called;

(B) copies of all documents and exhibits intended to be introduced into evidence, identified as “Complainant’s” or “Respondents’” exhibit², as appropriate, and numbered with Arabic numerals (*e.g.*, CX 1 or RX 1); and

(C) a statement explaining its views as to the appropriate place for the hearing and an estimate of the time needed to present its direct case. *See* 40 C.F.R. §§ 22.21(d), 22.19(d). Each party shall also state whether translation services are necessary in regard to the testimony of any witness(es) and, if so, state the language to be translated.

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondents’ Answer; and

(B) all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty.

3. In addition, Respondents shall submit the following as part of their Prehearing Exchange(s):

(A) copies of any documents in support of the denials made in the Answer;

(B) all factual information Respondents consider relevant to the assessment of a penalty and any supporting documentation; and

(C) if Respondents take the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which they intend to rely in support of such position.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a statement and/or any documents in response to Respondents’ Prehearing Exchange as to provisions 3(A) through 3(C) above; and

² If Respondents choose to file separate prehearing exchanges, the proposed exhibits should be appropriately identified as, for example, “Respondent Aylin’s,” “Respondent Franklin Eagle Mart’s,” or “Respondent Adnan Kiriscioglu’s” exhibits.

(B) a specific penalty proposal and detailed narrative explanation of how the proposed penalty was calculated in accordance with the applicable criteria set forth in the Complaint.

The above prehearing exchanges shall be filed pursuant to the following schedule:

March 14, 2014	Complainant's Initial Prehearing Exchange
April 04, 2014	Respondents' Prehearing Exchange(s)
April 18, 2014	Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify. Therefore, each party should thoughtfully prepare its prehearing exchange.

Supplement to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange shall be filed with an accompanying motion to supplement the prehearing exchange.

Default and Opportunity for a Hearing. The Complaint in this matter gave Respondents notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 554 to 559 ("APA"). Respondents' Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, each Respondent has the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence or through cross-examination of Complainant's witness. Each Respondent is entitled to elect any or all three means to pursue its defenses. If a Respondent intends to elect only to conduct cross-examination of Complainant's witnesses and to forgo the presentation of direct and/or rebuttal evidence, Respondent shall serve a statement to that effect on or before the date for filing its prehearing exchange.

Each Respondent is hereby notified that its failure to either comply with the prehearing exchange requirements set forth herein or to state that it is electing only to conduct cross-examination of Complainant's witnesses, can result in the entry of a default judgment against it. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.

Filing and Service. Under the current Headquarters Hearing Clerk Pilot Program (*see* www.epa.gov/oalj and 40 C.F.R. § 22.5), a document is “filed” when the Headquarters Hearing Clerk receives it. (However, any Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk.) Documents filed in this proceeding may be sent to the Headquarters Hearing Clerk by U.S. mail, or delivered by hand or courier. 40 C.F.R. § 22.5(a)(1). Documents in this proceeding may also be filed by e-mail, subject to the restrictions described below. 40 C.F.R. § 22.5(a)(1). All filings, regardless of submission method, must be signed and must be accompanied by a certificate of service as described in Section 22.5 of the Rules of Practice.

If filing by e-mail, send your document(s) to OALJfiling@epa.gov.³ The Subject Line should include the name and the docket number of this matter. Documents submitted by e-mail must be in Portable Document Format (“PDF”), must be signed, and must contain a contact name, phone number, and e-mail address. Documents filed by e-mail will be deemed to satisfy the duplicate-filing requirement of Section 22.5(a)(1), which requires submission of “[t]he original and one copy of each document intended to part of the record” 50 C.F.R. § 22.5(a)(1).

Please note that the e-mail system is not equipped either to accommodate or to protect the privacy of Confidential Business Information (“CBI”), and whenever a document is filed by e-mail the undersigned will consider all business confidentiality claims waived. A party submitting information for which a claim of confidentiality is made must do so by filing paper copies of that information in the manner described in the Consolidated Rules of Practice as modified by the Headquarters Hearing Clerk Pilot Project. *See* 40 C.F.R. § 22.5(d).

Prehearing exchange information as well as any motions or other papers to be filed in this proceeding shall be addressed as follows if sent by regular mail:

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

Hand-delivered packages transported by Federal Express or any delivery service that x-rays their packages as part of its routine security procedures may be filed by delivery directly to:

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency

³ Electronic files exceeding 50 MB must be separated into files under 50 MB each or submitted on a compact disk (“CD”) by mail, courier, or personal delivery.

Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

A copy of each document filed in this proceeding shall be served on the undersigned and on each party. 40 C.F.R. § 22.5(b). Documents, other than the complaint and rulings, orders, and decisions of the undersigned, may be served personally, by first class mail, by reliable commercial delivery service, or by e-mail. 40 C.F.R. § 22.5(b)(2). A document is “served” upon mailing, electronic transmission, or when placed in the custody of a reliable commercial delivery service. Documents filed by e-mail shall be deemed to have been served on the undersigned.

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the Presiding Judge, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the Presiding Judge except those that are fully executed and filed with the Regional Hearing Clerk.

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the court will be made publicly available. Thus, the parties are hereby advised not to file, or to redact (i.e., remove or obscure) where filing is necessary, any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such a Social Security numbers, medical records and personal financial information.

To the extent that any person files or submits any un-redacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. To protect such information against public disclosure, parties must follow the procedures specified on the Office of Administrative Law Judges website at www.epa.gov/oalj.

Contact Information. Contact may be made with my legal assistant, Mary Angeles at (202) 564-6281 or Angeles.Mary@epa.gov to ask whether a document has been received or issued. For procedural questions, you may contact staff attorney, Gilbert Mears at (202) 566-0954 or Mears.Gilbert@epa.gov.

Courtesy Copies. If any party wishes to receive, by e-mail or facsimile, an expedited courtesy copy of decisions and substantive orders issued in this proceeding, the party shall submit a request for such copies by letter addressed to Mary Angeles at one of the addresses above. The letter shall include the case docket number, the party’s e-mail address or facsimile number, and a statement as to whether the party requests expedited courtesy copies of (a) the initial decision

and/or any orders on motion for accelerated decision or dismissal, or (b) all decisions and substantive orders. The undersigned's office will endeavor to comply with such requests, but does not guarantee the party's receipt of expedited courtesy copies.

Motions. Prior to filing any motion, the moving party must contact the other party or parties to determine whether the other party has any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other party or parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Further, all motions must be submitted in sufficient time to permit the filing of a response by the other party and/or the issuance of a ruling on the motion before any relevant deadline set by this or any subsequent order. Sections 22.16(b) and 22.7(c) of the Rules of Practice allow a 15-day response period for motions, with an additional 5 days added thereto if the document is served by mail. Motions not filed in a timely manner may not be considered. *If either party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or motion to dismiss under 40 C.F.R. § 22.20(a), it shall be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange.*

Pursuant to 40 C.F.R. § 22.16(d), a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. The requesting party shall propose an appropriate location for the argument. The Office of Administrative Law Judges has access to videoconferencing technology, and strongly encourages the parties to consider utilizing such technology for oral arguments on motions, so as to minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

SO ORDERED.



Christine D. Coughlin
Administrative Law Judge

Dated: November 5, 2013
Washington, D.C.

**In the ADR Matter of Aylin, Inc., RT. 58 Mart, Inc., Franklin Eagle Mart Corp., Adnan Kiriscioglu d/b/a New Jersey Petroleum Organization a/k/a NJPO, Respondents.
Docket No. RCRA-03-2013-0039**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Prehearing Order and Order on Motion to Stay Proceedings, dated November 5, 2013, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Lead Legal Staff Assistant

Original and One Copy by Hand Delivery to:

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

One Copy by Electronic and Regular Mail to:

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

One Copy by Electronic and Regular Mail to:

Jeffrey L. Leiter, Esq.
Leitner & Cramer, PLLC
1707 L Street, NW, Suite 560
Washington, DC 20036
Email: jll@leitercramer.com

**Dated: November 5, 2013
Washington, D.C.**