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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

2013 OCT 21 AM 10:07
ENVIR. APPEALS BOARD

In the Matter of: Andrew B. Chase, a/k/a
Andy Chase, Chase Services, Inc., Chase
Convenience Stores, Inc., and Chase
Commercial Land Development, Inc.,

RCRA (9006) Appeal No. 13-04

Docket Number RCRA-02-2011-7503

SUPPLEMENT TO MOTION TO EXTEND FILING DATE FOR APPEAL BRIEF

Complainant, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (the "Region"), by motion dated October 17, 2013, moved the Environmental Appeals Board ("Board") to extend the time through to November 22, 2013 for the Region to file its opposition to Respondent's August 22, 2013 appeal and to file a cross-appeal. The Region now wishes to supplement its October 17th motion (a copy of which is included with this supplement).

The October 17th motion noted that it had not received a response from Chase counsel whether the latter would oppose the Region's request for an extension of time. That motion stated:

The Region has contacted Chase counsel to inquire whether he objects to the relief EPA is herein seeking (e-mail, sent 1:10 PM today). In a subsequent telephone conversation, the undersigned was informed that counsel who has handled the matter throughout the proceeding before the Administrative Law Judge, Thomas Plimpton, is on extended leave, and that other counsel (Justin R. Meyer) will be handling the appeal. As of 3:30 PM today (October 17th), no reply to EPA's e-mail communication has been received. Given the problems and

delays that might have been engendered by the government shutdown and the two-week cessation of much of EPA's work, the Region deems it a high priority to inform this Board as soon as possible of the present situation and the Region's request for additional time. Thus, while the Region does not now know whether Chase counsel does or does not object to the requested extension of time, the undersigned does note that previously Mr. Plimpton indicated he did not oppose such a request.

Subsequent to the service at the October 17th motion, the undersigned received an e-mail communication from the office of Respondent's counsel. That e-mail (indicating that it was sent at 4:12 PM on October 17th) indicates no objection by Respondents to EPA's request for the November 22nd extension:

Justin Meyer of this office is taking over the handling of this file in Mr. Plimpton's absence. He has advised that he has no objection to you indicating in your motion that we do not intend to oppose your request for additional time to file the EPA's brief.^[1]

Therefore, for the reasons stated in the Region's October 17th motion and given that Respondent does not object to the extension being sought, the Region reiterates its request that this Board: **a)** vacate that portion of the July 24th order that required the Region to file its appeal brief by October 15th, **b)** issue a revised order so as to extend the time until November 22, 2013 for the Region to submit a response brief to the Chase appeal and/or cross-appeal and **c)** otherwise grant the Region such other and further relief as this Board deems just, lawful and

¹ That e-mail was provided in response to an e-mail from the undersigned, sent at 1:10 PM, that stated, in pertinent part:

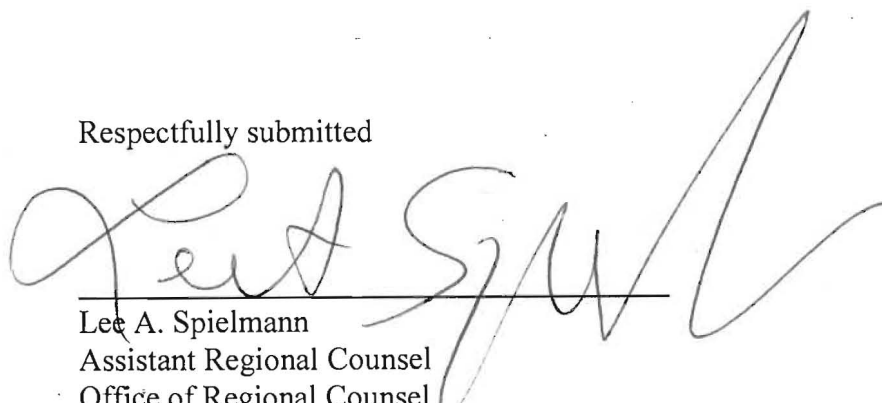
Obviously the October 15th appeal date has passed because of the partial government shutdown. I want to ask the EAB to extent the time for EPA to serve it appeal papers until November 22nd (I am out of the office the last week of October, returning November 4th):

Would it be OK if I indicated that you do not oppose this request for additional time for the filing of EPA's brief?

proper.

Dated: October 18, 2013
New York, New York

Respectfully submitted



Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222
FAX: 212-637-3199

TO: The Environmental Appeals Board
U.S. Environmental Protection Agency
1201 Constitution Avenue, N.W.
U.S. EPA East Building, Room 3332
Washington, DC 20004

Clerk of the Environmental Appeals Board
U.S. Environmental Protection Agency
1201 Constitution Avenue, N.W.
U.S. EPA East Building, Room 3334
Washington, DC 20004

Justin R. Meyer, Esq.
Stafford, Piller *et al.*
One Cumberland Avenue
P.O. Box 2947
Plattsburgh, New York 12901

In re Andrew B. Chase et al.
RCRA (9006) Appeal No. 13-04

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "SUPPLEMENT TO MOTION TO EXTEND FILING DATE FOR APPEAL BRIEF," dated October 18, 2013, in the above-referenced proceeding in the following manner to the respective addressees listed below:

Original and One Copy
By UPS OVERNIGHT:

Clerk of the Environmental Appeals Board
U.S. Environmental Protection Agency
1201 Constitution Avenue, N.W.
U.S. EPA East Building, Room 3334
Washington, DC 20004

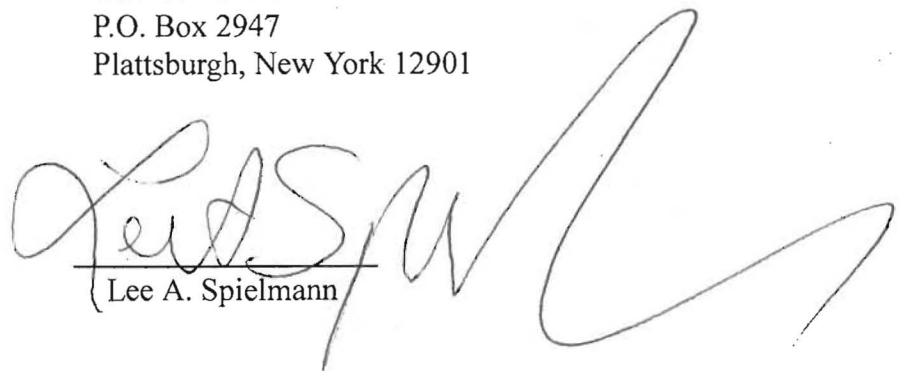
Copy by UPS OVERNIGHT:

The Environmental Appeals Board
U.S. Environmental Protection Agency
1201 Constitution Avenue, N.W.
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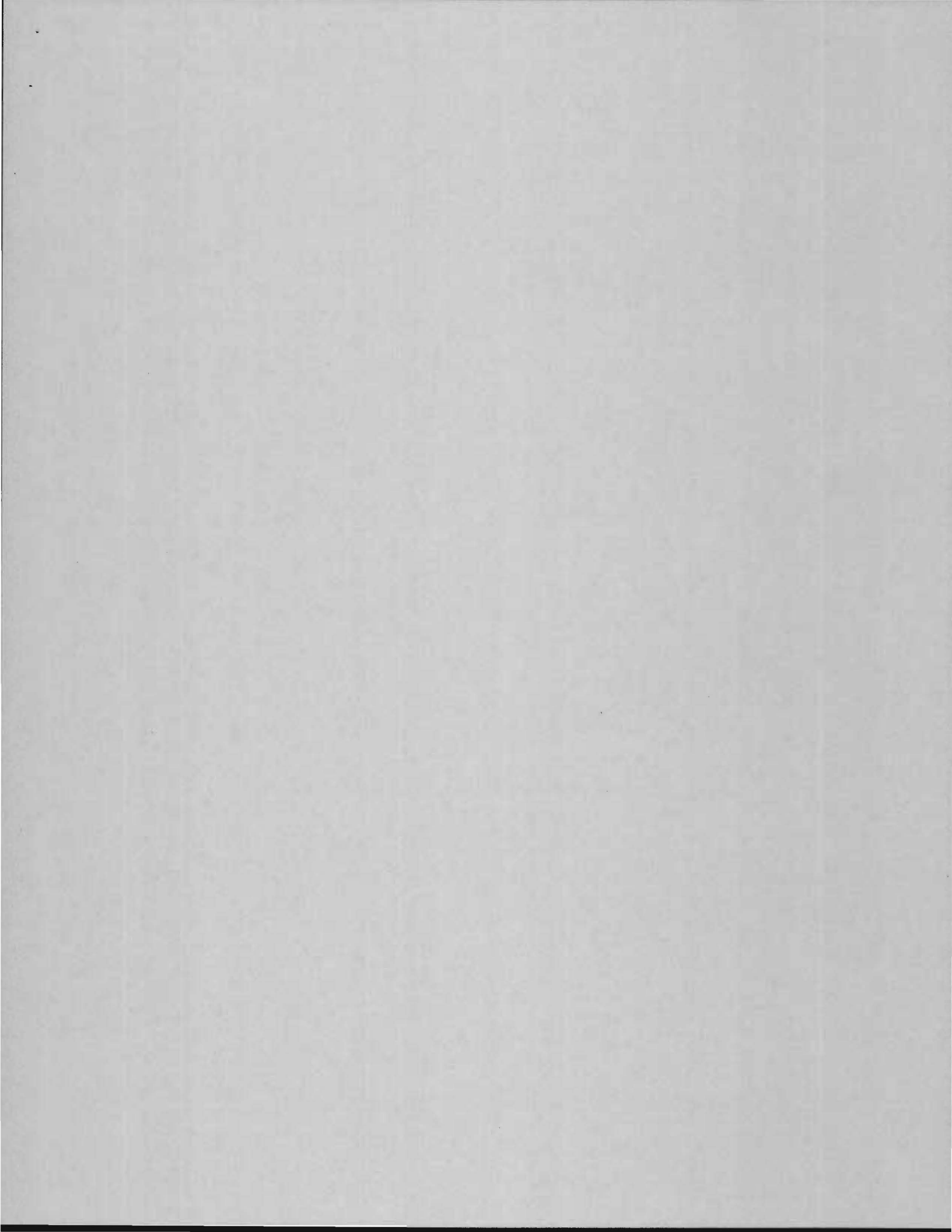
Copy by UPS OVERNIGHT:

Justin R. Meyer, Esq.
Stafford Piller et al.
One Cumberland Avenue
P.O. Box 2947
Plattsburgh, New York 12901

Dated: October 18, 2013
New York, New York



Lee A. Spielmann



**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of: Andrew B. Chase, a/k/a
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Commercial Land Development, Inc.,

RCRA (9006) Appeal No. 13-04

Docket Number RCRA-02-2011-7503

MOTION TO EXTEND FILING DATE FOR APPEAL BRIEF

Complainant, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (the "Region"), hereby requests the Environmental Appeals Board ("Board") to issue an order to modify the "ORDER GRANTING MOTION TO MODIFY JULY 16, 2013 ORDER," dated and filed with the Clerk of the Board on July 24, 2013 (the "July 24th order"). The instant motion is intended to supercede the motion the Region filed on September 30, 2013; through this filing, the Region formally withdraws the September 30th motion. The Region now requests that this Board extend the previously scheduled filing deadline established in the July 24th order through to November 22, 2013. For the reasons set forth below, Complainant submits that the attendant circumstances support the relief the Region seeks through this motion.

The July 24th order provides, *inter alia*:

Any party (or non-party participant) filing a response brief [to an appeal filed] must submit such brief on or before Tuesday, October 15, 2013.

Furthermore, if either party files a cross-appeal, such cross-appeal is due the same date responses are due, on Tuesday, October 15, 2013.

The Region is now seeking this extension because of the following circumstances. Over two weeks were lost because of the recent partial shutdown of federal government (which lasted from October 1, 2013 through October 16, 2013);¹ during that time, it was unlawful for the undersigned to have worked on the appeal brief.² With this appeal before the Board, and with any ensuing ruling having national precedential value for purposes of Part 22 EPA administrative adjudication, the Region is required to consult with various offices within EPA headquarters in the preparation of the brief; such consultations and discussions necessarily are time consuming. Further, the undersigned has previously made plans to be out of the office (and out of town) for the entire week of October 28th (returning to the office on Monday, November 4th). In addition, given that this filing is intended to supercede the September 30th one, this motion thereby functionally constitutes the first affirmative request for additional time the Region is independently making to the Board.³ The Region submits that these considerations in the aggregate militate for the extension of time through November 22nd.

The Region has contacted Chase counsel to inquire whether he objects to the relief EPA is herein seeking (e-mail, sent 1:10 PM today). In a subsequent telephone conversation, the undersigned was informed that counsel who has handled the matter throughout the proceeding

¹ One consequence of the federal government shutdown and the accompanying furlough of many EPA employees (including the undersigned) was that the October 15th filing deadline was not met.

² The undersigned was so informed, the operative provision being the Anti-Deficiency Act.

³ The Region's July 18th motion sought additional time for filing a cross-appeal subsequent to Chase having requested additional time to file its appeal (an extension this Board did grant).

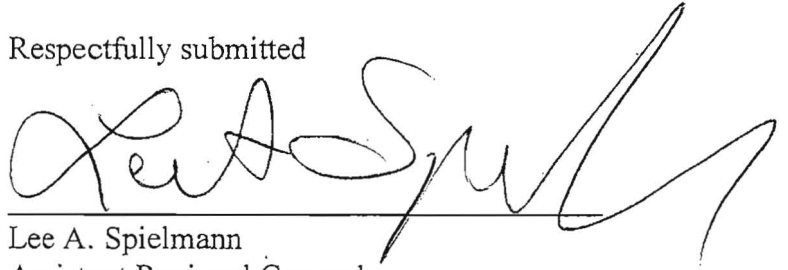
before the Administrative Law Judge, Thomas Plimpton, is on extended leave, and that other counsel (Justin R. Meyer) will be handling the appeal. As of 3:30 PM today (October 17th), no reply to EPA's e-mail communication has been received. Given the problems and delays that might have been engendered by the government shutdown and the two-week cessation of much of EPA's work, the Region deems it a high priority to inform this Board as soon as possible of the present situation and the Region's request for additional time. Thus, while the Region does not now know whether Chase counsel does or does not object to the requested extension of time, the undersigned does note that previously Mr. Plimpton indicated he did not oppose such a request.

The Region thus submits the requisite good cause exists for the granting of this motion exists.

Therefore, the Region respectfully moves this Board, pursuant to 40 C.F.R. §§ 22.7(b), 22.16(a) and 22.30(a), for an order: **a**) modifying the July 24th order so as to extend the time until November 22, 2013 for the Region to submit a response brief to the Chase appeal (dated August 22, 2013) and/or cross-appeal; **b**) and granting such other and further as this Board deems just, lawful and proper.

Dated: October 17, 2013
New York, New York

Respectfully submitted



Lee A. Spielmann
Assistant Regional Counsel
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FAX: 212-637-3199

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Justin R. Meyer, Esq.
Stafford, Piller *et al.*
One Cumberland Avenue
P.O. Box 2947
Plattsburgh, New York 12901

Spielmann, Lee

From: Tracie A. Fountain [tfountain@soctlaw.com]
Sent: Thursday, October 17, 2013 4:12 PM
To: Spielmann, Lee
Cc: Justin R. Meyer
Subject: RE: Chase appeal

Mr. Spielmann –

Justin Meyer of this office is taking over the handling of this file in Mr. Plimpton's absence. He has advised that he has no objection to you indicating in your motion that we do not intend to oppose your request for additional time to file the EPA's brief.

Thank you.

Tracie

Tracie A. Fountain, Paralegal
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Plimpton, Kelleher & Trombley, PLLC
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One Cumberland Avenue
Plattsburgh, New York 12901
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STATEMENT OF CONFIDENTIALITY: This message originates from the law firm of Stafford, Piller, Murnane, Plimpton, Kelleher & Trombley, PLLC. The information contained in this e-mail and any files transmitted with it may be a confidential attorney-client communication or may otherwise be privileged and confidential. If the reader of this message, regardless of the address or routing, is not an intended recipient, you are hereby notified that you have received this transmittal in error and any review, use, distribution, dissemination or copying is strictly prohibited. If you have received this message in error, please delete this e-mail and all files transmitted with it from your system and immediately notify Stafford, Piller, Murnane, Plimpton, Kelleher & Trombley, PLLC by sending a reply e-mail to the sender of this message. Thank you.

From: Spielmann, Lee [<mailto:Spielmann.Lee@epa.gov>]
Sent: Thursday, October 17, 2013 1:10 PM
To: Tom Plimpton
Subject: Chase appeal

Tom,

Obviously the October 15th appeal date has passed because of the partial government shutdown. I want to ask the EAB to extend the time for EPA to serve its appeal papers until November 22nd (I am out of the office the last week of October, returning November 4th).

Would it be OK if I indicated that you do not oppose this request for additional time for the filing of EPA's brief?

Thank you.

Lee