



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL PROTECTION AGENCY REG. 11 2012 MAR 23 P 1:31 REGIONAL HEARING CLERK

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.,)
Respondents.)

Docket No. RCRA-02-2011-7503

ORDER ON COMPLAINANT'S REQUEST FOR TIME TO FILE NON-DISPOSITIVE MOTIONS

A Prehearing Order in this matter was issued on July 12, 2011. Certain prehearing deadlines set therein have been extended upon motion by Orders dated July 18, 2011, August 16, 2011, October 11, 2011, and December 22, 2011. The latter, entitled Notice of Hearing and Scheduling Order and Order on Motion to Extend Filing Deadline for Dispositive Motions, states that any non-dispositive prehearing motions must be filed on or before March 16, 2012, a Joint Set of Stipulated Facts, Exhibits and Testimony must be filed by March 23, 2012, and if the parties wish to file prehearing briefs, they must do so on or before March 30, 2012. By Order dated January 5, 2012, the hearing was rescheduled to begin on June 12, 2012, and continue if necessary through June 15, 2012, in Plattsburgh, New York.

On March 16, 2012, the deadline for non-dispositive motions, Complainant filed a Status Report/Request for Time to File Non-Dispositive Motions ("Motion" and "Mot."). Therein, Complainant states that her counsel has sent Respondents a proposed set of joint stipulations of fact, exhibits and testimony, and requested a response by March 20, 2012. Mot. at 4. Also, Complainant states that its counsel has attempted to obtain Respondents' availability in order to move for a later hearing date, and is waiting for a response from Respondents regarding the "possibility of the parties re-visiting settlement discussions." Id.

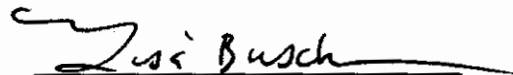
As to the relief sought in the Motion, Complainant states that it is "considering moving to request this Court to require Respondents to provide" documentation substantiating their inability to pay claim, which Complainant asserts it has repeatedly requested from Respondents, but has not received. Mot. at 5. If Respondents ultimately fail to provide such documentation, Complainant states, it may move to preclude Respondents from introducing such evidence at the

hearing pursuant to 40 C.F.R. §§ 22.19 and 22.22. Mot. at 5-6. The Motion provides that Complainant may also request the undersigned to conduct a settlement conference with the parties “so that many of these issues may be addressed on the record and (perhaps) the number of issues in contention could be reduced.” Mot. at 6. Given that joint stipulations are due on March 23, 2012, Complainant states it is “hoping that there might be at least one more opportunity” for the parties to discuss the production of documents. *Id.* Asserting that there is good cause upon which to grant its request, Complainant requests that the deadline by which non-dispositive prehearing motions must be filed be extended to March 26, 2012. *Id.*

The Consolidated Rules that govern this proceeding, set forth at 40 C.F.R. part 22 (“Rules”), provide that the presiding officer may grant an extension of time to file any document upon a party’s motion, for good cause shown, and after consideration of prejudice to the other parties, or upon her own initiative. 40 C.F.R. § 22.7(b). Though Respondents have not yet responded to the Motion, no prejudice will be imposed upon them if the deadline by which to file non-dispositive prehearing motions is extended by ten days for them as well as Complainant.

As to Complainant’s consideration of whether to request a settlement conference “on the record,” the Rules provide that “[n]o transcript of a prehearing conference related to settlement shall be made.”¹ 40 C.F.R. § 22.19(c). To reduce the number of issues, such as those regarding financial hardship and ability to pay, with the case record showing such reduction, an appropriate motion may be filed. See, 40 C.F.R. § 22.19(e). Both parties are reminded that if Respondents seek to mitigate any imposed penalty based on their alleged inability to pay, they are alone charged with substantiating that defense, as they bear the burden of proof on it. *Carroll Oil Co.*, 10 E.A.D. 635, 662-63 (EAB 2002).

For good cause shown, Complainant’s Request for Time to File Non-Dispositive Motions is hereby **GRANTED** solely to the extent that the deadline for non-dispositive prehearing motions set forth in the Notice of Hearing and Scheduling Order and Order on Motion to Extend Filing Deadline for Dispositive Motions, issued December 22, 2011, is extended to **March 26, 2012**.



M. Lisa Buschmann
Administrative Law Judge


Dated: March 22, 2012
Washington, D.C.

¹ It is acknowledged that the parties have twice been offered the opportunity to participate in Alternative Dispute Resolution (“ADR”), first by letter dated June 17, 2011, and second, by Order dated August 16, 2011, which directed the parties to confer about the possibility of initiating ADR and to respond. In a letter dated August 25, 2011, Complainant stated that none of the parties wanted to participate in ADR at that time and that they would be able to reach a settlement on their own.

**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., Respondents.
Docket No. RCRA-02-2011-7503**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order on Complainant's Request for Time to File Non-Dispositive Motions**, were sent to the following parties on this 22nd day of March 2012, in the manner indicated:


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