



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11 2011 JAN -5 A 9:25 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

NOTICE OF HEARING AND SCHEDULING ORDER AND ORDER ON MOTION TO EXTEND FILING DEADLINE FOR DISPOSITIVE MOTIONS

A Prehearing Order was issued in this matter on July 12, 2011. Certain prehearing deadlines set therein were extended upon motion by orders dated July 18, 2011, August 16, 2011, and October 11, 2011. Complainant's Initial Prehearing Exchange was received by the undersigned on November 15, 2011, Respondent's Prehearing Exchange was received on December 6, 2011, and Complainant's Rebuttal Prehearing Exchange was received on December 16, 2011. Prehearing exchanges having been completed, the hearing in this matter may be scheduled.

In its Initial Prehearing Exchange, Complainant states that New York City would be an appropriate place to hold the hearing, "given its ready accessibility to all" involved in the proceeding. Respondents counter in their Prehearing Exchange that holding the hearing in New York City would be highly prejudicial to them. Instead, they argue, Plattsburgh, Clinton County, New York, is the appropriate hearing location because each Respondent "owned a station in Clinton County," "Mr. Chase is a lifelong resident of Clinton County," Respondents' witnesses conduct business in Clinton County, Respondent's alleged behavior and actions at issue in the Complaint occurred solely within Clinton County, and Respondents may not be able to ensure the cooperation and attendance of its witnesses if the hearing were held outside Clinton County, given the time, expense and travel involved. In response in its Rebuttal Prehearing Exchange, Complainant proposes the hearing be held in Albany, New York.

The Rules governing this proceeding provide that the hearing "shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant [EPA] Regional Office is located, or in Washington, D.C., unless the Presiding Officer determines that there is good cause to hold it at another location or by

telephone.” 40 C.F.R. §§ 22.19(d), 22.21(d). Upon consideration of this provision and the parties’ comments, it is appropriate to hold the hearing in Plattsburgh, New York.

The hearing in this matter shall begin promptly at 9:30 a.m. on **Tuesday, April 17, 2012**, and shall continue if necessary through April 20, 2012, in **Plattsburgh, New York**.

On December 21, 2011, Complainant filed a Motion to Extend Deadline for Filing Dispositive Motions (“Motion”), requesting therein that the deadline for dispositive motions be moved from January 17, 2012, to March 1, 2012, or at least until February 16, 2012. In support, Complainant cites the holiday season resulting in personnel being unavailable, the need to obtain declarations in support of a motion for accelerated decision from two inspectors, one of whom is not an EPA employee, and the fact that the hearing is not yet scheduled. Respondents informed the office of the undersigned over the telephone that they do not oppose the extension being granted. In the Motion, Complainant notes that the parties have only discussed settlement intermittently over the last few weeks, and EPA is still waiting on settlement-related documents from Respondents since they were discussed in August, despite three extensions being granted over the latter half of 2011 in order to provide the parties enough time to negotiate a settlement.

Because the hearing is now scheduled, this matter has been pending since the Complaint was filed in April 2010, the Prehearing Order was issued in July 2011, and Complainant has already requested multiple extensions of time that, when granted, have resulted in no evident progress toward settlement, the lengthy extension request sought by Complainant is not supported by sufficient good cause in the Motion and is unreasonable. *See* 40 C.F.R. § 22.7(b). Instead, commensurate with Complainant’s intent to obtain declarations to support a motion for accelerated decision, and in light of the holiday season, the deadline by which the parties shall file any dispositive motions shall be extended for a shorter period of time than requested. The Motion to Extend Deadline for Filing Dispositive Motions is **GRANTED** to the extent that the parties shall file any dispositive motions on or before Friday, **February 3, 2012**.

Complainant shall file Status Reports as to the parties’ settlement status, which shall not include any specific terms of settlement, on or before **February 17, 2012**, and on or before **March 2, 2012**.

All non-dispositive prehearing motions, such as motions for subpoenas, motions to supplement a prehearing exchange and motions in limine, must be filed on or before **March 16, 2012**.

On or before **March 23, 2012**, the parties shall file a Joint Set of Stipulated Facts, Exhibits and Testimony. The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after a hearing.

The parties may, if they wish, file prehearing briefs by **March 30, 2012**. A copy of the

briefs should be faxed and/or hand-delivered to the undersigned by that date. If filed, Complainant's brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondents' brief should identify each of the defenses Respondents intend to pursue at the hearing.

Individuals requiring special accommodations at the hearing, including wheelchair access, should contact the Regional Hearing Clerk as soon as possible so that appropriate arrangements can be made.

RESPONDENTS ARE ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE HAVING BEEN SHOWN, MAY RESULT IN THE ENTRANCE OF DEFAULT JUDGMENT AGAINST THEM.

IF ANY PARTY DOES NOT INTEND TO ATTEND THE HEARING, OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.



Susan L. Biro
Chief Administrative Law Judge

Date: December 22, 2011
Washington, D.C.

**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 **Notice of Hearing and Scheduling Order and Order on Motion to Extend Filing Deadline for Dispositive Motions**, issued by Susan Biro, Chief Administrative Law Judge, in Docket No. RCRA-02-2011-7503, were sent to the following parties on this 23rd day of December 2011, in the manner indicated:



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

Karen Maples
Regional Hearing Clerk
US EPA, Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Pouch Mail to:

Lee A. Spielmann, Esq.
Assistant Regional Counsel
Waste and Toxic Substances Agency
U.S. EPA / Region II
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by Regular Mail to:

Thomas W. Plimton, Esq.
Stafford, Piller, Murnane, Plimpton, Kelleher & Trombley, PLLC
One Cumberland Avenue
P.O. Box 2947
Plattsburgh, NY 12901

**Dated: December 23, 2011
Washington, DC**