

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

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.

Proceeding Under Section 9006 of the
Solid Waste Disposal Act, as amended.

Hon. Susan L. Biro, Presiding Officer

Docket No. RCRA-02-2011-7503

REGIONAL HEARING
CLERK

2011 JUL 13 P 4:25

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2

MOTION TO EXTEND DEADLINES SET FORTH IN PREHEARING ORDER

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, requests this Court grant a one-month extension of time with regard to the deadlines set forth in this Court's "Prehearing Order," dated July 12, 2011. For the reasons set forth below, EPA submits that good cause exists for granting this motion.

This is a case administratively prosecuted under Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e, in which EPA seeks a civil penalty of approximately \$233,000 against various respondents for alleged violations that arose in connection with the operation of various upstate New York gasoline stations; the violations pertain to the underground storage tanks at six stations. The complaint, issued March 31, 2011, alleges 21 counts against the various owners and operators of the 40 C.F.R. Part 280 regulations.¹

¹ Because some of the owners/operators were not involved with certain stations, not all 21 counts are alleged against each respondent. See the table and accompanying explanatory material on pages 39 and 40 of the complaint.

Respondents timely filed their answer on or about June 6, 2011.² They dispute liability, dispute the penalty and request a hearing. To date, other than the issuance of the Prehearing Order, there have been no litigation developments, *e.g.*, there has been no motion practice, there has been no movement toward the development of an evidentiary record.

The Prehearing Order of this Court directs the parties to engage in a settlement conference on or before July 22, 2011, and for Complainant to file a status report no later than July 29, 2011. If the parties were able to reach a settlement, they are directed to submit a fully executed consent agreement and final order no later than August 19, 2011. If no settlement is reached by then, Complainant must file her prehearing exchange by August 19th, Respondents must do likewise by September 9th, and Complainant then has until September 23rd to file a rebuttal prehearing exchange.

The parties have held preliminary discussions since the submission of the answer, and have agreed to hold a settlement conference on August 11, 2011. In addition, the undersigned will not be in the office starting tomorrow (Wednesday, July 13, 2011) and will not return until Monday, July 25, 2011; in fact the undersigned will be out of the country.

In light of these circumstances, the undersigned requests that the Court grant a one-month extension of time to the above-referenced deadlines. Under this extended schedule, the parties must meet by August 19th, a status report must be filed by August 26th, and either an executed consent agreement must be filed by September 16, 2011 or the prehearing exchange process begin.

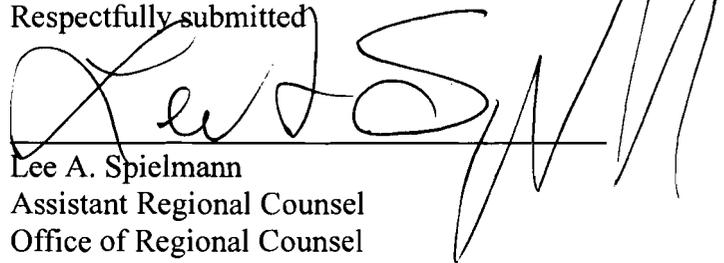
² On May 9, 2011, the Regional Judicial Officer of EPA, Region 2, granted respondents' request for an extension of time.

Complainant submits that the circumstances demonstrate that the good cause requirement of 40 C.F.R. § 22.7(b) exists for the granting of this motion. First and foremost, the unavailability of the undersigned to meet on or before July 22. Other factors militate in favor of this motion. This case has only recently been commenced (issue was joined approximately five weeks ago) and the parties were given until July 1, 2011 to decide whether to accept alternative dispute resolution. There have not been any litigation developments (such as the filing of any motions) and this is the first request for an extension of time. The evidentiary record has not been formally developed, and remains inchoate; no hearing date has been set or is imminent. Certainly the requested extension should not prejudice either party. The above-request is being made so that the undersigned has an opportunity in fact to participate in a settlement conference to which the parties have already agreed.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(2), 22.7(b), 22.16(a) and 22.19(a), for an order: **a)** vacating so much of the July 12th prehearing order as directed the parties to hold a settlement conference by July 22nd, as directed Complainant to file a status report one week later and as directed that, barring full settlement by August 19th, then the prehearing exchange process commence, and **b)** extending the deadline for each of the

³ If during the absence of the undersigned this Court wishes to communicate with EPA, any such correspondence or communication should be directed to EPA Assistant Regional Counsel Amy Chester, 212-637-3213 (same address as that of the undersigned).

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Lee A. Spielmann', written over a horizontal line. The signature is stylized and extends to the right of the line.

Lee A. Spielmann
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TO: Honorable Susan L. Biro
Chief Administrative Law Judge
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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "MOTION TO EXTEND DEADLINE SET FORTH IN PREHEARING ORDER," dated July 12, 2011, in the above-referenced proceeding in the following manner to the respective addressees listed below:

Original and One Copy
By Inter-Office Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

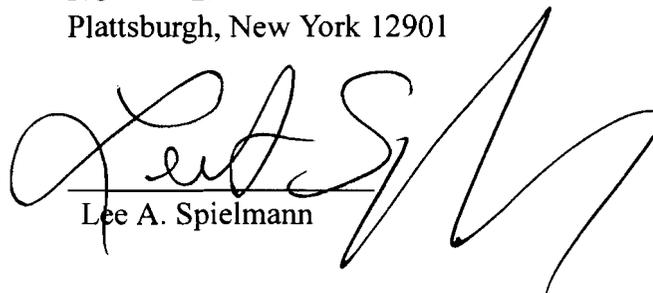
Copy by Fax Transmission,
202-565-0044, and Pouch Mail:

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900 L
Washington, DC 20460

Copy by Fax Transmission,
518-561-4848 and First Class Mail:

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Stafford Piller et al.
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Plattsburgh, New York 12901

Dated: July 12, 2011
New York, New York



Lee A. Spielmann