

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2012 SEP 31 P 3:19  
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.

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

Hon. M. Lisa Buschmann, Presiding Officer

Docket No. RCRA-02-2011-7503

MOTION TO SUPPLEMENT EPA'S SEPTEMBER 24<sup>TH</sup> REPLY BRIEF

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency (EPA or Agency), Region 2, through counsel, respectfully requests this Court to permit EPA to file the attached supplemental declaration in order to correct and clarify one paragraph in the declaration of Gail Coad, which was submitted as part of EPA's Reply Brief. As will be detailed below, Complainant submits that good cause exists for this Court to grant EPA the relief sought.

Pursuant to the July 13, 2012 and September 5, 2012 orders of this Court, Complainant submitted her Reply Brief. The Reply Brief included a declaration of Gail M. Coad, executed on September 21, 2012. The declaration was submitted to refute Respondents' claim that it would be unable to pay the penalty EPA seeks for the 40 C.F.R. Part 280 violations this Court previously found (approximately \$263,000)/that payment would cause Respondents financial hardship. In that declaration, paragraph 11 stated, in its entirety:

From available public documentation, I determined the date and sales price for the four gas station properties previously owned by the corporate Respondents. On July 24, 2009, three of the properties were sold to R.L. Vallee Inc. for more than \$4.7 million. The fourth property was sold to Mountain Mart 109 LLC for \$1.05 million on November 10, 2011. Gross sales proceeds from the four properties totaled over \$5.1 million. While the properties may have had outstanding mortgages or other obligations, that information is not publicly available, and was not provided in the pre-hearing exchange or in Respondents' Response dated August 29, 2012 [footnotes omitted].

This paragraph was quoted in EPA's "Memorandum in Reply to Respondents' 'Response Brief of Respondents,' dated August 29, 2012." (the "September 24<sup>th</sup> memorandum").<sup>1</sup> Upon review, Ms. Coad discovered that this paragraph was not fully accurate and was somewhat unclear. In a supplemental declaration she prepared, entitled "Supplemental Declaration of Gail B. Coad," executed on September 28, 2012, she wrote the following concerning her September 21<sup>st</sup> declaration:

On subsequent review, I determined that Paragraph 11 of the declaration was not completely accurate and clear. I have revised the paragraph and below provide the revised paragraph in its entirety.

A copy of her September 28<sup>th</sup> declaration is attached to this motion. She concludes paragraph 1 of her September 28<sup>th</sup> supplemental declaration by stating that "[t]his revised paragraph supersedes Paragraph 11 in my September 21<sup>st</sup> declaration" (hereinafter, references to "paragraph 11" are intended to refer to paragraph 11 of the September 21<sup>st</sup> declaration, and references to the "revised paragraph 11" are intended to refer to paragraph 11 of the supplemental declaration of September 28<sup>th</sup>).

The revised paragraph 11 reads as follows:

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<sup>1</sup> The prefatory clause of the first sentence, "From available public documentation," was omitted from the quotation in the September 24<sup>th</sup> memorandum.

I determined the dates and sale prices for the four gasoline service and convenience store properties previously owned by the corporate Respondents from publically available documentation. I found that the Respondent sold three properties (a total of six parcels) to R.L. Vallee Inc. on July 24, 2009 for more than \$4.74 million. One of the Respondents sold a fourth property (a single parcel) to Mountain Mart 109 LLC for \$1.05 million on November 10, 2011. Gross sales proceeds from the four properties totaled over \$5.79 million. While the properties may have had outstanding mortgages or other obligations, that information is not publicly available, and was not provided in the pre-hearing exchange or in Respondents' Response dated August 29, 2012. Furthermore, press articles indicate that Respondents sold an additional fifth gasoline station operation in Plattsburgh NY to R.V. Vallee. This sale did not involve real estate as we found no real estate records associated with the sale. This sale occurred in July 2009. The gasoline station and convenience store is located in a shopping center complex owned by an unrelated party. I do not know the consideration R.L. Vallee paid to Respondents for the sale of the 1785 Military Turnpike business [footnotes omitted].

Ms. Coad concludes her supplemental declaration by noting that “[t]he edits to Paragraph 11 do not affect in any way my conclusion as stated in Paragraph 17 of my Declaration executed on September 21, 2012.”

The revised paragraph 11 in the supplemental declaration serves to correct and clarify information provided in paragraph 11; revised paragraph 11 states with greater exactitude what paragraph 11 discusses.<sup>2</sup> It does not make any major or significant change, and it does not impact Ms. Coad's conclusions concerning Respondents' inability to pay/financial hardship claim. Nor does it correct or revise any of the other 16 paragraphs in the September 21<sup>st</sup> declaration; paragraphs 1 through 10 and paragraphs 12 through 17 remain unaffected what is contained in revised paragraph 11.

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<sup>2</sup> For example, paragraph 11 in the September 21<sup>st</sup> declaration, after noting sales of \$4.7 million and \$1.05 million, listed the total gross proceeds as “over \$5.1 million” even though the sum of these two figures was closer to \$5.8 million. The revised paragraph 11 is more precise with the dollar amounts listed, noting the gross proceeds from sales of more than \$4.74 million and \$1.05 million “totaled over \$5.79 million.”

EPA accordingly now requests this Court to allow it to supplement its September 24<sup>th</sup> Reply Brief with the September 28<sup>th</sup> supplemental declaration in order that the latter be incorporated into the Reply Brief, *i.e.* so that at revised paragraph 11 replace and supersede paragraph 11.<sup>3</sup> Doing so should not prejudice Respondents. Not only does revised paragraph 11 pertain solely to one specific paragraph in the September 21<sup>st</sup> declaration (and concomitantly does not involve any other changes to that declaration), it also does not affect or impact Ms. Coad's conclusions she reached in her September 21<sup>st</sup> declaration. Further, Respondents should be aware of the precise nature and extent of the sales of their gasoline stations and how much money was made in transacting those sales, and thus they cannot reasonably claim prejudice in Ms. Coad providing a more complete description of the sales of the gasoline stations and an accurate tabulation of the dollar figures involved. EPA's request for such relief is intended both to clarify the record and to give the Court more accurate and up-to-date information in deciding whether there is merit to Respondents' inability to pay/financial hardship claim. Indeed, in providing a more accurate and clear discussion concerning the sale of the gasoline stations, the supplemental declaration should benefit the Court in adjudicating this question. Moreover, this motion is made within less than one week since Complainant filed and served her Reply Brief on September 24, 2012. For all these reasons, EPA submits good cause exists for this Court to grant Complainant the relief sought.

Therefore, Complainant respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.1(c), 22.4(c)(2), 22.4(c)(10) and 22.16(a), for an order: **a)** permitting EPA to file and serve in this

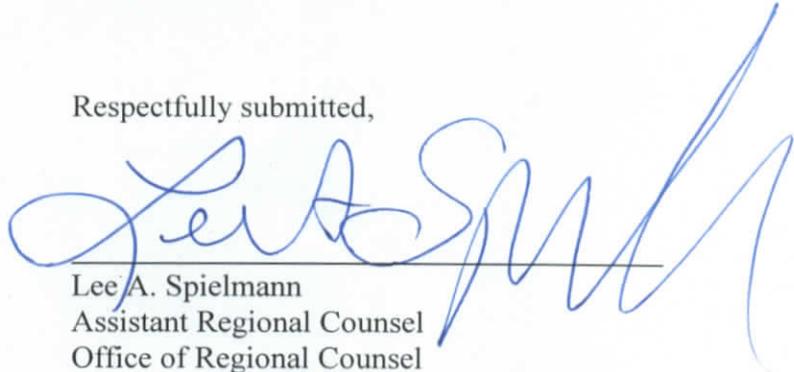
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<sup>3</sup> See page 10 of the September 24<sup>th</sup> memorandum. EPA seeks to have the reference on page 10 ("for over \$5.1 million") read "over "\$5.79 million" and that revised paragraph 11 be substituted for the quotation taken from paragraph 11 of the September 21<sup>st</sup> declaration.

proceeding the attached September 28<sup>th</sup> supplemental declaration of Gail B. Coad, **b)** establishing that said supplemental declaration shall, and hereby does, supplement EPA's September 24<sup>th</sup> Reply Brief, **c)** establishing that revised paragraph 11, for purposes of EPA's Reply Brief, shall, and hereby does, supersede paragraph 11, **d)** deeming that filing of this motion with the attached supplemental declaration constitutes filing of said supplemental declaration within the meaning of 40 C.F.R. § 22.5(a), **e)** deeming that serving this motion with the attached supplemental declaration constitutes serving said supplemental declaration within the meaning of 40 C.F.R. § 22.5(b)(2), and **f)** providing EPA with such other and further relief this Court deems just, lawful and proper.

Dated: September 28, 2012  
New York, New York

Respectfully submitted,



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Office of Regional Counsel  
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New York, New York 10007-1866  
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TO: Honorable M. Lisa Buschmann  
Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900L  
Washington, DC 20460

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

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Stafford, Piller *et al.* (Counsel for Respondents)  
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Plattsburgh, New York 12901



mortgages or other obligations, that information is not publicly available, and was not provided in the pre-hearing exchange or in Respondents' Response dated August 29, 2012. Furthermore, press articles indicate that Respondents sold an additional fifth gasoline station operation in Plattsburgh NY to R.L. Vallee.<sup>3</sup> This sale did not involve real estate as we found no real estate records associated with the sale. This sale occurred at the same time as the three other real estate transactions with R.L. Vallee in July 2009. The gasoline station and convenience store is located in a shopping center complex owned by an unrelated party. I do not know the consideration R.L. Vallee paid to Respondents for the sale of the 1785 Military Turnpike business.

2. The edits to Paragraph 11 do not affect in any way my conclusion as stated in Paragraph 17 of my Declaration executed on September 21, 2012.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 28, 2012

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Gail B. Coad  
Principal  
Industrial Economics, Incorporated

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<sup>3</sup> Internet business listings show the Respondent operated a gasoline station and possibly a convenience store under the business trade name "Chase's Service Station III" at 1785 Military Turnpike, Plattsburgh, New York 12901. Manta business listing for "Chase's Service Station III," accessed on 9/25/2012. Newspaper article "New owner for four local Chase's locations," Press Republican, July 28, 2009, accessed on September 25, 2012. Article refers to the Military Turnpike location as one of the four properties sold.

***In re Andrew B. Chase et al.***  
**Docket No. RCRA-02-2011-7503**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "MOTION TO SUPPLEMENT EPA'S SEPTEMBER 24<sup>TH</sup> REPLY BRIEF," dated September 28, 2012, together with the attached "Supplemental Declaration of Gail B. Coad," executed September 28, 2012, 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

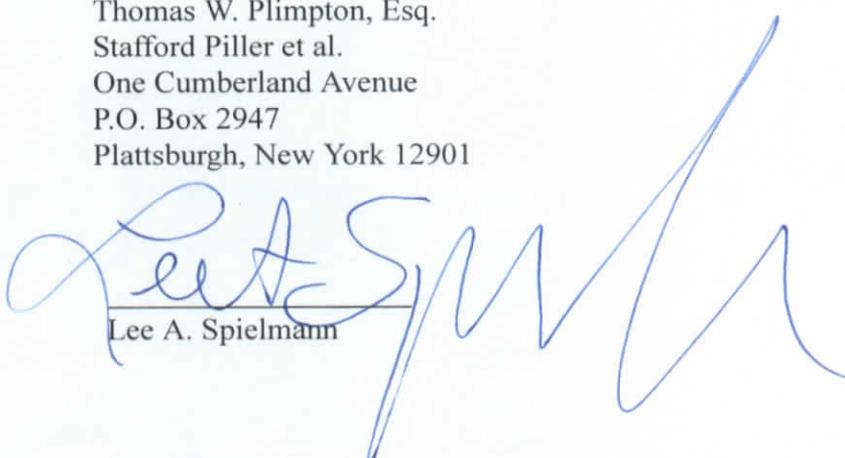
Copy by fax transmission,  
202-565-0044, and by Pouch Mail:

Honorable M. Lisa Buschmann  
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 certified mail,  
return receipt requested:

Thomas W. Plimpton, Esq.  
Stafford Piller et al.  
One Cumberland Avenue  
P.O. Box 2947  
Plattsburgh, New York 12901

Dated: September 28, 2012  
New York, New York

  
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Lee A. Spielmann