



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 31 2011

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Article Number: 7005 3110 0000 5933 5475

Andrew B. Chase  
1 Klein Strasse Street  
P.O. Box 315  
Lyon Mountain, New York 12952

Re: **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., Docket No. RCRA-02-2011-7503**

Dear Mr. Chase:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

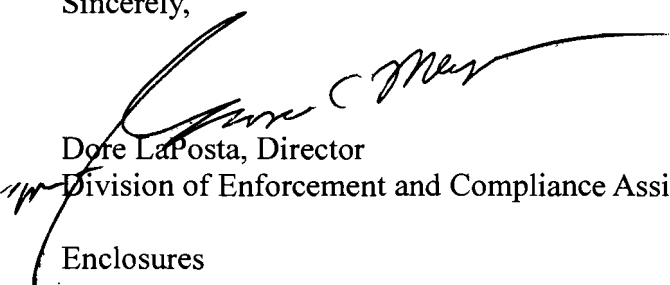
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 APR -7 P 2:11  
REGIONAL HEARING  
CLERK

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects."

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Russ Brauksieck, Chief  
Facility Compliance Section  
New York State Department of Environmental Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7250



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 APR -7 P 2:11  
REGIONAL HEARING  
CLERK

MAR 31 2011

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Article Number: 7005 3110 0000 5933 5413

Andrew B. Chase, Chief Executive Officer  
Chase Services, Inc.  
1 Klein Strasse Street  
P.O. Box 315  
Lyon Mountain, New York 12952

Re: **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., Docket No. RCRA-02-2011-7503**

Dear Mr. Chase:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.


Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Russ Brauksieck, Chief  
Facility Compliance Section  
New York State Department of Environmental Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7250



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 31 2011

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 APR -1 P 2:11  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Article Number: 7005 3110 0000 5933 5420

Andrew B. Chase, Chief Executive Officer  
Chase Convenience Stores, Inc.  
1 Klein Strasse Street  
P.O. Box 315  
Lyon Mountain, New York 12952

Re: **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., Docket No. RCRA-02-2011-7503**

Dear Mr. Chase:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Complaint.) For your general information and use, I also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Russ Brauksieck, Chief  
Facility Compliance Section  
New York State Department of Environmental Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7250



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 31 2011

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Article Number: 7005 3110 0000 5933 5437

Andrew B. Chase, Chief Executive Officer  
Chase Commercial Land Development, Inc.  
1785 Military Turnpike  
Plattsburgh, New York 12901

Re: **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., Docket No. RCRA-02-2011-7503**

Dear Mr. Chase:

Enclosed is the Complaint, Compliance Order and Opportunity for Hearing in the above-referenced proceeding. The Complaint alleges violations of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint. If you wish to contest the allegations and/or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint with the Regional Hearing Clerk of the Environmental Protection Agency ("EPA"), Region 2, at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer of Region 2, a default order may be entered against you and the entire proposed penalty may be assessed.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2011 APR -7 P 2:11  
REGIONAL HEARING  
CLERK

You will find enclosed a copy of the "Consolidated Rules of Practice," which govern this proceeding. (A brief discussion of some of these rules appears in the later part of the Complaint.) For your general information and use, I also enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings" which may apply to you depending on the size of the proposed penalty and nature of your company.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal conference, please contact the attorney whose name is listed in the Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Dore LaPosta", with a stylized flourish at the end.

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (without enclosures)

Russ Brauksieck, Chief  
Facility Compliance Section  
New York State Department of Environmental Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7250



**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.

**COMPLAINT, COMPLIANCE ORDER**  
**AND NOTICE OF OPPORTUNITY**  
**FOR HEARING**

Docket No. RCRA-02-2011-7503

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION II  
2011 APR -7 P 2:10  
REGIONAL HEARING  
CLERK

**COMPLAINT**

Complainant hereby alleges as and for her complaint against Respondents:

**Predicate Allegations**

1. This administrative proceeding is being prosecuted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended (the Solid Waste Disposal Act, as amended, henceforth referred to as the "Act").

2. This proceeding seeks to assess a civil penalty against Respondents for violations of the requirements or standards promulgated by the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 9003 of the Act, 42 U.S.C. § 6991b, and to require compliance with said requirements or standards.

3. This Tribunal has jurisdiction over the subject matter of this administrative proceeding pursuant to Section 9006(a) of the Act, 42 U.S.C. § 6991e(a), and 40 C.F.R. § 22.1(a)(4).

4. Section 9006(a)(1) of the Act, 42 U.S.C. § 6991e(a)(1) provides, in part, that "whenever on the basis of any information, the Administrator [of EPA] determines that any person is in violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i], the Administrator may issue an order requiring compliance within a reasonable specified time period...."

5. Section 9006(c) of the Act, 42 U.S.C. § 6991e(c), provides that “[a]ny order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.”

6. Pursuant to Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), “[a]ny owner or operator of an underground storage tank who fails to comply with[] any requirement or standard promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]...shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.”

7. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 9006(d) of the Act, 42 U.S.C. § 6991e(d), to \$11,000 for any violation occurring between January 30, 1997 and January 12, 2009, and to \$16,000 for any violation occurring after January 12, 2009.

8. Section 9006(e) of the Act, 42 U.S.C. § 6991e(e), provides that “[b]oth of the following may be taken into account in determining the terms of a civil penalty under [Section 9006(d), 42 U.S.C. § 6991e(d)]: (1) [t]he compliance history of an owner or operator in accordance with this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i] [and] (2) “[a]ny other factors the Administrator [of EPA] considers appropriate.”

9. EPA has promulgated regulations governing the installation, operation, maintenance and closure of “underground storage tanks” (as such term is defined in Section 9001(1) of the Act, 42 U.S.C. § 6991(1), and in 40 C.F.R. § 280.12; hereinafter such tanks also referred to as “UST” or “USTs”) by the “owners” (as such term has been defined by Section 9001(3) of the Act, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12) and/or “operators” (as such term has been defined in Section 9001(3) of the Act, 42 U.S.C. § 6991(3), and 40 C.F.R. § 280.12) of USTs.<sup>1</sup>

10. The requirements or standards set forth in the aforementioned (§ 9, above) regulations, codified in 40 C.F.R. Part 280, constitute the “requirement[s] or standard[s] promulgated by the Administrator [of EPA] under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A).

11. The failure to comply with a regulation set forth in 40 C.F.R. Part 280 constitutes a failure to comply with “any requirement or standard promulgated by the Administrator [of EPA]

---

<sup>1</sup> Words or phrases defined in accordance with applicable statutory and/or regulations definitions are subsequently used in this complaint, and are intended to be understood, as so defined.

under section 6991b of this title [Section 9003 of the Act]” for purposes of Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), and thus constitutes a “violation of any requirement of this subchapter [Subchapter IX, 42 U.S.C. §§ 6991 - 6991i]” for purposes of Section 9006 of the Act, 42 U.S.C. § 6991e.

12. For any violation of a regulation set forth at 40 C.F.R. Part 280, the violator(s) thereof is, *inter alia*, subject to a civil penalty pursuant to Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e(d)(2)(A), as amended.

13. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2.

14. Complainant has been duly delegated the authority to institute this action on behalf of the Administrator of EPA.

### **Applicable Statutory and Regulatory Definitions**

15. The term “tank” has been defined in 40 C.F.R. § 280.12 to mean “ a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.”

16. The term “underground storage tank” has been defined, in relevant part, to mean:

a) Pursuant to Section 9001(1) of the Act, 42 U.S.C. § 6991(1), “any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground.”

b) Pursuant to 40 C.F.R. § 280.12, “any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.”

17. Pursuant to 40 C.F.R. § 280.12, the term “UST system or Tank System means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.”

18. The term “existing tank system” has been defined in 40 C.F.R. § 280.12 to “mean[] a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988.”

19. Pursuant to 40 C.F.R. § 280.12, the term “new tank system” has been defined to “mean[] a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.”

20. Pursuant to 40 C.F.R. § 280.12, the term “petroleum UST system” has been defined to “mean[] an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances.”

21. The term “regulated substance” has been defined to mean:

a) Pursuant to Section 9001(2) of the Act, 42 U.S.C. § 6991(2), the following: “(A) any substance defined in Section 9601(14) of this title [42 U.S.C. § 9601(14)] (but not including any substance regulated as a hazardous waste under subchapter III of this chapter [42 U.S.C. §§ 6921-6939e]), and (B) petroleum.”

b) Pursuant to 40 C.F.R. § 280.12, the following: “(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA of 1980 [42 U.S.C. § 9601(14)] (but not including any substance regulated as a hazardous waste under subtitle C [42 U.S.C. §§ 6921-6939e]), and (b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

“The term ‘regulated substance’ includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.”

22. The term “owner” has been defined, in relevant part, to mean:

a) Pursuant to Section 9001(3) of the Act, 42 U.S.C. § 6991(3), “in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated su[b]stances....”

b) Pursuant to 40 C.F.R. § 280.12, “In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for the storage, use, or dispensing of regulated substances....”

23. The term “operator” has been defined to mean:

a) Pursuant to Section 9001(4) of the Act, 42 U.S.C. § 6991(4), “any person in control of, or having responsibility for, the daily operation of the underground storage tank.”

b) Pursuant to 40 C.F.R. § 280.12, “any person in control of, or having responsibility for, the daily operation of the UST system.”

24. The term “person” has been defined to mean:

a) Pursuant to Section 9001(6) of the Act, 42 U.S.C. § 6991(6), such term “has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

b) Pursuant to 40 C.F.R. § 280.12, “an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. ‘Person’ also includes a consortium, a joint venture, a commercial entity, and the United States Government.”

25. Section 1004(15) of the Act, 42 U.S.C. § 6903(15), defines “person” to “mean[] an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.”

### **Respondents’ Identities**

26. Respondents are: **a)** Andrew B. Chase, **b)** Chase Convenience Stores, Inc., **c)** Chase Services, Inc., and **d)** Chase Commercial Land Development, Inc.

27. Respondent Andrew B. Chase, a/k/a Andrew Chase and a/k/a Andy Chase, is a natural person and has been since at least January 1980 a resident of New York State.

28. Respondent Chase Convenience Store, Inc., is, and has been, a for-profit corporation organized pursuant to, and existing since July 1997 under, the laws of the State of New York.

29. Respondent Chase Services, Inc., is, and has been, a for-profit corporation organized pursuant to, and existing since September 1995 under, the laws of the State of New York.

30. Respondent Chase Commercial Land Development, Inc., s/k/a Chase Commercial Land Development, is, and has been, a for-profit corporation organized pursuant to, and existing since September 2000 under, the laws of the State of New York.

31. Respondent Andrew B. Chase is the chairman or chief executive officer of each of respondents Chase Convenience Stores, Inc., Chase Services, Inc., and Chase Commercial Land Development, Inc.

32. Each of the respondents is a “person” within the meaning of Section 9001(6) of the Act, 42 U.S.C. § 6991(6), and of 40 C.F.R. § 280.12.

33. Each of the respondents is, or has been for the times relevant to the matters alleged below, in the business of owning and/or operating retail gasoline stations in New York State.

### **The Service Stations and their USTs**

34. Since at least 1998 (and continuing through to the present), Respondent Andrew B. Chase has been the owner and operator of a retail gasoline station and convenience store business, known as Chase’s Mobil, the address of which is 3851 Route 374 in Lyon Mountain, New York 12952 (hereinafter this gasoline station referred to as “Service Station I”).

35. From 1998 through to the present (except as noted below), Service Station I has had four USTs, as follows:

- a) Tank number 001, installed September 1, 1989, with a capacity of 3,000 gallons;
- b) Tank number 006A, installed May 1, 1998, with a capacity of 11,000 gallons;
- c) Tank number 006B, installed May 1, 1998, with a capacity of 4,000 gallons;
- d) Tank number 008, installed October 1, 1998, with a capacity of 550 gallons, which was temporarily out of service from April 2008 and removed from service in November 2009.

36. With regard to the aforementioned (§ 35, above) USTs at Service Station I, Respondent Andrew B. Chase has owned and operated said USTs, and he continues to be the owner and operator of them.

37. Since at least 1998 through July 24, 2009, Respondent Andrew B. Chase was the operator of a retail gasoline station and convenience store business, the address of which is 654 Bear Swamp Road in Peru, New York 12972 (hereinafter this gasoline station referred to as “Service Station II”).

38. Respondent Chase Convenience Stores, Inc., was the owner of Service Station II from at least 1998 through July 24, 2009.

39. From 1998 through at least July 24, 2009, Service Station II has had three USTs, as follows:

- a) Tank number 001A, installed September 1, 1998, with a capacity of 11,000 gallons;
- b) Tank number 001B, installed September 1, 1998, with a capacity of 4,000 gallons; and

c) Tank number 002, installed September 1, 1998, with a capacity of 12,000 gallons;

40. With regard to the aforementioned (¶ 39, above) USTs at Service Station II, from at least 1998 through July 24, 2009:

a) Respondent Chase Convenience Stores, Inc., was the owner of said USTs; and

b) Respondent Andrew B. Chase was the operator of said USTs.

41. Since at least 1998 through July 24, 2009, Respondent Andrew B. Chase was the owner and operator of a retail gasoline station and convenience store business, the address of which is 1785 Military Turnpike Road, Unit 10, in Plattsburgh, New York 12901 (hereinafter this gasoline station referred to as "Service Station III").

42. From 1995 through at least July 24, 2009, Service Station III has had two USTs, as follows:

a) Tank number 001, installed on November 1, 1995, with a capacity of 12,000 gallons; and

b) Tank number 002, installed on November 1, 1995, with a capacity of 5,000 gallons.

43. With regard to the aforementioned (¶ 42, above) USTs at Service Station III, from 1995 through July 24, 2009, Respondent Andrew B. Chase was the owner and operator of said USTs.

44. Since at least 1995 through July 24, 2009, Respondent Andrew B. Chase was the operator of a retail gasoline station and convenience store business, the address of which is 4340 Route 3, P.O. Box 975, in Redford, New York 12978 (hereinafter this gasoline station referred to as "Service Station IV").

45. Respondent Chase Services, Inc., was the owner of Service Station IV from at least 1995 through July 24, 2009.

46. From at least 1995 through at least July 24, 2009, Service Station IV has had four USTs, as follows:

a) Tank number 001A, installed on April 1, 1992, with a capacity of 9,000 gallons;

b) Tank number 001B, installed on April 1, 1992, with a capacity of 3,000 gallons;

c) Tank number 003A, installed on June 1, 2003, with a capacity of 10,000 gallons; and

d) Tank number 003B, installed on June 1, 2003, with a capacity of 5,000 gallons.

47. With regard to the aforementioned (§ 46, above) USTs at Service Station IV, from at least 1995 through July 24, 2009:

a) Respondent Chase Services, Inc. was the owner of said USTs; and

b) Respondent Andrew B. Chase was the operator of said USTs.

48. Since at least 2001 through July 24, 2009, Respondent Andrew B. Chase was the operator of a retail gasoline station and convenience store business, the address of which is 936 Route 374, in Dannemora, New York 12929 (hereinafter this gasoline station referred to as "Service Station V").

49. Respondent Chase Commercial Land Development, Inc., was the owner of Service Station V from at least 2001 through July 24, 2009.

50. From at least 2001 through at least July 24, 2009, Service Station V has had four USTs, as follows:

a) Tank number 001A, installed on November 1, 2001, with a capacity of 10,000 gallons;

b) Tank number 001B, installed on November 1, 2001, with a capacity of 5,000 gallons;

c) Tank number 002A, installed on November 1, 2001, with a capacity of 6,000 gallons; and

d) Tank number 002B, installed on November 1, 2001, with a capacity of 2,000 gallons.

51. With regard to the aforementioned (§ 50, above) USTs at Service Station V, from at least 2001 through July 24, 2009:

a) Respondent Chase Commercial Land Development, Inc. was the owner of said USTs; and

b) Respondent Andrew B. Chase was the operator of said USTs.

52. Since at least 2007 (and continuing through to the present), Respondent Andrew B. Chase has been the owner and operator of a retail gasoline station and convenience store business, the address of which is 7155 Route 9, in Plattsburgh, New York 12901 (hereinafter this gasoline station referred to as "Service Station VI").

53. From 2007 through to the present, Service Station VI has had five USTs, as follows:



- a) Tank number 1, installed December 31, 2007, with a capacity of 12,000 gallons;
- b) Tank number 2A, installed December 31, 2007, with a capacity of 5,000 gallons;
- c) Tank number 2B, installed December 31, 2007, with a capacity of 3,000 gallons;
- d) Tank number 3A, installed December 31, 2007, with a capacity of 11,000 gallons; and
- e) Tank number 3B, installed December 31, 2007, with a capacity of 4,000 gallons.

54. With regard to the aforementioned (§ 53, above) USTs at Service Station VI, Respondent Andrew B. Chase has owned and operated said USTs, and he continues to be the owner and operator of them.

### **EPA Investigations of the Service Stations**

55. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on August 26, 2008, a duly designated representative of EPA conducted an inspection of each of a) Service Station II, b) Service Station III, c) Service Station IV, d) Service Station V and e) Service Station VI.

56. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on August 24, 2010, a duly designated representative of EPA conducted an inspection of Service Station VI.

57. The purpose of each of the aforementioned (§s 55 and 56, above) inspections was to determine compliance at the respective service station with the applicable provisions and requirements of 40 C.F.R. Part 280 in the operation and maintenance of the USTs.

58. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, on each of the following dates, duly designated representatives of EPA conducted an inspection of Service Station I: a) April 24, 2009, and b) August 24, 2010.

59. The purpose of the aforementioned (§ 58, above) inspections was to determine compliance at Service Station I with the applicable provisions and requirements of 40 C.F.R. Part 280 in the operation and maintenance of its USTs.

60. On or about each of the following dates, EPA issued an “information request letter” pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a) [hereinafter, such letter referred to as a “Section 9005 IRL”], as follows:

- a) On or about April 1, 2009, to Andrew B. Chase, seeking information on “All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities”;

b) On or about October 5, 2009, to Andrew B. Chase, seeking information on “All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities”; and

c) On or about September 7, 2010, to Andrew B. Chase, seeking information on “All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities”; and

d) On or about November 29, 2010, to Andrew B. Chase, seeking information on “All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities.”

61. Responses to the aforementioned (¶ 60, above) Section 9005 IRLs were provided, as follows: a) on or about June 5, 2009; b) on or about December 8, 2009; c) on or about January 18, 2010; d) on or about October 28, 2010; and e) on or about December 15, 2010.

62. Each of the aforementioned (¶ 61, above) responses was prepared and certified by an individual in the course of carrying out his duties and responsibilities with regard to the ownership and operation of Service Stations I through VI.

#### **Status of the USTs**

63. The New York State Department of Environmental Conservation (“NYSDEC”) has issued or renewed Petroleum Bulk Storage Certificates for the aforementioned (¶ 35 through 54, above) Service Stations I through VI (hereinafter collectively referred to as “the Service Stations”), as follows:

a) On or about November 29, 2005, to Respondent Andrew B. Chase (as owner and operator), for Service Station III;

b) On or about September 29, 2006, to Respondent Chase Commercial Land Development, Inc. (as owner) and Respondent Andrew B. Chase (as operator), for Service Station V;

c) On or about February 1, 2007, to Respondent Chase Services, Inc. (as owner) and Respondent Andrew B. Chase (as operator), for Service Station IV;

d) On or about February 22, 2008, to Respondent Andrew B. Chase (as owner and operator), for Service Station VI;

e) On or about August 18, 2008, to Respondent Chase Convenience Stores, Inc. (as owner) and Respondent Andrew B. Chase (as operator), for Service Station II; and

f) On or about October 3, 2008, to Respondent Andrew B. Chase (as owner and operator), for Service Station I.

64. At the time of the August 26, 2008 inspection (and for an additional period of time prior and subsequent thereto):

- a) each of the aforementioned (¶ 39, above) three USTs at Service Station II was in use;
- b) each of the aforementioned (¶ 42, above) two USTs at Service Station III was in use;
- c) each of the aforementioned (¶ 46, above) four USTs at Service Station IV was in use;
- d) each of the aforementioned (¶ 50, above) four USTs at Service Station V was in use; and
- e) each of the aforementioned (¶ 53, above) five USTs at Service Station VI was in use.

65. At the time of the August 24, 2010 inspection (and for an additional period of time prior and subsequent thereto) of Service Station VI, each of the aforementioned (¶ 53, above) five USTs at Facility VI was in use.

66. At the time of the April 24, 2009 inspection of Service Station I (and for an additional period of time prior and subsequent thereto), the following three aforementioned (¶ 35, above) USTs were in use: a) tank number 001, b) tank number 006A and c) tank number 006B.

67. At the time of the August 24, 2010 inspection of Service Station I (and for an additional period of time prior and subsequent thereto), the following three aforementioned (¶ 35, above) USTs were in use: a) tank number 001, b) tank number 006A and c) tank number 006B.

68. Each of the following USTs was installed on the listed dates:

- a) at Service Station I: (1) tank number 001 on or about September 1, 1989; (2) tank number 006A and tank number 006B on or about May 1, 1998; (3) tank number 008 on or about October 1, 1988;
- b) at Service Station II: tank number 001A, tank number 001B and tank number 002 on or about September 1, 1998;
- c) at Service Station III: tank number 001 and tank number 002 on or about November 1, 1995;

d) at Service Station IV: (1) tank number 001A and tank number 001B on or about April 1, 1992; (2) tank number 003A and tank number 003B on or about June 1, 2003;

e) at Service Station V: tank number 001A, tank number 001B, tank number 002A and tank number 002B on or about November 1, 2001; and

f) at Service Station VI: tank number 1, tank number 2A, tank number 2B, tank number 3A and tank number 3B on or about December 31, 2007.

69. Each of the following constituted a “new tank system”:

a) at Service Station I, (1) tank number 001; and (2) tank number 006A and tank number 006B (§ 35, above);

b) at Service Station II, (1) tank number 001A and tank number 001B; and (2) tank number 002 (§ 39, above);

c) at Service Station III, (1) tank number 001; and (2) tank number 002 (§ 42, above);

d) at Service Station IV, (1) tank number 001A and tank number 001B; and (2) tank number 003A and tank number 003B (§ 46, above);

e) at Service Station V, (1) tank number 001A and tank number 001B; and (2) tank number 002A and tank number 002B (§ 50, above); and

f) at Service Station VI, (1) tank number 1; (2) tank number 2A and tank number 2B; and (3) tank number 3A and tank number 3B (§ 53, above).

70. Prior to its removal from service, the aforementioned (§ 35, sub-§ “d,” above) tank number 008 at Service Station I constituted an “existing tank system.”

**Count 1, Service Station I — Failure to conduct annual tightness tests/provide monthly monitoring**

71. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

72. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

73. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

74. Between April 24, 2008 and December 15, 2010 (although not necessarily limited to such period), each of tank number 006A and tank number 006B (§ 35, sub-§s “b” and “c,” above) at Service Station I had underground piping that routinely contained and that was used to convey gasoline under pressure.

75. Gasoline is a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

76. Tank number 006A and tank number 006B at Service Station I constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

77. Between April 24, 2008 and December 15, 2010 (although not necessarily limited to such period), Respondent Andrew B. Chase failed to have either an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c) for both tank number 006A and tank number 006B at Service Station I..

78. Each of the aforementioned (§ 77, above) failures of Respondent Andrew B. Chase constitutes a failure by the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.41(b)(1)(ii), incorporating the requirements of 40 C.F.R. §§ 280.44(b) and 280.44(c).

79. For the aforementioned (§ 78, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 2, Service Station I — Failure to test operation of automatic line leak detector**

80. Complainant realleges paragraphs 1 through 70, above, and paragraphs 72, 74, 75 and 76, above, with the same force and effect as if fully set forth below.

81. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

82. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

83. As of each of the following dates (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 006A and tank number 006B at Service Station I was equipped with an automatic line leak detector: a) April 24, 2009, and b) August 24, 2010.

84. For the aforementioned (§ 83, above) underground piping for each of tank number 006A and tank number 006B at Service Station I, Respondent Andrew B. Chase was required to conduct an annual test of the operation of the automatic line leak detector starting no later than May 1, 1999 and continuing every year thereafter.

85. Respondent Andrew B. Chase failed, for each of tank number 006A and tank number 006B at Service Station I, to conduct (or to have a third-party on his behalf conduct) an annual test of the operation of the automatic line leak detector for the following periods of time: a) from at least May 1, 2006 until April 22, 2009, and b) from April 22, 2010 until September 7, 2010.

86. Each of the aforementioned (§ 85, above) failures of Respondent Andrew B. Chase constitutes a failure by the owner and operator of said USTs to comply with, and thus a violation of, the following: a) 40 C.F.R. § 280.44(a), and b) 40 C.F.R. § 280.41(b)(1)(i).

87. For the aforementioned (§ 86, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 3, Service Station I — Failure to provide overfill protection for existing tank system**

88. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

89. Pursuant to 40 C.F.R. § 280.21(a), not later than December 22, 1998, all existing UST systems had to comply with: a) the new UST system performance standards set forth in 40 C.F.R. § 280.20, b) the upgrading requirements set forth in 40 C.F.R. §§ 280.21(b) through .21(d), or the closure requirements of 40 C.F.R. Part 280, Subpart G.

90. Pursuant to 40 C.F.R. § 280.21(d), all existing UST systems are required to comply with new UST system spill and overfill prevention equipment requirements specified in 40 C.F.R. § 280.20(c).

91. Forty C.F.R. § 280.20(c)(1)(ii) provides, in part, that “to prevent...overfilling associated with product transfer to the UST system, owners and operators must use” overfill prevention equipment that will:

“(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

“(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into tank or triggering a high-level alarm; or

“(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are [sic] exposed to product due to overfilling.”

92. For at least two years prior to and through April 30, 2008 (although not necessarily limited to such time period), tank number 008 at Service Station I (¶ 35, sub-¶ “d,” above) contained and was being used to store kerosene.

93. For at least two years prior to and through April 30, 2008 (although not necessarily limited to that time period), Respondent Andrew B. Chase provided only a whistler valve as overfill prevention equipment for tank number 008 at Service Station I.

94. The whistler valve for tank number 008 at Service Station I failed to meet to requirements for overfill prevention equipment required pursuant to 40 C.F.R. § 280.20(c)(1)(ii).

95. As a consequence of the aforementioned (¶ 94, above) failure to meet the requirements specified for overfill prevention equipment, for some time prior to and through April 30, 2008, Respondent Andrew B. Chase failed to provide for tank number 008 at Service Station I overfill prevention equipment that met the requirements specified in 40 C.F.R. § 280.20(c)(1)(ii) to prevent overfilling associated with product transfer to the UST system.

96. The aforementioned (¶ 95, above) failure of Respondent Andrew B. Chase to provide the required overfill prevention equipment for tank number 008 at Service Station I constitutes, for each day during the period at least two years prior to and through April 30, 2008, a failure by the owner and operator said UST to comply with, and thus a violation of, 40 C.F.R. § 280.20(c)(1)(ii), as incorporated into 40 C.F.R. § 280.21(a)(1).

97. For the aforementioned (¶ 96, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

#### **Count 4, Service Station I — Failure to maintain release detection**

98. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

99. Forty 40 C.F.R. § 280.70(a) provides, in part, that “[w]hen an UST system is temporarily closed, owners and operators must continue operation and maintenance of [*inter alia*] any release detection in accordance with subpart D [ 40 C.F.R. Part 280, Subpart D],” provided there remains in said system more than 2.5 centimeters (one inch) of residue or 0.3 percent by weight of the total capacity of said system.

100. The aforementioned (¶ 35, sub-¶ “d,” above) tank number 008 at Service Station I constituted an “UST system” within the meaning of 40 C.F.R. § 280.70(a).

101. Tank number 008 at Service Station I was temporarily closed no later than April 30, 2008.

102. As of April 24, 2009 (and for an additional period of time prior and subsequent thereto), tank number 008 at Service Station I contained 31.5 inches of residue (kerosene).

103. Tank number 008 at Service Station I was emptied and permanently closed (*i.e.* removed from service) on or about November 30, 2009.

104. Respondent Andrew B. Chase failed to continue the required release detection in accordance with 40 C.F.R. Part 280, Subpart D, for tank number 008 for the period between April 30, 2008 and November 30, 2009.

105. The aforementioned (¶ 104, above) failure of Respondent Andrew B. Chase to continue release detection in accordance with 40 C.F.R. Part 280, Subpart D, for tank number 008 at Service Station I constitutes, for each day during the period between April 30, 2008 and November 30, 2009, a failure by the owner and operator of said UST to comply with, and thus a violation of, 40 C.F.R. § 280.70(a).

106. For the aforementioned (¶ 105, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 5, Service Station I — Failure to maintain cathodic protection**

107. Complainant realleges paragraphs 1 through 70, above, and paragraphs 100 through 103, above, with the same force and effect as if fully set forth below.

108. Forty 40 C.F.R. § 280.70(a) provides, in part, that “[w]hen an UST system is temporarily closed, owners and operators must continue operation and maintenance of [*inter alia*] corrosion protection in accordance with [ 40 C.F.R.] § 280.31,” provided there remains in said system more than 2.5 centimeters (one inch) of residue or 0.3 percent by weight of the total capacity of said system.

109. Forty C.F.R. § 280.31 provides, in part, that “[a]ll owners and operators of steel UST systems with corrosion protection must comply [with requirements specified in said regulation] to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances....”



110. Forty C.F.R. § 280.31(b)(1) provides in relevant part, that “[a]ll UST systems equipped with cathodic protection...must be tested [for proper operation] within 6 months of installation and at least every 3 years thereafter...”

111. The aforementioned (§ 35, sub-§ “d,” above) tank number 008 at Service Station I was an UST constructed of steel/carbon steel/iron that was used to store kerosene.

112. Tank 008 at Service Station I was a “steel UST system[] with corrosion protection...used to store [a] regulated substance[]” within the meaning of 40 C.F.R. § 280.31.

113. Tank 008 at Service Station I had been equipped with a cathodic protection system by no later than December 22, 1998.

114. Respondent Andrew B. Chase was required to test for the proper operation of the cathodic protection starting on or about June 22, 1999 and continuing at least every three years thereafter.

115. For the time period between April 2008 (the time when tank number 008 at Service Station I was temporarily closed) through November 2009 (when it was permanently closed, *i.e.* removed from service), Respondent Andrew B. Chase failed to conduct (or have a third-party conduct on his behalf) any required triennial testing of the cathodic protection system of said UST.

116. The aforementioned (§ 115, above) failure of Respondent Andrew B. Chase to conduct the required triennial testing pursuant to 40 C.F.R. § 280.70(a) for tank number 008 at Service Station I constitutes a failure by the owner/operator of said UST to comply with, and thus a violation of, 40 C.F.R. § 280.70(a).

117. For the aforementioned (§ 116, above) failure to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 6, Service Station I — Failure to cap and secure temporarily closed UST**

118. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

119. Pursuant to 40 C.F.R. § 280.70(b), “[w]hen an UST system is temporarily closed for 3 months or more,” the owner and operator thereof are required to “[l]eave vent lines open and functioning” and also to “[c]ap and secure all other lines, pumps, manways, and ancillary equipment.”

120. At Service Station I, tank number 008 (¶ 35, sub-¶ “d,” above) was temporarily closed in April 2008.

121. By no later than on or about July 30, 2008, Respondent Andrew B. Chase was required to have capped and secured tank number 008 at Service Station I.

122. Tank number 008 at Service Station I was not capped and secured as of April 24, 2009.

123. Respondent Andrew B. Chase failed to cap and secure tank number 008 at Service Station I for the period commencing on or about July 30, 2008 through on or about November 30, 2009.

124. The aforementioned (¶s 122 and 123, above) failure of Respondent Andrew B. Chase to cap and secure tank number 008 at Service Station I constitutes, for each day during the period between on or about July 30, 2008 and on or about November 30, 2009, a failure by the owner and operator of said UST to comply with, and thus a violation of, 40 C.F.R. § 280.70(b).

125. For the aforementioned (¶ 124, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

#### **Count 7, Service Station I — Failure to permanently close UST**

126. Complainant realleges paragraphs 1 through 70, above, and paragraphs 111 through 113, above, with the same force and effect as if fully set forth below.

127. Forty C.F.R. § 280.70(c) provides, in part, that “[w]hen an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet the either performance standards in [40 C.F.R.] § 280.20 for new UST systems or the upgrading requirements in [40 C.F.R.] § 280.21, *except that* the spill and overfill equipment requirements do not have to be met.”

128. The tank upgrading requirement set forth in 40 C.F.R. § 280.21(b)(2) states, in part, that “[a] tank may be upgraded by cathodic protection if the cathodic protection system meets the requirement[] of [*inter alia*] [40 C.F.R.] § 280.20(a)(2)(iv)....”

129. Pursuant to 40 C.F.R. § 280.20(a)(2)(iv), tanks must be designed and constructed such that, *inter alia*, “[c]athodic protection systems are operated and maintained in accordance with [40 C.F.R.] § 280.31.

130. Forty C.F.R. § 280.31 provides, in part, that “[a]ll owners and operators of steel UST systems with corrosion protection must comply [with requirements specified in said

regulation] to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances....”

131. Forty C.F.R. § 280.31(b) provides in part, that “[a]ll UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with [listed requirements specified in said regulation].”

132. Tank number 008 (¶ 35, sub-¶ “d,” above) at Service Station I was temporarily closed no later than April 30, 2008.

133. Pursuant to 40 C.F.R. § 280.70(c), Respondent Andrew B. Chase was required to have permanently closed tank number 008 at Service Station I or to have said tank inspected for proper operation by a qualified cathodic protection tester by no later than April 30, 2009.

134. For the time period between on or about April 30, 2009 through on or about November 30, 2009 (at which time tank number 008 at Service Station I was permanently closed, *i.e.* taken out of service), Respondent Andrew B. Chase failed either to permanently close said tank or to have it inspected for proper operation by a qualified cathodic protection tester.

135. The aforementioned (¶ 134, above) failure of Respondent Andrew B. Chase to either permanently close tank number 008 at Service Station I or to have the required inspection take place constitutes a failure by the owner/operator of said UST to comply with, and thus a violation of, 40 C.F.R. § 280.70(c).

136. For the aforementioned (¶ 135, above) failure to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

#### **Count 8, Service Station II — Failure to test operation of automatic line leak detector**

137. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

138. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

139. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

140. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

141. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), each of tank number 001A, tank number 001B and tank number 002 (§ 39, sub-§s “a” through “c,” above) at Facility II had underground piping that routinely contained and that was used to convey gasoline under pressure.

142. Gasoline is a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

143. Tank number 001A and tank number 001B at Service Station II constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41, and tank number 002 at Service Station II constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

144. Since at least September 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), underground piping for each of tank number 001A, tank number 001B and tank number 002 at Service Station II was equipped with an automatic line leak detector.

145. For the aforementioned (§ 144, above) underground piping for each of tank 001A, tank number 001B and tank number 002 at Service Station II, either Respondent Chase Convenience Stores, Inc. (as owner) or Respondent Andrew B. Chase (as operator) was required to conduct an annual test of the operation of the automatic line leak detector starting no later than September 1, 1999 and continuing every year thereafter.

146. Each of Respondent Chase Convenience Stores, Inc. and Respondent Andrew B. Chase failed, for each of tank number 001A, tank number 001B and tank number 002 at Service Station II to conduct (or to have a third-party on their behalf conduct) an annual test of the operation of the automatic line leak detector from at least September 1, 2006 until April 6, 2009.

147. Each of the aforementioned (§ 146, above) failures of Respondent Chase Convenience Stores, Inc. and Respondent Andrew B. Chase constitutes a failure by both the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.44(a), as incorporated into 40 C.F.R. § 280.41(b)(1)(i).

148. For the aforementioned (§ 147, above) failures to comply, Respondent Chase Convenience Stores, Inc. and Respondent Andrew B. Chase are subject to a civil penalty (*i.e.* are jointly and severally liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 9, Service Station III — Failure to conduct triennial cathodic protection system test**

149. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

150. Forty C.F.R. § 280.31 provides, in part, that “[a]ll owners and operators of steel UST systems with corrosion protection must comply [with requirements specified in said regulation] to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.

151. Forty C.F.R. § 280.31(b)(1) provides in relevant part, that “[a]ll UST systems equipped with cathodic protection...must be tested [for proper operation] within 6 months of installation and at least every 3 years thereafter....”

152. Each of the aforementioned (¶ 42, sub-¶s “a” and “b,” above) USTs (tank number 001 and tank number 002) at Service Station III was constructed of steel/carbon steel/iron and was used to store gasoline.

153. Each of tank number 001 and tank number 002 at Service Station III was a “steel UST system[] with corrosion protection...used to store [a] regulated substance[]” within the meaning of 40 C.F.R. § 280.31.

154. Since at least May 1, 2008 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), each of tank number 001 and tank number 002 at Service Station III was equipped with a cathodic protection system.

155. Until April 6, 2009, Respondent Andrew B. Chase failed to conduct (or to have a third-party on his behalf conduct) the required triennial testing of the cathodic protection system of either tank number 001 or tank number 002 at Service Station III.

156. The aforementioned (¶ 155, above) failure of Respondent Andrew B. Chase to conduct (or to have a third-party conduct) the required triennial testing pursuant to 40 C.F.R. § 280.31(b) constitutes, for each of tank number 001 and 002 at Service Station III, a failure by the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.31(b).

157. For the aforementioned (¶ 156, above) failures to comply, Respondent Andrew B. Chase is subject to a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 10, Service Station III — Failure to test operation of automatic adequate line leak detector system for piping**

158. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

159. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

160. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

161. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

162. Since at least November 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), each of tank number 001 and tank number 002 (¶ 42, sub-¶s “a” and “b,” above) at Service Station III had underground piping that routinely contained and that was used to convey gasoline under pressure.

163. Gasoline is a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

164. Each of tank number 001 and tank number 002, including the connected underground piping, at Service Station III constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

165. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 001 and tank number 002 at Service Station III was equipped with an automatic line leak detector.

166. For the aforementioned (¶ 165, above) underground piping for each of tank 001 and tank number 002 at Service Station III, Respondent Andrew B. Chase was required to conduct an annual test of the operation of the automatic line leak detector starting no later than November 1, 1996 and continuing every year thereafter.

167. Respondent Andrew B. Chase failed, for the piping connected to each of tank number 001 and tank number 002 at Service Station III, to conduct (or to have a third-party on his behalf conduct) an annual test of the operation of the automatic line leak detector from at least November 1, 2006 until April 6, 2009.

168. Each of the aforementioned (¶ 167, above) failures of Respondent Andrew B. Chase constitutes a failure by the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.44(a), as incorporated into 40 C.F.R. § 280.41(b)(1)(i).

169. For the aforementioned (¶ 168, above) failures to comply, Respondent Andrew B. Chase is subject to a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 11, Service Station III — Failure to maintain records of release detection**

170. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

171. Pursuant to 40 C.F.R. § 280.40(a), “[o]wners and operators of UST systems of new and existing UST systems must provide a method or combination of methods of release detection that” meets the requirements set forth therein.

172. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

173. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must be monitored for releases in a manner that meets one of the requirements set forth therein.

174. Pursuant to 40 C.F.R. § 280.45, “[a]ll UST system owners and operators must maintain records in accordance with [40 C.F.R.] § 280.34 demonstrating compliance with all applicable requirements of this subpart [40 C.F.R. Part 280, Subpart D].”

175. One of the requirements set forth in 40 C.F.R. § 280.34 is set forth in sub-paragraph (b)(4) thereof, which provision mandates that “[o]wners and operators must maintain” information pertaining to “[r]ecent compliance with release detection requirements ([40 C.F.R.] § 280.45)...”

176. The aforementioned (§s 174 and 175, above) required recordkeeping provides, pursuant to 40 C.F.R. § 280.45(b), “[t]he results of any sampling, testing or monitoring must be maintained for at least 1 year....”

177. Each of tank number 001 and tank number 002 at Service Station III constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

178. For the period that includes (but is not necessarily limited to) the time between August 26, 2007 and the end of December 2007, Respondent Andrew B. Chase conducted (or had a third-party conduct on his behalf) release detection monitoring for the underground piping connected to each of tank number 001 and tank number 002 at Service Station III.

179. Respondent Andrew B. Chase failed to maintain records of release detection monitoring of the piping connected to each of tank number 001 and tank number 002 at Service Station III for the period that includes (but is not necessarily limited to) the time between August 26, 2007 and the end of December 2007.

180. Each of the aforementioned (¶ 179, above) failures of Respondent Andrew B. Chase constitutes a failure by the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.45.

181. For the aforementioned (¶ 180, above) failures to comply, Respondent Andrew B. Chase is subject to a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 12, Service Station IV — Failure to provide proper overfill protection for new tank system**

182. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

183. Forty C.F.R. § 280.20 states that “[i]n order to prevent releases due to structural failure, corrosion or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet” the requirements specified therein.

184. One of the aforementioned (¶ 183, above) requirements of 40 C.F.R. § 280.20 is found 40 C.F.R. § 280.20(c)(1)(ii), which provides, in part, that “to prevent...overfilling associated with product transfer to the UST system, owners and operators must use” overfill prevention equipment that will:

“(A) Automatically shut off flow into the tank when then tank is no more than 95 percent full; or

“(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

“(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are [sic] exposed to product due to overfilling.”

185. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), tank number 001A at Service Station IV (¶ 46, sub-¶ “a,” above) contained and was being used to store diesel fuel.

186. As of August 26, 2008 (and for an additional period of time through July 24, 2009), the shut-off valve intended for overfill protection that was attached to tank number 001A at Service Station IV was broken and non-functional.



187. As a consequence of the aforementioned (§ 186, above) shut-off valve being broken, said valve failed to meet the requirements of 40 C.F.R. § 280.20(c)(1)(ii) to prevent overfilling associated with product transfer to the UST system of which tank number 001A at Service Station IV was a part (§ 68, sub-§ “c,” above).

188. As of August 26, 2008 (and for an additional period of time prior to and until July 24, 2009), Respondent Chase Services, Inc. (as owner) and Respondent Andrew B. Chase (as operator) failed to provide for tank number 001A at Service IV overfill prevention equipment that met the requirements specified in 40 C.F.R. § 280.20(c)(1)(ii).

189. The aforementioned (§ 188, above) failure of Respondent Chase Services, Inc. (as owner) and Respondent Andrew B. Chase (as operator) to provide the required overfill prevention equipment for tank number 001A at Service Station IV constitutes, for each day said condition continued, a failure by each of the owner and operator of tank number 001A to comply with, and thus a violation of, 40 C.F.R. § 280.20(c)(1)(ii).

190. For the aforementioned (§ 189, above) failures to comply, Respondent Chase Services, Inc. and Respondent Andrew B. Chase are subject to a civil penalty (*i.e.* are jointly and severally liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

### **Count 13, Service Station IV — Failure to test operation of automatic line leak detector**

191. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

192. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

193. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

194. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

195. Since at least April 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), tank number 001A at Service Station IV (§ 46, sub-§ “a,” above) had underground piping that routinely contained and that was used to convey diesel fuel under pressure.

196. Since at least June 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), tank number 003A and tank number 003B at

Service Station IV (§ 46, sub-§s “c” and “d,” above) had underground piping that routinely contained and that was used to convey gasoline under pressure.

197. Each of diesel fuel and gasoline is a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

198. Each of the following at Service Station IV constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41: a) tank number 001A and tank number 001B, and b) tank number 003A and tank number 003B.

199. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 001A, tank number 003A and tank number 003B at Service Station IV was equipped with an automatic line leak detector.

200. For the aforementioned (§ 199, above) underground piping for each of each respective UST at Service Station IV, either Respondent Chase Services, Inc. (as owner) or Respondent Andrew B. Chase (as operator) was required to conduct an annual test of the operation of the automatic line leak detector as follows:

a) for the piping connected to tank number 001A, starting no later than April 1, 1993 and continuing every year thereafter; and

b) for the piping connected to each of tank number 003A and tank number 003B, starting no later than June 1, 2004 and continuing every year thereafter.

201. Each of Respondent Chase Services, Inc. (as owner) and Respondent Andrew B. Chase (as operator) failed to conduct (or to have a third-party on its/his behalf conduct) an annual test of the operation of the automatic line leak detector as follows:

a) for the piping connected to tank number 001A, from at least April 1, 2006 until April 6, 2009; and

b) for the piping connected to each of tank number 003A and tank number 003B, from at least June 1, 2006 until April 6, 2009.

202. Each of the aforementioned (§ 201, above) failures of Respondent Chase Services, Inc. and Respondent Andrew B. Chase constitutes a failure by the owner and operator of said UST systems to comply with, and thus a violation of, 40 C.F.R. § 280.44(a), as incorporated into 40 C.F.R. § 280.41(b)(1)(i).

203. For the aforementioned (§ 202, above) failures to comply, Respondent Chase Services, Inc. and Respondent Andrew B. Chase are subject to a civil penalty (*i.e.* are jointly and severally liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 14, Service Station IV — Failure to maintain records of release detection**

204. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

205. Pursuant to 40 C.F.R. § 280.40(a), “[o]wners and operators of UST systems of new and existing UST systems must provide a method or combination of methods of release detection that” meets the requirements set forth therein.

206. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

207. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must be monitored for releases in a manner that meets one of the requirements set forth therein.

208. Pursuant to 40 C.F.R. § 280.45, “[a]ll UST system owners and operators must maintain records in accordance with [40 C.F.R.] § 280.34 demonstrating compliance with all applicable requirements of this subpart [40 C.F.R. Part 280, Subpart D].”

209. One of the requirements set forth in 40 C.F.R. § 280.34 is set forth in sub-paragraph (b)(4) thereof, which provision mandates that “[o]wners and operators must maintain” information pertaining to “[r]ecent compliance with release detection requirements ([40 C.F.R.] § 280.45)....”

210. The aforementioned (§s 208 and 209, above) required recordkeeping provides, pursuant to 40 C.F.R. § 280.45(b), “[t]he results of any sampling, testing or monitoring must be maintained for at least 1 year....”

211. Each of tank number 001A and 001B at Service Station IV constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41, and each of tank number 003A and tank number 003B at Service Station IV constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

212. For the period that includes (but is not necessarily limited to) the time between August 26, 2007 and the end of December 2007, Respondent Chase Services, Inc. (as owner) or Respondent Andrew B. Chase (as operator) conducted (or had a third-party conduct on its/his behalf) release detection monitoring for the underground piping of each of tank number 001A, tank number 001B, tank number 003A and tank number 003B at Service Station IV.

213. Respondent Chase Services, Inc. (as owner) and Respondent Andrew B. Chase (as operator) failed to maintain records of release detection monitoring for each of tank number 001A, tank number 001B, tank number 003A and tank number 003B at Service Station IV for

the period that includes (but is not necessarily limited to) the time between August 26, 2007 and the end of December 2007.

214. Each of the aforementioned (§ 213, above) failures of Respondent Chase Services, Inc. and Respondent Andrew B. Chase constitutes a failure by each of the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.45.

215. For the aforementioned (§ 214, above) failures to comply, Respondent Chase Services, Inc. and Respondent Andrew B. Chase are subject to a civil penalty (*i.e.* are jointly and severally liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 15, Service Station V — Failure to test operation of automatic line leak detector**

216. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

217. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

218. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

219. Forty C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

220. Since at least November 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), each of tank number 001A and tank number 001B at Service Station V (§ 50, sub-§s “a,” and “b,” above) had underground piping that routinely contained and that was used to convey gasoline under pressure.

221. Since at least November 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), tank number 002A at Service Station V (§ 50, sub-§ “c,” above) had underground piping that routinely contained and that was used to convey diesel fuel under pressure.

222. Each of gasoline and diesel fuel is a “regulated substance” within the meaning of Section 9001(12) of the Act, 42 U.S.C. § 6991(12), and 40 C.F.R. § 280.12.

223. Each of the following at Service Station V constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41: a) tank number 001A and tank number 001B, and b) tank number 002A and tank number 002B.

224. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 001A, tank number 001B and tank number 002A at Service Station V was equipped with an automatic line leak detector.

225. For the aforementioned (§ 224, above) underground piping for each of tank number 001A, tank number 001B and tank number 002A at Service Station V, either Respondent Chase Commercial Land Development, Inc. (as owner) or Respondent Andrew B. Chase (as operator) was required to conduct an annual test of the operation of the automatic line leak detector, starting no later than November 1, 2002 and continuing every year thereafter,.

226. Each of Respondent Chase Commercial Land Development, Inc. (as owner) and Respondent Andrew B. Chase (as operator) failed, for each of tank number 001A, tank number 001B and tank number 002A at Service Station V, to conduct (or to have a third-party on its/his behalf conduct) an annual test of the operation of the automatic line leak from at least November 1, 2006 to April 6, 2009.

227. Each of the aforementioned (§ 226, above) failures of Respondent Chase Commercial Land Development, Inc. and Respondent Andrew B. Chase constitutes a failure by each of the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.44(a), as incorporated into 40 C.F.R. § 280.41(b)(1)(i).

228. For the aforementioned (§ 227, above) failures to comply, Respondent Chase Commercial Land Development, Inc. and Respondent Andrew B. Chase are subject to a civil penalty (*i.e.* are jointly and severally liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

#### **Count 16, Service Station V — Failure to maintain records of release detection**

229. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

230. Pursuant to 40 C.F.R. § 280.40(a), “[o]wners and operators of UST systems of new and existing UST systems must provide a method or combination of methods of release detection that” meets the requirements set forth therein.

231. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

232. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must be monitored for releases in a manner that meets one of the requirements set forth therein.

233. Pursuant to 40 C.F.R. § 280.45, “[a]ll UST system owners and operators must maintain records in accordance with [40 C.F.R.] § 280.34 demonstrating compliance with all applicable requirements of this subpart [40 C.F.R. Part 280, Subpart D].”

234. One of the requirements set forth in 40 C.F.R. § 280.34 is set forth in sub-paragraph (b)(4) thereof, which provision mandates that “[o]wners and operators must maintain” information pertaining to “[r]ecent compliance with release detection requirements ([40 C.F.R.] § 280.45)...”

235. The aforementioned (§§ 233 and 234, above) required recordkeeping provides, pursuant to 40 C.F.R. § 280.45(b), “[t]he results of any sampling, testing or monitoring must be maintained for at least 1 year....”

236. Each of tank number 001A and 001B at Service Station V constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41, and each of tank number 002A and tank number 002B at Service Station V constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

237. For the period that includes (but is not necessarily limited to) the time between August 26, 2007 and the end of December 2007, Respondent Chase Commercial Land Development, Inc. (as owner) or Respondent Andrew B. Chase (as operator) conducted (or had a third-party conduct on its/his behalf) release detection monitoring for the underground piping of each of tank number 001A, tank number 001B, tank number 002A and tank number 002B at Service Station V.

238. Respondent Chase Commercial Land Development, Inc. and Respondent Andrew B. Chase failed to maintain records of release detection monitoring for the piping for each of tank number 001A, tank number 001B, tank number 002A and tank number 002B at Service Station V for the period that includes (but is not necessarily limited to) the time between August 26, 2007 and the end of December 2007.

239. Each of the aforementioned (§ 238, above) failures of Respondent Chase Commercial Land Development, Inc. and Respondent Andrew B. Chase constitutes a failure by both the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.45.

240. For the aforementioned (§ 239, above) failures to comply, Respondent Chase Commercial Land Development, Inc. and Respondent Andrew B. Chase are subject to a civil penalty (*i.e.* are jointly and severally liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 17, Service Station VI — Failure to provide proper overflow protection for new tank system**

241. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

242. Forty C.F.R. § 280.20 states that “[i]n order to prevent releases due to structural failure, corrosion or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet” the requirements specified therein.

243. One of the aforementioned (§ 242, above) requirements of 40 C.F.R. § 280.20 is found 40 C.F.R. § 280.20(c)(1)(ii), which provides, in part, that “to prevent...overflowing associated with product transfer to the UST system, owners and operators must use” overflow prevention equipment that will:

“(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

“(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

“(C) Restrict flow 30 minutes prior to overflowing, alert the operator with a high level alarm one minute before overflowing, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are [sic] exposed to product due to overflowing.”

244. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto through no later than August 24, 2010), tank number 2A at Service Station VI (§ 53, sub-§ “b,” above) contained and was being used to store biodiesel fuel.

245. As of August 26, 2008 (and for an additional period of time subsequent thereto through no later than August 24, 2010), the shut-off valve intended for overflow protection that was attached to tank number 2A at Service Station IV was damaged and non-functional.

246. As of August 26, 2008 (and for an additional period of time subsequent thereto through no later than August 24, 2010), as a consequence of the aforementioned (§ 245, above) shut-off valve being damaged, said valve failed to meet the requirements of 40 C.F.R. § 280.20(c)(1)(ii) to prevent overflowing associated with product transfer to the UST system of which tank number 2A at Service Station VI was a part (§ 69, sub-§ “e,” above).

247. As of August 26, 2008 (and for an additional period of time subsequent thereto through no later than August 24, 2010), Respondent Chase Commercial Land Development, Inc.

(as owner) and Respondent Andrew B. Chase (as operator) failed to provide for tank number 2A at Service Station VI overfill prevention equipment that met the requirements specified in 40 C.F.R. § 280.20(c)(1)(ii).

248. The aforementioned (§ 247, above) failure of Respondent Chase Commercial Land Development, Inc. and Respondent Andrew B. Chase to provide the required overfill prevention equipment for tank number 2A at Service Station VI constitutes, for each day during said condition, a failure by each of the owner and operator of tank number 2A to comply with, and thus a violation of, 40 C.F.R. § 280.20(c)(1)(ii).

249. For the aforementioned (§ 248, above) failures to comply, Respondent Chase Commercial Land Development, Inc. and Respondent Andrew B. Chase are subject to injunctive relief and a civil penalty (*i.e.* are jointly and severally liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

#### **Count 18, Service Station VI — Failure to test operation of automatic line leak detector**

250. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

251. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

252. Pursuant to 40 C.F.R. § 280.41(b)(1)(i), underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector conducted in accordance with 40 C.F.R. § 280.44(a).

253. 40 C.F.R. § 280.44(a) provides, in part, that “[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer’s requirements.”

254. As of each of the following dates (and for an additional period of time prior and subsequent thereto), tank number 1 at Service Station VI (§ 53, sub-§ “a,” above) had underground piping that routinely contained and that was used to convey diesel fuel under pressure: a) August 26, 2008, and b) August 24, 2010.

255. As of each of the following dates (and for an additional period of time prior and subsequent thereto), each of tank number 3A and tank number 3B at Service Station VI (§ 53, sub-§ s “d” and “e,” above) had underground piping that routinely contained and that was used to convey gasoline under pressure: a) August 26, 2008, and b) August 24, 2010.

256. Each of diesel fuel and gasoline is a “regulated substance” within the meaning of Section 9001(12) of the Act, 42 U.S.C. § 6991(12), and 40 C.F.R. § 280.12.



257. Tank number 1 at Service Station VI constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41, and tank number 3A and tank number 3B at Service Station VI constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

258. As of each of the following dates (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 1, tank number 3A and tank number 3B at Service Station VI was equipped with an automatic line leak detector: a) August 26, 2008, and b) August 24, 2010.

259. For the aforementioned (¶ 258, above) underground piping for each of tank number 1, tank number 3A and tank number 3B at Service Station VI, Respondent Andrew B. Chase was required to conduct an annual test of the operation of the automatic line leak detector starting no later than December 31, 2008 and continuing every year thereafter.

260. Respondent Andrew B. Chase failed, for the piping for each of tank number 1, tank number 3A and tank number 3B at Service Station VI, to conduct (or to have a third-party on his behalf conduct) an annual test of the operation of the automatic line leak detector from December 31, 2008 through September 7, 2010.

261. Each of the aforementioned (¶ 260, above) failures of Respondent Andrew B. Chase constitutes a failure by the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.44(a), as incorporated into 40 C.F.R. § 280.41(b)(1)(i).

262. For the aforementioned (¶ 261, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 19, Service Station VI — Failure to conduct annual tightness tests or provide monthly monitoring release detection**

263. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

264. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

265. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must, *inter alia*, have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) or have monthly monitoring conducted in accordance with 40 C.F.R. § 280.44(c).

266. Forty C.F.R. § 280.44 provides that “[e]ach method of release detection for piping used to meet the requirement of [40 C.F.R.] § 280.41 must be conducted in accordance with” the provisions set forth therein.

267. Pursuant to 40 C.F.R. § 280.44(c), “[a]ny of the methods in [40 C.F.R.] § 280.43 (e) through (h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.”

268. Pursuant to 40 C.F.R. § 280.43(g), “Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the...requirements” set forth therein.

269. As of each of the following dates (and for an additional period of time prior and subsequent thereto), tank number 1 (¶ 53, sub-¶ “a,” above) at Service Station VI had underground piping that routinely contained and that was used to convey diesel fuel under pressure: a) August 26, 2008 and b) August 24, 2010.

270. As of each of the following dates (and for an additional period of time prior and subsequent thereto), tank number 3A and tank number 3B (¶ 53, sub-¶s “d” and “e,” above) at Service Station VI had underground piping that routinely contained and that was used to convey gasoline under pressure: a) August 26, 2008 and b) August 24, 2010.

271. Each of diesel fuel and gasoline is a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

272. Tank number I at Service Station VI constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41, and tank number 3A and tank number 3B constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

273. As of August 24, 2009 (and for an additional period of time subsequent thereto up to at least December 15, 2010), Respondent Andrew B. Chase failed to have an annual line tightness test conducted in accordance with 40 C.F.R. § 280.44(b) for the piping for tank number 1, and for the piping for tank number 3A and tank number 3B at Service Station VI.

274. As of August 24, 2009 (and for an additional period of time subsequent thereto up to at least December 15, 2010), Respondent Andrew B. Chase conducted electronic and manual interstitial monitoring for the piping for tank number 1 at Service Station VI, and for the piping for tank number 3A and tank number 3B at Service Station VI.

275. As of August 24, 2009 (and for an additional period of time subsequent thereto up to at least December 15, 2010), Respondent Andrew B. Chase failed to properly conduct the aforementioned (¶ 273, above) interstitial monitoring for the piping for tank number 1 at Service Station VI, and for the piping for tank number 3A and tank number 3B at Service Station VI in

that, *inter alia*, the associated sumps were filled with water, a condition that would interfere with and impede the operation of the alarm sensors, and thus failed to properly maintain the required release detection.

276. Each of the aforementioned (§s 273 and 275, above) failures of Respondent Andrew B. Chase constitutes a failure by the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.41(b)(1)(ii), incorporating the requirements of 40 C.F.R. §§ 280.44(b) and 280.44(c).

277. For the aforementioned (§ 276, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty (*i.e.* liable to the United States) pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

### **Count 20, Service Station VI — Failure to maintain records of release detection**

278. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

279. Pursuant to 40 C.F.R. § 280.40(a), “[o]wners and operators of UST systems of new and existing UST systems must provide a method or combination of methods of release detection that” meets the requirements set forth therein.

280. Pursuant to 40 C.F.R. § 280.41, owners and operators of petroleum UST systems must provide, *inter alia*, release detection for piping in accordance with 40 C.F.R. § 280.41(b).

281. Pursuant to 40 C.F.R. § 280.41(b)(1)(ii), underground piping that routinely contains and conveys regulated substances under pressure must be monitored for releases in a manner that meets one of the requirements set forth therein.

282. Pursuant to 40 C.F.R. § 280.45, “[a]ll UST system owners and operators must maintain records in accordance with [40 C.F.R.] § 280.34 demonstrating compliance with all applicable requirements of this subpart [40 C.F.R. Part 280, Subpart D].”

283. One of the requirements set forth in 40 C.F.R. § 280.34 is set forth in sub-paragraph (b)(4) thereof, which provision mandates that “[o]wners and operators must maintain” information pertaining to “[r]ecent compliance with release detection requirements ([40 C.F.R.] § 280.45)...”

284. The aforementioned (§s 282 and 283, above) required recordkeeping provides, pursuant to 40 C.F.R. § 280.45(b), “[t]he results of any sampling, testing or monitoring must be maintained for at least 1 year....”

285. Tank number 1, including its underground piping, at Service Station VI constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

286. For the period between August 24, 2009 and at least December 15, 2010, Respondent Andrew B. Chase conducted (or had a third-party conduct on his behalf) release detection monitoring for the underground piping for tank number 1 at Service Station VI.

287. Respondent Andrew B. Chase failed to maintain records of release detection monitoring for the piping for tank number 1 at Service Station VI for the period between August 24, 2009 and at least December 15, 2010.

288. The aforementioned (§ 287, above) failures of Respondent Andrew B. Chase constitutes a failure by each of the owner and operator of said UST to comply with, and thus a violation of, 40 C.F.R. § 280.45.

289. For the aforementioned (§ 288, above) failure to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

**Count 21, Service Station VI — Failure to report and immediately investigate a suspected release**

290. Complainant realleges paragraphs 1 through 70, above, with the same force and effect as if fully set forth below.

291. Forty C.F.R. § 280.50(c) states, in part, that “[o]wners and operators of UST systems must report to the implementing agency within 24 hours...and follow the procedures in [40 C.F.R.] § 280.52 for” *inter alia*, “[m]onitoring results from a release detection method required under [40 C.F.R.] § 280.41 and [40 C.F.R.] § 280.42 that indicate that a release may have occurred....”

292. The procedures specified in 40 C.F.R. § 280.52 require that “owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under [40 C.F.R.] § 280.50 within 7 days...using either [the procedures set forth therein] or another procedure approved by the implementing agency....”

293. As of August 24, 2010 (and for an additional period of time prior and subsequent thereto), the NYSDEC was, for purposes, *inter alia*, relating to reporting and investigating releases (including suspected releases) in accordance with 40 C.F.R. Part 280, Subpart E, the “implementing agency” within the meaning of 40 C.F.R. § 280.12.

294. As of August 24, 2010 (and for an additional period of time prior and subsequent thereto), tank number 2A (§ 53, sub-§ “b,” above) at Service Station VI contained “off-road” diesel fuel.

295. As of August 24, 2010 (and for an additional period of time prior and subsequent thereto), tank number 2B (§ 53, sub-§ “c,” above) at Service Station VI contained kerosene.

296. Each of “off-road” diesel fuel and kerosene is a “regulated substance” within the meaning of Section 9001(2) of the Act, 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

297. Tank number 2A and tank number 2B constituted at Service Station VI constituted an UST system for purposes of 40 C.F.R. § 280.50 (hereinafter said tanks at Service Station VI collectively referred to as the “2A/2B UST system”).

298. As of August 24, 2010 (and for an additional period of time prior and subsequent thereto), in accordance with 40 C.F.R. § 280.41, interstitial monitoring was being maintained for the USTs (including their piping and associated sumps) of the 2A/2B UST system.

299. As of August 24, 2010 (although not necessarily limited to that date), various sensors connected to and/or associated with the 2A/2B UST system (including the sump sensors) were in alarm.

300. The aforementioned (¶ 299, above) sensors in alarm might have involved the release of regulated substances from the 2A/2B UST system.

301. Respondent Andrew B. Chase (or some party acting on behalf of Respondent Andrew B. Chase) was required, pursuant to 40 C.F.R. § 280.50(c), to “report to the [NYSDEC], and follow the procedures in [40 C.F.R.] § 280.52” the “[m]onitoring results from a release detection method required under [inter alia] [40 C.F.R.] § 280.41...that indicate that a release may have occurred....”

302. Respondent Andrew B. Chase (or some party acting on behalf of Respondent Andrew B. Chase) was required, pursuant to 40 C.F.R. § 280.52, to “immediately investigate...all suspected releases of regulated substances requiring reporting under [40 C.F.R.] §280.50....”

303. Respondent Andrew B. Chase (or some party acting on behalf of Respondent Andrew B. Chase) failed to report to the NYSDEC within 24 hours of August 24, 2010 the aforementioned (¶ 299, above) sensors having been in alarm.

304. Respondent Andrew B. Chase (or some party acting on behalf of Respondent Andrew B. Chase) failed to immediately (*i.e.* until August 26, 2010) investigate whether the aforementioned (¶ 299, above) sensors in alarm involved a release of regulated substances from the 2A/2B UST system.

305. Each of the aforementioned (¶s 303 and 304, above, above) failures of Respondent Andrew B. Chase constitutes a failure by each of the owner and operator of said USTs to comply with, and thus a violation of, 40 C.F.R. § 280.50, which incorporates 40 C.F.R. § 280.52.

306. For each of the aforementioned (¶ 305, above) failures to comply, Respondent Andrew B. Chase is subject to injunctive relief and a civil penalty pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e.

## **PROPOSED CIVIL PENALTY**

Section 9006(d)(2)(A) of the Act, 42 U.S.C. § 6991e (d)(2)(A), authorizes the assessment of a civil penalty against any person of up to \$10,000 for each UST for each day of violation of any requirement or standard promulgated by the Administrator of EPA. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, set forth in 61 *Fed. Reg.* 69360 (1996); on February 13, 2004, 69 *Fed. Reg.* 7121 (2004); and on December 11, 2008, 73 *Fed. Reg.* 239 (2008), codified at 40 C.F.R. Part 19.

Under Table I of the Civil Monetary Penalty Inflation Adjustment Rule, the maximum civil penalty under Section 9006(d)(2) of the Act, 42 U.S.C. § 6991e(d)(2), for each UST for each day of violation occurring between January 30, 1997 and January 12, 2009 is \$11,000. The maximum civil penalty for a violation(s) occurring after January 12, 2009 was increased to \$16,000.

The penalties are proposed pursuant to the “U.S. EPA Penalty Guidance for Violations of UST Requirements,” dated November 1990 (“UST penalty guidance”; a copy of which is available upon request or at this Internet address: <http://www.epa.gov/swerust1/directiv/od961012.htm>). The penalty amounts in this UST penalty guidance were amended by a September 21, 2004 document entitled, “Modifications to EPA Penalty Policies to implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004),” and a December 29, 2008 document entitled, “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009).” A more specific guidance entitled “Revision to Adjusted Penalty Policy Matrices Issued on November 16, 2009” was issued on April 6, 2010. (These documents are available upon request.) The penalty guidance for UST violations provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors to particular cases.

Based upon the facts alleged in this Complaint and taking into account factors such as the seriousness of the violations and any good faith efforts by the Respondents to comply with the applicable requirements, Complainant proposes, subject to receipt and evaluation of further relevant information, to assess the following civil penalties, as follows:

<b>Service Station/Count</b>	<b>UST(s) at issue</b>	<b>40 CFR Part 280 requirement violated</b>	<b>Violation summary – failure to:</b>	<b>Proposed penalty for count</b>
I/1	006A & 006B	280.41(b)(1)(ii)	Provide annual tightness tests/monthly monitoring	\$18,694
I/2	006A & 006B	280.44(a)	Annually test automatic line leak detector	\$24,546
I/3	008	280.21(d)	Provide overfill protection – existing tank	\$4,116
I/4	008	280.70(a)	Continue release detection-temp. closed tank	\$7,181
I/5	008	280.70(a)	Conduct triennial testing cathodic protection – temp. closed tank	\$2,539
I/6	008	280.70(b)	Cap & secure temp. closed tank	\$3,054
I/7	008	280.70(c)	Permanently close tank	\$4,296
II/8	001A, 001B & 002	280.44(a)	Annually test automatic line leak detector	\$40,480
III/9	001 & 002	280.31(b)	Conduct triennial testing cathodic protection	\$7,560
III/10	001 & 002	280.44(a)	Annually test automatic line leak detector	\$23,764
III/11	001 & 002	280.45	Maintain records release detection	\$340.13
IV/12	001A	280.20(c)(1)(ii)	Provide overfill prevention	\$5,144
IV/13	001A, 003A & 003B	280.44(a)	Annually test automatic line leak detector	\$55,316

IV/14	001A, 001B, 003A & 003B	280.45	Maintain records release detection	\$462
V/15	001A, 001B & 002A	280.44(a)	Annually test automatic line leak detector	\$24,066
V/16	001A, 001B, 002A & 002B	280.45	Maintain records release detection	\$247.50
VI/17	2A	280.20(c)(1)(ii)	Provide overfill prevention	\$3,692
VI/18	1, 3A & 3B	280.44(a)	Annually test automatic line leak detector	\$22,191
VI/19	1, 3A & 3B	280.44(c)	Provide adequate monthly monitoring for lines	\$19,095
VI/20	1	280.45	Maintain records release detection	\$7,175
VI/21	2A & 2B	280.50	Report to NYSDEC & investigate	\$2,120
<b>Total Penalty</b>	XXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	<b>\$232,838.63</b>

As set forth above in the respective numbered allegations, liability shall be as follows:

- a) For each of **counts 1 through 7, counts 9 through 11 and counts 17 through 21**, Respondent Andrew B. Chase is solely liable for the violations alleged in said counts.
- b) For **count 8**, Respondent Andrew B. Chase and Respondent Chase Convenience Stores, Inc., are jointly and severally liable for the violations alleged in said count.
- c) For **counts 12 through 14**, Respondent Andrew B. Chase and Respondent Chase Services, Inc., are jointly and severally liable for the violations alleged in said counts.
- d) For **counts 15 and 16**, Respondent Andrew B. Chase and Respondent Chase Commercial Land Development, Inc., are jointly and severally liable for the violations alleged in said counts.



## COMPLIANCE ORDER

Pursuant to the authority granted EPA in Section 9006 of the Act, 42 U.S.C. § 6991e, Complainant issues the following Compliance Order against Respondent Andrew B. Chase. This Compliance Order shall become final (*i.e.* take effect) thirty (30) days after service of this Compliance Order (henceforth, the “effective date”) unless, by said date, Respondent Andrew B. Chase has requested a hearing as provided for in 40 C.F.R. § 22.15. Pursuant to this Compliance Order, Respondent Andrew B. Chase shall:

1) Within thirty (30) days of the effective date of this Compliance Order, comply with, to the extent he has not already done so, the release detection requirements of 40 C.F.R. § 280.41(b)(1)(ii) for the underground piping that conveys regulated substances under pressure for UST tank numbers 006A and 006B at Service Station I, or, in the alternative, if Respondent Andrew B. Chase is unable or unwilling to attain said compliance within such period, cease operation and permanently close said USTs in accordance with the closure and associated requirements set forth in 40 C.F.R. Part 280, Subpart G (40 C.F.R. §§ 280.70 through 280.74).

2) Within thirty (30) days of the effective date of this Compliance Order, comply with, to the extent he has not already done so, the installation, operation and/or maintenance of overflow prevention equipment in accordance with the requirements of 40 C.F.R. § 280.20(c) for UST tank number 2A at Service Station VI, or, in the alternative, if Respondent Andrew B. Chase is unable or unwilling to attain said compliance within such period, cease operation and permanently close said UST in accordance with the closure and associated requirements set forth in 40 C.F.R. Part 280, Subpart G (40 C.F.R. §§ 280.70 through 280.74).

3) Within thirty (30) days of the effective date of this Compliance Order, comply with, to the extent he has not already done so, the annual automatic line leak detector testing requirements of 40 C.F.R. § 280.44(a) for the underground piping that conveys regulated substances under pressure for UST tank number 1, 3A and 3B at Service Station VI, or, in the alternative, if Respondent Andrew B. Chase is unable or unwilling to attain said compliance within such period, cease operation and permanently close said USTs in accordance with the closure and associated requirements set forth in 40 C.F.R. Part 280, Subpart G (40 C.F.R. §§ 280.70 through 280.74).

4) Maintain compliance with all other applicable requirements of 40 C.F.R. Part 280 for each UST system at each of Service Station I and Service Station VI.

5) Within forty-five (45) days of the effective date of this Compliance Order, submit to EPA written notice of compliance (accompanied by a copy of appropriate supporting documentation) or non-compliance with the provisions of this Compliance Order. If Respondent Andrew B. Chase is in non-compliance with a particular requirement(s), such notice shall state the reason(s) for non-compliance and shall provide a schedule for achieving expeditious compliance with such requirement(s). Such notice shall contain the following certification:

I certify that the information contained in this written notice and the accompanying supporting documentation is true, accurate and complete to the best of my knowledge and belief. As to the identified portions of this response for which I am unable personally to verify their truthfulness, accuracy and/or completeness, I certify that this response and all accompanying supporting documentation were prepared in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. I am aware that there are significant penalties for submitting false, misleading and/or incomplete information, and such penalties might include criminal fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The notice required pursuant to this Compliance Order (including any accompanying supporting documentation) should be sent to:

**Paul Sacker, Acting Team Leader  
RCRA Compliance Branch-UST Team  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866**

Compliance with the provisions of this Compliance Order is neither intended nor shall be construed to release Respondent Andrew B. Chase from liability for any past violations of 40 C.F.R. Part 280 that occurred at either Service Station I or Service Station VI. In addition, nothing herein waives, prejudices or otherwise affects EPA's right (or the right of the United States on behalf of EPA) to enforce any applicable provision of 40 C.F.R. Part 280 with regard to any UST system at either Service Station I or Service Station VI, and to seek and obtain any appropriate penalty or other remedy permitted under law in connection with Respondent Andrew B. Chase's ownership and operation of any UST at any service station.

If a court of competent jurisdiction were to stay, enjoin enforcement or invalidate a given provision of this Compliance Order, and such ruling were to remain in effect, the other provisions of this Compliance Order shall remain in full force and effect, and for said remaining provisions EPA (or the United States on behalf of EPA) retains its rights to seek and obtain any

relief or remedy provided for in, or pursuant to, Section 9006(a)(3) of the Act, 42 U.S.C. § 6991e(a)(3), or any other provision of applicable law.

### **NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

Pursuant to the terms of Section 9006(a)(3) of the Act, 42 U.S.C. § 6991e(a)(3), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), and the regulations EPA has codified pursuant thereto set forth at 40 C.F.R. Part 19 [as alleged in paragraph 7 of the complaint], a violator failing to timely comply with a provision of the Compliance Order set forth above, where said order has taken effect, shall be liable for a civil penalty of up to \$37,500 for each day of continued noncompliance.

### **PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation were promulgated in 64 *Fed. Reg.* 40138 (July 23, 1999), entitled, “CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS,” and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this “Complaint, Compliance Order and Notice of Opportunity for Hearing.”

#### **A. Answering The Complaint**

Where Respondents<sup>2</sup> intend to contest any material fact upon which the Complaint is based, to contest that the proposed penalty and/or the Compliance Order, to contend that the proposed penalty and/or Compliance Order is inappropriate, or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer(s) to the Complaint, and such Answer(s) must be filed within 30 days after service of the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c).<sup>3</sup> The address of the Regional Hearing Clerk of EPA, Region 2, is:

---

<sup>2</sup> For simplicity, the term “Respondents” in the plural will be used throughout this section. The context in which such term is used will determine whether it refers to an individual respondent or to multiple respondents. Thus, for example, while the term “Respondents” has been used with regard to contesting the Compliance Order, in such context it refers exclusively to Respondent Andrew B. Chase.

<sup>3</sup> However they deem it appropriate, Respondents may serve answers individually or otherwise. Nothing herein is intended to limit how any individual respondent answers the Complaint, nor to imply whether an individual response or otherwise is appropriate.

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

Respondents shall also then serve one copy of the Answer(s) to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondents' Answer(s) to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in the Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondents request a hearing. 40 C.F.R. § 22.15(b).

Respondents' failure affirmatively to raise in the Answer(s) facts that constitute or that might constitute the grounds of their defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

**B. Opportunity To Request A Hearing**

If requested by Respondents, a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent Andrew B. Chase requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

**C. Failure To Answer**

If Respondents fail in the Answer(s) to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondents fail to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer(s) to the Complaint, Respondents may be found in

default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondents, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

#### **D. Exhaustion of Administrative Remedies**

Where Respondents fail to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondents waive their right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondents must do so "[w]ithin thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

#### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondents request a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in the Complaint, and Respondents may also provide whatever additional information that they believes relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise. At such a conference, Respondents may, if they so choose, be represented by counsel.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any

relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this complaint should be directed to:

Lee A. Spielmann  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, Room 1654  
New York, New York 10007-1866  
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal hearing does not prevent them from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer(s) to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondents waive their right to contest the allegations in the Complaint and waive any right to obtain judicial review of the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

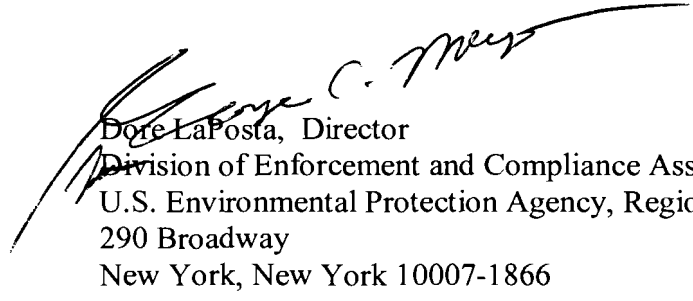
Respondents' entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the complaint. Respondents' entering into a settlement does not extinguish, waive, satisfy or otherwise affect their obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

If, instead of filing an Answer(s), Respondents wish not to contest the Compliance Order in the Complaint and wish to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondents should promptly contact the Assistant Regional Counsel identified on the previous page.

Dated:

**COMPLAINANT:**



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866

- To:** Andrew B. Chase  
1 Klein Strasse  
P.O. Box 315  
Lyon Mountain, New York 12952
- Andrew B. Chase, Chief Executive Officer  
Chase Services, Inc.  
1 Klein Strasse  
P.O. Box 315  
Lyon Mountain, New York 12952
- Andrew B. Chase, Chief Executive Officer  
Chase Convenience Stores, Inc.  
1 Klein Strasse  
P.O. Box 315  
Lyon Mountain, New York 12952
- Andrew B. Chase, Chief Executive Officer  
Chase Commercial Land Development, Inc.  
1785 Military Turnpike  
Plattsburgh, New York 12901

**cc:** Russ Brauksieck, Chief  
Facility Compliance Section  
New York State Department of Environmental Conservation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, New York 12233-7012



**CERTIFICATE OF SERVICE**

This is to certify that on the 7 day of April, 2011, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," bearing Docket Number RCRA-02-2011-7503 (henceforth referred to as the "Complaint"), and with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the following addressees listed below. I hand carried the original and a copy of the Complaint to the office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Andrew B. Chase  
1 Klein Strasse  
P.O. Box 315  
Lyon Mountain, New York 12952

Andrew B. Chase, Chief Executive Officer  
Chase Services, Inc.  
1 Klein Strasse  
P.O. Box 315  
Lyon Mountain, New York 12952

Andrew B. Chase, Chief Executive Officer  
Chase Convenience Stores, Inc.  
1 Klein Strasse  
P.O. Box 315  
Lyon Mountain, New York 12952

Andrew B. Chase, Chief Executive Officer  
Chase Commercial Land Development, Inc.  
1785 Military Turnpike  
Plattsburgh, New York 12901

Dated: April 7, 2011  
New York, New York

Mildred N. Bag