

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of: Andrew B. Chase, a/k/a
Andy Chase, Chase Services, Inc., Chase
Convenience Stores, Inc., and Chase
Commercial Land Development, Inc.,

RCRA (9006) Appeal No. 13-04

Docket Number RCRA-02-2011-7503

MOTION TO MODIFY ORDER OF JULY 16, 2013

Complainant, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (the "Region"), requests the Environmental Appeals Board ("Board") issue an order to modify the "ORDER GRANTING MOTION FOR EXTENSION OF TIME," dated, and filed with the Clerk of the Board on, July 16, 2013 ("July 16th order"). The Region seeks to have the July 16th order modified to extend the time during which the Region might file an appeal (or cross-appeal), pursuant to 40 C.F.R. § 22.30(a), in the above-referenced matter. For the reasons set forth below, Complainant submits good cause exists for granting the relief the Region seeks.

By motion dated July 10, 2013, Respondents requested that they be granted a 30-day extension of time in order to file their Notice of Appeal and Brief. The July 16th order granted the requested extension. In so ruling, the Board extended the time as follows:

Because the Initial Decision was served on June 20, 2013, under relevant Agency regulations, Respondents' notice of appeal and brief would be due on July 25, 2013, and the Region's response would be due within twenty days after service of that appeal, which would be on or about August 14, 2013. In light of the extensions the Board is granting the parties, Respondents' notice of appeal and

brief are now due on Monday, August 26, 2013, and the Region's response brief is now due on Tuesday, October 15, 2013.

After noting that Respondents' counsel had contacted Regional counsel (the undersigned), the July 16th ruling stated the Board had been informed that the Region conditioned its consent on receiving an equal extension of time in which to *respond* to any appeal filed by Respondents.¹ What was conveyed to the Board, however, was not wholly accurate.² The Region consented to Respondents informing the Board as follows: the Region would not object to or oppose the extension Respondents would be seeking as long as their application for such relief indicated it also included a similar extension for the time in which the Region might file any cross-appeal. The relevant e-mail communication from the Region to Respondents, dated July 9, 2013, stated, "I do not oppose or object to your moving to obtain such relief (and I have no problem to consenting to same), provided your application to secure such extension indicates it also extends to any cross-appeal that might be filed under 40 CFR 22.30(a)."

Therefore this application is made for the Board to extend the time during which the Region might file an appeal under 40 C.F.R. § 22.30(a) (whether denominated an appeal or cross-appeal), and to direct that any appeal the Region might file be due on the same date as Respondents' appeal is due, August 26, 2013. If the requested relief is granted, the Region deems it appropriate and equitable that Respondents be afforded the same opportunity to respond

¹ Paragraph 5 of Respondents' motion stated, in part: "Mr. Spielmann responded via e-mail on July 9, 2013, and graciously agreed to consent to such an extension of time, provided he receives an[] equal extension of time *in which to respond*, to which Respondents have no objection" (emphasis added).

² Most likely this was because of the imperative to serve as quickly as possible the motion to extend the time to file an appeal, given that the 30-day appeal clock set forth in 40 C.F.R. § 22.30(a) was running and would have expired, relative to the date Respondents' served their motion, in approximately 10 business days.

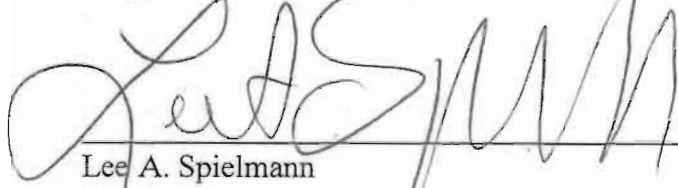
to such Regional appeal, *i.e.* any responding papers from Respondent should then be made due on October 15, 2013.

Granting the Region the relief it seeks should not prejudice Respondents, as the Region would be given only that which has already been given to Respondents. The same factors that prompted Respondents' application — the decision is long, the issues are complex (involving six separate service stations with a total of approximately 20 underground storage tanks), and much internal discussion will need to occur just to decide whether to appeal (and if so, what portion(s) of the lower court ruling) — are germane to this motion. Under such circumstances and given the extensions granted in the July 16th order, the Region submits there exists the requisite good cause for the relief it now seeks.

Therefore, the Region respectfully moves this Board, pursuant to 40 C.F.R. §§ 22.7(b), 22.16(a) and 22.30(a), for an order: a) modifying the July 16th order so as to extend the time until August 26, 2013 in which the Region might submit any appeal pursuant to 40 C.F.R. § 30(a); b) allowing Respondents until October 15, 2013 to submit any response to an appeal the Region might file; and c) granting the Region such other and further as this Board deems just, lawful and proper.

Dated: July 18, 2013
New York, New York

Respectfully submitted



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In re Andrew B. Chase et al.
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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "MOTION TO MODIFY ORDER OF JULY 16, 2013," in the above-referenced proceeding in the following manner to the respective addressees listed below:

Original and One Copy
By UPS OVERNIGHT:

Clerk of the Environmental Appeals Board
U.S. Environmental Protection Agency
1201 Constitution Avenue, N.W.
U.S. EPA East Building, Room 3334
Washington, DC 20004

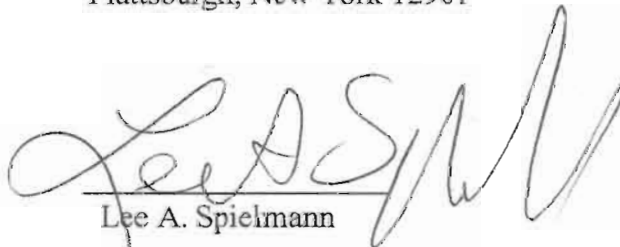
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Dated: July 18, 2013
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