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March 29, 2012

VIA FEDERAL EXPRESS

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 MAR 30 A 10:50
REGIONAL HEARING
CLERK

RE: Chase, et al, Respondents
Docket No. RCRA-02-2011-7503

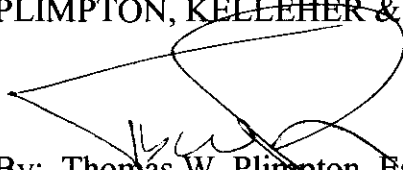
Dear Ms. Maples:

I enclose herewith the original and one copy of my Declaration in opposition to Complainants Motion for Partial Accelerated Decision regarding the above matter.

Thank you for your consideration in this regard.

Very truly yours,

STAFFORD, PILLER, MURNANE,
PLIMPTON, KELLEHER & TROMBLEY, PLLC


By: Thomas W. Plimpton, Esq.

TWP/taf

Enclosures

CC: Hon. M. Lisa Buschmann, Presiding Officer
Lee Spielmann, Esq.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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.,

**DECLARATION OF
THOMAS W. PLIMPTON, ESQ.**

Respondents.

Docket No. RCRA-02-2011-7503

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

**DECLARATION OF THOMAS W. PLIMPTON IN OPPOSITION TO
COMPLAINANTS MOTION FOR PARTIAL ACCELERATED DECISION**

THOMAS W. PLIMPTON, ESQ., for his declaration pursuant to 28 U.S.C. § 1746, hereby states:

1. I am an attorney duly licensed to practice law in the State of New York, and a member of the firm of Stafford, Piller, Murnane, Plimpton, Kelleher & Trombley, PLLC, and attorney for the Respondents in the above matter.
2. I make this Declaration in opposition to Complainant's Motion for Partial Accelerated Decision.
3. Of the six Service Stations at issue, five were sold prior to service of the Complaint, Compliance Order and Notice of Opportunity for Hearing. The only station not sold is Service Station I, with an address of 3851 Route 374 in Lyon Mountain, New York.

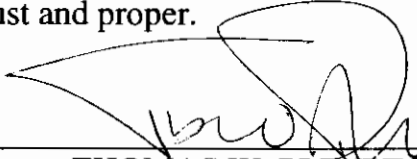
4. The Complaint incorrectly alleges that Service Station I in Lyon Mountain, New York is owned by Andrew Chase individually. That Service Station is actually owned by Belmont, Inc. a New York State Corporation.
5. Counts 1 and 2 of the Complaint, which relate to the Lyon Mountain facility, concern allegations that (1) there was a failure to provide annual tightness tests/monthly monitoring, and (2) annual test of line leak detector.
6. However, Adirondack Energy and Paragon Environmental Construction, Inc. performed leak detector testing at the Lyon Mountain facility in 2009, 2010 and 2011 and found those tanks tested to have passed. Copies of those leak detector testing forms have been previously provided and are attached hereto as Exhibit A.
7. As a result of the evidence attached hereto as Exhibit A, the EPA's Motion for a Partial Accelerated Decision for Counts 1 and 2 should be denied.
8. Service Station VI is located at 7155 Route 9, Plattsburgh, New York, and was previously owned by Respondent, Chase Services, Inc. That Station was sold prior to service of the Complaint, Compliance Order, and Notice of Opportunity for Hearing.
9. Count 18 and 19 relate to Service Station VI, and allege that there was a (18) failure to annually test the automatic line leak detector, and (19) provide adequate monthly monitoring for lines.
10. Contrary to those allegations, Paragon Environmental Construction, Inc. performed leak detector testing at the Service Station VI. A copy of the 2011

inspection (previously provided and attached hereto as Exhibit B) demonstrates that those tanks at that facility passed.

11. As a result of the evidence attached hereto as Exhibit B, the EPA's Motion for a Partial Accelerated Decision for Counts 18 and 19 should be denied.
12. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

WHEREFORE, Respondents respectfully request that the Complainant's Motion for Partial Accelerated Decision be dismissed as to Counts 1, 2, 18 and 19, and for such other and further relief as this Court may deem just and proper.

DATED: March 29, 2012.



THOMAS W. PLIMPTON, ESQ.

Exhibit A

To Declaration of
Thomas W. Plimpton, Esq.



17 Junction Road • P.O. Box 355
 Malone, New York 12953
 518-483-FUEL (3835)

Leak Detector FTA EVALUATION CHART

Site Location CHASO'S

Service Company ADIRONDACK ENERGY

Lyon MT.

Date 4/22/09

Technician Performing Test [Signature]

TYPES OF LEAK DETECTORS TESTED

- BFLD (117-182-5)
- FX1V (116-056-5)
- FX2V (116-057-5)
- FX1DV (116-058-5)
- FX2DV (116-059-5)

TEST INFORMATION

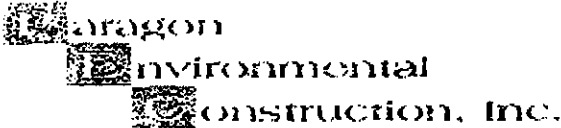
Product	Serial Number	Resiliency	Opening Time	Test Leak Rate ml/Min gph	Pressure Relief Holding psi/kPa	Metering psi/kPa	Pass/Fail Test Leak Rate ML/Min GPH	Pump psi/kPa Pressure
REG 1	9952		10 SEC	4.9 ML 3 GPH	15 PSI	22 PSI	PASS	26 PSI
Super 2	7425		15 SEC	4.8 ml 3 GPH	20 PSI	24 PSI	PASS	26 PSI
3								
4								
5								
6								
7								
8								

Owner/Operator

[Signature]
 (Signature)

4/22/09
 (Date)

ESTABROOK'S EZY CHECK LEAK DETECTOR TESTING



5664 Mud Mill Road ■ Brewerton, NY 13029
 Ph: 315-699-0840 ■ Fax: 315-699-0845

TECH NAME AND CERTIFICATE #

Carl F. Lingway NY 57687

Owner's Name <i>Andy Chou</i>	Site Name <i>Chasen Motel</i>
Address <i>1 Kline St Lyons Mountain</i>	Address <i>3857 Rt 374 Lyons Mountain, NY 13952</i>
Owner Contact <i>Same</i>	Site Contact <i>Andy Chou</i>
Owner Phone <i>578-755-4481</i>	Site Phone <i>578-755-4481</i>
PBS # <i>5-462969</i>	Test Date <i>9/2/10</i>

TYPE OF LEAK DETECTOR TESTED

PUMP #	MAKE	MODEL	SERIAL #
1	<i>Red Torch</i>	<i>FXIV</i>	<i>7425</i>
2	<i>Red Torch</i>	<i>FXIV</i>	<i>9952</i>
3			
4			
5			
6			
7			
8			

PUMP #	PRODUCT TYPE	METERING PRESSURE	FUNCTIONAL ELEMENT HOLDING PSI	RESILIENCY	TEST LEAK RATE ML/MIN	OPENING TIME	PASS FAIL
1	<i>Regul</i>	<i>32</i>	<i>14</i>	<i>191</i>	189 ML	<i>8 Sec</i>	<i>Pass</i>
2	<i>Super</i>	<i>31</i>	<i>12</i>	<i>182</i>	189 ML	<i>9 Sec</i>	<i>Pass</i>
3					189 ML		
4					189 ML		
5					189 ML		
6					189 ML		
7					189 ML		
8					189 ML		

Paragon Environmental Construction Co., Inc. reminds you that this is an annual test. Please contact our office for scheduling. Thank you!

ESTABROOK'S EZY CHECK LEAK DETECTOR TESTING

TECH NAME AND CERTIFICATE # Carl F. Longway N.Y. S 7687

Owner's Name	<u>Andrew Chase</u>	Site Name	<u>Chase Mobil</u>
Address	<u>1 K Lane Storm St. Lyons Mountain, NY 12952</u>	Address	<u>3851 Rt 374 Lyons Mountain, NY 12952</u>
Owner Contact	<u>Same</u>	Site Contact	<u>Owners</u>
Owner Phone	<u>518-735-4481</u>	Site Phone	<u>518-735-4481</u>
PBS #	<u>5-462965</u>	Test Date	<u>8/23/11</u>

TYPE OF LEAK DETECTOR TESTED

PUMP #	MAKE	MODEL	SERIAL #
1	<u>Rad Tech</u>	<u>FXIV</u>	<u>7425</u>
2	<u>Rad Tech</u>	<u>FXIV</u>	<u>9952</u>
3			
4			
5			
6			
7			
8			

PUMP #	PRODUCT TYPE	METERING PRESSURE	FUNCTIONAL ELEMENT HOLDING PSI	TEST LEAK RATE ML/MIN	OPENING TIME	PASS FAIL
1	<u>Reveal</u>	<u>28</u>	<u>12</u>	189 ML	<u>4 Sec</u>	<u>Pass</u>
2	<u>Sepr.</u>	<u>28</u>	<u>10</u>	189 ML	<u>5 Sec</u>	<u>Pass</u>
3				189 ML		
4				189 ML		
5				189 ML		
6				189 ML		
7				189 ML		
8				189 ML		

Paragon Environmental Construction, Inc. reminds you that this is an annual test. Please contact our office for scheduling. Thank you!

Exhibit B

To Declaration of
Thomas W. Plimpton, Esq.

ESTABROOK'S EZY CHECK LEAK DETECTOR TESTING

TECH NAME AND CERTIFICATE # Carl F. Longway N.Y. 57687

Owner's Name	<u>Andrew Chase</u>	Site Name	<u>Chan. Property Tr</u>
Address	<u>1- Klein St Lyon Mountain, NY 12952</u>	Address	<u>2155 Rt 9 Plattsburgh, NY 12901</u>
Owner Contact	<u>Same</u>	Site Contact	<u>Andrew Chase</u>
Owner Phone	<u>518-561-2797</u>	Site Phone	<u>518-561-2797</u>
PBS #	<u>5-60855</u>	Test Date	<u>8/23/11</u>

TYPE OF LEAK DETECTOR TESTED

PUMP #	MAKE	MODEL	SERIAL #
1	<u>Red Jack</u>	<u>FXIV</u>	<u>7565</u>
2	<u>Red Jack</u>	<u>FXIV</u>	<u>7589</u>
3	<u>Red Jack</u>	<u>FXIDU</u>	<u>3782</u>
4			
5			
6			
7			
8			

PUMP #	PRODUCT TYPE	METERING PRESSURE	FUNCTIONAL ELEMENT HOLDING PSI	TEST LEAK RATE ML/MIN	OPENING TIME	PASS FAIL
1	<u>Paper</u>	<u>38</u>	<u>20</u>	189 ML	<u>7 sec</u>	<u>Pass</u>
2	<u>Synthetic</u>	<u>38</u>	<u>20</u>	189 ML	<u>7 sec</u>	<u>Pass</u>
3	<u>Diesel Fuel</u>	<u>45</u>	<u>20</u>	189 ML	<u>3 sec</u>	<u>Pass</u>
4				189 ML		
5				189 ML		
6				189 ML		
7				189 ML		
8				189 ML		

Paragon Environmental Construction, Inc. reminds you that this is an annual test. Please contact our office for scheduling. Thank you!