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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.11
2012 SEP -4 P 12:07
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 Response Brief of Respondents regarding the above matter, as well as the Affidavit of Service Via Federal Express of the Response Brief of Respondents upon Lee Spielmann, Esq.

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.

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 11
2012 SEP -14 P 12:07
REGIONAL HEARING
CLERK

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.,

**AFFIDAVIT OF SERVICE
VIA FEDERAL EXPRESS**

Respondents.

Docket No. RCRA-02-2011-7503

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

STATE OF NEW YORK)
) ss:
COUNTY OF CLINTON)

Tracie A. Fountain, being duly sworn, deposes and says:

1. She is over 18 years of age, and is not a party to this action.
2. That on August 29, 2012, your deponent served a copy of the Response Brief of Respondents the above matter by Federal Express upon:

Lee Spielmann, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

the address designated by said attorney, by depositing same in a prepaid properly addressed wrapper, in an official depository under the exclusive care and custody of Federal Express.


TRACIE A. FOUNTAIN

Sworn to before me this
29th day of August, 2012.


Notary Public

HEATHER D. WEST
Notary Public, State of New York
Qualified in Clinton County
Reg# 02WE6133414
Commission Expires 9-19-2013

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 SEP -4 P 12:08
REGIONAL HEARING
CLERK

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

**RESPONSE BRIEF OF
RESPONDENTS**

Respondents.

Docket No. RCRA-02-2011-7503

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

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. Many of the alleged violations referred to in the Complaint concern issues that occur as early as 2006 and ending in 2009.

Despite their investigation, the EPA chose not to file this action until April 2011. By the time the EPA actually filed this Complaint, the various companies owning and operating the stations at issue, had run into financial hardship. Each of the stations, but for Lyon Mountain, has been sold, and Mr. Chase and the companies no longer have any interest in those stations. Due to the financial conditions of the stations at the time of the sale, any net proceeds received from the sale were relatively minimal, and none of the named corporations are in operation. None of the Respondent corporations have any financial ability to pay any

amount of fine. Andrew Chase, as an alleged operator, and as an individual does not have the capacity to pay the fines.

While it is recognized that the fine calculations are statutory, the amount of the fines do not appear to be in any way related to any actual harm due to any leak or contamination. It is undisputed that no such leak or contamination has occurred as a result of the violations. To impose the fines requested years after the fact and years after many of the stations have been sold, in fact, poses incredible financial hardship upon Andrew Chase, individually (The corporate Respondents are no longer in business).

Respondents respectfully request that this Court reconsider its decision to restrict the introduction of financial hardship information and allow such evidence to be submitted. It is ultimately to neither parties' benefit to restrict the consideration of such evidence. The Respondents' financial condition is an unalterable fact. A penalty that is so large that it is beyond the financial means of the Respondents to pay, will only force the Respondents into bankruptcy, and prevent the EPA from being paid. On the other hand, a penalty that recognizes the Respondents' financial condition better insures that the EPA will be paid.

On or about March 26, 2012, the EPA was forwarded copies of the 2008 and 2009 tax returns for Chase Commercial Properties, the 2008 and 2009 tax returns for Chase Convenience Stores, the 2008 and 2009 tax returns for Chase Services, the 2008 tax return for Belmont, Inc., the IRS payment notice for Andrew Chase, individually, for the 2009 tax year, and New York State Department of Taxation Notice of Adjustment for Andrew Chase, individually. On June 14, 2012, a copy of the Individual Ability to Pay Claim (Financial Data Request Form) was forwarded to the EPA.

The purpose of exchanging the financial information is to provide the EPA with the opportunity to analyze the information which demonstrates the Respondents' very limited financial means to pay any penalties assessed in this matter. It is the Respondents' hope to come to an agreement on the amount of penalties which would satisfy the EPA, commensurate with their very limited financial resources.

The U.S. EPA Penalty Guidance for Violations of UST Regulations OSWER Directive 9610.12 November 14, 1990, specifically allows for adjustments to be made to the proposed penalty, including up to 80% of the "gravity-based component." In this case, the gravity based component accounts for \$256,955.63 of the penalty. An 80% reduction of this should be implemented in this case. Any assessment of a requested penalty in this case will devastate Andy Chase and force him into bankruptcy.

DATED: August 29, 2012.



THOMAS W. PLIMPTON, ESQ.