

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.

Hon. M. Lisa Buschmann, Presiding Officer

Docket No. RCRA-02-2011-7503

MOTION TO REVISE DATE FOR EPA'S REPLY BRIEF

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency (EPA or Agency), Region 2, through counsel, respectfully requests this Court to revise the deadline set forth in the order dated July 25, 2012 so as to grant her additional time — from September 18, 2012, to September 24, 2012 — to file and serve a reply brief on the penalty issues remaining in contention in this proceeding. In the alternative, if this Court does not extend the date to September 24th, then EPA requests that it revise the date to September 21, 2012, as originally established in the order dated July 13, 2012. The circumstances outlined below attest that the requisite good cause for the relief herein sought exists.

The July 13th order of this Court, "ORDER GRANTING JOINT MOTION TO CANCEL HEARING AND FOR THE COURT TO ISSUE AN INITIAL DECISION BASED ON THE WRITTEN RECORD," provided, *inter alia*:

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 SEP -5 A 8:35
REGIONAL HEARING
CLERK

Complainant shall file and serve its Initial Brief (and any accompanying affidavits, declarations, documents and memoranda), on or before August 6, 2012.

Respondents shall file and serve their Response Brief (and any accompanying affidavits, declarations, documents and memoranda), on or before August 27, 2012.

Complainant shall file and serve its Reply Brief (and any accompanying affidavits, declarations, documents and memoranda), if any, on or before September 21, 2012 [emphases omitted].

By motion dated July 24, 2012, denominated, "MOTION FOR ADDITIONAL TIME TO FILE INITIAL BRIEF," Complainant moved for additional time to file her Initial Brief, from August 6, 2012 to August 9, 2012. The order of the Court, dated July 25, 2012, and titled "ORDER ON MOTION FOR ADDITIONAL TIME TO FILE INITIAL BRIEF," granted EPA's July 24th motion and enlarged the time period to file and serve the Initial Brief, extending the deadline for three days, *i.e.* through August 9th. The Court also, *sua sponte*, extended the time for Respondents to file and serve their Response Brief an additional three days, from August 27th to August 30th.

In addition, the July 25th order listed a revised the time for EPA to file and serve its Reply Brief. That revision, however, was not consistent with the extension granted for the other two deadlines. Rather, it truncated the time EPA has to file and serve such brief by three days, from September 21st to September 18th. No explanation or reason was given for this deadline having been shortened.

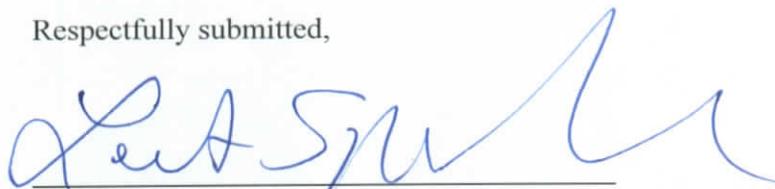
To the undersigned, the September 18th deadline for EPA's Reply Brief listed in the July 25th motion appears to be a printing error, a "typo." It is not consistent with the three-day extension given for the other two deadlines, and indeed is contrary to such extensions; a change

in the due date for the Reply Brief consistent with the deadlines changes for the other two dates would have resulted in the original September 21st deadline being extended to September 24th.

Therefore, Complainant respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(10), 22.7(b) and 22.16(a), for an order: **a)** vacating so much of the July 25, 2012 order requiring that Complainant file and serve her Reply Brief on or before September 18, 2012;¹ and **b)** extending the time for the filing and service of such brief through September 24, 2012.²

Dated: September 4, 2012
New York, New York

Respectfully submitted,



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TO: Honorable M. Lisa Buschmann
Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20460

¹ As September 18th coincides with a religious holiday, *a fortiori* that date should be vacated.

² If this Court is unable to extend the time to September 24th, then Complainant requests that it restore the original date when the Reply Brief is to be filed and served, *i.e.* September 21, 2012.

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
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In re Andrew B. Chase et al.
Docket No. RCRA-02-2011-7503

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "MOTION TO REVISE DATE FOR EPA'S REPLY BRIEF," dated September 4, 2012, in the above-referenced proceeding in the following manner to the respective addressees listed below:

Original and One Copy
By Inter-Office Mail:

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

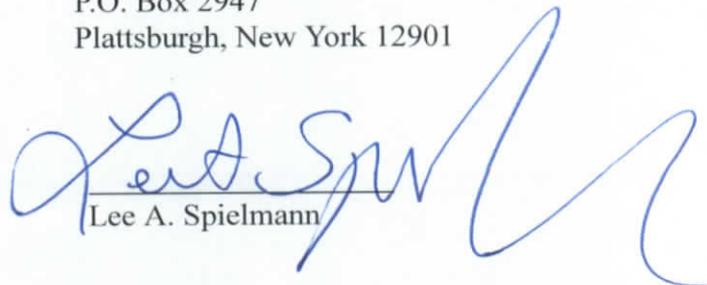
Copy by fax transmission,
202-565-0044, and by Pouch Mail:

Honorable M. Lisa Buschmann
Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900 L
Washington, DC 20460

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518-561-4848, and first class mail:

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Dated: September 4, 2012
New York, New York


Lee A. Spielmann