

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

REGIONAL HEARING
CLERK
2012 JUL 11 A 7 04

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

JOINT MOTION TO CANCEL HEARING AND FOR THE COURT TO ISSUE AN INITIAL
DECISION BASED ON THE WRITTEN RECORD

The parties hereto — Complainant, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA or Agency), and Respondents Andrew B. Chase (a/k/a Andy Chase), Chase Services, Inc., Chase Convenience Stores, Inc., and Chase Commercial Land Development, Inc. — through respective counsel, hereby jointly move this Court, pursuant to 40 C.F.R. §§ 22.4(c), 22.16 and 22.21(d), for an order cancelling the hearing in this matter previously scheduled to commence on July 17, 2012, in Plattsburgh, New York. Each of the parties requests that this Court issue an initial decision (as defined in 40 C.F.R. § 22.3) with regard to the issue of an appropriate penalty amount (if any) for each of the violations found in the decision and order of this Court, "ORDER ON COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION," dated June 21, 2012, based upon the parties written submissions as set forth below.

The parties so move on the express understanding that each of Complainant and Respondents, aware of her/their right to a hearing on the record pursuant to 42 U.S.C. § 6991e

and 40 C.F.R. § 22.21, knowingly and willingly relinquishes and waives such right to have a hearing held with regard to the issues remaining in contention in this proceeding. Further, this joint motion is made upon the parties' agreement and acceptance of the following conditions:

1. This Court establish a schedule for the submission of papers (including affidavits, declarations, documents and memoranda) as follows: a) Complainant to serve her initial papers with regard to her position on the outstanding penalty issues on or before AUGUST 6, 2012; b) Respondents to serve their papers with regard to their opposition and/or response to Complainant's prior (August 6th) submission on or before AUGUST 27, 2012; and Complainant to serve her reply, if any, to Respondents' prior (August 27th) opposition/response papers on or before SEPTEMBER 21, 2012;
2. Complainant will not be pursuing or seeking to obtain a judgment on liability or a penalty assessment for counts 17 and 20 of the "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING," served April 7, 2011, bearing the above-referenced docket number;
3. In the papers to be submitted, the parties need not annex or attach as exhibits documents previously listed in and submitted as part of a party's prehearing exchange; any such document(s) previously identified and included within a party's prehearing exchange need only be referenced in any submission to be made pursuant hereto, and such document(s) shall be deemed incorporated by reference into the submission in which such reference is made;
4. Subject to the limitation set forth in paragraphs 5 and 6, below, opposition/response and reply papers submitted pursuant to the parties' agreement and the Court's acceptance and ratification thereof may consist of or include statements of fact and exhibits in support thereof (such as in a declaration made by one with requisite personal knowledge);
5. No declaration or affidavit shall be submitted by any person unless he/she has previously been identified and listed in a party's prehearing exchange or unless, upon motion for good cause, the Court has granted leave for such person to submit a declaration or affidavit; and
6. Notwithstanding any provision set forth in each of the previously five numbered paragraphs, provisions of the order of this Court, denominated "ORDER ON COMPLAINANT'S MOTION TO PRECLUDE DOCUMENTATION AND DRAW ADVERSE INFERENCE," dated June 28, 2012, whereby "all financial information and evidence that may be presented in support of any claim [by

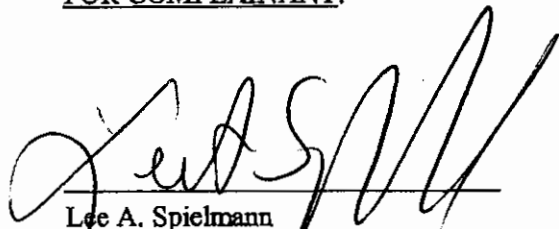
Respondents] of financial hardship or inability to pay" have been precluded from the hearing, shall remain fully operative and shall apply with full force and effect to all submissions Respondents shall make pursuant hereto;

7. To the extent an issue exists or arises not covered by any of the six numbered paragraphs above, such issue shall be governed by the provisions of 40 C.F.R. Part 22 and the case law thereunder.

For all the reasons set forth above, the parties respectfully request this Court issue an order that a) cancels the hearing previously scheduled to begin July 17, 2012; b) incorporates into said order the terms and conditions and provisions to which the parties have agreed, as set forth in number paragraphs 1 through 7, above, and c) grants such other and further ancillary relief that this Court deems just and proper to effect the intentions of the parties as set forth above.

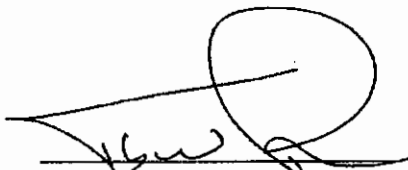
AGREED TO AND ACCEPTED BY THE PARTIES, THROUGH COUNSEL:

FOR COMPLAINANT:



Lee A. Spielmann
Counsel for Complainant
United States Environmental Protection
Agency, Region 2
New York, New York

FOR RESPONDENTS:



Thomas W. Plimpton
Counsel for Respondents
Stafford, Piller, Murname, Plimpton,
Kelleher & Trombley, PLLC
Plattsburgh, New York

Dated: July 10, 2012

Dated: July , 2012



FW: Scanned image from MX-M503N
Tom Plimpton to: Lee Spielmann

07/10/2012 02:26 PM

From: "Tom Plimpton" <tplimpton@soctlaw.com>
To: Lee Spielmann/R2/USEPA/US@EPA



1 attachment



administrator@soctlaw.com_20120710_132655.pdf

Lee,
Attached should be the Stipulation which I signed.

Tom

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 "JOINT MOTION TO CANCEL HEARING AND FOR THE COURT TO ISSUE AN INITIAL DECISION BASED ON THE WRITTEN RECORD," dated July 10, 2012, together with the e-mail communication from Respondents' counsel (Thomas W. Plimpton) indicating his assent thereto, 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

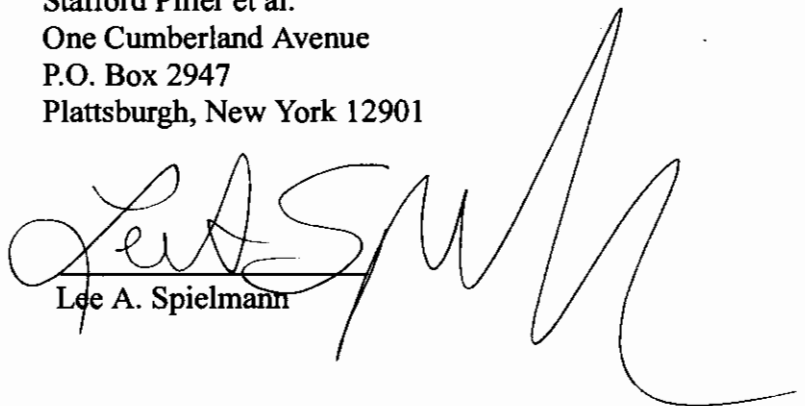
Copy by fax transmission,
202-565-0044, and by Pouch Mail:

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

Copy by fax transmission,
518-561-4848, and first class mail:

Thomas W. Plimpton, Esq.
Stafford Piller et al.
One Cumberland Avenue
P.O. Box 2947
Plattsburgh, New York 12901

Dated: July 10, 2012
New York, New York


Lee A. Spielmann