

**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. Susan L. Biro, Presiding Officer

Docket No. RCRA-02-2011-7503

REGIONAL HEARING
CLERK

2011 DEC 22 A 9 21

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

MOTION TO EXTEND DEADLINE FOR FILING DISPOSITIVE MOTIONS

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA), through her attorney, hereby requests this Court to grant the parties approximately a six-week extension of time for the filing of dispositive motions regarding liability. EPA submits that the circumstances discussed below satisfy the requisite good cause standard for granting the relief sought, and that under said circumstances Respondents would not be prejudiced.

Background

EPA commenced this administrative proceeding under authority of Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e. Seeking a civil penalty of approximately \$233,000 against various respondents, the complaint alleges 21 violations of the underground storage tank regulations (40 C.F.R. Part 280) have occurred in the course of Respondents' ownership and/or operation of six upstate New York retail gasoline stations. Of the six stations named therein, the complaint alleges four are no longer owned or operated by

on or about December 2, 2011, and EPA filed and served its rebuttal prehearing exchange on December 15, 2011.¹

Over the last few weeks, the parties have intermittently communicated. In an e-mail communication dated September 30th, Respondents' counsel affirmed his clients' desire to negotiate a settlement. By e-mail letter sent December 15th, the undersigned informed counsel that EPA still wishes to pursue settlement, and the communication renewed the request for the documentation Respondents stated during the August 11th settlement conference would be forthcoming. To date, other than the four documents provided in the October 5th communication (and also provided in their prehearing exchange), EPA has not received any of the documents Respondents referenced during the parties' settlement conference. Further, while Respondents asserted in their prehearing exchange, *inter alia*, that public records refute EPA's claim that Andrew B. Chase owned service station I and that the proposed penalty sought would result in Mr. Chase suffering financial hardship, no supporting documentation to attest to the accuracy or veracity of these claims was attached to Respondents' prehearing exchange.

The Instant Motion

The July 12th Order directed (at page 6):

If any party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, 40 C.F.R. § 22.20(a), it shall be filed within thirty days after the due date for Complainant's Rebuttal Prehearing Exchange [bolded emphasis deleted].

¹ The documents Respondents submitted in their prehearing exchange appear to be the same ones sent to EPA in the October 5th e-mail communication.

this case militate for the extension sought.

The instant proceeding involves 21 counts, alleging 21 separate Part 280 violations, that occurred at six service stations, with seven violations alleged to have occurred at one station, one violation at the second station, three violations alleged to have occurred at the third station, three additional violations alleged to have occurred at the fourth station, one violation at the fifth station and five violations alleged to have occurred at the sixth station. Furthermore, the time period covered by the allegations of the complaint spans several years; almost all of the violations alleged do not represent one-time, one-day violations. EPA developed this case through inspections carried out by two inspectors, one of whom is not directly employed by EPA; because these inspections were carried out by two separate people, any motion for a judgment on liability would necessarily have to include two separate declarations. An additional and complicating factor is that of the two inspectors, the non-EPA employee (he conducted inspections under contract) will likely be unavailable until mid-winter.

To date this Court has not established a schedule for any hearing, and given that the prehearing exchange process has been consummated, the extension sought should not interfere with or delay the prehearing exchange mechanism or other pre-trial matter. Respondents have not pointed to anything that might indicate they would suffer prejudice if the sought-for extension were granted, and, given that there have been no substantive litigation developments, it does not appear any such prejudice would ensue. In light of this concatenation of circumstances, the undersigned submits that sufficient good cause exists that would warrant the granting of the relief EPA herein seeks.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.4(c)(2),

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 EXTEND DEADLINE FOR FILING DISPOSITIVE MOTIONS," dated December 21, 2011, 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 Pouch Mail:

Honorable Susan L. Biro
Chief 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 Certified Mail,
Return Receipt Requested:

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

Dated: December 21, 2011
New York, New York



Lee A. Spielmann