

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

2012 JAN 30 P 3:05

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

EXPEDITED 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, moves this Court to vacate that part of the Court's order of December 22, 2011 that established a February 3, 2012 deadline for the filing of dispositive motions, and to issue a new order extending such deadline for one week, through February 10, 2012.

The history and operative facts underlying this proceeding have been amply document in recent motions and orders: Complainant's December 21, 2011 motion, the December 22nd order, Complainant's motion of December 23, 2011, and the order of January 5, 2012. That history and the underlying facts will not be repeated, and this Court is respectfully referred to said motion and its recently issued order.

Complainant's motion of December 21, 2011 requested this Court to extend the time for filing dispositive motions from the date set in the order of July 12, 2011; this July order directed that such motions be filed 30 days following the due date for EPA's rebuttal prehearing

exchange, which would have been January 17, 2012. EPA moved on December 21, 2011 for an extension of time to extend the deadline for such filing to March 1, 2012, or, in the alternative, to February 16, 2012. In response to EPA's motion of December 21st, this Court issued its order of December 22, 2011, which is denominated, "NOTICE OF HEARING AND SCHEDULING ORDER AND ORDER ON MOTION TO EXTEND FILING DEADLINE FOR DISPOSITIVE MOTIONS." The December 22nd order provided that "the parties shall file any dispositive motions on or before Friday, February 3, 2012 [bolded emphasis deleted]."

The reasons underlying EPA's attempt to secure the extension, besides the-then upcoming end-of-year holidays, were explained in the Agency's December 21st motion, and they are reproduced below (page 5 of the December 21st motion):

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.

The instant matter is not just a complex case but an extensive one, with an extensive documentary record (EPA's initial prehearing exchange listed 57 items as possible documentary evidence), and EPA is in the process of obtaining additional documentation. Moreover, when EPA moved for the extension of the January 17th deadline, no hearing date had been held; the

next day (December 22, 2011) the Court issued its order that established, *inter alia*, that the hearing commence April 17, 2012. The date eventually established for a hearing (following additional motions) to commence is now June 12, 2012. That date, over four months from now, was set in the Court's order of January 5, 2012.

The undersigned has earlier today (around noon) called the office of Respondents' counsel (518-561-4400) and spoke with his secretary/administrative assistant (a woman who has identified herself as Tracie); she was apprised of the circumstances and the reason for the call. In addition, the undersigned sent counsel (Thomas Plimpton) an e-mail requesting, as did the message left with Tracie, to know whether he would authorize the undersigned to "convey to the Court that you [counsel] do not object to this extra week of time EPA is seeking." That e-mail, the entirety of which is reproduced below in the margin, was sent at 12:14 PM.¹

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Tom,

I just called your office and spoke to Traci, and I conveyed to her that I wish to ask Judge Biro for an extension of time so that the parties have until February 10th (rather than February 3rd, the present deadline) to file dispositive motions. She said you were out for lunch, so I told her I would call around 1:40 PM.

As you know, in her December 22nd order, Judge Biro has set a deadline for this coming Friday, February 3rd, as the last date for the parties to file dispositive motions. As I mentioned in my December 15th e-mail (sent 9:37 PM), EPA was then considering filing a motion for summary judgment (accelerated decision under Part 22 terminology) on the issue of liability. As I mentioned to Traci, EPA is now in fact now preparing such a motion.

I want to ask Judge Biro to give the parties this additional week (until February 10, 2012) to file such motions. Please let me know whether I might convey to the Court that you do not object to this extra week of time EPA is seeking. I will call your office at 1:40, but if you are available earlier please give me a call at 212-637-3222 (I gave Traci my number) or send me an e-mail. In any case, because time is of the essence and I would need to file such a motion quickly, I do ask that you kindly let me know your position on this question ASAP.

The undersigned called Mr. Plimpton's office at 1:40 PM and was told that he was not in, and the person answering the call (she would not give her name) said she did not know when he would return to the office. As she further informed me that Tracie was not in, a message was left with her voice-mail. Because time is critical (given the upcoming deadline in less than five days), the undersigned will be submitting this motion without Mr. Plimpton's response whether he would agree to, or object to (or be neutral), the extension of time EPA is now seeking.

This extra week is being sought so that the motion may adequately and comprehensively address the many issues and questions necessarily involved in a motion for partial accelerated decision in a case consisting of 21 counts, involving six service stations, eight separate inspections, two declarations from EPA witnesses, a multitude of EPA-related documents, a number of documents generated by the New York State Department of Environmental Conservation (and perhaps a number of documents filed by Respondents with the New York Department of Environmental Conservation), and overall a case that had been commenced with a complaint containing over 300 separately numbered allegations. Moreover, if the motion is successful, even if only in part (and, obviously, Complainant recognizes there is never a guarantee of any such foreordained result when a motion for summary judgment is made), that would necessarily lessen what the parties would have to litigate at the hearing, and thus expedite the hearing. Respondents should not be prejudiced, as only one week extra is sought, especially since their counsel has been on notice since mid-December of the possibility of EPA moving for

Thank you.

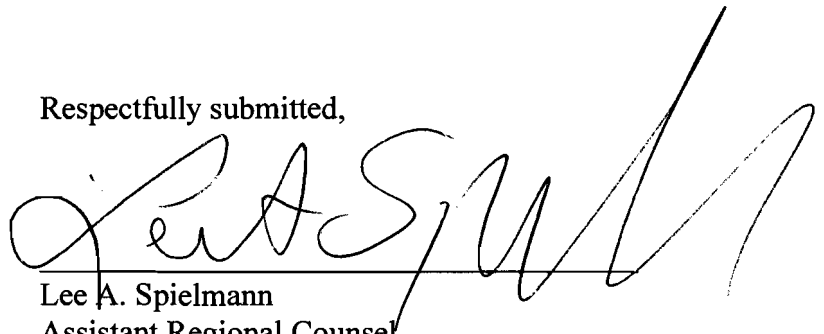
Lee

a judgment on liability.² See the second full paragraph of the reproduced e-mail in note 1. The undersigned believes one additional week for the submission of papers to the Court (as opposed to seeking additional time that would result in delaying the commencement of a previously scheduled hearing) should, at most, only minimally affect adversely this Court's calendar and docket.

Therefore, EPA respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.1(c), 22.4(c)(10), 22.7(b), 22.16(a) and 22.20(a), for an order: a) vacating so much of the December 22nd order that required the parties to file any dispositive motions by February 3, 2012, and b) re-scheduling the date for such filing to February 10, 2012.³

Dated: January 30, 2012
New York, New York

Respectfully submitted,



Lee A. Spielmann
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212-637-3222
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² Further, in their response to EPA's motion to re-schedule the hearing a commencement date other than April 17, 2012 (because of scheduling conflicts with previous commitments), Respondents' counsel wrote (January 4, 2012 response, paragraph 5, page 2) that he requests "that the new hearing date be rescheduled for the week of June 4, 2012 through June 8, 2012, or the week of June 11, 2012 through June 15, 2012."

³ Nothing in this motion is intended to affect the other deadlines established in the December 22nd order or the hearing schedule established in the January 5th order.

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

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

Thomas W. Plimpton, Esq.
Stafford, Piller *et al.* (Counsel for Respondents)
One Cumberland Avenue
P.O. Box 2947
Plattsburgh, New York 12901

In re Andrew B. Chase et al.

EXTEND DEADLINE FOR FILING DISPOSITIVE MOTIONS," dated January 30, 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 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: January 30, 2012
New York, New York


Lee A. Spielmann