



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 MAR 23 P 1:19
REGIONAL HEARING
CLERK

POUCH MAIL

March 22, 2012

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

Re: *In re Andrew B. Chase et al.*
Docket Number RCRA-02-2011-7503

Dear Judge Buschmann:

Pursuant to the December 22, 2011 order of this Court, "NOTICE OF HEARING AND SCHEDULING ORDER AND ORDER ON MOTION TO EXTEND FILING DEADLINE FOR DISPOSITIVE MOTIONS," the undersigned hereby submits joint stipulations of fact, exhibits and testimony for the scheduled hearing in the above-referenced matter. Counsel for Respondents, Thomas Plimpton, has indicated his assent to such stipulations through an e-mail communication to the undersigned (copy enclosed; also enclosed is the transmittal e-mail from EPA, with the PDF attachment thereto, containing the proposed stipulations). If the Court wishes and so directs that an original signature of Mr. Plimpton be obtained, the undersigned will endeavor to obtain an original signature and will then provide it to the Court.

Respectfully submitted,

Lee A. Spielmann
Assistant Regional Counsel
Office of Region Counsel

Enc. Joint Stipulations

E-mail from Thomas Plimpton to Lee Spielmann, March 22, 2012 @ 3:49 PM
E-mail from Lee Spielmann to Thomas Plimpton, March 16, 2012 @ 12:59 PM

cc: Thomas W. Plimpton, Esq. (w/enclosures; first class mail)
Karen Maples, EPA-Region 2 Regional Hearing Clerk (w/enclosures; inter-office mail)

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11.2. EKAMONNENTIA



RE: In re Chase: proposed joint stipulations
Tom Plimpton
to:
Lee Spielmann
03/22/2012 03:49 PM
Hide Details
From: "Tom Plimpton" <tplimpton@soctlaw.com>

To: Lee Spielmann/R2/USEPA/US@EPA

Lee,
The Proposed Joint Stipulation is acceptable.

From: Lee Spielmann [<mailto:Spielmann.Lee@epamail.epa.gov>]
Sent: Friday, March 16, 2012 1:00 PM
To: Tom Plimpton
Subject: In re Chase: proposed joint stipulations

Tom:

I. Proposed Joint Stipulations

Pursuant to the December 22nd order of the Court, the parties are to submit joint stipulations re facts, exhibits and testimony by next Friday, March 23rd. I have drafted a set of stipulations for your review. Please try to get back to me by Tuesday, March 20th. Note that EPA is still reviewing this draft, although in all likelihood this will be the version we would submit (assuming you are able to accept these stipulations as written).

Re FACTS: these stipulations consist of the admissions made in Respondents' answer, with the exception of paragraph 7 (indicating the address of the six service stations). A few of the paragraphs have been "corrected," as noted in footnote 5 on page 8 of EPA's February 10th memorandum of law; none of these changes affects the substance of the allegations or admissions made.

Re EXHIBITS: these simply indicate the documents EPA listed in its initial prehearing exchange, and those Respondents listed in their prehearing exchange. I have also noted that Respondents intend to rely on documents EPA has submitted. Also note that I have proposed we stipulate to the admissibility of the documents (and not just for purposes of identification); that should move the hearing along more quickly. Especially in light of Respondents' statement that they intend to rely on the documents EPA is submitting, I do not think there is a dispute re the admissibility of the documents.

Re TESTIMONY: I have incorporated by reference what the two prehearing exchanges say re potential witnesses.

Let me know whether you find this document acceptable as is --- in which case, please sign and then fax me the signature page (and send that page via the mail with the original signature), or, if you wish changes, please let me know by Tuesday so that we might discuss these on Wednesday (March 21st) or Thursday (March 22nd).

I thank you for your anticipated cooperation.

II. Motion to extend hearing date



I have previously written that EPA is thinking of asking the Court to move the hearing back one week, to commence June 19th, or perhaps two weeks, to June 26th. My expected co-counsel has a personal family obligation that would essentially make it impossible for him to meaningfully participate in a hearing (including its preparation) set for June 12th. I have not heard back from you or Tracie re your availability either week, so I will now make a motion to the Court. If you are available either week, I would appreciate if you could so inform the Court.

Lee



In re Chase: proposed joint stipulations
Lee Spielmann to: tplimpton

03/16/2012 12:59 PM

	Lee Spielmann	In re Chase: proposed joint stipulations
	Tom Plimpton	<i>Lee, The Proposed Joint Stipulation is acceptable.</i>

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Lee

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

JOINT STIPULATIONS

Pursuant to the December 22, 2011 order of this Court, "NOTICE OF HEARING AND SCHEDULING ORDER AND ORDER ON MOTION TO EXTEND FILING DEADLINE FOR DISPOSITIVE MOTIONS,"¹ the parties hereto, by their respective counsel, hereby agree and stipulate to, and accept, the following:

I. Stipulated Facts

The following facts have been established and are to be deemed admitted for all purposes pertaining to or otherwise in connection with the administrative hearing to be held in and for the above-referenced proceeding:

1. Respondents are: **a)** Andrew B. Chase; **b)** Chase Convenience Stores, Inc., **c)** Chase Services, Inc., and **d)** Chase Commercial Land Development, Inc.
2. Respondent Andrew B. Chase, a/k/a Andrew Chase and a/k/a Andy Chase, is a natural person and has been since at least January 1980 a resident of New York State.

¹ The last full paragraph of page 2 of the December 22nd order states:

On or before March 23, 2012, the parties shall file a Joint Set of Stipulated Facts, Exhibits and Testimony. The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters which cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after a hearing.

3. Respondent Chase Convenience Store, Inc., is, and has been, a for-profit corporation organized pursuant to, and existing since July 1997 under, the laws of the State of New York.

4. Respondent Chase Services, Inc., is, and has been, a for-profit corporation organized pursuant to, and existing since September 1995 under, the laws of the State of New York.

5. Respondent Chase Commercial Land Development, Inc., s/k/a Chase Commercial Land Development, is, and has been, a for-profit corporation organized pursuant to, and existing since September 2000 under, the laws of the State of New York.

6. Respondent Andrew B. Chase is the chairman or chief executive officer of each of respondents Chase Convenience Stores, Inc., Chase Services, Inc., and Chase Commercial Land Development, Inc.

7. The service stations in which the “underground storage tanks” (as defined by 42 U.S.C. § 6991(1) and 40 C.F.R. § 280.12; hereinafter “USTs”) at issue in this proceeding are located are:

a) a retail gasoline and convenience store business, known as Chase’s Mobil, the address of which is 3851 Route 374 in Lyon Mountain, New York (hereinafter referred to as “Service Station I”);

b) a retail gasoline and convenience store business, the address of which is 654 Bear Swamp Road, in Peru, New York (hereinafter referred to as “Service Station II”);

c) a retail gasoline and convenience store business, the address of which is 1785 Military Turnpike Road, Unit 10, in Plattsburgh, New York (hereinafter referred to as “Service Station III”);

d) a retail gasoline and convenience store business, the address of which is 4340 Route 3, P.O. Box 975, in Redford, New York (hereinafter referred to as “Service Station IV”);

e) a retail gasoline and convenience store business, the address of which is 936 Route 374, in Dannemora, New York (hereinafter referred to as “Service Station V”); and

f) a retail gasoline and convenience store business, the address of which is 7155 Route 9, in Plattsburgh, New York (hereinafter referred to as “Service Station VI”).

8. From 1998 through to the present (except as noted below), Service Station I has had

four USTs, as follows:

- a) Tank number 001, installed September 1, 1989, with a capacity of 3,000 gallons;
- b) Tank number 006A, installed May 1, 1998, with a capacity of 11,000 gallons;
- c) Tank number 006B, installed May 1, 1998, with a capacity of 4,000 gallons;
- d) Tank number 008, installed October 1, 1988, with a capacity of 550 gallons, which was temporarily out of service from April 2008 and removed from service in November 2009.

9. Respondent Chase Convenience Stores, Inc., was the owner of Service Station II from at least 1998 through July 24, 2009.

10. From 1998 through at least July 24, 2009, Service Station II has had three USTs, as follows:

- a) Tank number 001A, installed September 1, 1998, with a capacity of 11,000 gallons;
- b) Tank number 001B, installed September 1, 1998, with a capacity of 4,000 gallons; and
- c) Tank number 002, installed September 1, 1998, with a capacity of 12,000 gallons;

11. With regard to the aforementioned (§ 10, above) USTs at Service Station II, from at least 1998 through July 24, 2009, Respondent Chase Convenience Stores, Inc., was the owner of said USTs.

12. From 1995 through at least July 24, 2009, Service Station III has had two USTs, as follows:

- a) Tank number 001, installed on November 1, 1995, with a capacity of 12,000 gallons; and
- b) Tank number 002, installed on November 1, 1995, with a capacity of 5,000 gallons.

13. Respondent Chase Services, Inc., was the owner of Service Station IV from at least 1995 through July 24, 2009.

14. From at least 1995 through at least July 24, 2009, Service Station IV has had four USTs, as follows:

- a) Tank number 001A, installed on April 1, 1992, with a capacity of 9,000 gallons;

- b) Tank number 001B, installed on April 1, 1992, with a capacity of 3,000 gallons;
- c) Tank number 003A, installed on June 1, 2003, with a capacity of 10,000 gallons; and
- d) Tank number 003B, installed on June 1, 2003, with a capacity of 5,000 gallons.

15. With regard to the aforementioned (§ 14, above) USTs at Service Station IV, from at least 1995 through July 24, 2009, Respondent Chase Services, Inc. was the owner of said USTs.

16. Respondent Chase Commercial Land Development, Inc., was the owner of Service Station V from at least 2001 through July 24, 2009.

17. From at least 2001 through at least July 24, 2009, Service Station V has had four USTs, as follows:

- a) Tank number 001A, installed on November 1, 2001, with a capacity of 10,000 gallons;
- b) Tank number 001B, installed on November 1, 2001, with a capacity of 5,000 gallons;
- c) Tank number 002A, installed on November 1, 2001, with a capacity of 6,000 gallons; and
- d) Tank number 002B, installed on November 1, 2001, with a capacity of 2,000 gallons.

18. With regard to the aforementioned (§ 17, above) USTs at Service Station V, from at least 2001 through July 24, 2009, Respondent Chase Commercial Land Development, Inc. was the owner of said USTs .

19. From 2007 through to the present, Service Station VI has had five USTs, as follows:

- a) Tank number 1, installed December 31, 2007, with a capacity of 12,000 gallons;
- b) Tank number 2A, installed December 31, 2007, with a capacity of 5,000 gallons;
- c) Tank number 2B, installed December 31, 2007, with a capacity of 3,000 gallons;
- d) Tank number 3A, installed December 31, 2007, with a capacity of 11,000 gallons; and
- e) Tank number 3B, installed December 31, 2007, with a capacity of 4,000 gallons.

20. Pursuant to 42 U.S.C. § 6991d, on August 26, 2008, a duly designated representative of EPA conducted an inspection of each of a) Service Station II, b) Service Station III, c) Service Station IV, d) Service Station V and e) Service Station VI.

21. Pursuant to 42 U.S.C. § 6991d, on August 24, 2010, a duly designated representative of EPA conducted an inspection of Service Station VI.

22. Pursuant to 42 U.S.C. § 6991d, on each of the following dates, duly designated representatives of EPA conducted an inspection of Service Station I: a) April 24, 2009, and b) August 24, 2010.

23. On or about each of the following dates, EPA issued an "information request letter" pursuant to Section 9005(a) of the Act, 42 U.S.C. § 6991d(a) [hereinafter, such letter referred to as a "Section 9005 IRL"], as follows:

a) On or about April 1, 2009, to Andrew B. Chase, seeking information on "All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities";

b) On or about October 5, 2009, to Andrew B. Chase, seeking information on "All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities"; and

c) On or about September 7, 2010, to Andrew B. Chase, seeking information on "All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities"; and

d) On or about November 29, 2010, to Andrew B. Chase, seeking information on "All UST Facilities Owned/Operated by Andrew B. Chase and/or Chase Services, Inc., and any affiliated entities."

24. At the time of the August 26, 2008 inspection (and for an additional period of time prior and subsequent thereto):

a) each of the aforementioned (¶ 10, above) three USTs at Service Station II was in use;

b) each of the aforementioned (¶ 12, above) two USTs at Service Station III was in use;

c) each of the aforementioned (¶ 14, above) four USTs at Service Station IV was in use;

d) each of the aforementioned (¶ 17, above) four USTs at Service Station V was in use; and

e) each of the aforementioned (¶ 19, above) five USTs at Service Station VI was

in use.

25. At the time of the August 24, 2010 inspection (and for an additional period of time prior and subsequent thereto) of Service Station VI, each of the aforementioned (¶ 19, above) five USTs at Facility VI was in use.

26. At the time of the April 24, 2009 inspection of Service Station I (and for an additional period of time prior and subsequent thereto), the following three aforementioned (¶ 8, above) USTs were in use: a) tank number 001, b) tank number 006A and c) tank number 006B.

27. At the time of the August 24, 2010 inspection of Service Station I (and for an additional period of time prior and subsequent thereto), the following three aforementioned (¶ 8, above) USTs were in use: a) tank number 001, b) tank number 006A and c) tank number 006B.

28. Each of the following USTs was installed on the listed dates:

a) at Service Station I: (1) tank number 001 on or about September 1, 1989; (2) tank number 006A and tank number 006B on or about May 1, 1998; (3) tank number 008 on or about October 1, 1988;

b) at Service Station II: tank number 001A, tank number 001B and tank number 002 on or about September 1, 1998;

c) at Service Station III: tank number 001 and tank number 002 on or about November 1, 1995;

d) at Service Station IV: (1) tank number 001A and tank number 001B on or about April 1, 1992; (2) tank number 003A and tank number 003B on or about June 1, 2003;

e) at Service Station V: tank number 001A, tank number 001B, tank number 002A and tank number 002B on or about November 1, 2001; and

f) at Service Station VI: tank number 1, tank number 2A, tank number 2B, tank number 3A and tank number 3B on or about December 31, 2007.

29. Each of the following constituted a "new tank system" within the meaning of 40 C.F.R. § 280.12:

a) at Service Station I, (1) tank number 001; and (2) tank number 006A and tank number 006B (¶ 8, above);

b) at Service Station II, (1) tank number 001A and tank number 001B; and (2) tank

number 002 (¶ 10, above);

c) at Service Station III, (1) tank number 001; and (2) tank number 002 (¶ 12, above);

d) at Service Station IV, (1) tank number 001A and tank number 001B; and (2) tank number 003A and tank number 003B (¶ 14, above);

e) at Service Station V, (1) tank number 001A and tank number 001B; and (2) tank number 002A and tank number 002B (¶ 17, above); and

f) at Service Station VI, (1) tank number 1; (2) tank number 2A and tank number 2B; and (3) tank number 3A and tank number 3B (¶ 19, above).

30. Between April 24, 2008 and December 10, 2010 (although not necessarily limited to such period), each of tank number 006A and tank number 006B (¶ 8, sub-¶s “b” and “c,” above) at Service Station I had underground piping that routinely contained and that was used to convey gasoline under pressure.

31. Gasoline is a “regulated substance” within the meaning of 42 U.S.C. § 6991(2) and 40 C.F.R. § 280.12.

32. Tank number 006A and tank number 006B at Service Station I constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

33. As of each of the following dates (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 006A and tank number 006B at Service Station I was equipped with an automatic line leak detector: a) April 24, 2009, and b) August 24, 2010.

34. For at least two years prior to and through April 30, 2008 (although not necessarily limited to such time period), tank number 008 at Service Station I (¶ 8, sub-¶ “d,” above) contained and was being used to store kerosene.

35. Tank number 008 at Service Station I was temporarily closed no later than April 30, 2008.

36. Tank number 008 at Service Station I was emptied and permanently closed (*i.e.* removed from service) on or about November 30, 2009.

37. The aforementioned (¶ 8, sub-¶ “d,” above) tank number 008 at Service Station I was an UST constructed of steel/carbon steel/iron that was used to store kerosene.

38. As of August 26, 2008 (and for an additional period of time prior and subsequent

thereto), each of tank number 001A and tank number 001B (§ 10, sub-§s “a” and “b,” above) at Service Station II had underground piping that routinely contained and that was used to convey gasoline under pressure.

39. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), tank number 002 (§ 10, sub-§ “c,” above) at Service Station II had underground piping that routinely contained and that was used to convey diesel fuel under pressure.

40. Since at least September 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), underground piping for each of tank number 001A, tank number 001B and tank number 002 at Service Station II was equipped with an automatic line leak detector.

41. For the aforementioned (§ 10, above) underground piping for each of tank 001A, tank number 001B and tank number 002 at Service Station II, Respondent Chase Convenience Stores, Inc. (as owner) had been required to conduct annual tests.

42. Each of the aforementioned (§ 12, sub-§s “a” and “b,” above) USTs (tank number 001 and tank number 002) at Service Station III was constructed of steel/carbon steel/iron and was used to store gasoline.

43. Each of tank number 001 and tank number 002 at Service Station III was a “steel UST system[] with corrosion protection...used to store [a] regulated substance[]” within the meaning of 40 C.F.R. § 280.31.

44. Since at least May 1, 2008 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), each of tank number 001 and tank number 002 at Service Station III was equipped with a cathodic protection system.

45. Since at least November 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), each of tank number 001 and tank number 002 (§ 12, sub-§s “a” and “b,” above) at Service Station III had underground piping that routinely contained and that was used to convey gasoline under pressure.

46. Each of tank number 001 and tank number 002, including the connected underground piping, at Service Station III constituted a petroleum UST system for purposes of 40 C.F.R. § 280.41.

47. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 001 and tank number 002 at Service Station III was equipped with an automatic line leak detector.

48. As of August 26, 2008 (and for an additional period of time prior and subsequent

thereto), tank number 001A at Service Station IV (§ 14, sub-§ "a," above) contained and was being used to store diesel fuel.

49. Since at least April 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), tank number 001A at Service Station IV (§ 14, sub-§ "a," above) had underground piping that routinely contained and that was used to convey diesel fuel under pressure.

50. Since at least June 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), tank number 003A and tank number 003B at Service Station IV (§ 14, sub-§s "c" and "d," above) had underground piping that routinely contained and that was used to convey gasoline under pressure.

51. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 001A, tank number 003A and tank number 003B at Service Station IV was equipped with an automatic line leak detector.

52. For the aforementioned (§s 49 and 50, above) underground piping for each of tank number 001A, tank number 003A and tank number 003B at Service Station IV, Respondent Chase Services, Inc. (as owner) was required to conduct an annual test of the operation of the automatic line leak detector.

53. Respondent Chase Services, Inc. (as owner) conducted release detection monitoring for the underground piping of each of tank number 001A, tank number 003A and tank number 003B at Service Station IV.

54. Since at least November 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), each of tank number 001A and tank number 001B at Service Station V (§ 17, sub-§s "a," and "b," above) had underground piping that routinely contained and that was used to convey gasoline under pressure.

55. Since at least November 1, 2006 (and for an additional period of time prior and subsequent thereto up to at least April 6, 2009), tank number 002A at Service Station V (§ 17, sub-§ "c," above) had underground piping that routinely contained and that was used to convey diesel fuel under pressure.

56. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 001A, tank number 001B and tank number 002A at Service Station V was equipped with an automatic line leak detector.

57. Respondent Chase Commercial Land Development, Inc. conducted release detection monitoring for the underground piping of each of tank no. 001A, tank no. 001B and tank no. 002A.

58. As of August 26, 2008 (and for an additional period of time prior and subsequent thereto through no later than August 24, 2010), tank number 2A at Service Station VI (¶ 19, sub-¶ “b,” above) contained and was being used to store biodiesel fuel.

59. As of August 26, 2008 (and for an additional period of time subsequent thereto through no later than August 24, 2010), the shut-off valve intended for overfill protection that was attached to tank number 2A at Service Station VI was damaged and non-functional.

60. As of each of the following dates (and for an additional period of time prior and subsequent thereto), tank number 1 at Service Station VI (¶ 19, sub-¶ “a,” above) had underground piping that routinely contained and that was used to convey diesel fuel under pressure: a) August 26, 2008, and b) August 24, 2010.

61. As of each of the following dates (and for an additional period of time prior and subsequent thereto), each of tank number 3A and tank number 3B at Service Station VI (¶ 19, sub-¶ s “d” and “e,” above) had underground piping that routinely contained and that was used to convey gasoline under pressure: a) August 26, 2008, and b) August 24, 2010.

62. As of each of the following dates (and for an additional period of time prior and subsequent thereto), underground piping for each of tank number 1, tank number 3A and tank number 3B at Service Station VI was equipped with an automatic line leak detector: a) August 26, 2008, and b) August 24, 2010.

63. As of each of the following dates (and for an additional period of time prior and subsequent thereto), tank number 1 (¶ 19, sub-¶ “a,” above) at Service Station VI had underground piping that routinely contained and that was used to convey diesel fuel under pressure: a) August 26, 2008 and b) August 24, 2010.

64. As of each of the following dates (and for an additional period of time prior and subsequent thereto), tank number 3A and tank number 3B (¶ 19, sub-¶ s “d” and “e,” above) at Service Station VI had underground piping that routinely contained and that was used to convey gasoline under pressure: a) August 26, 2008 and b) August 24, 2010.

65. As of August 24, 2010 (and for an additional period of time prior and subsequent thereto), tank number 2A (¶ 19, sub-¶ “b,” above) at Service Station VI contained “off-road” diesel fuel.

66. As of August 24, 2010 (and for an additional period of time prior and subsequent thereto), tank number 2B (¶ 19, sub-¶ “c,” above) at Service Station VI contained kerosene.

II. Stipulated Exhibits

The parties hereby agree and accept the numbering system used below to identify the exhibits listed below. The parties additionally agree and accept that each party waives any objection pursuant to 40 C.F.R. §§ 22.22 and 22.23 to the admissibility of such exhibits into the record of the hearing to be held in this proceeding, and each party further consents to the admission of the exhibits listed below into the record of such hearing:²

Complainant's Exhibit 1: "U.S. EPA Penalty Guidance for Violations of UST Regulations OSWER Directive 9610.12 November 14, 1990," available on the Internet at the following URL: <http://www.epa.gov/oust/directiv/od961012.htm>

Complainant's Exhibit 21: September 21, 2004 memorandum, "Modifications to EPA Penalty Policies to Implement the civil Monetary Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004," from Thomas V. Skinner, Acting [EPA] Assistant Administrator, to Regional Administrators

Complainant's Exhibit 3: December 29, 2008, "Amendment to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)," from Grant Y. Nakayama, Assistant Administrator, to Regional Administrators

Complainant's Exhibit 4: April 6, 2010, "Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009," from Rosemarie A. Kelley, Director of the Waste and Chemical Enforcement Division of EPA's Office of Civil Enforcement, to Regional Counsels, Regional Division Directors and Regional Enforcement Directors

Complainant's Exhibit 5: August 26, 2008 inspection report (and accompanying documentation) for Service Station II in Peru, New York

Complainant's Exhibit 6: August 26, 2008 inspection report (and accompanying documentation) for Service Station III in Plattsburgh, New York (on Military Turnpike Road)

Complainant's Exhibit 7: August 26, 2008 inspection report (and accompanying documentation) for Service Station IV in Redford, New York

Complainant's Exhibit 8: August 26, 2008 inspection report (and accompanying documentation) for Service Station V in Dannemora, New York.

² The parties' consenting to the admissibility of such documents is not intended and is not to be construed as either party waiving any objection regarding the appropriate weight to be given any such document(s).

Complainant's Exhibit 9: August 26, 2008 inspection report (and accompanying documentation) for Service Station VI in Plattsburgh, New York (on Route 9)

Complainant's Exhibit 10: April 24, 2009 inspection report (and accompanying documentation) for Service Station I in Lyon Mountain, New York

Complainant's Exhibit 11: August 24, 2010 inspection report (and accompanying documentation) for Service Station I in Lyon Mountain, New York

Complainant's Exhibit 12: August 24, 2010 inspection report (and accompanying documentation) for Service Station VI in Plattsburgh, New York (on Route 9)

Complainant's Exhibit 13: April 1, 2009 EPA Information Request Letter to Andrew B. Chase

Complainant's Exhibit 14: April 22, 2009 Paul Sacker "Note to File"

Complainant's Exhibit 15: October 5, 2009 EPA Information Request Letter to Andrew B. Chase

Complainant's Exhibit 16: January 7, 2010 e-mail, at 3:10 PM, from Paul Sacker to chasesmobil@gmail.com

Complainant's Exhibit 17: January 27, 2010 e-mail, at 12:33 PM, from Paul Sacker to chasesmobil@gmail.com

Complainant's Exhibit 18: January 27, 2010 e-mail, at 4:27 PM, from Paul Sacker to chasesmobil@gmail.com

Complainant's Exhibit 19: September 7, 2010 EPA Information Request Letter to Andrew B. Chase

Complainant's Exhibit 20: November 3, 2010 e-mail, at 3:04 PM, from Paul Sacker to Andrew Chase

Complainant's Exhibit 21: November 29, 2010 EPA Information Request Letter to Andrew B. Chase

Complainant's Exhibit 22: Andrew B. Chase response to EPA Information Request Letter, received June 16, 2009, including six separate New York State Department of Environmental Conservation "Petroleum Bulk Storage" certificates (hereinafter "PBS certificate"), as follows:

- a) PBS certificate, dated October 3, 2008 for Service Station I;
- b) PBS certificate, dated August 18, 2008 for Service Station II;
- c) PBS certificate, dated November 29, 2005 for Service Station III;
- d) PBS certificate, dated February 1, 2007 for Service Station IV;
- e) PBS certificate, dated September 29, 2006 for Service Station V; and
- f) PBS certificate, dated February 22, 2008 for Service Station VI.³

Complainant's Exhibit 23: Andrew B. Chase response to EPA Information Request Letter, dated December 8, 2009

Complainant's Exhibit 24: Andrew B. Chase response to EPA Information Request Letter, dated January 18, 2010

Complainant's Exhibit 25: January 27, 2010 Paul Sacker "Note to File"

Complainant's Exhibit 26: Fax from Andy Chase to Paul Sacker, February 4, 2010

Complainant's Exhibit 27: Chase Services, Inc., response to EPA Information Request Letter, November 2, 2010

Complainant's Exhibit 28: Fax from Andy Chase to Paul Sacker, December 15, 2010

Complainant's Exhibit 29: E-mail communications between EPA and the New York State Department of Environmental Conservation:

- a) January 7, 2010, at 1:46 PM
- b) January 7, 2010, at 3:58 PM
- c) January 28, 2010, at 11:30 AM
- d) March 5, 2010, at 11:45 AM
- e) August 25, 2010, at 12:36 PM
- f) January 26, 2011, at 2:48 PM
- g) January 26, 2011, at 3:08 PM

Complainant's Exhibit 30: June 22, 2010 e-mail from Jackson Schad to "gbc" [Gail B. Coad]

³ Other portions of this exhibit to be similarly identified by such sub-groupings.

Complainant's Exhibit 31: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for count 1

Complainant's Exhibit 32: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 2

Complainant's Exhibit 33: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 3

Complainant's Exhibit 34: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 4

Complainant's Exhibit 35: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 5

Complainant's Exhibit 36: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 6

Complainant's Exhibit 37: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 7

Complainant's Exhibit 38: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 8

Complainant's Exhibit 39: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 9

Complainant's Exhibit 40: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 10

Complainant's Exhibit 41: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 11

Complainant's Exhibit 42: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 12

Complainant's Exhibit 43: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 13

Complainant's Exhibit 44: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 14

Complainant's Exhibit 45: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 15

Complainant's Exhibit 46: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 16

Complainant's Exhibit 47: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 17

Complainant's Exhibit 48: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 18

Complainant's Exhibit 49: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 19

Complainant's Exhibit 50: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 20

Complainant's Exhibit 51: EPA Penalty Computation Worksheet, together with the economic benefit component (derived from EPA's Economic Benefit program, a/k/a "BEN analysis), for Count 21

Complainant's Exhibit 52: "Andrew Chase Servicves [sic], Inc. Summary of Violations//Violations Cited," as of March 31, 2011

Complainant's Exhibit 53: New York State Department of State, Division of Corporations, Entity Information for the following: Chase Services, Inc; Chase Commercial Land Development, Inc.; Chase Convenience Stores, Inc.; and Chase Properties, Inc.

Complainant's Exhibit 54: D&B Business Information Report for the following: Chase Services, Inc. (for Service Station III); Chase Services, Inc. (for Service Station IV); Chase Convenient Stores, Inc.; and Chase Commercial Land Dev[elopment]

Complainant's Exhibit 55: September 15, 2010 Memorandum from Gail Coad *et al.* to Paul Sacker and Rebecca Jamison of EPA, Region 2, re "Andrew Chase, Ability-to-Pay Analysis"

Complainant's Exhibit 56: August 13, 2002 Memorandum of Agreement between New York State Department of Environmental Conservation and EPA that sets forth each entity's respective role in the implementation of the UST program in New York State

Complainant's Exhibit 57: Resume of Gail Coad

Complainant's Exhibit 58: The Petroleum Bulk Storage application filed with the New York State Department of Environmental Conservation (hereinafter referred to as the "PBS application") for Service Station I⁴

Complainant's Exhibit 59: The Petroleum Bulk Storage application filed with the New York State Department of Environmental Conservation (hereinafter referred to as the "PBS application") for Service Station II

Complainant's Exhibit 60: The Petroleum Bulk Storage application filed with the New York State Department of Environmental Conservation (hereinafter referred to as the "PBS application") for Service Station III

Complainant's Exhibit 61: The Petroleum Bulk Storage application filed with the New York State Department of Environmental Conservation (hereinafter referred to as the "PBS application") for Service Station IV

Complainant's Exhibit 62: The Petroleum Bulk Storage application filed with the New York State Department of Environmental Conservation (hereinafter referred to as the "PBS

⁴ The PBS applications for each of the service stations are more fully described and discussed in Complainant's February 22, 2012 motion to supplement her prehearing exchange, and also in paragraphs 18 through 44 of the declaration of Paul Sacker, executed on February 10, 2012, which was submitted as part of Complainant's February 10, 2012 motion for accelerated decision on liability (paragraphs 18 through 44 discuss the PBS applications and their nexus to the corresponding PBS certificates).

application”) for Service Station V

Complainant’s Exhibit 63: The Petroleum Bulk Storage application filed with the New York State Department of Environmental Conservation (hereinafter referred to as the “PBS application”) for Service Station VI⁵

Respondents’ Exhibit 1: Paragon Environmental Construction, Inc., “ESTABROOK’S EZY CHECK LEAK DETECTOR TESTING,” dated August 23, 2011, for Chase Property Inc., 7155 Route 9, Plattsburgh, New York

Respondents’ Exhibit 2: Paragon Environmental Construction, Inc., “ESTABROOK’S EZY CHECK LEAK DETECTOR TESTING,” dated August 23, 2011, for Chase’s Mobil, 3851 Route 374, Lyon Mountain, New York

Respondents’ Exhibit 3: Paragon Environmental Construction, Inc., “ESTABROOK’S EZY CHECK LEAK DETECTOR TESTING,” dated September 7, 2010, for Chase’s Mobil, 3851 Route 374, Lyon Mountain, New York

Respondents’ Exhibit 4: Adirondack Energy, “Leak Detector: FTA EVALUATION CHART,” for Chase’s, Lyon Mt., dated April 22, 2009⁶

III. Stipulated Testimony

The parties hereby agree and accept that the anticipated testimony of their respective witnesses will cover the matters as set forth in their respective prehearing exchanges, as follows:

Complainant’s witness Paul Sacker: as set forth in paragraph 1 on pages 5 and 6 of Complainant’s initial prehearing exchange, dated November 10, 2011;

Complainant’s witness Jeffrey K. Blair: as set forth in paragraph 1 on page 6 of Complainant’s initial prehearing exchange, dated November 10, 2011;⁷

⁵ Complainant’s exhibits 58 through 63 are the subject of Complainant’s February 22, 2012 motion to supplement the prehearing exchange, and inclusion of these six exhibits within these stipulations, as well as within the record of the hearing, is contingent upon the Court granting the February 22nd motion.

⁶ Respondents’ Pre-Hearing Exchange, dated December 2, 2011, notes, “Respondent [sic] intends to rely upon any documentation submitted by Complainant.” If the Court admits into the record Complainant’s documentation, the above-numbered items of Complainant’s exhibits should then accordingly be numbered as “Joint Exhibit 1, Joint Exhibit 2,” etc.

⁷ Since the time of EPA’s initial prehearing exchange, Mr. Blair presently works for PARS Environmental Inc., with corporate offices in Robbinsville, New Jersey; his title is “EPA UST/UIC

Complainant's witness Dennis McChesney: as set forth in paragraph 3 on pages 6 and 7 of Complainant's initial prehearing exchange, dated November 10, 2011; and

Complainant's witness Gail Code: as set forth in paragraph 4 on page 7 of Complainant's initial prehearing exchange, dated November 10, 2011.

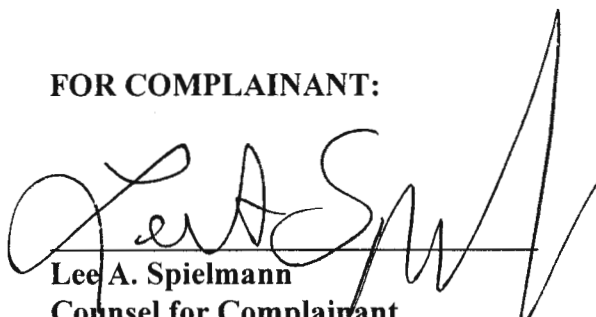
Respondents' witness Andrew Chase: as set forth in paragraph 1 on pages 1 and 2 of Respondents' Prehearing Exchange, dated December 2, 2011;

Respondents' witness Paragon Environmental Construction, Inc.: as set forth in paragraph 2 on page 2 of Respondents' Prehearing Exchange, dated December 2, 2011; and

Respondents' witness Adirondack Energy: as set forth in paragraph 3 on page 2 of Respondents' Prehearing Exchange, dated December 2, 2011.

The parties agree and accept that the paragraphs from their respective prehearing exchanges listing their witnesses, as listed above, are hereby incorporated by reference into these Joint Stipulations with the same force and effect as if set forth in full.

FOR COMPLAINANT:



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