

**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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2012 MAR 27 A 11: 12  
REGIONAL HEARING  
CLERK

STATUS REPORT/REQUEST FOR CONFERENCE OR EXTENSION OF HEARING DATE

Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2 (EPA or Agency), through her attorney, herewith provides the following status report to inform this Court of recent developments and, further, to moves for an extension of time for the commencement of the hearing, to be determined by a conference among the parties, or for an appropriate date to be set at the discretion of the Court.

**I. Background**

The history underlying this administrative proceeding has been extensively detailed to this Court on a number of occasions, most recently in status reports (March 16<sup>th</sup>, March 1<sup>st</sup> and February 14<sup>th</sup>). In February, Complainant moved for accelerated decision on liability (February 10<sup>th</sup> motion), and the papers accompanying said motion provided in ample detail the facts and circumstances of this matter. That motion seeks a judgment on liability for 20 of the 21 counts of the complaint (all counts except count 20). Notwithstanding these various recitations, for the convenience of this Court, a brief review of such facts and circumstances will be set forth below,

and the Court is respectfully referred to various papers (and their accompanying exhibits) that constituted EPA's motion for partial accelerated decision for details on this litigation. For the Court's convenience, a brief synopsis is provided below

This administrative proceeding is being prosecuted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6991e, with EPA seeking a civil penalty of approximately \$233,000 against various respondents for a number of violations of requirements of the 40 C.F.R. Part 280 regulations governing underground storage tanks. These violations are alleged to have arisen in the course of Respondents' ownership and/or operation of underground storage tanks located at six retail gasoline stations in New York State. The complaint alleges Respondent Andrew B. Chase (an individual) is liable for each of the 21 counts, either singly or in tandem with one of three named corporate respondents; the corporate respondents are not alleged to be liable for all violations. Various requirements for the operation, maintenance and closure of the underground storage tanks (also referred to as "USTs") are alleged in the complaint to have been violated, specifically regarding 19 underground storage tanks (these include violations pertaining to the piping connected to a number of the tanks) at the six service stations, as follows: three USTs at the service station identified as "Service Station I,"<sup>1</sup> three USTs at Service Station II, two USTs at Service Station III, three USTs at Service Station IV, three USTs at Service Station V and five USTs at Service Station VI.

The complaint was based upon information EPA collected through information request letters (IRLs) that were sent by EPA under authority of Section 9005(a) of the Act, 42 U.S.C. §

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<sup>1</sup> Paragraph 7 of the Paul Sacker declaration, executed February 10, 2012, pages 5 and 6, identify the location of each of the six service stations.

6991d(a), and 40 C.F.R. § 280.34, to Respondent Andrew B. Chase and the responses sent in reply, as well as upon EPA inspections of the six service stations.

The December 22, 2011 order of this Court, denominated “NOTICE OF HEARING AND SCHEDULING ORDER AND ORDER ON MOTION TO EXTEND FILING DEADLINE FOR DISPOSITIVE MOTIONS,” requires, *inter alia*, that the parties file a joint set of stipulated facts, exhibits and testimony on or before March 23, 2012. It further requires that “[a]ll non-dispositive motions...must be filed on or before” March 16, 2012.

The January 5, 2012 order of this Court, “ORDER RESCHEDULING HEARING,” directs that a hearing in the matter commence on June 12, 2012. On February 22, 2012, Complainant moved to supplement her prehearing exchange to add six additional documents, known as “PBS applications.” The March 22, 2012 order extended the time for filing non-dispositive motions through March 26, 2012.

## **II. Status Report**

In the opinion of the undersigned, developments since the filing of the last status report warrant informing this Court of subsequent developments.

The parties have agreed to a joint set of stipulations regarding facts, exhibits and testimony, and these stipulations were filed and served on March 22, 2012.

Respondent has recently submitted, for settlement purposes, some of the documentation EPA has requested. EPA then communicated with Respondents’ counsel (Thomas Plimpton), requesting additional information, and Mr. Plimpton has stated he expects these to be shortly forthcoming. Based on these exchanges, it appears that settlement negotiations have resumed in earnest, and it is the hope of the Agency that these can result in a negotiated settlement.

Contemporaneous with this status report/motion, Complainant is submitting a motion to compel production of financial documentation and for sanctions for failure to produce such documentation.

To date, no response has been received by the undersigned with regard to Respondents' position on EPA's February 22<sup>nd</sup> motion to supplement Complainant's prehearing exchange to include six documents referred to as the "PBS applications" (one for each of the six service stations).

### **III. Need to to extend starting date of hearing**

As most recently noted (March 16<sup>th</sup> status report), Complainant has been considering moving this Court to extend the date of the hearing from the presently scheduled June 12<sup>th</sup> start date. In an effort to ensure that any possible extension not conflict with the commitments of and/or schedule of Respondents' counsel, Mr. Plimpton, the undersigned sent a number of e-mail message to Mr. Plimpton informing him that EPA might seek to move the hearing date to a later time in June. Such e-mails were sent on March 16<sup>th</sup>, at 12:59 PM; March 7<sup>th</sup>, at 12:28 PM; February 28<sup>th</sup>, at 4:26 PM; and February 16<sup>th</sup>, at 3:54 PM. The undersigned informed Mr. Plimpton that a personal family commitment of expected EPA co-counsel would essentially make it impossible to participate in the preparation for, and thus the actual, June 12<sup>th</sup> hearing. To date no response to these inquiries has been received from Mr. Plimpton or otherwise from his office.

In the course of taking the necessary preparatory efforts for the hearing, the undersigned

learned that one of EPA's witnesses would not be available in the second half of June.<sup>2</sup> The earliest dates in which all EPA witnesses would be available would be the week of July 16<sup>th</sup> (July 16-July 20) or the following week (July 23-July 27).

EPA thus appeals to this Court for an extension of the hearing, from a start date of June 12<sup>th</sup> to a start date of either July 17<sup>th</sup> (a Tuesday; June 12<sup>th</sup> is a Tuesday) or July 24<sup>th</sup> (also a Tuesday). To expedite consideration of this matter, EPA requests this Court to convene a telephone conference between the parties, with the Court participating, to determine an appropriate hearing date. The undersigned believes such a conference would most quickly and readily dispose of this question in a manner satisfactory to all; at such a conference, each participant could inform the others as to which dates they would be available, which dates they would not be, and such a discussion would expedite reaching an agreement among all concerned as to the most propitious time for the holding of the hearing.<sup>3</sup> If this Court does not wish to call such a conference, Complainant respectfully requests this Court, for the reasons set forth above, to issue an order directing that the hearing start date be extended to begin on either July 17<sup>th</sup> or July 24<sup>th</sup>.

#### **IV. Relief sought**

Therefore, Complainant respectfully moves this Court, pursuant to 40 C.F.R. §§ 22.1(c),

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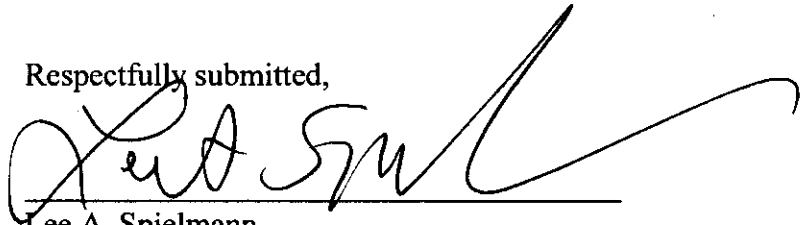
<sup>2</sup> The witness, Gail Coad, has noted that subsequent developments might allow her to be available during the last two weeks of June, but, based on the undersigned's most recent communication with her, it seems unlikely that such will be the case.

<sup>3</sup> Forty C.F.R. § 22.19(b) allows the "presiding officer, at any time before the hearing begins, [to] direct the parties and their counsel or other representatives to participate in a conference to consider," *inter alia*, "[s]ettlement of the case," "[t]he time and place for the hearing," and "[a]ny other matters which may expedite the disposition of the proceeding."

22.4(c) and 22.19(b) and 22.21(c), for an order: a) vacating so much of the January 5, 2012 order scheduling that the hearing commence on June 12, 2012; b) establishing a date certain for a conference call between the parties, with the Court participating, in order to schedule a hearing start date convenient to all involved; c) in lieu of "b," extending the time for the commencement of the hearing to either July 17, 2012 or July 24, 2012; and d) granting Complainant such other and further discretionary relief as this Court deems just and proper.

Dated: March 25, 2012  
New York, New York

Respectfully submitted,



Lee A. Spielmann  
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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

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U.S. Environmental Protection Agency, Region 2  
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Thomas W. Plimpton, Esq.  
Stafford, Piller *et al.* (Counsel for Respondents)  
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Plattsburgh, New York 12901

***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 "STATUS REPORT/ REQUEST FOR CONFERENCE OR EXTENSION OF HEARING DATE," dated March 25, 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 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.  
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**Dated: March 26, 2012**  
**New York, New York**

  
**Lee A. Spielmann**