



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)
Andrew B. Chase, a/k/a Andy Chase,)
Chase Services, Inc., Chase Convenience) Docket No. RCRA-02-2011-7503
Stores, Inc., and Chase Commercial)
Land Development, Inc.,)
Respondents.)

ORDER EXTENDING PREHEARING EXCHANGE DEADLINES

On July 12, 2011, a Prehearing Order was issued in this matter setting various prehearing filing deadlines. Upon motion and for good cause shown, the deadlines were extended by Order Granting Motion to Extend Deadlines Set Forth in Prehearing Order dated July 18, 2011.

On or about August 12, 2011, Complainant filed a Status Report/Motion to Extend Prehearing Exchange Deadlines ("Motion"), seeking a three-month extension of the dates by which the parties' prehearing exchanges must be filed, or, if the Tribunal is not able to grant such relief, a two-month extension of such deadlines. Motion at 1. Complainant states that the parties held a settlement conference on August 11, 2011, during or after which Complainant requested from Respondents "documentation concerning the potential financial impact of the proposed penalty on future business operations, concerning the question of the present ownership and operation of Service Stations I and VI and concerning Respondents' compliance with substantive UST requirements for such stations." Id. at 3. "[D]iscussion of proposed settlement offers and responsive counter-offers, it was felt, should await another day," until this documentation may be reviewed and Complainant can make a "reasonable and equitable" settlement offer, Complainant states in the Motion. Id. at 4. Complainant estimates that Respondent will produce the documentation within three to four weeks, and Complainant will need time after that to analyze the information. Id. at 4-5. Both parties "wish to discuss and explore settlement options without having to concern themselves with upcoming litigation deadlines," Complainant states, and both believe the case is "amenable" to settlement. Id. at 5. Respondents' counsel, Complainant reports, consents to the relief sought in the Motion. Id. at 1.

Section 22.7(b) of the Rules of Practice provides that the Presiding Officer may grant a motion requesting an extension of time for filing any document for good cause shown and after

consideration of prejudice to the other parties. 40 C.F.R. § 22.7(b).

By letter dated June 17, 2011, the parties were offered the opportunity to participate in Alternative Dispute Resolution (“ADR”), which is often utilized by those parties that find themselves in similar circumstances to that described by Complainant in its Motion. Office records show that no party indicated it would like to utilize ADR. Complainant now seeks to have “until December” to reach a settlement, which is three and one half months away. Motion at 5. This substantial amount of time is being sought, Complainant explains, because of concern that the proceeding stretches over holiday periods in November and December. *Id.* at 5, n.5. The time period generally reserved for parties in ADR is at least 60 days. An excerpt from the Office of Administrative Law Judges’ recently-revised ADR letter explains the process in brief:

As a general practice, our Office offers mediation as the method of ADR. The neutral Judge, as mediator, hears each party’s position and arguments, either in writing, orally or both, may ask the parties questions, may request the parties submit documents or other information, helps identify the factual and legal issues, enables each party to understand the other party’s position and arguments, keeps the focus on the facts and issues that may lead toward settlement, and helps the parties explore their options, including practical concerns, to assist in reaching a settlement. At the parties’ request, the neutral Judge may offer an opinion as to the strengths and/or weaknesses of a case and/or defenses, however the decision to do so, and whether to deliver the opinion in writing or orally, is entirely within the discretion of the neutral Judge. If the neutral Judge does offer an opinion, the parties may elect to discuss it with the neutral Judge separately or in conjunction with the other party or parties.

Given Complainant’s reasoning for requesting a lengthy extension of time to move forward in this proceeding, and because of the absence of any substantive settlement discussions between the parties, proceeding with the litigation may be inappropriate and commencing ADR may be productive. Therefore, the parties are once again offered the opportunity to jointly request a neutral ADR Judge from this Office to preside over settlement discussions, and will have ten days to file a joint motion to that effect if they agree to do so. 40 C.F.R. § 22.18(d)(3).

Pursuant to the undersigned’s authority in 40 C.F.R. § 22.19(b), it is **ORDERED** that the parties confer about whether they agree to participate in ADR, and if they do, they shall file a joint motion requesting ADR, on or before **August 26, 2011**.

If the parties do not agree to participate in ADR, the parties are encouraged to continue settlement discussions, however, the litigation must proceed in a timely manner.¹ A reasonable

¹ The parties are reminded that after the prehearing exchanges are filed, they may request additional discovery, and may also file motions to supplement their prehearing exchanges. 40 C.F.R. §§ 22.19(e), (f).

extension is warranted, for good cause shown by the parties communicating with each other and exchanging information in furtherance of resolution. Accordingly, in accordance with 40 C.F.R. § 22.7(b), the unopposed Motion is **GRANTED** to the extent that the prehearing deadlines are hereby extended four (4) weeks, as follows:

October 14, 2011	Complainant's Initial Prehearing Exchange
November 4, 2011	Respondent's Prehearing Exchange
November 18, 2011	Complainant's Rebuttal Prehearing Exchange

SO ORDERED.



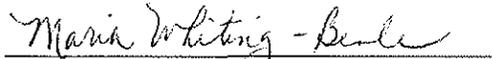
Susan L. Biro
Chief Administrative Law Judge

Dated: August 16, 2011
Washington, D.C.

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
Docket No. RCRA-02-2011-7503

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Extending Prehearing Exchange Deadlines**, dated August 16, 2011, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: August 16, 2011

Original And One Copy By Pouch Mail To:

Karen Maples
Regional Hearing Clerk
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy By Pouch Mail And Facsimile To:

Lee Spielmann, Esquire
Assistant Regional Counsel
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy By Regular Mail And Facsimile To:

Thomas W. Plimpton, Esquire
Stafford, Piller, Murname, Plimpton,
Killeher & Trombley, PLLC
One Cumberland Avenue
P.O. Box 2947
Plattsburg, NY 12901