

1 PATRICIA M. O'TOOLE, State Bar No. 107192  
2 THE O'TOOLE LAW FIRM  
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7 Attorney for Respondent  
8 U.S. POLE COMPANY, INC.  
9

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U.S. EPA REGION IX  
REGIONAL HEARING CLERK

7 **BEFORE THE**  
8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
9 **REGION IX**

10 In the Matter of:

Docket No. CAA-09-2007-0031

11 U.S. POLE COMPANY, INC.,

12  
13 Respondent  
14  
15 \_\_\_\_\_/

**NOTICE OF MOTION AND  
MOTION TO EXTEND TIME  
TO ANSWER COMPLAINT AND  
REQUEST OPPORTUNITY  
FOR HEARING; DECLARATION  
OF PATRICIA M. O'TOOLE**

16  
17 PLEASE TAKE NOTICE that Respondent U.S. Pole Company, Inc. will move the  
18 Regional Judicial Officer of the United States Environmental Protection Agency –  
19 Region IX to enter an Order further extending the time for Respondent (i) to answer the  
20 complaint filed by the United States Environmental Protection Agency – Region IX  
21 (“EPA-IX”) in this matter and (ii) to request a hearing, for an additional 30 days until  
22 February 6, 2008.

23 This Motion is brought pursuant to 40 CFR §22.7(b), governing motions  
24 concerning extensions of time, and is timely thereunder as the Complaint in this matter  
25 was served on October 9, 2007, and Respondent’s answer and request for hearing is due  
26 on January 7, 2008.

27 Good cause exists for granting the requested extension of time in this case  
28 because (1) EPA-IX and Respondent have been engaged in settlement discussions since  
the service of the Complaint; (2) on November 6, 2007, EPA-IX and Respondent reached

1 an agreement in principle on the terms of a settlement of all allegations set forth in the  
2 Complaint, including the monetary component of such settlement; (3) the parties have  
3 been working collaboratively and diligently on issues relating to assurance of  
4 Respondent's continued compliance with and/or exemption from the requirements of 40  
5 CFR 63.1500 *et seq.* in the future, including the testing of various compliance options,  
6 but need additional time to finalize the details of a plan for compliance assurance under  
7 the particular circumstances of Respondent's operations; (4) the parties also need  
8 additional time to document the settlement properly and to obtain all required  
9 approvals; and (5) requiring Respondent to prepare and file an answer and request for  
10 hearing by January 7, 2008 would, under these circumstances, impose an unnecessary  
11 burden on Respondent and require an unnecessary allocation of resources for both  
12 Respondent and EPA-IX to prepare for a hearing that is unlikely to occur.

13 Therefore, Respondent is moving for a further extension of 30 days, until  
14 February 6, 2008, to file an answer and request a hearing in this matter.

15 On December 26, 2007, counsel for EPA-IX, Mr. Daniel Reich, contacted  
16 Respondent's counsel to discuss this Motion, and Mr. Reich confirmed that EPA-IX  
17 concurs in Respondent's motion for an additional 30-day extension of time to answer the  
18 Complaint and request a hearing.

19 This Motion is based on this Notice, the attached Declaration of Patricia M.  
20 O'Toole, all pleadings and papers on file in this action, and on such further evidence and  
21 arguments as may be presented in any hearing on this Motion.

22 January 2, 2008

THE O'TOOLE LAW FIRM

24 BY:

25   
26 Patricia M. O'Toole  
27 Attorney for Respondent  
28 U.S. Pole Company, Inc.



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1. I am an attorney admitted to practice before all the Courts of the State of California, the United States District Court for the Central District of California, and the United States Court of Appeals for the Ninth Circuit, and I am the attorney representing the Respondent, U.S. Pole Company, Inc. ("Respondent"), in this matter. I am familiar with the following facts from my personal observations and experience and, if called as a witness, I would and could testify as follows:

3. EPA-IX and Respondent have been engaged in settlement discussions since the service of the Complaint.

5. The parties have been working collaboratively and diligently on issues relating to assurance of Respondent's continued compliance with and/or exemption from the requirements of 40 CFR 63.1500 *et seq.* in the future, including the testing of various compliance options to ensure that only "clean charge" (as defined in 40 CFR 63.1500 *et seq.*) is used in Respondent's operations. However, the parties need additional time to finalize the details of a plan for compliance assurance under the particular circumstances of Respondent's operations.

7. Completion of the plan for compliance assurance and proper documentation of the settlement, including any administrative order, will require approximately 30 additional days.

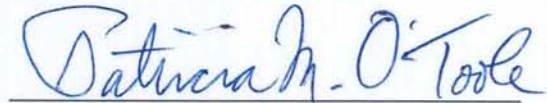
8. Requiring Respondent to prepare and file an answer and request for hearing by

1 January 7, 2008 would, under these circumstances, impose an unnecessary burden on  
2 Respondent and require an unnecessary allocation of resources for both Respondent and  
3 EPA-IX to prepare for a hearing that is unlikely to occur.

4 9. On December 26, 2007, counsel for EPA-IX, Mr. Daniel Reich, contacted  
5 Respondent's counsel to discuss this Motion, and Mr. Reich confirmed that EPA-IX  
6 concurs in Respondent's motion for an additional 30-day extension of time to answer the  
7 Complaint and request a hearing.

8 I declare under penalty of perjury under the laws of the State of California that  
9 the foregoing is true and correct.

10 Executed this 2<sup>nd</sup> day of January 2008 at Los Angeles, California.

11   
12 Patricia M. O'Toole

**PROOF OF SERVICE**

**United States Environmental Protection Agency  
Region IX**

**IN RE U.S. POLE COMPANY, INC.  
Docket No. CAA-09-2007-0031**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is The O'Toole Law Firm, P. O. Box 352348, Los Angeles, California 90035-0260.

On November 6, 2007, I served the foregoing documents described as **Notice of Motion and Motion to Extend Time to Answer Complaint and Request Opportunity for Hearing; Declaration of Patricia M. O'Toole** on the following parties and interested persons at the following addresses:

**Daniel Reich, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region IX  
75 Hawthorne Street, ORC-2  
San Francisco, CA 94105**

BY OVERNIGHT COURIER: I placed a true copy thereof enclosed in a sealed envelope and deposited such envelope with Federal Express at Los Angeles, California, with delivery charges thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 2, 2008 at Los Angeles, California.

Patricia M. O'Toole

SIGNATURE: \_\_\_\_\_

