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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
HEARING CLERK  
EPA -- REGION 10

In the matter of:

)  
) DOCKET NO. CWA 10-2010-0132  
)  
)  
)  
)

DAVID D'AMATO,

)  
) **COMPLAINANT'S MOTION TO EXTEND**  
) **TIMES FOR FILING OF RESPONDENT'S**  
) **PREHEARING EXCHANGE AND**  
) **COMPLAINANT'S REBUTTAL**  
) **PREHEARING EXCHANGE**  
)

Anchorage, Alaska,

Respondent  

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Pursuant to the Presiding Officer's Prehearing Order dated September 10, 2010, and Sections 22.5, 22.7, and 22.16 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Rules of Practice"), the United States Environmental Protection Agency, Region 10 ("Complainant" or "EPA") hereby moves to extend the times for filing of Respondent's Prehearing Exchange and Complainant's Rebuttal Prehearing Exchange for good cause as described below.

Complainant filed its Initial Prehearing Exchange on November 5, 2010, with the Regional Hearing Clerk. Copies were served on the Presiding Officer by pouch mail<sup>1</sup> and on Respondent, who is representing himself in this matter, at his home, by U.S. certified mail, return receipt requested. See Certificate of Service attached to Complainant's Initial Prehearing

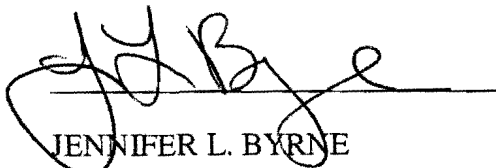
<sup>1</sup> It appears that the Presiding Officer's copy arrived without incident.

Exchange and Notice of Appearance and Notice of Substitution, attached as Exhibit A.

According to the "Track & Confirm" information provided by the U.S. Postal Service's web site, attached as Exhibit B, the Respondent's package was received at the Respondent's local post office on November 11, 2010, and a notice was left with Respondent on November 12, 2010. Respondent states that the notice was never received. In any event, the package was not received by Respondent until Complainant tracked the package, unclaimed, at the post office and notified Respondent on December 8, 2010. Respondent confirms that he claimed the package at the post office on December 8, 2010.

Pursuant to the Presiding Officer's Prehearing Order and Section 22.7 of the Rules of Practice, Respondent's Prehearing Exchange was due on December 8, 2010, including the five days allowed to be added when service is by first-class mail. Since Respondent did not receive Complainant's Prehearing Exchange until December 8, 2010, Complainant proposes that Respondent's Prehearing Exchange be due on January 7, 2010, and that Complainant's Rebuttal Prehearing Exchange be due 14 days after Respondent's Prehearing Exchange is filed with the Regional Hearing Clerk, thus generally preserving the intervals originally provided in the Presiding Officer's Prehearing Order. Complainant has consulted with Respondent concerning the revised times, and Respondent concurs with the proposed new schedule.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of November, 2010.



JENNIFER L. BYRNE  
Assistant Regional Counsel  
Region 10

## **Exhibit A**

**Certificate of Service  
5 November 2010  
appended to  
“Notice of Appearance and  
Notice of Substitution” and to  
“Complainant’s Initial  
Prehearing Exchange”**

**CERTIFICATE OF SERVICE**

*In the matter of David D'Amato, Docket No. CWA-10-2010-0132, I hereby certify that a copy of Complainant's Initial Prehearing Exchange", with copies of all exhibits, and a copy of "Notice of Appearance and Notice of Substitution" was filed and sent to the following persons in the manner specified, on the date below:*

Original and one copy, hand-delivered:

Carol Kennedy, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, WA 98101

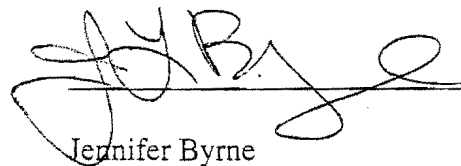
A true and correct copy, by certified mail, return receipt requested:

David D'Amato  
17211 Kings Way Drive  
Anchorage, AK 99516

A true and correct copy, by pouch mail:

Judge Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

Dated: 5 November 2010



Jennifer Byrne  
U.S. Environmental Protection Agency

COMPLAINANT'S INITIAL  
PREHEARING EXCHANGE

DOCKET NO. CWA 10-2010-0132

U.S. ENVIRONMENTAL PROTECTION AGENCY  
1200 SIXTH AVENUE, SUITE 900  
SEATTLE, WASHINGTON 98101  
(206) 553-8183

## **Exhibit B**

**“Track & Confirm Results”  
Retrieved from USPS.com  
on 8 December 2010**



## Track & Confirm

### Search Results

Label/Receipt Number: **7010 1060 0002 0288 4984**  
Service(s): **Certified Mail™**  
Status: **Notice Left**

We attempted to deliver your item at 4:17 pm on November 12, 2010 in ANCHORAGE, AK 99516 and a notice was left. Information, if available, is updated periodically throughout the day. Please check again later.

#### Detailed Results:

- **Notice Left, November 12, 2010, 4:17 pm, ANCHORAGE, AK 99516**
- **Arrival at Unit, November 11, 2010, 12:35 pm, ANCHORAGE, AK 99515**

### Notification Options

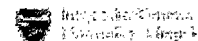
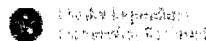
#### Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)

### Track & Confirm

Enter Label/Receipt Number.

[Go >](#)



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of "Complainant's Motion to Extend Times for Filing of Respondent's Prehearing Exchange and Complainant's Rebuttal Prehearing Exchange," with copies of all exhibits was filed and sent to the following persons in the manner specified, on the date below:

Original and one copy, hand-delivered:

Carol Kennedy, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, WA 98101


A true and correct copy, by certified mail, return receipt requested:

David D'Amato  
17211 Kings Way Drive  
Anchorage, AK 99516

A true and correct copy, by pouch mail:

Judge Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

Dated this 9 day of Dec 2010.

  
\_\_\_\_\_  
Signature  
Print Name: JJ Eason  
\_\_\_\_\_  
Legal Secretary  
EPA Region 10