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BEFORE
THE REGIONAL ADMINISTRATOR
REGION 10
U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
EMPIRE LUMBER CO.,
Respondent.

Docket No. CAA-10-2012-0054
RESPONDENT'S MOTION FOR
LEAVE TO FILE OUT OF TIME

Respondent Empire Lumber Company ("Respondent"), by and through its counsel, pursuant to EPA Office of Administrative Law Judges Practice Manual, respectfully moves for leave to file out of time its Motion to Dismiss for Failure to State a Claim.¹

Complainant filed a Complaint in this matter on April 16, 2012. After informal settlement discussions failed to reach an agreed resolution of this matter, Respondent on July 12, 2012 sought to enter into Alternative Dispute Resolution (ADR), and Complainant agreed to participate in the ADR process. Although the ADR process

¹ Respondent acknowledges that the Prehearing Order does not specifically provide for motions for leave to file out of time. In the alternative, this motion may be considered a motion to extend, pursuant to Rule 22.7(b) of the Consolidated Rules of Practice (CROP)(40 C.F.R. §22.7(b)).

Docket No. CAA-10-2012-0054
RESPONDENT'S MOTION FOR LEAVE TO
FILE OUT OF TIME - 1

**SHORT CRESSMAN
& BURGESS PLLC**
999 Third Avenue, Suite 3000, Seattle, WA 98104-4088
206.682.3333 phone | 206.340.8856 fax | www.scblaw.com

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1 clarified several of the issues involved in this matter, the parties were still unable to
2 reach a settlement, and this matter was returned to the litigation docket. However,
3 Respondent has continued to seek a resolution of this matter short of hearing and, to
4 that end, has continued settlement negotiations with Complainant. Complainant
5 represented to Respondent that it would provide a response to Respondent's offer of
6 additional information on January 24, 2013, "at the earliest." As of February 5, 2013,
7 Respondent has not yet received Complainant's offer, which Respondent expects to be
8 Complainant's final settlement offer. Respondent can delay no longer and therefore
9 requests that it be permitted to file a dispositive motion two days out of time, on
10 February 6, 2013.²

11 Here, there is good cause for Respondent's delay in filing the Motion to Dismiss
12 for Failure to State a Claim as the parties have been actively engaged in settlement
13 discussions that, if successful, will resolve this case. Thus, both parties would benefit
14 from the reduction of time and expense that would occur if settlement can be reached.
15 In addition, settlement would spare this Board of expending additional resources on
16 this matter. Therefore, Respondent's delay in filing it Motion to Dismiss is reasonable
17 under these circumstances. Further, the Board should grant this motion as Respondent
18 is seeking to file a dispositive motion that could likewise quickly and efficiently
19 resolve this matter.

20 Postponing the filing of a motion to dismiss by two days would not result in
21 prejudice to the Complainant as it would have no adverse impact Complainant's ability
22

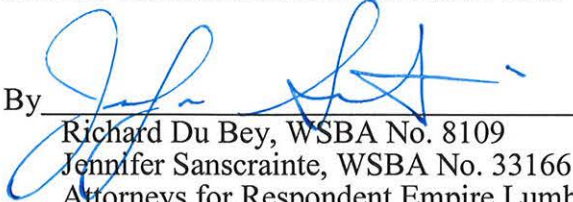
23 _____
24 ² Respondent attempted to contact Complainant to discuss the extension of the date for
dispositive motions, but has received no response from complaint. See
contemporaneously-filed Declaration of Jennifer Sanscrainte.

1 to respond to that motion, nor would it have an adverse impact on the hearing schedule.
2 Respondent is not seeking to expand or otherwise alter the scope of litigation, such as
3 adding a witness, but is rather seeking to dispose of this case prior to hearing.
4 Generally, "the Board typically grants a motion where the movant shows good cause
5 for its request and/or granting the motion makes sense from an administrative or
6 judicial efficiency standpoint. " *In re: Desert Rock Energy Company, LLC, PSD*
7 *Permit No. AZP 04-01*, 2009 EPA App. LEXIS 28 (EPA App. 2009) (granting a
8 motion for voluntary remand).

9 Finally, in the event this motion is considered a motion to extend time, Section
10 22.7 of the CROP provides that an extension of time for filing any document may be
11 granted "for good cause shown, and after consideration of prejudice to other parties."
12 40 C.F.R. §22.7(b). As discussed above, there is good cause for a short extension of
13 the filing deadline for dispositive motions in this matter, and such an extension will
14 result in no prejudice to Complainant.

15 DATED this 6th day of February, 2013.

16 SHORT CRESSMAN & BURGESS PLLC

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18 By 
19 Richard Du Bey, WSBA No. 8109
20 Jennifer Sanscrainte, WSBA No. 33166
21 Attorneys for Respondent Empire Lumber Company
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BEFORE
THE REGIONAL ADMINISTRATOR
REGION 10
U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

EMPIRE LUMBER CO.,

Respondent.

Docket No. CAA-10-2012-0054

DECLARATION OF JENNIFER
SANSCRAINTE

I, Jennifer Sanscrainte, under penalty of perjury and the laws of the state of Washington, hereby declare and state as follows:

1. I am over 18 years of age and otherwise competent to testify to the matters stated herein. I am one of the attorneys for Empire Lumber Co. dba Kamiah Mills (Empire). I make this declaration based upon my personal knowledge.

2. On February 5, 2013, I telephoned Shirin Venus, Assistant Regional Counsel, US EPA Region 10, to discuss whether Complainant objected to Empire's filing a dispositive motion on that date, but received no response from Ms. Venus. I also attempted to contact Ms. Venus on February 6, 2013, and did not receive a response. In both instances, I left voicemail messages for Ms. Venus, explaining Empire's plan to file its dispositive motion and reiterating Empire's interest in continuing settlement discussions.

DECLARATION OF JENNIFER
SANSCRAINTE - 1
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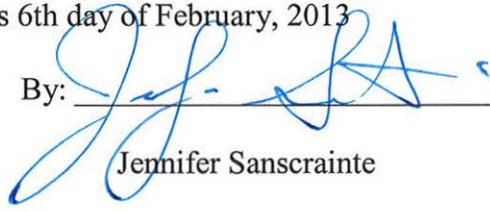
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1 3. Empire has continued to seek a resolution of this matter short of hearing
2 and, to that end, has continued settlement negotiations with EPA. On January 18,
3 2013, I received an email communication from Ms. Venus representing that EPA
4 would provide a response to Respondent's offer of additional information on January
5 24, 2013, "at the earliest." As of the date of this declaration, Empire had not yet
6 received EPA's offer.
7

8 Dated and signed this 6th day of February, 2013

9
10 By: _____



11 Jennifer Sanscrainte
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1 **CERTIFICATE OF SERVICE**

2 I, Tricia Backus, certify and declare:

3 I am over the age of 18 years, make this Declaration based upon personal
4 knowledge, and am competent to testify regarding the facts contained herein.

5 On February 6, 2013, I served true and correct copies of RESPONDENT'S
6 MOTION FOR LEAVE TO FILE OUT OF TIME on the parties and in the manner
7 listed below:

8 The Honorable M. Lisa Buschmann
9 Administrative Law Judge
10 U.S. EPA
11 Office of Administrative Law Judges
12 1200 Pennsylvania Ave. NW
13 Mail Code 1900L
14 Washington, D.C. 20460

Hearing Clerk
U.S. EPA
Office of Administrative Law Judges
1099 14th Street NW
Franklin Court, Suite 350
Washington, D.C. 200005


- | | | | |
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| <input checked="" type="checkbox"/> | Via Facsimile - (202) 565-0044 | <input type="checkbox"/> | Via Facsimile - (202) 565-0044 |
| <input checked="" type="checkbox"/> | Via U.S. Mail | <input type="checkbox"/> | Via U.S. Mail |
| <input type="checkbox"/> | Via Legal Messenger | <input type="checkbox"/> | Via Legal Messenger |
| <input type="checkbox"/> | Via Federal Express | <input checked="" type="checkbox"/> | Via Federal Express |
| <input type="checkbox"/> | Via E-Mail: | <input type="checkbox"/> | Via E-Mail: |

14 Shirin Venus, Asst. Regional Counsel
15 EPA Region 10
16 1200 Sixth Ave., Suite 900
17 Mail Stop: ORC-158
18 Seattle, WA 98101

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Via Facsimile |
| <input checked="" type="checkbox"/> | Via U.S. Mail |
| <input type="checkbox"/> | Via Legal Messenger |
| <input type="checkbox"/> | Via Federal Express |
| <input checked="" type="checkbox"/> | Via E-Mail:
venus.shirin@epamail.epa.gov |

20 I certify under penalty of perjury pursuant to the laws of the State of
21 Washington that the foregoing is true and correct.

22 SIGNED on February 6, 2013, at Seattle, Washington.

23 
24 Tricia Backus

Docket No. CAA-10-2012-0054
RESPONDENT'S MOTION FOR LEAVE TO
FILE OUT OF TIME - 4

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