

1 PATRICIA M. O'TOOLE, State Bar No. 107192
2 THE O'TOOLE LAW FIRM
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4 Los Angeles, California 90035-0260
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7 Attorney for Respondent
8 U.S. POLE COMPANY, INC.

FILED

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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

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

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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 45 days until
22 April 21, 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 March 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; (4) EPA-IX required additional time to review and
6 confer with EPA Headquarters on critical issues affecting the terms and scope of the
7 settlement; (5) EPA-IX is now able to proceed with the documentation of the settlement;
8 (6) the parties need the additional time requested to document the settlement properly
9 and to obtain all required approvals for a Consent Agreement and Final Order to resolve
10 this matter; and (7) requiring Respondent to prepare and file an answer and request for
11 hearing by March 7, 2008 would, under these circumstances, impose an unnecessary
12 burden on Respondent and require an unnecessary allocation of resources for both
13 Respondent and EPA-IX to prepare for a hearing that is unlikely to occur.

14 Therefore, Respondent is moving for a further extension of 45 days, until April 21,
15 2008, to file an answer and request a hearing in this matter.

16 On March 3, 2008, counsel for EPA-IX, Mr. Daniel Reich, and Respondent's
17 counsel discussed this Motion, and Mr. Reich confirmed that EPA-IX concurs in
18 Respondent's motion for an additional 45-day extension of time to answer the Complaint
19 and request a hearing.

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

23 March 4, 2008

THE O'TOOLE LAW FIRM

24
25 BY:


Patricia M. O'Toole
Attorney for Respondent
U.S. Pole Company, Inc.

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1 Agreement and Final Order, and approval and execution thereof will require
2 approximately 45 additional days.

3 9. Requiring Respondent to prepare and file an answer and request for hearing by
4 March 7, 2008 would, under these circumstances, impose an unnecessary burden on
5 Respondent and require an unnecessary allocation of resources for both Respondent and
6 EPA-IX to prepare for a hearing that is unlikely to occur.

7 10. On March 3, 2008, counsel for EPA-IX, Mr. Daniel Reich, and Respondent's
8 counsel discussed this Motion, and Mr. Reich confirmed that EPA-IX concurs in
9 Respondent's motion for an additional 45-day extension of time to answer the Complaint
10 and request a hearing.

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

13 Executed this 4th day of March 2008 at Los Angeles, California.

14 
15 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 March 4, 2008, 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 March 4, 2008 at Los Angeles, California.

Patricia M. O'Toole

SIGNATURE: Patricia M. O'Toole