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REGIONAL HEARING CLERK

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:

U.S. POLE COMPANY, INC.,

Respondent

/

Docket No. CAA-09-2007-0031

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

PLEASE TAKE NOTICE that Respondent U.S. Pole Company, Inc. will move the Regional Judicial Officer of the United States Environmental Protection Agency – Region IX to enter an Order further extending the time for Respondent (i) to answer the complaint filed by the United States Environmental Protection Agency – Region IX ("EPA-IX") in this matter and (ii) to request a hearing, for an additional 45 days until April 21, 2008.

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

Good cause exists for granting the requested extension of time in this case 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

an agreement in principle on the terms of a settlement of all allegations set forth in the Complaint, including the monetary component of such settlement; (3) 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; (4) EPA-IX required additional time to review and confer with EPA Headquarters on critical issues affecting the terms and scope of the settlement; (5) EPA-IX is now able to proceed with the documentation of the settlement; (6) the parties need the additional time requested to document the settlement properly and to obtain all required approvals for a Consent Agreement and Final Order to resolve this matter; and (7) requiring Respondent to prepare and file an answer and request for hearing by March 7, 2008 would, under these circumstances, impose an unnecessary burden on Respondent and require an unnecessary allocation of resources for both Respondent and EPA-IX to prepare for a hearing that is unlikely to occur.

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

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

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

March 4, 2008

THE O'TOOLE LAW FIRM

BY: Patricia M. O'Toole

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

DECLARATION OF PATRICIA M. O'TOOLE

I, Patricia M. O'Toole declare:

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:

2. The United States Environmental Protection Agency – Region IX ("EPA-IX") served a Complaint in this matter on U.S. Pole on October 9, 2007.

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

4. On November 6, 2007, EPA-IX and Respondent reached an agreement in principle on the terms of a settlement of all allegations set forth in the Complaint, including the monetary component of such settlement.

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.

6. I was informed in early February 2008 by Daniel Reich, Esq. of EPA-IX that the agency personnel involved in this matter required additional time to review and confer with EPA Headquarters on critical issues affecting the terms and scope of the settlement; and was further informed by Mr. Reich on March 3, 2008 that EPA-IX has completed that review and conferral process and is now ready to proceed with the documentation of the settlement.

7. The parties need additional time to document the settlement properly and to obtain all required approvals for a Consent Agreement and Final Order to resolve this matter.

8. Completion of the documentation of the settlement, including a Consent

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

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

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

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

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

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