

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 FEB -2 PM 2: 27

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Fulton Fuel Company)
)
a Montana Corporation)
)
)
)
Respondent.)
_____)

Docket No. CWA-08-2009-0006

**ORDER ALLOWING 30 DAYS ADDITIONAL TIME FOR SETTLEMENT
AND ORDER TO EITHER SUBMIT CONSENT AGREEMENT OR SHOW
CAUSE WHY DEFAULT ORDER SHOULD NOT BE FILED**

On January 28, 2010, a status report was filed by Counsel for Complainant, Marc Weiner. On January 29, 2010, a separate status report was filed by Counsel for Respondent, Douglas C. Allen. Both reports indicated that settlement has not been reached between the parties to date. Respondent's status report requested an order setting a deadline for a motion to be filed and an additional 30 days for settlement discussions. The request did not state what motion it was seeking to file. Based on the January 14, 2010, conference call with the parties, this court assumes Mr. Allen is referring to his interest in filing a motion to set aside default on behalf of his client as was discussed during the call.

During the January 14, 2010, conference call, I made clear to the parties that I was willing to entertain settlement discussions however negotiations needed to occur in short order. I also indicated persuasive evidence supporting Respondent's claim that it was represented by counsel during the early stages of these proceedings (i.e., Complaint, Motion for Default, Orders to Show Cause) was necessary before this court would entertain a motion to set aside default. Therefore, if settlement cannot be reached within three weeks, with a signed consent agreement filed with the Hearing Clerk, then Respondent **SHALL** provide any evidence that is relevant, material, not unduly repetitious, reliable and has probative value, pursuant to 40 C.F.R. § 22.22. Such evidence shall relate to Respondent's contention that this matter was being addressed by an attorney on Respondent's behalf (although not the attorney of record) and therefore good cause can be shown to set aside the default. 40 C.F.R. § 22.17(c).

This court grants the motion for additional time up to **February 24, 2010** for settlement discussions and a consent agreement to be filed. If an agreement is not reached by February 24, 2010, Respondent shall show cause why a default order should not be issued, as noted above, by **March 3, 2010**.

Ordered this ^{2nd} day of February, 2010.

A handwritten signature in black ink, appearing to read 'Elyana R. Sutin', written over a horizontal line.

Elyana R. Sutin
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER ALLOWING 30 DAYS ADDITIONAL TIME FOR SETTLEMENT AND ORDER TO EITHER SUBMIT CONSENT AGREEMENT OR SHOW CAUSE WHY DEFAULT ORDER SHOULD NOT BE FILED** in the matter **FULTON FUEL COMPANY; DOCKET NO.: CWA-08-2009-0006** was filed with the Regional Hearing Clerk on February 2, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Marc Weiner, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on February 2, 2010, to:

Attorney for Respondent:

Douglas C. Allan
Attorney at Law
P. O. Box 873
Shelby, MT 59474

February 2, 2010



Tina Artemis
Paralegal/Regional Hearing Clerk

