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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

IN THE MATTER OF:

Frank Coluccio Construction Co., and  
Castle Family Limited Partnership,

Respondents.

Proceeding to Assess Class II  
Administrative Penalty Under  
Clean Water Act Section 309(c)


No. CWA-09-2007-0003

NOTICE OF APPEARANCE

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Respondent, Frank Coluccio Construction Company, by and through its undersigned attorney, and without waiving any objections as to improper service, process, jurisdiction, venue, or any defense, hereby enters its appearance in the above entitled action, and hereby requests that all future papers and pleadings in said cause, except original process, be served upon said attorney at the address stated hereon.

DATED this 25<sup>th</sup> day of October, 2007.

LAW OFFICES OF  
CHRISTOPHER A. COLUCCIO PLLC

By   
Christopher A. Coluccio, WSBA 20929  
Email: cac@colucciolaw.com

Attorney for, Respondent, Frank Coluccio  
Construction Company

NOTICE OF APPEARANCE - 1  
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**ORIGINAL**

LAW OFFICES OF  
CHRISTOPHER A. COLUCCIO PLLC  
14900 INTERURBAN AVE. S, SUITE 274  
SEATTLE, WASHINGTON 98168  
PHONE: 206-575-0123

1 Docket No. CWA-9-2007-0003

2 CERTIFICATE OF SERVICE

3 I certify that the foregoing document was mailed by 1<sup>ST</sup> Class Mail, postage pre-paid, on the  
4 date below, to the following persons.

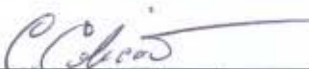
5 Original to: Danielle Carr, Regional Hearing Clerk  
6 Office of Regional Counsel  
7 U.S. Environmental Protection Agency  
8 Region 9  
9 75 Hawthorne Street  
10 San Francisco, CA 94105

11 Copies to: Rich Campbell (*via mail and email*)  
12 Assistant Regional Counsel  
13 U.S. Environmental Protection Agency  
14 Region 9  
15 75 Hawthorne Street  
16 San Francisco, CA 94105

17  
18 Lisa Munger, Atty for Castle Family (*via mail and email*)  
19 Goodsill Anderson Quinn & Stifel  
20 1099 Alakea Street, Suite 1800  
21 Honolulu, HI 96813

22 Alec Wong, Chief (*via mail*)  
23 Clean Water Branch  
24 Hawaii Dept. of Health  
25 919 Ala Moana Blvd, 3<sup>rd</sup> Floor  
26 Honolulu, HI 96814

Dated: 10/25/07

  
Christopher A. Coluccio

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

IN THE MATTER OF:

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Clean Water Act Section 309(c)

No. CWA-09-2007-0003

MOTION TO EXTEND TIME  
TO ANSWER COMPLAINT

COMES NOW, Respondent, Frank Coluccio Construction Company by and through  
its undersigned attorney, and moves as follows.

**1. Relief Requested.**

Respondent, Frank Coluccio Construction Company respectfully requests an order  
extending the time for it to answer the complaint by a minimum of 60 calendar days, or no  
sooner than January 11, 2008.

**2. Authority and Argument.**

This motion is made pursuant to 40 CFR §22.7(b) which provides that the "Presiding  
Officer may grant an extension of time for filing any document; upon timely motion of a party  
to the proceeding, for good cause shown...". This motion is submitted herein based on the  
Declaration of Christopher A. Coluccio and the records and files herein.

MOTION TO EXTEND TIME  
TO ANSWER COMPLAINT - 1

Hamakua-Mtn-Answer.doc

COPY

LAW OFFICES OF  
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SEATTLE, WASHINGTON 98168  
PHONE: 206-575-0123

1 The matter involves the Environmental Protection Agency (EPA) complaint  
2 assessing penalties against Respondents for alleged violations of the Clean Water Act, with  
3 respect to certain amounts of fill dirt allegedly placed on Respondent's Castle Family's  
4 property in Hawaii. The parties are in the process of settling this matter, and as such  
5 Respondent, Frank Coluccio Construction seeks to avoid the need and expense of  
6 answering the complaint and setting a hearing, while good faith settlement discussions are  
7 on-going.

8 It is hoped that settlement documents will be prepared and presented by the EPA by  
9 the end of October or early November, 2007. Respondent, Frank Coluccio Construction  
10 Company has been waiting on said documents for several weeks. The delay has been  
11 because of the Castle Family and EPA's investigation into a possible Supplemental  
12 Environmental Project (SEP). This research has been going on for months and the process  
13 is slow because of the many parties and agencies which could be involved. Nevertheless,  
14 Respondent, Frank Coluccio Construction Company has been informed that the EPA is  
15 close to getting management approval for a SEP option for Respondents to consider, in lieu  
16 of an all cash penalty.

17  
18 Respondent, Frank Coluccio Construction's Hawaii office received the EPA's  
19 complaint on October 9, 2007, and therefore its time to answer the complaint would be on  
20 Monday, November 12, 2007 (the 30<sup>th</sup> day, November 10 falls on a Saturday). A sixty day  
21 extension should be adequate time for the SEP alternative to be researched and finalized,  
22 and for the settlement documents to be drawn up for Respondents to review, discuss,  
23 modify if necessary, and approve. Because the history of this matter reveals that this  
24 settlement process is going slower than all parties would otherwise want, and because of  
25  
26

MOTION TO EXTEND TIME  
TO ANSWER COMPLAINT - 2

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PHONE: 206-575-0123

1 the upcoming holiday season, answering the complaint should be put off until after the first  
2 of next year (or at a minimum 60 days – January 11, 2008).

3 Respondent, Frank Coluccio Construction has already agreed on a settlement  
4 amount proposed by the EPA, and will consider any SEP option. Respondent, Frank  
5 Coluccio Construction remains willing to settle this matter immediately, and waits patiently  
6 for such settlement documents to be ready.

7 DATED this 25<sup>th</sup>, day of October, 2007.

8 LAW OFFICES OF  
9 CHRISTOPHER A. COLUCCIO PLLC

10 By   
11 Christopher A. Coluccio, WSBA 20929  
12 Email: cac@colucciolaw.com

13 Attorney for, Respondent, Frank Coluccio  
14 Construction Company

14 Docket No. CWA-9-2007-0003

15 CERTIFICATE OF SERVICE

16 I certify that the foregoing document was mailed by 1<sup>st</sup> Class Mail, postage pre-paid, on the date  
17 below, to the following persons.

18 Original to: Danielle Carr, Regional Hearing Clerk  
19 Office of Regional Counsel  
20 U.S. Environmental Protection Agency  
21 Region 9  
22 75 Hawthorne Street  
23 San Francisco, CA 94105

21 Copies to: Rich Campbell (via mail and email)  
22 Assistant Regional Counsel  
23 U.S. Environmental Protection Agency  
24 Region 9  
25 75 Hawthorne Street  
26 San Francisco, CA 94105

Lisa Munger, Atty for Castle Family (via mail and email)  
Goodsill Anderson Quinn & Stifel  
1099 Alakea Street, Suite 1800

MOTION TO EXTEND TIME  
TO ANSWER COMPLAINT - 3

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Honolulu, HI 96813  
  
Alec Wong, Chief (via mail)  
Clean Water Branch  
Hawaii Dept. of Health  
919 Ala Moana Blvd, 3<sup>rd</sup> Floor  
Honolulu, HI 96814

Dated: 10/25/07

  
\_\_\_\_\_  
Christopher A. Coluccio

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5 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
6 REGION 9

7 IN THE MATTER OF:

8 Frank Coluccio Construction Co., and  
9 Castle Family Limited Partnership,

10 Respondents.

11 Proceeding to Assess Class II  
12 Administrative Penalty Under  
13 Clean Water Act Section 309(c)

No. CWA-09-2007-0003

DECLARATION OF  
CHRISTOPHER A. COLUCCIO  
IN SUPPORT OF  
MOTION TO EXTEND TIME  
TO ANSWER COMPLAINT

14 I CHRISTOPHER A. COLUCCIO declare and state as follows:

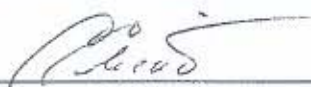
15 1. I am an attorney representing Respondent, Frank Coluccio Construction Company  
16 and make the following statements based on my personal knowledge.

17 2. Counsel for the Castle Family, Lisa Munger, counsel for the EPA, Rich Campbell,  
18 and myself have been in discussions concerning the assessment of penalties against  
19 Respondents for several months. During a conference call on August 28, 2007 and since  
20 that time, Respondents indicated their acceptance to a proposed settlement amount for the  
21 penalties sought by the EPA. Since that time, the parties have also been exploring various  
22 Supplemental Environmental Projects (SEPs) to partially pay for the assessed penalty and  
23 to put the money to work for an environmental cause in the State of Hawaii.

24 3. Counsel for the EPA has indicated to the undersigned that they are in the process of  
25 drafting up settlement documents, but apparently the delay has been caused by  
26 investigation into a possible SEP.

4. Respondent, Frank Coluccio Construction remains willing to settle this matter,  
immediately, with or without a SEP, and seeks to avoid the need to answer the complaint  
since settlement appears imminent.

Executed this 25<sup>th</sup> day of October, 2007, at Seattle Washington.

25   
26 Christopher A. Coluccio  
DEC. OF C COLUCCIO FOR  
MOTION TO EXTEND TIME  
TO ANSWER COMPLAINT - 1

Hamakua-Mtn-Dec-Answer.doc

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