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U.S. EPA, REGION IX
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8 U.S. POLE COMPANY, INC.

9
10 **BEFORE THE**
11 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
12 **REGION IX**

13 In the Matter of:

Docket No. CAA-09-2007-0031

14 U.S. POLE COMPANY, INC.,

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

15 Respondent

16
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 30 days until
22 May 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 April 21, 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 has now drafted the documentation of the settlement; (6) the
8 parties need the additional time requested to review and finalize and to obtain all
9 required approvals for the Consent Agreement and Final Order to resolve this matter;
10 and (7) requiring Respondent to prepare and file an answer and request for hearing by
11 April 21, 2008 would, under these circumstances, impose an unnecessary burden on
12 Respondent and require an unnecessary allocation of resources for both Respondent and
13 EPA-IX to prepare for a hearing that is unlikely to occur.


14 Therefore, Respondent is moving for a further extension of 30 days, until May 21,
15 2008, to file an answer and request a hearing in this matter.

16 On April 15, 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 30-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 April 15, 2008

THE O'TOOLE LAW FIRM

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25 BY: 
26 Patricia M. O'Toole
27 Attorney for Respondent
28 U.S. Pole Company, Inc.

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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 had completed that review and conferral process and was ready to proceed with the documentation of the settlement.

7. EPA-IX has now drafted the documentation for the settlement, and the parties need the additional time requested to review and finalize and to obtain all required approvals for the Consent Agreement and Final Order to resolve this matter.

8. Completion of the review and approval of the Consent Agreement and Final Order


1 by the parties will require approximately 30 additional days.

2 9. Requiring Respondent to prepare and file an answer and request for hearing by
3 April 21, 2008 would, under these circumstances, impose an unnecessary burden on
4 Respondent and require an unnecessary allocation of resources for both Respondent and
5 EPA-IX to prepare for a hearing that is unlikely to occur.

6 10. On April 15, 2008, counsel for EPA-IX, Mr. Daniel Reich, and Respondent's
7 counsel discussed this Motion, and Mr. Reich confirmed that EPA-IX concurs in
8 Respondent's motion for an additional 30-day extension of time to answer the Complaint
9 and request a hearing.

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

12 Executed this 15th day of April 2008 at Los Angeles, California.

13 
14 Patricia M. O'Toole
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 April 15, 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 April 15, 2008 at Los Angeles, California.

Patricia M. O'Toole

SIGNATURE: _____

Patricia M. O'Toole