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February 9, 2013

Regional Hearing Clerk (E-19J)  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Re: **Docket No.: CWA-05-2013-0003**  
In the Matter of: Polo Development, Inc.  
AIM Georgia, LLC  
Joseph Zdrilich

- (1) Respondents AIM Georgia, LLC's and Polo Development, Inc.'s Joint Motion for Extension of Time to Answer Complaint;
- (2) Respondent Joseph's Zdrilich's Answer to Complaint

Dear Sir/Madam:

Enclosed are two sets of pleadings.

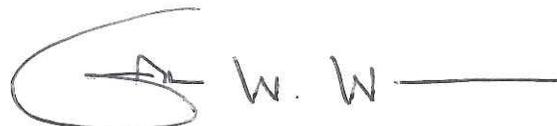
The first set is an original and one copy of a pleading entitled "Respondents AIM Georgia, LLC's and Polo Development, Inc.'s Joint Motion for Extension of Time to Answer the U.S. EPA's Complaint to Assess a Class II Civil Penalty Under Section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g)." I ask that you first file this pleading. Two additional copies are provided. I ask that you return the additional file stamped copies in the self-addressed, stamped envelope.

The second set is an original and one copy of a pleading entitled "Respondent Joseph Zdrilich's Answer to U.S. EPA's Proceeding to Assess a Civil Penalty Pursuant to Section 309(g) of the Clean Water Act." I ask that you file this pleading second. Two additional copies are provided. Please return those additional file stamped copies in the same self-addressed, stamped envelope.

Richard Clarizio, Associate Regional Counsel, has been properly served under separate cover.

Thank you for processing and returning the documents. Please contact me with any questions.

Respectfully submitted,



Grant W. Wilkinson

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CWA-05-2013-0003</b>
	)	
	)	<b>Respondents AIM Georgia, LLC's and</b>
<b>Polo Development, Inc.</b>	)	<b>Polo Development, Inc.'s Joint Motion</b>
<b>AIM George, LLC</b>	)	<b>for Extension of Time to Answer</b>
<b>Joseph Zdrilich</b>	)	<b>the U.S. EPA's Proposed Assessment</b>
	)	<b>of a Class II Civil Penalty Under</b>
<b>Respondents</b>	)	<b><u>Section 309(g) of the Clean Water Act</u></b>

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**MOTION**

Respondent Polo Development, Inc. and Respondent AIM Georgia, LLC, by and through their counsel, respectfully move the Regional Judicial Officer, pursuant to 40 C.F.R. 22.16(a), for an Order granting them an extension of time through and including March 7, 2013 to file their Answers to U.S. EPA's Proposed Assessment of a Class II Civil Penalty Under Section 309(g) of the Clean Water Act. Respondents provide the following information to demonstrate good cause for the granting of their joint motion.

**MEMORANDUM IN SUPPORT**

U.S. EPA instituted this administrative action on January 8, 2013 seeking a civil penalty and completion of a wetland restoration plan at a site in Poland, Mahoning County, Ohio ("Site"). U.S. EPA named Polo Development, Inc., AIM Georgia, LLC, and Joseph Zdrilich as Respondents. U.S. EPA and the Respondents had been working with a third party neutral towards resolution of this matter when U.S. EPA instituted the administrative action. Believing that this matter might still resolve itself before the answer date, the Respondents continued to work through the neutral and delayed retaining counsel. Because the answer date was nearing

and issues remained unresolved, Respondents approached local counsel in Youngstown, Mahoning County, Ohio for representation.

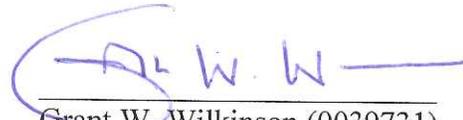
Respondents' Youngstown, Ohio counsel does not engage in matters involving environmental law. Consequently, Respondent's Youngstown, Ohio counsel contacted the undersigned and asked this firm to consider providing representation for Respondent Zdrilich. Though this firm is located three hours west of the Site (Toledo, Ohio), given the nature of the matter, the congeniality of the third party neutral and counsel for U.S. EPA, Respondent Zdrilich's circumstances and financial position, Respondents Polo Development Inc.'s and AIM Georgia, LLC's circumstances, financial positions, and locations, the undersigned traveled to Poland, Ohio last Friday, February 1, 2013 to review the Site, meet with a local wetlands consultant, and meet Respondent Joseph Zdrilich.

The undersigned agreed to represent Respondent Zdrilich. Because his answer date is February 11, 2013, and even though the undersigned is still in the process of seeking information from Respondent Zdrilich and U.S. EPA and awaiting information from the wetlands consultant, the undersigned timely filed an Answer on behalf of Respondent Zdrilich.

Respondents Polo Development, Inc. and AIM Georgia, LLC have also requested that the undersigned represent their interests in this matter. Respondents AIM Georgia, LLC and Polo Development, Inc. have different (later) answer dates than Respondent Zdrilich due to delayed service dates. AIM Georgia, LLC's answer date is February 14, 2013. Polo Development, Inc.'s answer date is on or about February 28, 2013. Accordingly, in order to continue to collect accurate information, confer with representatives of U.S. EPA, and possibly conduct an informal settlement conference before they answer, Respondents seek the Regional Judicial Officer's consent to an extension of time to file their Answers through March 7, 2013.

It is the intention of the Respondents to use all means possible to resolve all issues in this matter, expeditiously and efficiently, including the informal settlement conference, continued use (with the consent of U.S. EPA and the Regional Judicial Officer) of the third party neutral, the ready exchange of information, and creative remedies. For the foregoing reasons, Respondents request an extension to answer through March 7, 2013.

Respectfully submitted,



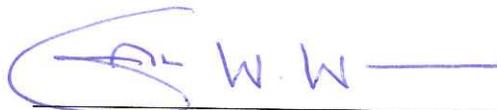
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Counsel for Respondents  
Polo Development, Inc. and  
AIM Georgia, LLC

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of a pleading titled "AIM Georgia, LLC's and Polo Development, Inc.'s Joint Motion for Extension of Time to Answer U.S. EPA's Proposed Assessment of a Class II Civil Penalty Under Section 309(g) of the Clean Water Act" was served by first class mail, postage prepaid, upon Richard J. Clarizio, Esq. (C-14J), Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, this 9<sup>th</sup> day of February, 2013. A copy of the pleading was also submitted electronically to Richard Clarizio, Esq. this 9<sup>th</sup> day of February, 2013.



Grant W. Wilkinson, Esq.  
Counsel for Respondents  
AIM Georgia, LLC  
Polo Development, Inc.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. CWA-05-2013-0003  
)  
Polo Development, Inc. ) Answer of Respondent Joseph Zdrilich  
AIM Georgia, LLC ) to the U.S. EPA's Proceeding to Assess  
Joseph Zdrilich ) a Class II Civil Penalty Under  
) Section 309(g) of the Clean Water Act

**I. Respondent Joseph Zdrilich's Responses to U.S. EPA's General Allegations**

1. Respondent admits that U.S. EPA Region 5 has instituted an administrative action, but otherwise is without knowledge or information as to the balance of the statements and allegations set forth in paragraph 1 of U.S. EPA's Complaint.

2. Respondent admits that he has been identified as a Respondent in this matter, but denies that he is a person against whom liability or a penalty can be imposed under the Clean Water Act, 33 U.S.C. 1251 *et seq.* Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 2 of U.S. EPA's Complaint.

3. Respondent admits that the Polo Development Site is located north of Polo Boulevard in Section 11 of Poland Township, Mahoning County, Ohio. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 3 of U.S. EPA's Complaint.

4. Respondent denies the statements and allegations as set forth in paragraph 4 of U.S. EPA's Complaint.

5. Respondent denies the statements and allegations as set forth in paragraph 5 of U.S. EPA's Complaint.

6. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 6 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies that it violated those sections of the Clean Water Act cited and alleged by the U.S. EPA in paragraph 6 of its Complaint.

7. Respondent admits that he is an individual. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 7 of U.S. EPA's Complaint.

8. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 8 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 8 of U.S. EPA's Complaint.

9. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 9 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Moreover, Respondent denies that he added dirt, spoil, rock and sand to the waters and wetlands identified in paragraph 5 of U.S. EPA's Complaint.

10. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 10 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 10 of U.S. EPA's Complaint.

11. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 11 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 11 of U.S. EPA's Complaint.

12. Respondent denies the statements and allegations in paragraph 12 of U.S. EPA's Complaint.

13. To the extent that U.S. EPA cites and references a regulation that implements the Clean Water Act in paragraph 13 of its Complaint, Respondent admits that said regulatory section is currently in force and effect. The language in 40 C.F.R. 232.3 speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without information or knowledge as to the balance of the statements and allegations set forth in paragraph 13 of U.S. EPA's Complaint.

14. Respondent denies the statements and allegations in paragraph 14 of U.S. EPA's Complaint.

15. Respondent denies the statements and allegations in paragraph 15 of U.S. EPA's Complaint.

16. Respondent is without knowledge or information as to the statements and allegations in paragraph 16 of U.S. EPA's Complaint.

17. To the extent that U.S. EPA cites and references a regulation that implements the Clean Water Act in paragraph 17 of its Complaint, Respondent admits that said regulatory section is currently in force and effect. The language in 40 C.F.R. 230.3(s)(1) speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without knowledge and information as to the statements in paragraph 17 of U.S. EPA's Complaint.

18. Respondent denies the statements and allegations in paragraph 18 of U.S. EPA's Complaint.

19. Respondent denies the statements and allegations in paragraph 19 of U.S. EPA's Complaint.

20. Respondent admits that U.S. EPA issued an administrative order to respondents requiring respondents to develop and implement a Wetlands Restoration Plan on or about October 26, 2011. Otherwise, Respondent denies the remaining statements and allegations in paragraph 20 of U.S. EPA's Complaint.

21. Respondent admits that U.S. EPA approved the Wetlands Restoration Plan as submitted and amended, in January, 2012 and February, 2012, respectively. Otherwise, Respondent denies the remaining statements and allegations in paragraph 21 of U.S. EPA's Complaint.

22. Respondent is without knowledge and information as to the statements and allegations in paragraph 22 of U.S. EPA's Complaint.

23. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 23 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without information or knowledge as to the balance of statements and allegations set forth in paragraph 13 of U.S. EPA's Complaint.

## **II. Respondent Joseph Zdrilich's Response to U.S. EPA's Proposed Civil Penalty**

24. Respondent Joseph Zdrilich contests U.S. EPA's proposed penalty and asserts that it is inappropriate for the following reasons:

- a. Respondent Zdrilich did not engage in any activity that would subject him to a penalty pursuant to the Clean Water Act, its implementation regulations, or any permit issued pursuant to the Clean Water Act.
- b. Imposition of a civil penalty is barred by the statute of limitations.

- c. U.S. EPA's application of the factors associated with its calculation of a civil penalty amount pursuant to Section 309(g) of the Clean Water Act results in an excessive penalty.
- d. The facts associated with this matter exonerate Respondent Zdrilich and render the assessment of a civil penalty inappropriate and the amount of a civil penalty inappropriate.
- e. U.S. EPA's imposition of a civil penalty and the amount and appropriateness of the civil penalty are barred by, or excessive when viewed in light of, the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.
- f. U.S. EPA has failed to incorporate the requirements of the Small Business Regulatory Enforcement Fairness Act in its calculation of the proposed civil penalty.
- g. Respondent Zdrilich has no ability to pay the proposed civil penalty.

### **III. Affirmative Defenses**

25. U.S. EPA has failed to state a claim against Respondent Joseph Zdrilich for which relief can be granted.

26. Initial work performed at the Site was performed after receiving authorization from the U.S. Army Corps of Engineers, Pittsburgh District, pursuant to a nationwide permit.

27. Work performed at the Site in 2008, 2011, and 2012 was performed in good faith to comply with the directives of governmental officials.

28. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the statute of limitations.

29. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.

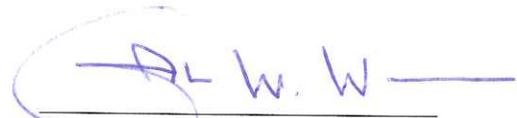
### **IV. Respondent Joseph Zdrilich's Request for a Hearing**

30. Pursuant to Section 309(g)(2)(B) of the Clean Water Act and Section 22.15 of U.S. EPA's Consolidated Rules of Practice, 40 C.F.R. 22.15, Respondent Joseph Zdrilich requests a hearing to contest material facts alleged in U.S. EPA's Complaint that he has specifically disputed in paragraphs 1 through 23 above, the assessment of a civil penalty and the appropriateness of the amount of the proposed civil penalty as set forth in paragraph 24 above, to provide mitigating and exonerating facts in support of his defenses in paragraphs 25 through

29above, and to consider whether he is entitled to judgment as a matter of law at any point in this proceeding, up to and including the completion of the hearing.

31. In the meantime, Respondent Joseph Zdrilich intends to engage in an informal settlement conference with U.S. EPA in an effort to resolve this matter.

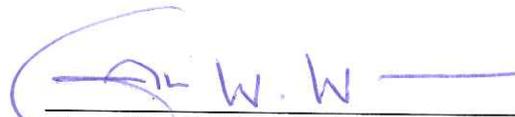
Respectfully submitted,



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Counsel for Respondent Zdrilich

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of a pleading titled "Answer of Respondent Joseph Zdrilich to the U.S. EPA's Proceeding to Assess a Class II Civil Penalty Under Section 309(g) of the Clean Water Act" was served by first class mail, postage prepaid, upon Richard J. Clarizio, Esq. (C-14J), Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, this 9<sup>th</sup> day of February, 2013.



Grant W. Wilkinson, Esq.  
Counsel for Respondent Joseph Zdrilich

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