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5 **BEFORE THE**  
6 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

7 )  
8 In the Matter of: )

DOCKET NO. CWA 10-2008-0009

9 Anthony Lerma, )

COMPLAINANT'S UNOPPOSED  
MOTION FOR ADDITIONAL TIME TO  
FILE A PROPOSED PENALTY

10 Anchorage, Alaska )

11 Respondent. )  
\_\_\_\_\_

12 **I. INTRODUCTION**

13 Pursuant to Section 22.7(b) and 22.16 of the "Consolidated Rules of Practice Governing  
14 the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action  
15 Orders, and the Revocation, Termination or Suspension of Permits" ("Part 22 Rules"), the United  
16 States Environmental Protection Agency, Region 10 ("Complainant" or "EPA"), hereby moves  
17 for additional time (until August 1, 2008) to file a proposed penalty in the above-captioned  
18 matter.  
19

20 **II. BACKGROUND**

21 Under the Presiding Officer's March 14, 2008, Prehearing Order and Section 22.19(a)(4)  
22 of the Part 22 Rules, Complainant is required to file a document specifying a proposed penalty  
23 and explaining in detail how the proposed penalty was determined, including a description of  
24 how the specific provisions of any EPA penalty or enforcement policies and/or guidelines were  
25

COMPLAINANT'S UNOPPOSED MOTION  
FOR ADDITIONAL TIME TO FILE A  
PROPOSED PENALTY - 1

DOCKET NO. CWA 10-2008-0009

U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1796

1 applied in calculating the penalty. The Prehearing Order and Part 22 Rules require that  
2 Complainant file this proposed penalty and explanation within 15 days after Respondent files his  
3 prehearing information exchange. In addition, the Prehearing Order establishes that the  
4 prehearing exchange in this matter be filed *in seriatim* manner according to the following  
5 schedule:

- 6 • June 17, 2008, Complainant files its Initial Prehearing Exchange;
- 7 • July 17, 2008, Respondent files his Prehearing Exchange, including any direct  
8 and/or rebuttal evidence; and
- 9 • July 31, 2008, Complainant files its Rebuttal Prehearing Exchange (if necessary).

10 Respondent filed his Prehearing Exchange on June 16, 2008. Complainant filed its Initial  
11 Prehearing Exchange on June 17, 2008.

12 Section 22.19(f) of the Part 22 Rules permit Complainant and Respondent to supplement  
13 prior exchanges filed in accordance with Section 22.19(a).

14 Complainant's case development officer, Chae John Park, is out of the country and  
15 unavailable until July 11, 2008.

16 On June 18, 2008, the undersigned counsel for Complainant contacted counsel for  
17 Respondent and counsel for Respondent consented to the relief herein requested.

### 18 **III. ARGUMENT**

19 The standard under which this Court may consider a motion for an extension of time is  
20 set out under Section 22.7(b) of the Part 22 Rules. Section 22.7(b) states that a Presiding Officer  
21 may "grant an extension of time for filing any document: upon timely motion of a party to the  
22 proceeding, for good cause shown, and after consideration of prejudice to other parties[.]"  
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**COMPLAINANT'S UNOPPOSED MOTION  
FOR ADDITIONAL TIME TO FILE A  
PROPOSED PENALTY - 2**

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1 The Court's Prehearing Order and the Part 22 Rules provide both parties in this matter the  
2 opportunity to appreciate fully the scope and nature of the evidence expected to be presented at  
3 trial, including a proposed penalty. In addition, the Court's requirement to file prehearing  
4 information *in seriatim* manner ensures an efficient and orderly opportunity for both parties to  
5 review each other's prehearing information and provide rebuttal information. Based on these  
6 considerations, Complainant chose not to propose a penalty in this matter until it had a full  
7 opportunity to consider all relevant information bearing on the question of what constitutes an  
8 appropriate and justifiable penalty.  
9

10 On the afternoon before Complainant filed its Initial Prehearing Exchange, Respondent  
11 filed and delivered a copy of his Prehearing Exchange to Complainant. Respondent's pleading  
12 did not explicitly assert an "inability to pay"; however, several documents attached to the  
13 pleading suggest that Respondent expects to assert as much at hearing. In addition,  
14 Respondent's pleading and accompanying information exchange did not contain any rebuttal  
15 evidence since Respondent filed before Complainant. As a result, it is difficult for Complainant  
16 to propose a penalty at this time because it has not considered all the evidence that may be  
17 introduced at hearing in this case.

18 While Complainant does have Respondent's direct evidence to consider when proposing  
19 a penalty, it does not possess an understanding of what evidence, if any, Respondent expects to  
20 present in rebuttal to either liability or penalty. Since the Court's Prehearing Order sets July 17,  
21 2008, as the last day for Respondent to submit "direct and/or rebuttal evidence," Respondent  
22 may submit rebuttal evidence after considering Complainant's Initial Prehearing Information  
23 Exchange and proposed penalty. Consequently, Complainant cannot make a fully informed and  
24  
25

COMPLAINANT'S UNOPPOSED MOTION  
FOR ADDITIONAL TIME TO FILE A  
PROPOSED PENALTY - 3

DOCKET NO. CWA 10-2008-0009

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1 accurate proposal regarding penalties at this time. This situation is further compounded by the  
2 fact that Complainant's case development officer, Mr. Park, is unavailable to evaluate the  
3 information contained in Respondent's submission until July 11, 2008.

4 If required to submit a proposed penalty within 15 days of Respondent's initial  
5 information exchange filing, then Complainant may seek to supplement its proposed penalty in  
6 accordance with Section 22.19(f) of the Part 22 Rules, if Respondent does submit rebuttal or  
7 additional direct evidence relevant to the issue of penalties. However, that process may be  
8 inefficient and unnecessarily time consuming. Therefore, Complainant moves this Court to  
9 modify the filing date for a proposed penalty. Specifically, Complainant respectfully requests  
10 this Court to grant leave to Complainant to file its proposed penalty on August 1, 2008 (15 days  
11 after July 17, 2008).

12  
13 The August 1, 2008, date would provide Respondent an opportunity to supplement his  
14 prehearing information exchange in light of Complainant's exchange materials. In addition, the  
15 August 1, 2008, date would provide Complainant the opportunity to consider fully all relevant  
16 information before proposing a penalty. There is no prejudice to Respondent in granting such an  
17 extension, nor would an extension result in undo delay in these proceedings because August 1,  
18 2008, is the day a proposed penalty would be due if Respondent had filed his prehearing  
19 exchange information in accordance with the Court's Order.

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**COMPLAINANT'S UNOPPOSED MOTION  
FOR ADDITIONAL TIME TO FILE A  
PROPOSED PENALTY - 4**

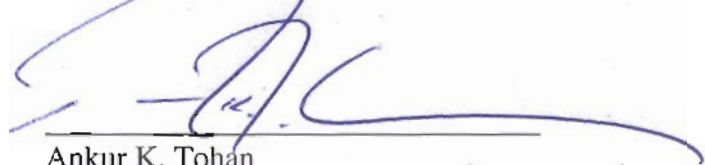
**DOCKET NO. CWA 10-2008-0009**

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1 IV. CONCLUSION

2 For the reasons stated above, Complainant respectfully requests the Presiding Office  
3 grant the relief requested.  
4

5 Submitted this 18<sup>th</sup> day of June, 2008.  
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8 Ankur K. Tohan  
9 Assistant Regional Counsel  
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**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:	)	
	)	DOCKET NO. CWA 10-2008-0009
Anthony Lerma,	)	
	)	[PROPOSED] ORDER
Anchorage, Alaska	)	
	)	
Respondent.	)	

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Having considered the United States Environmental Protection Agency's "Motion For Additional Time To File A Proposed Penalty," and finding good cause and no prejudice to the non-moving party, therefore, and with the consent of Respondent to the motion, it is ORDERED that leave to file a proposed penalty on the First day of August, 2008, is GRANTED.

SO ORDERED.

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Hon. Barbara A. Gunning  
Administrative Law Judge

CERTIFICATE OF SERVICE

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I certify that the foregoing "Complainant's Unopposed Motion for Additional Time to File a Proposed Penalty" was filed and sent to the following person, in the manner specified, on the date below:

Original and one copy, hand-delivered:

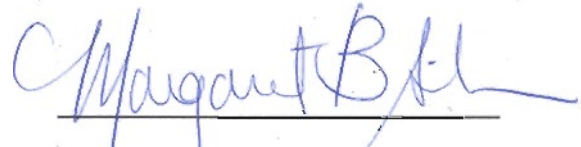
Carol Kennedy, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, WA 98101

A true and correct copy faxed and delivered by certified mail, return receipt requested:

David Shoup  
Tindall Bennett & Shoup PC  
508 W 2nd Ave, 3rd Floor  
Anchorage, AK 99501  
(Fax) 907.278.8536

Judge Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington, DC 20460-2001  
(Fax) 202.565.0044

Dated: 6/18/08

  
Margaret B. Silver  
U.S. EPA Region 10

COMPLAINANT'S UNOPPOSED MOTION  
FOR ADDITIONAL TIME TO FILE A  
PROPOSED PENALTY - 6  
  
DOCKET NO. CWA 10-2008-0009

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