



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

2019 MAR 28 AM 10:57

In the Matter of: )  
 )  
Kent Hoggan, Frostwood 6 LLC, and )  
David Jacobsen, )  
 )  
Respondents. )

Docket No. CWA-08-2017-0026

FILED  
EPA REGION VIII  
HEARING CLERK

---

**PARTIAL CONSENT AGREEMENT AS TO RESPONDENT DAVID JACOBSON**

Region 8 of the United States Environmental Protection Agency (EPA) and Respondent David Jacobsen, by their undersigned representatives, agree as follows:

1. On September 27, 2017, the EPA issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging that the Respondents Kent Hoggan, Frostwood 6 LLC, and David Jacobsen violated section 301(a) of the Clean Water Act (Act), 33 U.S.C. § 1311(a), by discharging storm water from a construction site in Park City, Utah, into waters of the United States without a permit. The Complaint proposed that the Respondents pay a civil administrative penalty for their violations, pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).
2. Respondent David Jacobsen admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint. Respondent David Jacobsen admits that he did not create the Inspection Logs submitted as RX 1 through RX 7 contemporaneously with the dates listed on the logs. Instead, Respondent David Jacobsen admits he created them after the issuance of the Complaint.
3. Respondent David Jacobsen consents to the assessment of the penalty referenced in paragraph 6, below. Respondent David Jacobsen waives his rights to contest the allegations in the Complaint and to appeal any final order (Final Order) that an EPA Regional Judicial Officer may issue to approve this partial consent agreement (Agreement).

4. The EPA determined the penalty referenced in paragraph 6, below, is appropriate based on review of relevant financial information provided by Respondent David Jacobsen to support his inability to pay the EPA's initially requested penalty.

5. This Agreement, upon incorporation into a Final Order, is binding upon the EPA, Respondent David Jacobsen, his heirs, successors and/or assigns.

6. Respondent David Jacobsen agrees to pay, and agrees to the EPA's assessment of, an administrative civil penalty in the amount of \$500 as described below:

- a. Payment shall be due no later than 30 calendar days after the date of the Final Order;
- b. Payment shall be made using any method provided on the following website: <https://www.epa.gov/financial/makepayment>;
- c. The check or other means of payment shall indicate the name and docket number of this matter (see first page); and
- d. Within 24 hours of payment, a copy of the check or other proof of payment shall be sent by U.S. mail or email to each of the following:

Akash Johnson, NPDES Enforcement Unit  
U.S. EPA Region 8 (8ENF-W-NP)  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Email: johnson.akash@epa.gov

and

Melissa Haniewicz, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Email: haniewicz.melissa@epa.gov

7. If the EPA does not receive the payment referenced in the preceding paragraph by the specified due date, interest will accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue

until payment in full is received (*e.g.*, on the first late day, 30 days of interest will have accrued). A handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, second to accrued interest, and then to the outstanding principal amount.

8. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent David Jacobsen will not deduct penalties paid under this Agreement for federal tax purposes.

9. Nothing in this Agreement shall relieve Respondent David Jacobsen of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

10. Any failure by Respondent David Jacobsen to comply with this Agreement shall constitute a breach of this Agreement and may result in referral to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

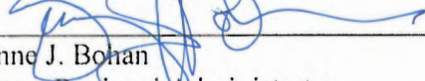
11. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as any failure by Respondent David Jacobsen to comply with this Agreement.

12. The EPA and Respondent David Jacobsen shall bear their own respective costs and attorney's fees in connection with this matter.

13. This Agreement, upon incorporation into a Final Order and full satisfaction by Respondent David Jacobsen, shall be a complete and full resolution of Respondent David Jacobsen's liability for federal civil penalties for the violations and facts alleged in the Complaint. This Agreement does not resolve any liability of Respondents Kent Hoggan or Frostwood 6 LLC.

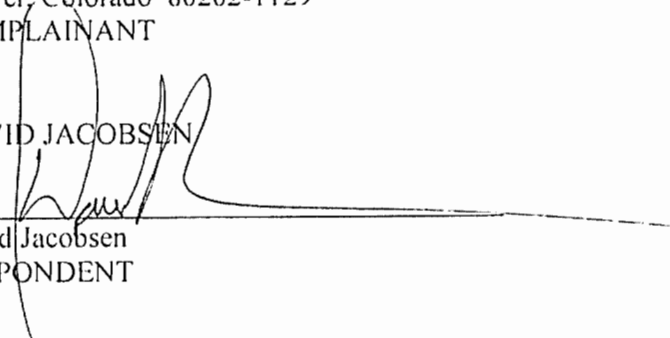
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8

Date: 3/15/19

By:   
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
COMPLAINANT

Date: 3-13-19

DAVID JACOBSEN

By:   
David Jacobsen  
RESPONDENT

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **PARTIAL CONSENT AGREEMENT and FINAL ORDER** in the matter of **KENT HOGGAN, FROSTWOOD 6 LLC, AND DAVID JACOBSEN; DOCKET NO.: CWA-08-2017-0026** was filed with the Regional Hearing Clerk on March 28, 2019.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Matt Castelli, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on March 28, 2019, to:

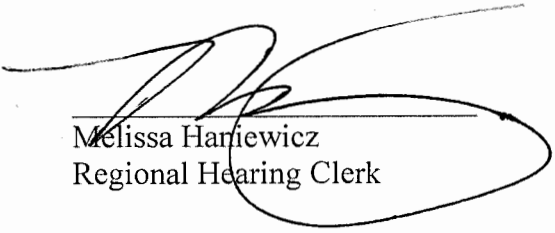
Respondent

David Jacobsen  
14106 North Council Fire Trail  
Kamas, Utah 84036

And emailed to:

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

March 28, 2019



Melissa Harnewicz  
Regional Hearing Clerk