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Environmental Protection Agency
Washington, DC 20460

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Rick Mckell
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:)
Kent Hoggan, Frostwood 6 LLC,) Docket No. CWA-08-2017-0026
David Jacobsen, and)
CBM Leasing, L.L.C.,)
Respondents.)

ORDER ON MOTION FOR PARTIAL WITHDRAWAL OF COMPLAINT

This proceeding was initiated on September 27, 2017, when Complainant, the Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA, Region 8, ("Agency") filed a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents under Section 309(g)(1)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(1)(A).

The Agency served three of the Respondents with copies of the Complaint as follows: Frostwood 6 LLC on October 2, 2017; Kent Hoggan on November 14, 2017; and David Jacobsen on November 20, 2017. On December 15, 2017, these Respondents filed a combined Answer to the Complaint.

However, CBM Leasing, L.L.C. ("CBM") has not answered the Complaint, and the Agency now moves to dismiss its claims against the company. See Partial Motion for Withdrawal of Complaint Against Respondent CBM Leasing, L.L.C. (Feb. 5, 2018) ("Motion"). According to the Agency, it has been unable to serve CBM: The Agency attempted to deliver the Complaint by U.S. Mail to CBM's state-registered address on October 2, 2017, but the mailing was undeliverable because the business was closed. Mot. at 2 & Attachs. 1-2. The Agency then attempted to personally serve the Complaint on CBM's registered agent, but the Utah County Sheriff was unable to complete service because the registered agent had been evicted from his last known address. Mot. at 2 & Attach. 3. Since December 2017, the Agency states it has been unable to find any other location at which to serve CBM. Mot. at 2.

Accordingly, the Agency in its Motion seeks to "withdraw its claims in the Complaint against CBM, without prejudice." Mot. at 3. The rules that govern this proceeding provide that "[t]he complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed." 40 C.F.R. § 22.14(d) (emphasis added).

The Agency's Motion is GRANTED. In this instance, CBM has not filed an answer to the Complaint, so the Agency is entitled to withdraw the portions of the Complaint that constitute its claims against the company. Because this is the first withdrawal and CBM's



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In the Matter of:

Kent Hoggan, Frostwood 6 LLC, David Jacobsen, and CBM Leasing, L.L.C., Respondents.

Docket No. CWA-08-2017-0026

ORDER OF DESIGNATION

Chief Administrative Law Judge Susan L. Biro, U.S. Environmental Protection Agency, Washington, D.C., is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 309(g)(1)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(1)(A), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

Filing: As provided in 40 C.F.R. § 22.5(a), the original and one copy of each document intended to be part of the record of this proceeding shall be filed with the Headquarters Hearing Clerk. Electronic filing is strongly encouraged. To file a document electronically, the document shall be submitted to the Headquarters Hearing Clerk using the OALJ E-Filing System, a web-based tool that can be accessed by visiting the website for the Office of Administrative Law Judges ("OALJ") at www.epa.gov/alj.1 A document filed electronically is deemed to constitute both the original and one copy of the document.

Any party choosing to file electronically must first register to use the OALJ E-Filing System. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time that party will be able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered "filed" at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the presiding judge. Within an hour of a document being electronically filed,

1 More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, available on the OALJ's website at www.epa.gov/alj.