



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

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

**ORDER ON COMPLAINANT’S MOTION FOR CLARIFICATION OF THE  
DEADLINE FOR FILING COMPLAINANT’S REPLY TO RESPONDENT’S  
OPPOSITION TO COMPLAINANT’S MOTION FOR ACCELERATED DECISION, OR  
IN THE ALTERNATIVE COMPLAINANT’S MOTION FOR EXTENSION OF TIME**

On March 20, 2019, I granted Respondents Hoggan’s and Frostwood 6 LLC’s request for an extension of time, until March 22, 2019, to file their opposition to EPA’s Motion for Accelerated Decision on Liability.

On March 21, 2019, Respondents Kent Hoggan and Frostwood 6 LLC filed their Opposition to Complainant’s Motion for Accelerated Decision on Liability (“Opposition”). Respondents’ Certificate of Service attached to the Opposition stated that it was served on Complainant’s counsel by email.

On March 26, 2019, counsel filed Complainant’s Motion for Clarification of the Deadline for Filing Complainant’s Reply to Respondent’s Opposition to Complainant’s Motion for Accelerated Decision, or in the Alternative Complainant’s Motion of an Extension [sic] of Time (“Motion”). The grounds for Complainant’s Motion are that Complainant was first notified that Respondents filed their Opposition when Complainant’s counsel contacted the Headquarters Hearing Clerk on March 25, 2019, because Respondents had not served Complainant as indicated on the Certificate of Service attached to the Opposition. Complainant states in its Motion that, on March 25, 2019, its counsel contacted Respondents’ counsel who then served Respondents’ Opposition on Complainant. Complainant further states in its Motion that Respondents’ counsel acknowledged that the Opposition was not served contemporaneously with its filing due to a clerical oversight. Complainant requests that I clarify that its deadline for replying to the Opposition is ten days from its actual and constructive service, which would be April 4, 2019. In the alternative, for good cause shown, Complainant requests an extension of time, from April 1, 2019 to April 4, 2019, to file its reply to Respondents’ Opposition. Complainant’s counsel represents that Respondents do not object to an extension of the reply deadline until April 4, 2019.

The Rules governing this proceeding, at 40 C.F.R. part 22, provide in pertinent part that “[s]ervice of the complaint is complete when the return receipt is signed. Service of all other

documents is complete upon mailing, when placed in the custody of a reliable commercial delivery service, or for facsimile or other electronic means, including but not necessarily limited to email, upon transmission.” 40 C.F.R. § 22.7(c).

Regarding replies to written responses to motions, the Rules provide in pertinent part that “[t]he movant’s reply to any written response must be filed within 10 days after service of such response . . . . The Presiding Officer . . . may set a shorter or longer time for . . . reply, or make other orders concerning the disposition of motions.” 40 C.F.R. § 22.16(b). Additionally, this Tribunal “may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.” 40 C.F.R. § 22.7(b). “Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer . . . reasonable opportunity to issue an order.” *Id.*

Here, Complainant represents, and Respondents apparently acknowledged, that it was not served Respondents’ Opposition until March 25, 2019. The Rules are clear on the deadline for filing a reply. *See* 40 C.F.R. § 22.16(b) (“The movant’s reply to any written response must be filed within 10 days after service of such response . . .”). Given this fact, pursuant the Rules, Complainant’s reply to the Opposition is due within 10 days after March 25th, or by April 4, 2019. Consequently, Complainant’s Motion is hereby **GRANTED**. Accordingly, Complainant shall file its reply to Respondents’ Opposition on or before April 4, 2019.

**SO ORDERED.**



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Susan L. Biro  
Chief Administrative Law Judge

Dated: March 28, 2019  
Washington, D.C.

In the Matter of *Kent Hoggan, Frostwood 6 LLC, and David Jacobsen*, Respondents.  
Docket No. CWA-08-2017-0026

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order on Complainant's Motion for Clarification of the Deadline for Filing Complainant's Reply to Respondent's Opposition to Complainant's Motion for Accelerated Decision, or in the Alternative Complainant's Motion for Extension of Time**, dated March 28, 2019, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Michael Wright  
Attorney-Advisor

Original by Hand Delivery to:

Mary Angeles  
Headquarters Hearing Clerk  
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*Counsel for Respondents Kent Hoggan, Frostwood 6 LLC,  
and David Jacobsen*

Dated: March 28, 2019  
Washington, D.C.