



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 RESPONDENTS’ REQUEST FOR EXTENSION OF TIME TO FILE
OPPOSITION TO EPA’S MOTION FOR ACCELERATED DECISION ON LIABILITY**

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). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice” or “Rules”).

On March 1, 2019, Complainant filed its Motion for Accelerated Decision on Liability, seeking an order finding Respondent’s Hoggan and Frostwood 6 LLC liable for a subset of the allegations alleged in the Complaint.

On March 18, 2019, Respondents Hoggan and Frostwood 6 LLC, through counsel, file a Request for Extension of Time to File Opposition to EPA’s Motion for Accelerated Decision on Liability (“Request”), seeking an extension of time to file their opposition from March 18, 2019 to March 22, 2019. The grounds for the Request—there were no grounds stated in the Request. However, Respondents stated in the Request that “[c]ounsel for respondent has communicated this request to Matthew Castelli, counsel for the EPA, and Mr. Castelli does not oppose this request.”

Regarding responses to motions, the Rules provide in pertinent part that “[a] party’s response to any written motion must be filed within 15 days after service of such motion. . . . The Presiding Officer . . . may set a longer time for a response . . . 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) (emphasis added). However, “[a]ny 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.* (emphasis added). “Any party who fails to respond within the designated period waives any objection to the granting of the motion.” 40 C.F.R. § 22.16(b).

Here, Respondents response to Complainant’s Motion for Accelerated Decision on Liability was due by March 18, 2019.¹ Thus, Respondents’ Request was not timely because it was not filed sufficiently in advance of the due date to allow me reasonable opportunity to issue an order. See 40 C.F.R. §§ 22.7(b), 22.16(b). Additionally, Respondents failed to state any grounds for the Request. Complainant’s non-opposition to the Request is sufficient, in this case, to show that it would not be prejudiced by the granting of the Request but that is not a showing of good cause.

On November 14, 2018, this Tribunal issued an Order on Complainant’s Motion for Default and Respondent Kent Hoggan’s Motion for Late Filing of Respondent’s Initial Prehearing Exchange. In denying Complainant’s motion for default, this Tribunal warned Respondents and their counsel to “strictly follow the Rules of Practice and instructions set forth in orders issued in this proceeding from this day forward, as such leniency may not be shown again in this proceeding.” Order on Complainant’s Mot. for Default and Resp’t Kent Hoggan’s Mot. for Late Filing of Resp’t’s Initial Prehear’g Exchange (Nov. 14, 2018). Respondents’ continued casual attitude toward their participation in this matter is not acceptable.

Considering the foregoing, it is only in the interest of ensuring that the facts are fully elicited so that all issues in this proceeding are adjudicated that Respondents’ Request is hereby **GRANTED**. Accordingly, Respondents shall file their responses to Complainant’s Motion for Accelerated Decision on Liability on or before March 22, 2019, or I will consider any objection to the granting of the motion waived.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: March 20, 2019
Washington, D.C.

¹ The fifteenth day after service of Complainant’s March 1, 2019 motion fell on Saturday, March 16, 2019, but under the Rules, the deadline was extended to the next business day which was March 18, 2019. 40 C.F.R. § 22.7(a).

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Docket No. CWA-08-2017-0026

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Respondents' Request for Extension of Time to File Opposition to EPA's Motion for Accelerated Decision on Liability**, dated March 20, 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
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic Mail to:

Matthew Castelli, Esq.
Mark Chalfant, Esq.
US EPA – Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129
Email: castelli.matthew@epa.gov
Email: Chalfant.mark@epa.gov
Counsel for Complainant

Copies by Electronic Mail to:

David W. Steffensen, Esq.
Law Office of David W. Steffensen, P.C.
4873 South State Street
Salt Lake City, UT 84107
Email: dave.dwslaw@me.com
*Counsel for Respondents Kent Hoggan, Frostwood 6 LLC,
and David Jacobsen*

Dated: March 20, 2019
Washington, D.C.