

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

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

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**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 AN EXTENSION OF TIME**

Complainant respectfully submits this motion pursuant to 40 C.F.R. §§ 22.7 and 22.16, with the request that the Presiding Officer either clarify that the deadline for Complainant’s Reply to Respondent’s Opposition to Complainant’s Motion for Accelerated Decision on Liability is automatically adjusted to April 4, 2019, or grant Complainant’s motion for an extension to the same date.

On March 1, 2019, Complainant filed a Motion for Accelerated Decision on Liability (Motion) against two respondents in this matter, Mr. Kent Hoggan and Frostwood (together Respondents). OALJ Index Document #41. On March 18, 2019, Respondents filed a motion for an extension of time to respond to Complainant’s Motion. OALJ Index Document #42. On March 20, 2019, the Presiding Officer extended the deadline for Respondents to file their response until March 22, 2019. OALJ Index Document #43. Respondents filed their Opposition to Complainant’s Motion for Accelerated Decision on Liability (Response) on March 21, 2019. OALJ Index Document #44. However, Counsel for Respondents did not serve the Response on either counsel for Complainant until Monday, March 25, 2019.

On March 22, 24, and 25, 2019, Complainant reviewed the electronic docket for this case, and no responsive filing was published. Accordingly, on Monday, March 25, 2019, Complainant called the Hearing Clerk for the OALJ to confirm whether Respondents filed a response to the Motion. The Hearing Clerk informed counsel for Complainant that Respondents filed their Response on March 21, 2019, and that the document had yet to be published to the electronic docket, but that it would be published that day. Counsel for Complainant immediately contacted counsel for Respondents, who then served Respondents' Response on Complainant and acknowledged that Complainant was not served contemporaneously with the filing of the Response due to a clerical oversight. On March 25, 2019, counsel for Complainant also emailed counsel for Respondent to inform counsel of this motion, and counsel for Respondents indicated that Respondents do not object to an extension of the Reply deadline until April 4, 2019.

Therefore, Complainant requests that the Presiding Officer clarify that the deadline for Complainant's Reply is April 4, 2019 (ten days from Complainant's actual and constructive service) rather than April 1, 2019 (ten days from when Respondents filed their Response). *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 . . .*") (emphasis added).

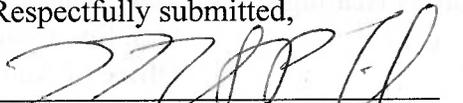
Alternatively, Complainant requests that the Presiding Officer grant an extension of time for Complainant's Reply until April 4, 2019, under 40 C.F.R. § 22.7. "[T]he Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties[.]" 40 C.F.R. § 22.7. This motion is timely because it is filed well in advance of any deadline for Complainant's Reply, and it is supported by good cause because Complainant had neither actual

nor constructive service of Respondents' Response until March 25, 2019. Further, no prejudice to Respondents exists, as they do not oppose an extension to April 4, 2019.

Accordingly, Complainant requests the Presiding Officer clarify that Complainant's Reply is not due until April 4, 2019, under 40 C.F.R. § 22.16, or alternatively grant this motion and extend the Reply deadline to April 4, 2019, under 40 C.F.R. § 22.7.

3/26/19  
Date

Respectfully submitted,



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Counsel for Complainant

**CERTIFICATE OF SERVICE**

I certify that the foregoing 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 AN EXENSION OF TIME in In the Matter of Kent Hoggan, Frostwood 6 LLC, and David Jacobsen, Respondents, Docket No. CWA-08-2017-0026, dated March 26, 2019. were sent this day in the following manner to the addressees listed below:

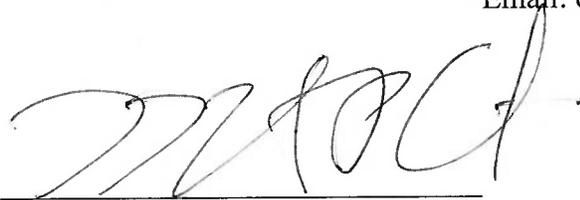
Copy by OALJ E-Filing System to:

Headquarters Hearing Clerk Mary Angeles  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Presiding Officer The Honorable Susan L. Biro  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Copy by email to:

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Dated: March 26, 2019

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