



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

answer has not been filed, the company and the claims against it are dismissed from this proceeding without prejudice. Hereafter, CBM shall be removed from the case caption. All remaining claims against the remaining Respondents shall go forward.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: February 15, 2018
Washington, D.C.

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Motion for Partial Withdrawal of Complaint**, dated February 15, 2018, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Matt Barnwell
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 and Regular Mail to:

Lauren Hammond, Esq.
Enforcement Attorney
US EPA – Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202
Email: hammond.lauren@epa.gov
Counsel for Complainant

Copies by Regular Mail to:

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

Rick Mckell
CBM Leasing, L.L.C.
165 N. 1330 West, Suite B1
Orem, UT 84057-5111
Registered Agent for Respondent CBM Leasing, L.L.C.

Dated: February 15, 2018
Washington, D.C.