

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

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

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**JOINT SET OF STIPULATED FACTS, EXHIBITS, AND TESTIMONY**

Pursuant to the Presiding Officer’s December 28, 2018 Order, Complainant U.S. Environmental Protection Agency, Region 8 and Respondents Kent Hoggan and Frostwood 6 LLC submit the following stipulations.

**I. EXHIBITS**

Complainant and Respondents stipulate to admit into evidence at hearing the following exhibits, reserving the right to argue the relevance, meaning, effect and/or weight of such at hearing: CX 1-7, CX 11-15, CX 26-27, CX 29, CX 33-41, CX 44, CX 49-54, CX 57, CX 59, CX 67-68, CX 75-77, RX 1-8, RX 9 (except for 224-232), RX 11, RX 18-22, RX 45, RX 54-65, and RX 71.

**II. WITNESSES**

Complainant and Respondents reached no stipulations regarding witness testimony.

**III. STIPULATIONS OF FACTS**

Complainant and Respondents stipulate to the following facts:

1. Mr. Kent Hoggan is an individual who resides in the State of Utah. Answer ¶ 28.
2. Mr. David Jacobsen or Mr. “Jake” Jacobsen (Mr. Jacobsen) is an individual who resides in the State of Utah. Answer ¶ 29.
3. Mr. Jacobsen does business as the sole proprietor of David Jacobsen Construction.

Answer ¶ 29.

4. Frostwood 6 LLC is a limited liability company formed in the State of Utah. Answer ¶ 30.

5. Frostwood 6 LLC has its principal office of business in Utah. Answer ¶ 30.

6. Mr. Kent Hoggan has owned Frostwood 6 LLC at all times relevant to this case. Answer ¶ 31.

7. Frostwood 6 LLC has engaged in constructing a housing development known as “Frostwood F6 townhomes” located at 4285 Cooper Lane, Park City, Utah (“the Site”) at all times relevant to this case. Answer ¶ 31.

8. Mr. David Jacobsen is responsible for the operation of constructing the Site and day-to-day operations. Answer ¶ 33.

9. Frostwood 6 LLC has been the sole owner of the real property comprising the Site at all times relevant to this case. Answer ¶ 35.

10. The Site encompasses approximately 4.76 acres. Answer ¶ 39.

11. Construction activities began at the Site on approximately January 7, 2016. Answer ¶ 40.

12. On August 31, 2016, EPA inspectors conducted a storm water inspection at the Site to determine compliance with the Utah Pollutant Discharge Elimination System (UPDES) General Permit for Discharges from Construction Activities, UPDES Permit No. UTRC00000 (“Permit”). Answer ¶ 49.

13. On August 31, 2016, Mr. Jacobsen identified himself as the operator at the Site to EPA inspectors. Answer ¶ 49.

14. On April 27, 2017, Mr. Jacobsen submitted a Notice of Intent (NOI) to the Utah Department of Environmental Quality Division of Water Quality (DWQ) and paid the annual

fee. Answer ¶ 57.

15. Mr. Jacobsen's April 27, 2017 submittal was an application for authorization to discharge under a Common Plan of Development Permit (UTRH80279) which was an incorrect permit authorization for the Site. Answer ¶ 57.

16. DWQ corrected Mr. Jacobsen's April 27, 2017 submittal and renewed the original UPDES Permit No. UTR373147 for a term beginning April 27, 2017. Answer ¶ 57.

17. The NOI Mr. Jacobsen submitted on April 27, 2017, identified the permittees as follows: (1) the owner as "Frostwood 6 LLC;" and (2) the operator as "David Jacobsen Construction." Answer ¶ 58.

18. On April 28, 2017, a DWQ inspector conducted a storm water inspection at the Site to determine compliance with the Permit. Answer ¶ 59.

19. Mr. Jacobsen's and Frostwood 6 LLC's construction activities at the Site resulted in the disturbance of at least one acre. Answer ¶ 63.

20. Mr. Jacobsen had and has operational control of the construction activities and directed and directs workers to carry out the conditions of the Permit. Answer ¶ 64.

21. Frostwood 6 LLC controlled the plans and specifications for the construction activities. Answer ¶ 65.

22. From at least the date of construction commencement on January 7, 2016, until April 27, 2017, Mr. Jacobsen and Frostwood 6 LLC were aware that they were required to submit a NOI to obtain coverage under the Permit prior to beginning work on the Site. Answer ¶ 69.

23. Mr. Jacobsen had no formal stormwater compliance training until May 22, 2018. Jacobsen Aff. ¶ 19(e); RX 8 at 7.

24. EPA filed an Administrative Order for Compliance on March 7, 2017. Respondents Kent

Hoggan's and Frostwood 6, LLC's Opposition to Complainant's Motion for Accelerated Decision on Liability ¶ 20.

25. An NOI authorized Frostwood 6 LLC's coverage under the Permit as the Site owner from November 18, 2015, to November 18, 2016.

26. NOIs authorized Frostwood 6 LLC's coverage under the Permit as the Site owner from April 27, 2017, to May 18, 2019.

#### **IV. PROPOSED STIPULATIONS OF LEGAL ISSUES**

The parties recognize that the Presiding Officer will make the ultimate determinations regarding legal issues in this case. The Presiding Officer's Order provides that "the parties must make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after an evidentiary hearing." Consequently, Complainant and Respondents stipulate that the following issues of law are not contested.

1. Mr. Jacobsen is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. Answer ¶ 29.

2. Frostwood 6 LLC is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2. Answer ¶ 30.

3. Mr. Jacobsen is an "operator" of the Site as defined by 40 C.F.R. § 122.2 and the Permit. Answer ¶ 34.

4. Frostwood 6 LLC is an "owner" of the Site as defined by 40 C.F.R. § 122.2 and the Permit. Answer ¶ 36.

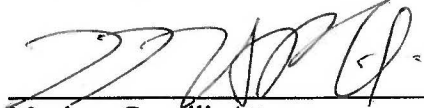
5. At all times relevant to this case, Mr. Jacobsen and Frostwood 6 LLC were persons that proposed to discharge or who were otherwise required to timely apply for coverage under the Permit, in accordance with section 402(p) of the Act, 33 U.S.C. 1342(p), 40 C.F.R. §§

122.21(a), (c), and 122.26(c). Answer ¶ 68.

6. East Canyon Reservoir and East Canyon Creek are “waters of the United States” as defined by 40 C.F.R. § 122.2 and therefore “navigable waters” as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7).

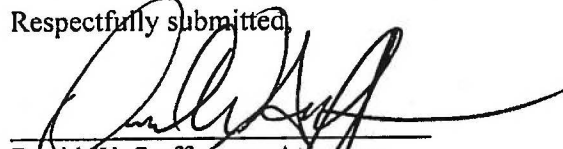
5/3/19  
Date

Respectfully submitted,

  
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5/3/19  
Date

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I certify that the foregoing JOINT SET OF STIPULATED FACTS, EXHIBITS, AND TESTIMONY, in In the Matter of Kent Hoggan and Frostwood 6 LLC, Respondents, Docket No. CWA-08-2017-0026, dated May 3, 2019, was sent this day in the following manner to the addressees listed below:

Copy by OALJ E-Filing System to:

Headquarters Hearing Clerk Mary Angeles  
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Dated: May 3, 2019

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