



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

In the Matter of:)
)
VSS International, Inc.,) **Docket No. OPA-09-2018-0002**
)
Respondent.)

**ORDER ON COMPLAINANT’S MOTION TO SUPPLEMENT
AND CORRECT THE PREHEARING EXCHANGE**

On April 20, 2018, I issued a Prehearing Order in this matter, establishing certain prehearing filing deadlines, including deadlines for each party to file a prehearing exchange. The Prehearing Order instructed the parties that a motion to supplement the prehearing exchange is only required if supplementation of the prehearing exchange is sought within 60 days of the scheduled hearing. Consistent with the Prehearing Order, both parties submitted a prehearing exchange. Thereafter, by order issued on July 20, 2018, I scheduled the hearing in this matter to occur on January 29, 2019- February 8, 2019, in San Francisco, California. However, due to a lapse in funding for the U.S. Environmental Protection Agency, by order issued on February 8, 2019, I rescheduled the evidentiary hearing in this matter to occur June 18, 2019- June 28, 2019, in San Francisco, California.

Prior to the issuance of the order rescheduling the evidentiary matter in this proceeding, Complainant filed a Motion to Supplement and Correct the Prehearing Exchange (“Motion to Supplement”) on January 11, 2019, along with several proposed exhibits. In its Motion to Supplement, the Agency requests that it be granted leave to supplement its prehearing exchange with certain exhibits submitted along with the motion, and that it also be granted leave to replace misidentified exhibits in its prehearing exchange. Further, the Agency requests that it be permitted to adopt and include any of the proposed exhibits submitted by Respondent in its Prehearing Exchange. Notably, in its Motion to Supplement, Complainant indicates that the motion is not agreed upon by the parties.

As the hearing in this matter has subsequently been rescheduled to June 18, 2019- June 28, 2019, greater than 60 days prior to Complainant’s Motion to Supplement, it is appropriate to grant Complainant’s request to supplement its prehearing exchange at this juncture. Accordingly, Complainant’s Motion to Supplement is **GRANTED**, under the conditions provided for below. At the evidentiary hearing, the parties are permitted to offer for the record any document proposed as an exhibit by an opposing party in its prehearing exchange.¹ As

¹ If a party chooses to offer such a document as an exhibit at the hearing, it accepts the responsibility for authenticating the document.

Complainant did not comply with the directives in the Prehearing Order regarding identifying and labeling its proposed exhibits, it shall submit a Supplemental Prehearing Exchange no later than **March 15, 2019**, strictly complying with the directives of the Prehearing Order. In its Supplemental Prehearing Exchange, Complainant shall appropriately identify any proposed exhibits not identified in Complainant's Initial Prehearing Exchange or Complainant's Rebuttal Prehearing Exchange with a "CX" designation, followed by a numeric, sequential exhibit number. This must be completed for both the proposed exhibits addressed by Complainant in its Motion to Supplement, as well as any proposed exhibits previously submitted that were either not identified with exhibit numbers in a prehearing exchange document (such as the public notice for this proceeding and the Policy on Civil Penalties dated February 16, 1984), or were improperly identified in a prehearing exchange document with a "PE" designation (such as email correspondence identified as PE 7 in Complainant's Rebuttal Prehearing Exchange). Instead of denoting any "revised" exhibits with an alphanumeric identifier following the "CX" designation, as proposed by Complainant, Complainant shall simply identify any such revised exhibits by a sequential, numeric exhibit number following the "CX" designation.² Complainant shall also submit with its Supplemental Prehearing Exchange copies of all such exhibits required to be addressed in the Supplemental Prehearing Exchange as outlined above, with these copies appropriately labeled as directed in the Prehearing Order.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: February 15, 2019
Washington, D.C.

² For example, instead of identifying a revised proposed exhibit as CX 20-R, Complainant may identify this document as CX 37 in circumstances where the last previously proposed exhibit is identified as CX 36.

In the Matter of *VSS International, Inc.*, Respondent.
Docket No. OPA-09-2018-0002

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Motion to Supplement and Correct the Prehearing Exchange**, dated February 15, 2019, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Andrea Priest
Attorney Advisor

Original and One Copy by Personal 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:

Rebekah Reynolds
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For Complainant

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For Respondent

Dated: February 15, 2019
Washington, D.C.