



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

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

**ORDER ON RESPONDENT’S MOTION FOR RECONSIDERATION AND APPEAL
AND RESPONDENT’S AMENDED MOTION FOR RECONSIDERATION AND
APPEAL**

On December 26, 2018, I issued an Order on Complainant’s Motion for Accelerated Decision as to Liability (“Order on Accelerated Decision”), in which I granted Complainant’s Motion for Accelerated Decision as to Liability with regard to liability for Count I of the Complaint for the period from February 13, 2013 to May 1, 2017, but otherwise denied Complainant’s motion with regard to liability for Counts II-V of the Complaint. Respondent filed a Motion for Reconsideration and Appeal on January 7, 2019, seeking “reconsideration or appeal” of the Order on Accelerated Decision with regard to my finding of liability for Count I. In response, Complainant timely filed an Opposition to Respondent’s Motion for Reconsideration and Appeal on January 8, 2019. On January 10, 2019, Respondent filed an Amended Motion for Reconsideration and Appeal, without an associated motion for leave to amend its Motion for Reconsideration and Appeal. Complainant subsequently filed an Opposition to Respondent’s Amended Motion for Reconsideration and Appeal on January 22, 2019.

The rules that govern this proceeding, contained in 40 C.F.R. Part 22 (“Rules of Practice”), address prehearing motions, *see* 40 C.F.R. § 22.16, as well as requests for interlocutory appeal, *see* 40 C.F.R. § 22.29. The Rules of Practice provide that prehearing motions must set forth the relief sought and state the grounds for such relief with particularity. 40 C.F.R. § 22.16. With regard to requests for interlocutory appeal, the Rules of Practice provide that a party seeking an appeal from an order other than an initial decision shall file the motion within ten days of service of the order. 40 C.F.R. § 22.29. The Rules of Practice further provide that a request for interlocutory appeal in such circumstances shall include a request that the Presiding Officer forward the order to the Environmental Appeals Board for review, and a brief statement of the grounds for appeal. *Id.*

It is unclear from the language contained in both Respondent’s Motion for Reconsideration and Appeal and Respondent’s Amended Motion for Reconsideration and Appeal whether Respondent in these motions is moving for reconsideration of the Order on

Accelerated Decision, requesting interlocutory review of the Order on Accelerated Decision, or requesting both reconsideration and interlocutory review of the Order on Accelerated Decision.¹ As a result, in considering these motions, I have addressed them as including both a request for reconsideration and a request for interlocutory appeal, as discussed below.

I. Request for Reconsideration

Respondent's Motion for Reconsideration and Appeal does not meet the minimum requirements of a prehearing motion set forth in 40 C.F.R. § 22.16, as it fails to clearly identify the relief sought or state the grounds for seeking such relief with particularity. Notably, the Motion for Reconsideration and Appeal fails identify any grounds upon which I should reconsider the Order on Accelerated Decision. Additionally, Respondent's Amended Motion for Reconsideration and Appeal neither identifies new evidence supporting reconsideration of the Order on Accelerated Decision, nor asserts arguments that were unavailable to Respondent in its response to Complainant's Motion for Accelerated Decision as to Liability. As a result, I do not find Respondent's request for reconsideration of the Order on Accelerated Decision in either its Motion for Reconsideration and Appeal or its Amended Motion for Reconsideration and Appeal to be warranted. Accordingly, Respondent's request for reconsideration of the Order on Accelerated Decision is hereby **DENIED**.

II. Request for Interlocutory Appeal

Respondent's Motion for Reconsideration and Appeal also does not meet the minimum requirements set by 40 C.F.R. § 22.29 for a request for interlocutory appeal. Specifically, Respondent's Motion for Reconsideration and Appeal fails to request that I forward the Order on Accelerated Decision to the Environmental Appeals Board for review, and further fails to include a brief statement of the grounds for appeal, as required by 40 C.F.R. § 22.29. Respondent's Motion for Reconsideration and Appeal notably does not assert any basis for granting interlocutory appeal. As a result, Respondent's Motion for Reconsideration and Appeal does not contain a sufficient request for interlocutory appeal of the Order on Accelerated Decision.

Although Respondent subsequently filed an Amended Motion for Reconsideration and Appeal, this document was filed following the deadline established by 40 C.F.R. § 22.29 for a request for interlocutory appeal of the Order on Accelerated Decision, and notably after Complainant filed a response to Respondent's Motion for Reconsideration and Appeal noting the deficiency of this motion under 40 C.F.R. § 22.29. Despite these circumstances, Respondent's Amended Motion for Reconsideration and Appeal was not accompanied by a motion seeking leave for amendment out of time, and the Amended Motion for Reconsideration and Appeal does not request leave to amend out of time or provide any justification for amendment out of time. As Respondent did not seek leave to amend its Motion for Reconsideration and Appeal, and otherwise provided no justification for amending this motion out of time, I can find no basis for permitting this late amendment to Respondent's request for interlocutory appeal. Accordingly, the request for interlocutory appeal in Respondent's Amended Motion for Reconsideration and Appeal is untimely, and therefore insufficient on this basis. As neither Respondent's Motion for

¹ For example, although the titles of both motions reference "reconsideration and appeal," both motions contain language identifying that Respondent is seeking "reconsideration or appeal."

Reconsideration and Appeal nor Respondent's Amended Motion for Reconsideration and Appeal sufficiently asserted a timely request for interlocutory appeal, Respondent's request for interlocutory appeal in both motions is appropriately **DENIED**.

III. Order

For the reasons set forth above, Respondent's Motion for Reconsideration and Appeal and Respondent's Amended Motion for Reconsideration and Appeal are hereby **DENIED**.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: February 21, 2019
Washington, D.C.

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 Respondent's Motion for Reconsideration and Appeal and Respondent's Amended Motion for Reconsideration and Appeal**, dated February 21, 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:

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Dated: February 21, 2019
Washington, D.C.