



**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 TO CONTINUE HEARING DATE

I issued a Notice of Hearing Order on July 20, 2018, setting the evidentiary hearing in this matter to occur January 29, 2019- February 8, 2019, in San Francisco, California, and otherwise establishing certain prehearing deadlines. Due to a lapse in funding for the U.S. Environmental Protection Agency, the Office of Administrative Law Judges was closed as of December 29, 2018, and did not resume normal operations until January 28, 2019. As a result of the shutdown associated with this lapse in funding, the hearing in this matter was postponed. On February 8, 2019, I issued an Order on Joint Motion for Conditional Extension of Time and Rescheduling Hearing, rescheduling prehearing deadlines in this matter and setting the hearing for June 18-28, 2019, in San Francisco, California. Prior to issuing this order, a staff attorney with the Office of Administrative Law Judges solicited and received dates of unavailability from the parties for conducting a hearing during the period from April through July 2019, for purposes of scheduling.

On February 15, 2019, Respondent filed a Motion to Continue Hearing Date to On or After August 20, 2019 (“Motion to Continue Hearing Date”), along with a memorandum of support and the declaration of Richard McNeil, counsel for Respondent. Subsequently on February 15, 2019, Respondent filed a Notice of Errata to correct the declaration of Mr. McNeil. In the Motion to Continue Hearing Date, Respondent requests that the hearing in this matter be rescheduled to a date on or after August 20, 2019. In support of this request, counsel for Respondent, Mr. McNeil, states in the filings associated with Respondent’s Motion to Continue Hearing Date that he has a conflict with the current dates set for the hearing in June 2019, due to a mediation for another case before the Los Angeles Superior Court, which was scheduled following his prior report of unavailability for the period from April through July 2019. Mr. McNeil indicates that rescheduling the conflicting mediation would be a hardship given logistical considerations. Mr. McNeil further represents that it would not be feasible for another attorney who has assisted him in this matter, Christine Cwiertny, to represent Respondent at the hearing in his absence, as she has not been designated co-counsel of record and has limited familiarity with this matter. With regard to the specific request that the hearing be set on or after August 20, 2019, Mr. McNeil asserts that Complainant advised that it would not oppose a request to reschedule the hearing date provided that the hearing be rescheduled after mid-August. Mr.

McNeil further provides dates during the period from August through November 2019 during which the parties have agreed that they would be available to participate in a hearing.

On February 25, 2019, Complainant filed a Response to Respondent's Motion to Continue Hearing Date ("Response"). In its Response, Complainant provides justification for various dates of conflict for rescheduling the hearing in September through October 2019. Complainant, in its Response, further provides preferred dates for a hearing occurring on or after August 20, 2019. Additionally, Complainant proposes that if the hearing is not rescheduled on or after August 20, 2019, as requested in Respondent's Motion to Continue Hearing Date, that the hearing as scheduled in June be rescheduled to accommodate a recess for Respondent's counsel to attend the conflicting mediation addressed in Respondent's Motion to Continue Hearing Date.

The procedural rules governing this proceeding, set forth at 40 C.F.R. Part 22 ("Rules of Practice"), provide that "[n]o request for postponement of a hearing shall be granted except upon motion and for good cause shown." 40 C.F.R. § 22.21(c). Further, the Rules of Practice dictate that I must avoid delay as the Presiding Officer in this proceeding. 40 C.F.R. § 22.4(c). Upon consideration of the representations made by Mr. McNeil, I find that postponement of the hearing, as requested in Respondent's Motion to Continue Hearing Date, is supported by good cause, and therefore warranted. However, I find the request that the hearing in this matter be rescheduled on or after August 20, 2019, to be unsupported. Such a postponement would result in excessive delay in a proceeding that has already been delayed as a result of the U.S. Environmental Protection Agency's lapse in funding. The hearing dates requested in Respondent's Motion to Continue Hearing Date and Complainant's Response are more than six months after the hearing was initially scheduled to commence in January 2019, and occur more than a year after I issued the Notice of Hearing in this matter on July 20, 2018. Further, the parties have not provided any basis justifying a postponement of the duration requested in the Respondent's Motion to Continue Hearing Date. As a result, I deny the request to reschedule the hearing on or after August 20, 2019. Further, I decline Complainant's proposal to reschedule the hearing in June to accommodate a recess for Respondent's counsel to attend the conflicting mediation at issue, given the disruption and considerable additional expense entailed in executing such a proposal. Accordingly, the Respondent's Motion to Continue Hearing Date is **GRANTED IN PART** and **DENIED IN PART**. The prehearing filing deadlines and the hearing in this matter are scheduled as follows.

Settlement Status Reports. Complainant is directed to file Status Reports as to the status of any settlement negotiations between the parties, *which shall not include any specific terms of settlement*. Complainant shall file a Status Report on or before **March 15, 2019**, and another Status Report on or before **April 5, 2019**.

Joint Stipulations. On or before **April 12, 2019**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for the hearing is limited. Therefore, 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.

Notice of Appearance. Any representative for a party in this proceeding who has not been clearly identified as such in filings must enter a notice of appearance to represent a party in this matter.

Prehearing Conference. A prehearing conference will be scheduled in advance of the hearing and conducted by a staff attorney.

Prehearing Briefs. The parties may, if they wish, file prehearing briefs on or before **April 26, 2019**. If filed, Complainant's brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondent's brief should identify each of the defenses Respondent intends to pursue at the hearing.

Hearing. The hearing in this matter shall commence at **9:00 a.m. on Thursday, May 16, 2019**, and shall continue as necessary through **Friday, May 24, 2019**,¹ at the address set forth below:

**Phillip Burton Federal Building & United States Courthouse
450 Golden Gate Avenue
Courtroom 15, 18th Floor
San Francisco, CA 94102**

Individuals requiring special accommodations at the hearing, including wheelchair access and translation services, must contact Mary Angeles, Headquarters Hearing Clerk, at (202) 564-6281, no later than 30 days prior to the scheduled hearing, so that appropriate arrangements can be made. If you have any procedural questions or questions about what to expect at the hearing, you may contact Andrea Priest, Attorney Advisor, at (202) 564-4914 or priest.andrea@epa.gov.

Postponement. In consideration of the prior postponement of the hearing and the difficulty in rescheduling the hearing in this matter, the parties are advised that requests to postpone the hearing may not be granted at this point in the proceeding. The parties are put on notice to plan and prepare for the hearing accordingly.

RESPONDENT IS ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE HAVING BEEN SHOWN, MAY RESULT IN THE ENTRANCE OF DEFAULT JUDGMENT AGAINST IT.

IF EITHER PARTY DOES NOT INTEND TO ATTEND THE HEARING, OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

¹ I am aware that an attorney of record for Complainant, Rebekah Reynolds, reported unavailability from March 4, 2019- June 12, 2019, due to parental leave. However, unavailability was not reported for Rebecca Sugerman, co-counsel of record for Complainant, during the scheduled period for the hearing, and the set hearing dates allow time for Complainant to seek additional co-counsel or otherwise prepare for the unavailability of Ms. Reynolds as necessary.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'S. Biro', written above a horizontal line.

Susan L. Biro
Chief Administrative Law Judge

Dated: February 26, 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 to Continue Hearing Date**, dated February 26, 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
Rebecca Sugerman
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
Email: reynolds.rebekah@epa.gov
Email: sugerman.rebecca@epa.gov
For Complainant

Richard J. McNeil
Crowell & Moring LLP
Email: rmcneil@crowell.com
For Respondent

Dated: February 26, 2019
Washington, D.C.