

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

IN THE MATTER OF:

VSS International, Inc.

Respondent.

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) DOCKET NO. OPA 09-2018-0002  
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**JOINT STIPULATIONS**

In accordance with the Chief Administrative Law Judge's July 20, 2018, Notice of Hearing Order, Complainant United States Environmental Protection Agency, Region 9 (Complainant or EPA) and Respondent VSS International, Inc. (Respondent or VSSI) respectfully submit the foregoing Joint Stipulations. In order to narrow the issues and minimize the necessity for the introduction of evidence at hearing, the parties enter into the following joint stipulations:

**I. Joint Stipulated Facts**

The following facts have been established and are to be deemed admitted for all purposes pertaining to or otherwise in connection with the hearing to be held in the above referenced matter.

1. Respondent is a corporation organized under the laws of California.
2. Respondent is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
3. Respondent is the "owner and operator" of a facility, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
4. The facility referenced above is located at 3785 Channel Drive, in West Sacramento, California ("Facility").
5. The Facility is a bulk storage and aggregation facility for petroleum surfacing materials, including asphaltic cement.
6. Respondent manufactures asphalt emulsions and other products used principally for application on roadways.
7. The Facility has been in operation since the late 1980s.
8. Respondent has operated the Facility since the late 1980s.

9. The Facility is approximately 10.5 acres.
10. The Facility includes an office, a maintenance shop, the product storage and manufacturing area, bulk asphalt containment area, rubberized asphalt plant, rail spur, truck/equipment wash, and parking areas for fleet vehicles, equipment, and employees.
11. The Facility is a “non-transportation related onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
12. Respondent uses and stores “oil” at the Facility, including asphaltic cement, within the meaning of 40 C.F.R. § 112.2.
13. Respondent is “engaged in ...storing ...oil or oil products” at the Facility within the meaning of 40 C.F.R. § 112.1.
14. There are above ground storage tanks (“ASTs”) at the Facility that store oil or oil products.
15. Some of the ASTs at the Facility have been in service for a number of years, some are field-constructed, some are over 50,000 gallons, and some are over 75,000 gallons.
16. The Facility has an oil storage capacity over 1,320-gallons.
17. Several types of oil (e.g., asphaltic cement) stored at the Facility are kept in heated and insulated tanks.
18. The Facility currently includes two approximately 2,400,000-gallon field-constructed insulated ASTs that store oil. These tanks are referred to as Tank # 2001 and Tank #2002.
19. The current total oil storage capacity at the Facility exceeds approximately 5,000,000 gallons.
20. The Sacramento River Deep Water Ship Channel (“SRDWSC”) is located about 200 feet south of the south Facility boundary fence.
21. The SRDWSC is an artificially constructed deep channel for ships to access the Port of Sacramento.
22. The SRDWSC extends generally from the Port of Sacramento to its mouth on Cache Slough.
23. On November 27, 2012, EPA conducted an inspection of Respondent’s Facility.
24. At the time of the inspection, Respondent had an SPCC plan, dated April 6, 2012 (“April 2012 SPCC Plan”), in place.
25. David Wampler, Acting Assistant Director of the Enforcement Division at EPA, sent Mr. Reed a letter dated May 22, 2014 (“Show Cause Letter”).
26. Respondent provided to EPA a document with a “current revision date” of October 24, 2014, and titled “Hazardous Materials, Environmental Compliance, and Contingency Business Plan” (“October 2014 SPCC/FRP Plan”).

27. Respondent provided to EPA a document with a "current revision date of January 15, 2016," and titled Hazardous Materials, Environmental Compliance, and Contingency Business Plans ("January 2016 SPCC Plan").
28. On September 30, 2016, EPA conducted an inspection of Respondent's Facility.
29. After the September 30, 2016 inspection, EPA provided Respondent its SPCC Field Inspection and Plan Review Checklist ("2016 SPCC Checklist").
30. Respondent submitted an FRP to EPA, with a "current revision date" of January 9, 2017 ("January 2017 FRP").
31. Respondent submitted an FRP to EPA, with a "current revision date" of May 1, 2017 ("May 2017 FRP").
32. Respondent submitted an SPCC Plan to EPA, with a "current revision date" of May 1, 2017 ("May 2017 SPCC Plan").
33. ~~The SWDWSC, for purposes of this matter, is approximately 200 feet wide, 30 feet deep, with a slope of 0.0000483 (5 feet/19.62 miles).~~

## II. Joint Stipulated Exhibits

The parties stipulate that the documents that Complainant and Respondent have submitted and identified below are true and authentic copies of original documents and are admissible into evidence in this matter.

No witness will be required to authenticate or admit stipulated documents. The Parties are not stipulating to the relevance or truthfulness of any particular statements in any of the exhibits, the credibility of the person(s) making any such statements in any of the exhibits, or the weight to be given to any of the exhibits. The Parties may introduce admissible evidence and other documents at the time of hearing to explain and/or place into context the exhibits listed below in this section. Nothing in this Joint Stipulation limits the parties from introducing other documents.

CX exhibits: CX 1-48 and 52-54.

RX Exhibits: RX 1-97, less RX 25-28, 30-31, 33-36, and 44.

**III. Joint Stipulated Testimony**

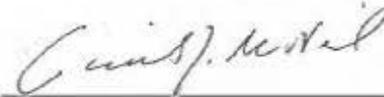
Complainant and Respondent have not agreed to any stipulated testimony not otherwise stated herein.

**IV. Conclusion**

The above stipulations are signed by representatives of the parties on the dates set forth below.

For Respondent VSS International, Inc.:

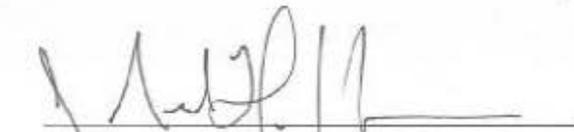
Dated: April 12, 2019



Richard J. McNeil  
CROWELL & MORING LLP  
Attorney for Respondent

For Complainant United States Environmental Protection Agency:

Dated: Apr. 12 2019



J. Andrew Helmlinger  
U.S. EPA, Region IX  
Attorneys for Complainant

**CERTIFICATE OF SERVICE**

I, Rebecca Sugerman, hereby certify that on April 12, 2019, I caused to be filed electronically the foregoing Joint Stipulations with the Clerk of the Office of Administrative Law Judges using the OALJ E-Filing System, which sends a Notice of Electronic Filing to Respondent.

Additionally, I, Rebecca Sugerman, hereby certify that on April 12, 2019, I served a true and correct copy of the foregoing Joint Stipulations via electronic mail to Richard McNeil, attorney for Respondent, at RMcNeil@crowell.com.

Dated: April 12, 2019

Respectfully Submitted,



Rebecca Sugerman  
Assistant Regional Counsel,  
U.S. EPA, Region IX