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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF
VSS INTERNATIONAL, INC.

3785 Channel Drive
West Sacramento, CA

Respondent.

DOCKET NO. OPA 09-2018-00002

**RESPONDENT VSS INTERNATIONAL, INC.'S
MOTION TO SUPPLEMENT AND CORRECT
THE PREHEARING EXCHANGE**

Proceeding to Assess Class II Civil Penalty Under Clean
Water Act Section 311

Hearing Officer: Chief Administrative Law Judge
Susan L. Biro
Hearing Location: Phillip Burton Federal
Courthouse, Courtroom 15
Hearing Date: May 16, 2019
Hearing Time: 9:00 a.m.

MOTION TO SUPPLEMENT AND CORRECT THE PREHEARING EXCHANGE

Comes now Respondent, VSS International, Inc. (“VSSI”) and, by and through its attorneys of record, seeks to supplement and correct its Prehearing Exchange pursuant to 40 C.F.R. § 22.19(f) to add to Respondent’s Exhibit List: (i) the prehearing exchanges previously filed by both parties; and (ii) filings previously made in this matter as is set forth below (all of which have been filed and served previously in this matter). The proposed new series of exhibits have been tentatively identified and are included herewith as RX 98 through RX 113.

These documents, though in the possession of both parties, and in this Tribunal’s files, may be the subject of presentation at the hearing but have not been identified by exhibit number by Respondent, which is the purpose of the filing of this motion.

Respondent notes that Rule 22.19(f) provides that a party who previously has made an information exchange under Rule 22.19(a) “shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.”

In this case, all of the “additional or corrective information” has been disclosed to the other party as all of the information either has been included in prehearing exchanges of either party or has been part of the record in this case; nonetheless, the information below has not been separately identified as an exhibit, thus this motion.

At the same time, Rule 22.22(a) provides in part as follows: “If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under Section 22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information

and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.”

In this case, again, none of the proposed exhibits has not previously been filed and served in this matter, and this filing is beyond 15 days before the hearing date; nevertheless, this motion to supplement is being filed in the interest of the exhibits being complete, accurate and up to date.

Respecting meeting and conferring regarding this motion, counsel for Respondent sent a draft of this proposed motion to counsel for Complainant. Counsel met and conferred by email and by phone and, based on an open question regarding the motion, counsel scheduled a call with Ms. Priest, which was held on April 25, 2019. Based on this call, counsel for Respondent removed two pleadings (the answer and the complaint) and one court order (the order dated December 26, 2019) from inclusion in this motion, it being the understanding of Respondent that pleadings and orders need not be identified as exhibits in order to be presented at the hearing. It is the further understanding of counsel for Respondent that EPA does not necessarily object to this motion but may have matters of clarification of which it will wish to advise the Court by way of a responsive pleading.

The specific supplements and corrections are provided below.

RX 98

Complainant’s Prehearing Exchange, dated June 1, 2018

RX 99

Respondent’s Prehearing Exchange, dated June 22, 2018

RX 100

Complainant’s Rebuttal Prehearing Exchange, dated July 5, 2018

RX 101

Declaration of Daniel A. Meer, dated August 2, 2018

RX 102

Declaration of Joseph Troy Swackhammer, dated August 2, 2018

RX 103

Declaration of William R. Michaud, dated August 3, 2018

RX 104

Declaration of Janice Witul, dated August 3, 2018

RX 105

Complainant's Motion for Accelerated Decision as to Liability, dated August 3, 2018

RX 106

Complainant's Memorandum In Support of Its Motion for Accelerated Decision as to Liability, dated August 3, 2018

RX 107

Complainant's Reply to Respondent VSS International, Inc.'s Opposition to Complainant's Motion for Accelerated Decision as to Liability, dated August 30, 2018

RX 108

Complainant's Supplement to the Prehearing Exchange, dated March 14, 2019

RX 109

Joint Stipulation to Exclude Exhibits and Limit Potential Penalties, dated March 15, 2019

RX 110

Declaration of John Kastrinos In Support Of Respondent's Motion for Default, dated April 8, 2019

RX 111

Declaration of Lee DeLano In Support Of Respondent's Motion for Default, dated
April 8, 2019

RX 112

Declaration of Craig R. Fletcher In Support Of Respondent's Motion for Default, dated
April 8, 2019

RX 113

Joint Stipulation, dated April 12, 2019

For all of the foregoing reasons, VSS International, Inc. respectfully requests that this
Court grant its Motion to Supplement or Correct the Prehearing Exchange.

Dated: April 25, 2019

CROWELL & MORING LLP



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VSS INTERNATIONAL, INC.