

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
)	DOCKET NO. OPA 09-2018-0002
VSS International, Inc.)	
)	Complainant's Opposition to Respondent's
)	Motion for Reconsideration and Appeal
)	
Respondent.		

Complainant submits this opposition to Respondent VSS International, Inc.'s Motion for Reconsideration and Appeal. Respondent did not provide any legal or factual basis for seeking reconsideration or appeal. The Consolidated Rules of Practice provides that a motion requesting interlocutory appeal must request "that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for this appeal." 40 C.F.R. § 22.29. Respondent failed to meet this minimum standard. At best, Respondent's basis is only its dissatisfaction with the result. There is no additional argument from what it laid out in its Opposition to Complainant's Motion for Accelerated Decision, dated August 20, 2018. The EPA Office of Administrative Law Judges has been clear that a motion for reconsideration "will be denied if you merely attempt to reargue your position." EPA Office of Administrative Law Judges Practice Manual (June 2011) at 26 *available at* https://www.epa.gov/sites/production/files/2013-09/documents/alj-practice-manual_0.pdf.

In addition to Section 22.29 of the Consolidated Rules, Respondent cites to Sections 22.20 (Accelerated decision), 22.27 (Initial decision), 22.30 (Appeal from or review of initial decision) and 22.32 (motion to reconsider a final order) of the Consolidated Rules for authority to file its motion and seek the requested relief. These provisions, however, provide Respondent with no such authority.¹

Finally, although Respondent provided notice to EPA that it planned to file its motion just hours before filing, the motion failed to state the position of Complainant as required by the Chief Administrative Law Judge Biro's Prehearing Order dated April 20, 2018.

For these reasons, Complainant respectfully requests that Respondent's Motion for Reconsideration and Appeal be denied.

¹ Respondent failed to cite to Section 22.16 (Motions) of the Consolidated Rules which might have covered its request for reconsideration.

In the Matter of VSS International, Inc.

Docket No. OPA 09-2018-0002

For Complainant United States Environmental Protection Agency:

Dated: January 8, 2019

/s/ Rebekah Reynolds

Rebekah Reynolds
Rebecca Sugerman
U.S. EPA, Region IX
Attorneys for Complainant

CERTIFICATE OF SERVICE

I, Rebekah Reynolds, hereby certify that on January 8, 2019, I caused to be filed electronically the foregoing Complainant's Status Report 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, Rebekah Reynolds, hereby certify that on January 8, 2019, I served a true and correct copy of the foregoing Complainant's Status Report via electronic mail to Richard McNeil, attorney for Respondent, at RMcNeil@crowell.com.

Dated: January 8, 2019

Respectfully Submitted,

/s/ Rebekah Reynolds

Rebekah Reynolds
Assistant Regional Counsel,
U.S. EPA, Region IX