

Richard J. McNeil (SBN 116438)  
Christine E. Cwiertny (SBN 222098)  
CROWELL & MORING LLP  
3 Park Plaza, Suite 2000  
Irvine, CA 92614  
Telephone: 949-263-8400  
Facsimile 949-263-8414  
[rmcneil@crowell.com](mailto:rmcneil@crowell.com)  
[ccwiertny@crowell.com](mailto:ccwiertny@crowell.com)

Attorneys for VSS INTERNATIONAL, INC.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF

**VSS INTERNATIONAL, INC.**

3785 Channel Drive  
West Sacramento, CA

Respondent.

DOCKET NO. OPA 09-2018-0002

**RESPONDENT VSS INTERNATIONAL, INC.'S  
PREHEARING EXCHANGE**

Respondent VSS International, Inc. ("Respondent" or "VSSI") provides this Prehearing Exchange as directed in the Prehearing Order of April 20, 2018.

**I. RESPONDENT DENIES THAT ANY PENALTY IS WARRANTED, THAT ITS SPILL PREVENTION CONTROL & COUNTERMEASURE ("SPCC") PLAN FAILED TO COMPLY WITH PERTINENT REGULATIONS, OR THAT IT IS REQUIRED UNDER 40 C.F.R. § 112.20 TO SUBMIT A FACILITY RESPONSE PLAN ("FRP")**

Respondent provides the following factual and legal support for its denials made in its Response To Administrative Complaint And Request For A Hearing filed March 21, 2018.

**A. No Penalty Is Warranted Because VSSI's SPCC Complies With The Applicable Regulations And At All Times VSSI Cooperated And Worked With Complainant To Ensure Its SPCC Satisfied Complainant's Expectations**

From the time that Respondent received notice from Complainant of alleged violations at its facility in May, 2012 by the Yolo County Environmental Health Division, the CUPA, that initially inspected Respondent VSSI's Spill Prevention Control and Countermeasures ("SPCC") Plan under a program administered by the United States Environmental Protection Agency ("USEPA"), Respondent has continuously and diligently worked to seek guidance from the CUPA and from Complainant on how to enhance its SPCC program so that it satisfies the Complainant's expectations. Indeed, within a week of receiving notice of the SPCC alleged violations, Respondent sought to clarify the CUPA's expectations, which resulted in guidance being sought by the CUPA from the Complainant, inasmuch as a question of regulatory ambiguity was presented. Based on this guidance, Respondent voluntarily agreed to modify its SPCC Plan and all violations were cleared as of June 1, 2012.

Approximately six months later, in November, Respondent's facility was inspected again by the CUPA, however, the CUPA officer had Janice Witul of the USEPA accompany him. In attendance for VSSI were Randall Tilford (Corporate Environmental Manager) and Pat McNairy (Plant Manager). The VSSI representatives were advised that no penalty would be forthcoming based on the November 27, 2012 inspection, that the USEPA would possibly be offering further guidance respecting VSSI's SPCC and Facility Response Plans, and that the USEPA would respond to VSSI within three to four months. In February, 2013 Wes Greenwood of Condor queried Mr. Tilford on whether he had received any feedback from the USEPA as of that date (February 25, 2013) respecting the guidance promised by the USEPA.

As should already be clear, but is borne out further by the documents identified as exhibits herein, not only did Respondent timely respond to Complainant's notice of alleged violations at its facility regarding its SPCC Plan, but it also maintained constant contact with EPA over the past five years through phone calls, written communications, and in person meetings that provided updates on Respondent's efforts to respond to additional clarification and information requests from Complainant and satisfy its expectations. Such communications included providing evidence of the inspection of above ground storage tanks at the facility; proposals for tank integrity testing and testing protocols; status updates for Respondent's voluntary FRP development, as well as the submission of draft and final FRPs; status updates for Respondent's SPCC Plan, as well as the submission of draft and final SPCCs; updates on engineering analyses; and training records. All or nearly all of the issues discussed between the USEPA and VSSI were complex, often including layers of complexity (such as, for example, whether an FRP was or is required). VSSI was promised by the USEPA that it would assist VSSI in reviewing and commenting upon its draft plans (as it is mandated to do) and thus the decision ultimately to seek an administrative penalty from VSSI was a grave disappointment.

Evidence of these communications is demonstrated through the following documents (identified as exhibits below): May 9, 2012 Email from Michael Sears to Randall Tilford; May 30, 2012 Email from Michael Sears to Randall Tilford; July 30 Email from Randall Tilford to Richard McNeil; June 25, 2013 Letter from Arlene Kabei to Mr. Jeffrey R. Reed; August 23, 2013 Letter from Richard McNeil to Ms. Janice Witul; August 23, 2013 Letter from Jeffrey R. Reed to Ms. Janice Witul ; January 29, 2014 Letter from Richard McNeil to Ms. Janice Witul; April 21, 2014 Letter from Richard McNeil to J. Andrew Helmlinger; May 22, 2014 Letter from David Wampler to Mr. Jeffrey R. Reed; August 29, 2014 Email from Richard McNeil to Andrew

Helminger; September 10, 2014 Email from Bill Fox to Richard McNeil; October 2, 2014 Letter from Richard J. McNeil to J. Andrew Helminger; April 1, 2015 Email to Andrew Helminger to Richard McNeil; April 1, 2015 Email from Andrew Helminger to Richard McNeil; April 3, 2015 Email from Randy Tilford to Richard McNeil; April 21, 2015 Email from Randy Tilford to Richard McNeil; April 24, 2015 Email from Andrew Helminger to Janice Witul; June 9, 2015 Email from Richard McNeil to Andrew Helminger; April 22, 2015 Email from Randy Tilford to Richard McNeil; June 10, 2015 Email from Kari Casey to Richard McNeil; June 17, 2015 Email from Randy Tilford to Richard McNeil; June 22, 2015 Email from Randy Tilford to Richard McNeil; June 25, 2015 Email from Randy Tilford to Richard McNeil; July 7, 2015 Letter from Richard McNeil to J. Andrew Helminger; July 8, 2015 Email from Andrew Helminger to Sandi Martinez; March 29, 2017 Email from Randy Tilford to Richard McNeil; April 28, 2017 Email from Richard McNeil to Randy Tilford; May 5, 2017 Email from Andrew Helminger to Richard McNeil; May 5, 2017 Email from Andrew Helminger to Richard McNeil; May 11, 2017 Email from Andrew Helminger to Richard McNeil; May 11, 2017 Email from Andrew Helminger to Richard McNeil; May 25, 2017 Email from Richard McNeil to Randy Tilford; June 27, 2017 Email from Richard McNeil to Andrew Helminger; July 18, 2017 Email from Andrew Helminger to Richard McNeil; July 18, 2017 Email from Randy Tilford to Jeff Reed; September 15, 2017 Email from Andrew Helminger to Richard McNeil; September 18, 2017 Email from Richard McNeil to Richard McNeil (Forwarding June 27, 2017 Email from Andrew Helminger to Richard McNeil); September 21, 2017 Email from Richard McNeil to Andrew Helminger; October 9, 2017 Email from Richard McNeil to Richard McNeil (forwarding Email from Andrew Helminger to Richard McNeil).

## **1. Specific Denials**

In accordance with Section 3 of the Prehearing Order dated April 20, 2018, Respondent now provides the following factual, legal, and evidentiary support for the denials made in its Response To Administrative Complaint And Request For A Hearing (the “Response”):

1. **Paragraph 12:** The assertion in the Administrative Complaint that the Sacramento Deep Water Ship Channel connects to other bodies of water is relevant to this action only insofar as fish and wildlife and sensitive environments could be injured. The Response objected to this assertion for this reason. A more detailed basis for this denial (based on the conflation by the USEPA of the navigability of the waters in question with their fish and wildlife sensitivity) is set forth in Section 1.B., infra.

2. **Paragraph 14:** The total oil storage capacity for bulk containers at Respondent’s facility was less than one million gallons during a portion of the time relevant to the Complaint, in particular, prior to the dates Tank Numbers 2001 and 2002 were placed into service. Respondent will use testimony and documents, including but not limited to Respondent’s July 10, 2013 responses to Complainant’s June 25, 2013 Information Request, as well as an April 23, 2015, email from Craig Fletcher to Richard McNeil, and a July 22, 2013 Email from Wesley Greenwood to Randy Tilford to show the dates that tanks 2001 and 2002 were placed into service and the amount of total oil storage capacity at the site when these tanks entered into service.

3. **Paragraph 17:** The assertion in the Administrative Complaint that the Sacramento Deep Water Ship Channel connects to other bodies of water is relevant to this action only insofar as fish and wildlife and sensitive environments could be injured. The Response objected to this assertion for this reason. A more detailed basis for this denial (based on the

conflation by the USEPA of the navigability of the waters in question with their fish and wildlife sensitivity) is set forth in Section 1.B., infra.

4. **Paragraph 18:** Respondent's Response set forth the basis that the assertion in this paragraph is incorrect. See also, Section 1.B., infra.

5. **Paragraph 22:** Respondent's Response set forth the basis that the assertion in this paragraph is incorrect. See also, Section 1.B., infra.

6. **Paragraph 23:** Respondent's Response set forth the basis that the assertion in this paragraph is incorrect. See also, Section 1.B., infra.

7. **Paragraph 30:** Respondent will use testimony and the April 6, 2012 VSSI SPCC to show that the SPCC included management approval of the SPCC Plan.

8. **Paragraph 31:** Respondent will show that its SPCC Plan either included a facility plan with "all regulated fixed containers, storage areas and connecting pipes, and stating the oil type and capacity for containers," or that such plans were unnecessary as a result of negotiation and agreement with state and federal officials. Respondent will make this showing through the use of testimony, the April 6, 2012 VSSI SPCC, and documents including but not limited to the following: September 30, 2016 Notice Of SPCC Inspection With Deficiencies; April 6, 2012 Condor Earth Technologies letter executed by Wesley P. Greenwood, PG and Robert J. Job, PE and forwarding April 6, 2012, Spill Prevention Control And Countermeasure (SPCC) Plan for VSS Emultech; USEPA Office of Emergency Management SPCC Program; May 9, 2012 Email from Michael Sears to Randy Tilford; May 30, 2012 Email from Michael Sears to Randy Tilford; February 25, 2013 Email from Wesley Greenwood to Randy Tilford; Office of the State Fire Marshal Aboveground Petroleum Storage Act Advisory Committee Draft Meeting Minutes dated July 11, 2013; July 22, 2013 letter from Randy Tilford to Richard

McNeil forwarding Tilford's affidavit of recollection of closing conference with EPA on November 27, 2013; July 22, 2013 affidavit of Pat McNairy re EPA and Yolo County Health and Environmental inspection of VSSI; July 30, 2013 Email from Randy Tilford to Richard McNeil and Wesley Greenwood forwarding inspection reports and notices of violation and return to compliance documents; USEPA Office of Emergency Management SPCC Program; December 16, 2013 SPCC Guidance For Regional Inspectors, Chapter 6 Facility Diagram and Description; SPCC Rule – Expectations and Tank Integrity Testing Requirements.

9. **Paragraph 32:** Respondent will show through testimony and its April 6, 2012, SPCC Plan that its SPCC Plan included a containment or diversionary structure in its facility diagram for tanks not permanently closed.

10. **Paragraph 33:** Respondent will show that its SPCC Plan was prepared in accordance with 40 CFR §§ 112.3, 112.5, and 112.7 or otherwise received dispensation from such requirements from the appropriate state and federal officials. To do so, Respondents will use testimony and documents, including but not limited to the following: April 6, 2012 VSSI SPCC Plan; September 30, 2016 Notice Of SPCC Inspection With Deficiencies; April 6, 2012 Condor Earth Technologies letter executed by Wesley P. Greenwood, PG and Robert J. Job, PE and forwarding April 6, 2012, Spill Prevention Control And Countermeasure (SPCC) Plan for VSS Emultech; May 9, 2012 Email from Michael Sears to Randy Tilford; May 30, 2012 Email from Michael Sears to Randy Tilford; February 25, 2013 Email from Wesley Greenwood to Randy Tilford; Office of the State Fire Marshal Aboveground Petroleum Storage Act Advisory Committee Draft Meeting Minutes dated July 11, 2013; July 22, 2013 letter from Randy Tilford to Richard McNeil forwarding Tilford's affidavit of recollection of closing conference with EPA on November 27, 2013; July 22, 2013 affidavit of Pat McNairy re EPA and Yolo County Health

and Environmental inspection of VSSI; July 30, 2013 Email from Randy Tilford to Richard McNeil and Wesley Greenwood forwarding inspection reports and notices of violation and return to compliance documents; December 16, 2013 SPCC Guidance For Regional Inspectors, Chapter 6 Facility Diagram and Description; SPCC Rule – Expectations and Tank Integrity Testing Requirements.

11. **Paragraphs 35-38:** Using the testimony and documents identified above for paragraphs 30-33, Respondent will show that its SPCC Plan was not in violation of 40 C.F.R. § 112.3 for the period November 27, 2012 through May 1, 2017 and that no penalty is warranted.

12. **Paragraphs 41-42:** Respondent will show, using testimony and the April 6, 2012 SPCC, that a licensed Professional Engineer – Robert J. Job, P.E., Registration No. C 51592 – certified the SPCC pursuant to 40 C.F.R. § 112.3(d) on April 6, 2012.

13. **Paragraph 44-46:** Respondent will show, using testimony and the April 6, 2012 SPCC that a licensed Professional Engineer –Robert J. Job, P.E., Registration No. C 51592 – certified the SPCC pursuant to 40 C.F.R. § 112.3(d) on April 6, 2012. As a result Respondent did not violate 40 C.F.R. § 112.3(d) and is not liable for penalties in any amount for any period of time.

14. **Paragraphs 49-53; 55:** Respondent will use testimony and documents to show that it did not put “into service the 2,348,000 gallon tank #2001” in 2012. These documents include the April 6, 2012 SPCC Plan, an email dated July 22, 2013 from Wesley Greenwood to Randall Tilford, as well as the multiple draft SPCC Plans and FRP’s that referred to Tanks 2001 and 2002.

15. **Paragraphs 57-60:** Respondent will use testimony, expert reports, and documents to show that its failure, if any, to amend the SPCC Plan did not “essentially



undermine[ ] the ability of [VSSI] to prevent or respond to a worst-case spill” at its facility.

Accordingly, no penalty should be assessed against VSSI.

16. **Paragraphs 63-67:** Respondent will use testimony and documents to show that Respondent kept records of inspections and tests at its facility for a period of three years, in accordance with 40 C.R.F. § 112.7(e) and its SPCC Plan. Further, to the extent there was any such purported violation, which there was not, it did not “essentially undermine[ ] the ability of Respondent to prevent or respond to a worst-case spill” at its facility. Accordingly, no penalty is warranted. The documents supporting Respondent’s position include but are not limited to the following: April 19, 2015 letter from Fletcher Consultants, Inc. – Craig R. Fletcher, P.G., C.Hg. to Richard McNeil re Integrity Testing Requirements, August 14, 2015 Email from Michael Sears to Randy Tilford, October 6, 2015 Email from Michael Sears to Randy Tilford, November 28, 2016 Tank 817 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 818 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 831 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 832 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 833 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 834 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 839 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 848 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 854 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 878 API 653 External Tank Inspection And Suitability For Service Evaluation, November 28, 2016 Tank 886 API 653 External Tank Inspection And Suitability For

Service Evaluation, June 1, 2016 Tank 854 API 653 Internal Tank Inspection And Suitability For  
Service Evaluation, June 1, 2016 Tank 865 API 653 External Tank Inspection And Suitability  
For Service Evaluation, June 1, 2016 Tank 881 API 653 External Tank Inspection And  
Suitability For Service Evaluation, January 15, 2017 Emulsion Tank 882 API 653 Out Of  
Service/Internal Tank Inspection And Suitability For Service Evaluation.

**B. No Penalty Is Warranted Because No FRP Is Required Under 40 C.F.R.  
§ 112.20, But Out Of An Abundance Of Caution VSSI Worked With EPA To  
Ensure Its FRP Met Complainant's Expectations**

From the time that Respondent received notice from Complainant of alleged violations at  
its facility in November 2012, Respondent has continuously and diligently worked to seek  
guidance from the Complainant on whether (and, if whether, how) to implement and tailor its  
FRP program so that it satisfies the Complainant's expectations.

Evidence of these communications is demonstrated through the following documents  
(identified as exhibits below): June 25, 2013 Letter from Arlene Kabei to Mr. Jeffrey R. Reed;  
August 23, 2013 Letter from Richard McNeil to Ms. Janice Witul; August 23, 2013 Letter from  
Jeffrey R. Reed to Ms. Janice Witul ; January 29, 2014 Letter from Richard McNeil to Ms.  
Janice Witul; April 21, 2014 Letter from Richard McNeil to J. Andrew Helmlinger; May 22,  
2014 Letter from David Wampler to Mr. Jeffrey R. Reed; August 29, 2014 Email from Richard  
McNeil to Andrew Helmlinger; September 10, 2014 Email from Bill Fox to Richard McNeil;  
October 2, 2014 Letter from Richard J. McNeil to J. Andrew Helmlinger; April 1, 2015 Email to  
Andrew Helmlinger to Richard McNeil; April 1, 2015 Email from Andrew Helmlinger to  
Richard McNeil; April 3, 2015 Email from Randy Tilford to Richard McNeil; April 21, 2015  
Email from Randy Tilford to Richard McNeil; April 24, 2015 Email from Andrew Helmlinger to  
Janice Witul; June 9, 2015 Email from Richard McNeil to Andrew Helmlinger; April 22, 2015

Email from Randy Tilford to Richard McNeil; June 10, 2015 Email from Kari Casey to Richard McNeil; June 17, 2015 Email from Randy Tilford to Richard McNeil; June 22, 2015 Email from Randy Tilford to Richard McNeil; June 25, 2015 Email from Randy Tilford to Richard McNeil; July 7, 2015 Letter from Richard McNeil to J. Andrew Helmlinger; July 8, 2015 Email from Andrew Helmlinger to Sandi Martinez; March 29, 2017 Email from Randy Tilford to Richard McNeil; April 28, 2017 Email from Richard McNeil to Randy Tilford; May 5, 2017 Email from Andrew Helmlinger to Richard McNeil; May 5, 2017 Email from Andrew Helmlinger to Richard McNeil; May 11, 2017 Email from Andrew Helmlinger to Richard McNeil; May 11, 2017 Email from Andrew Helmlinger to Richard McNeil; May 25, 2017 Email from Richard McNeil to Randy Tilford; June 27, 2017 Email from Richard McNeil to Andrew Helmlinger; July 18, 2017 Email from Andrew Helmlinger to Richard McNeil; July 18, 2017 Email from Randy Tilford to Jeff Reed; September 15, 2017 Email from Andrew Helmlinger to Richard McNeil; September 18, 2017 Email from Richard McNeil to Richard McNeil (Forwarding June 27, 2017 Email from Andrew Helmlinger to Richard McNeil); September 21, 2017 Email from Richard McNeil to Andrew Helmlinger; October 9, 2017 Email from Richard McNeil to Richard McNeil (forwarding Email from Andrew Helmlinger to Richard McNeil).

In its Response To Administrative Complaint And Request For A Hearing, Respondent made the following denials for which it now provides factual, legal, and evidentiary support:

2. **Paragraph 17:**

a. Winter-Run Chinook Salmon. 57 Fed. Reg. 36626, issued August 14, 1992, sets forth the proposed rule for 50 C.F.R. Part 226, Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon. It excludes the Sacramento Deep Water Ship Channel as part of that critical habitat or as a riparian zone to the Sacramento River. Likewise,

50 C.F.R. § 226.204 identifies the critical habitat for Sacramento winter-run chinook salmon and it does not identify the Sacramento Deep Water Ship Channel as part of that critical habitat or as a riparian zone to the Sacramento River. Likewise, the maps submitted by EPA from [http://www.westcoast.fisheries.noaa.gov/publications/gis\\_maps/salmon\\_steelhead/critical\\_habitat/chin/chinook\\_srwr.pdf](http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/salmon_steelhead/critical_habitat/chin/chinook_srwr.pdf) do not identify the Sacramento Deep Water Ship Channel as part of the critical habitat for winter-run chinook salmon. Fed. Reg. 33212, issued June 16, 1993, also does not identify the Sacramento Deep Water Ship Channel as part of that critical habitat or as a riparian zone to the Sacramento River. Similarly, the GIS Data provided by NOAA on its site at [http://www.westcoast.fisheries.noaa.gov/maps\\_data/endangered\\_species\\_act\\_critical\\_habitat.html](http://www.westcoast.fisheries.noaa.gov/maps_data/endangered_species_act_critical_habitat.html) does not identify the Sacramento Deep Water Ship Channel as part of the critical habitat for the Sacramento River winter-run chinook. In addition, 59 Fed. Reg. 14714, issued March 29, 1994, Guidance For Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments includes the Sacramento River as a critical habitat for the Winter-run Chinook Salmon in Appendix II, but not the Sacramento Deep Water Ship Channel.

b. Central spring-run chinook and Central Valley steelhead. 50 C.F.R. 226.211 identifies the Central Valley spring-run Chinook and Central Valley steelhead as evolutionarily significant units of salmon in Sacramento County. While the Sacramento Delta watershed is identified as a critical habitat for these two species, 70 Fed. Reg. 52488, Tables 13 and 14 exclude the Deep Water Ship Channel from the critical habitat. See also 50 C.F.R. § 226.211.

3. **Paragraph 18:** Respondent will use testimony; expert reports; maps; 40 C.F.R. § 112.2, Definitions; 40 C.F.R. § 112.20, Facility Response Plans; 40 C.F.R. Pt. 112, App. C, Appendix C to Part 112 – Substantial Harm Criteria; NOAA Chart 18662 Sacramento River, Andrus Island to Sacramento at <http://www.charts.noaa.gov/PDFs/18662.pdf> visited June 20,

2018; U.S. Environmental Response Planning, Compliance Assistance Guide at <https://www.epa.gov/sites/production/files/2014-04/documents/frpguide.pdf> visited June 20, 2018; the San Francisco Area Contingency Plan 2 – GRA 8, North Delta (§§ 9848.1-9848.4) at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=16226&inline=true> visited June 20, 2018; The Substantial Harm Criteria Determination prepared by WHF Inc.; and Report On Evaluation Of Containment Measures For Asphalt-Cement Above-Ground Storage Tanks Valley Slurry Seal International Facility West Sacramento, California (as well as documents set forth to support Respondent’s denial of Paragraph 17) to show that Respondent’s facility is not subject to 40 CFR 112.20 and, therefore, is not required to prepare a Facility Response Plan (“FRP”). Instead, Respondent voluntarily elected to prepare an RFP with the consent of and in coordination with the USEPA as an accommodation to resolve any alleged uncertainty related to Respondent’s obligation to prepare an FRP as well as to tailor the FRP to the USEPA’s expectations.

4. **Paragraph 22:** Respondent will use testimony, expert reports, and the documents, maps, statutory rules and regulations, and other matter set forth above regarding Paragraphs 17 and 18 to show that the VSSI facility is not a “non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shoreline in a harmful quantity.”

5. **Paragraph 23:** This paragraph alleges that the VSSI facility is an “SPCC regulated facility,” a term defined in paragraph 22. Respondent will use testimony, expert reports, and the documents, maps, statutory rules and regulations, and other matter set forth above regarding Paragraphs 17 and 18 to show that the VSSI facility is not an “SPCC-regulated facility,” which is defined in paragraph 22 as a “non-transportation-related onshore facility

which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shoreline in a harmful quantity.”

23. **Paragraphs 70-78:** Respondent contends that it was not required to prepare and submit a Facility Response Plan (“FRP”) because it is not, as alleged by Complainant, “located at such a distance from the Sacramento Deep Water Ship Channel that a discharge could cause injury to fish and wildlife and sensitive environments.” That said, Respondent voluntarily and proactively cooperated with officials at the EPA to voluntarily prepare and submit an FRP so as to avoid any argument that an FRP was required and to be a “good” environmental citizen.

Respondent was taken by surprise when EPA filed its Administrative Complaint on February 12, 2018, given that Respondent had worked with EPA, and acted in good faith, to complete an FRP that addressed all of EPA’s issues and concerns. Because no FRP is required under the Clean Water Act, and Respondent worked diligently and in good faith with EPA to voluntarily prepare an FRP out of an abundance of caution, no penalty is warranted. Respondent will support its position through the use of testimony, expert reports, and the following documents: 57 Fed. Reg. 36626, issued August 14, 1992, proposed rule for 50 C.F.R. Part 226, Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon; 50 C.F.R. § 226.204, which identifies the critical habitat for Sacramento winter-run chinook salmon; maps submitted by Complainant in its pre-hearing exchange, from [http://www.westcoast.fisheries.noaa.gov/publications/gis\\_maps/salmon\\_steelhead/critical\\_habitat/chin/chinook\\_srwr.pdf](http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/salmon_steelhead/critical_habitat/chin/chinook_srwr.pdf); 58 Fed. Reg. 33212, issued June 16, 1993, setting forth the detailed description for the winter-run chinook critical habitat; GIS Data provided by NOAA on its site at [http://www.westcoast.fisheries.noaa.gov/maps\\_data/endangered\\_species\\_act\\_critical\\_habitat.html](http://www.westcoast.fisheries.noaa.gov/maps_data/endangered_species_act_critical_habitat.html); 59 Fed. Reg. 14714, issued March 29, 1994, Guidance For Facility and Vessel Response

Plans Fish and Wildlife and Sensitive Environments; 50 C.F.R. 226.211; 70 Fed. Reg. 52488; the San Francisco Area Contingency Plan 2 – GRA 8, North Delta (§§ 9848.1-9848.4) at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=16226&inline=true> visited June 20, 2018; 40 C.F.R. § 112.2, Definitions; 40 C.F.R. § 112.20, Facility Response Plans; 40 C.F.R. Pt. 112, App. C, Appendix C to Part 112 – Substantial Harm Criteria; NOAA Chart 18662 Sacramento River, Andrus Island to Sacramento at <http://www.charts.noaa.gov/PDFs/18662.pdf> visited June 20, 2018; U.S. Environmental Response Planning, Compliance Assistance Guide at <https://www.epa.gov/sites/production/files/2014-04/documents/frpguide.pdf> visited June 20, 2018; The Substantial Harm Criteria Determination prepared by WHF Inc.; and Report On Evaluation Of Containment Measures For Asphalt-Cement Above-Ground Storage Tanks Valley Slurry Seal International Facility West Sacramento, California (as well as documents set forth to support Respondent’s denial of Paragraph 17).

## **II. RESPONDENT’S LIST OF WITNESSES TO BE CALLED AT HEARING**

Respondent may call the following witnesses at the hearing. Respondent may not call some witnesses if, at the time of hearing, the substance of their testimony is undisputed or has been stipulated to by the parties. Similarly, Respondent may not call some of its witnesses if their testimony is otherwise deemed unnecessary or if they are unavailable.

Respondent reserves the right to supplement its list of witnesses to the extent allowed by 40 CFR Part 22, or by order of the tribunal.

### **A. Fact Witnesses**

1. Randall Tilford. Randall Tilford is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint, VSSI’s interactions with the Yolo

County Environmental Health Department and the USEPA, and the engagement of third-party professionals to assist in the analysis of the compliance options.

2. Michael Sears. Michael Sears is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA.

3. Kari Casey. Kari Casey is expected to testify as a fact witness regarding the layout of the VSSI facility and the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA, and as an expert witness respecting her role in preparing the compliance documents submitted to the USEPA.

4. Wes Greenwood. Wes Greenwood is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint, VSSI's interactions with the USEPA, and the engagement of third-party professionals to assist in the analysis of the compliance options.

5. Janice Witul. Janice Witul is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with Yolo County and the USEPA.

6. Jeffrey Reed. Jeffrey Reed is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint, VSSI's interactions with the USEPA, and the engagement of third-party professionals to assist in the analysis of the compliance options.

7. Roger Liston. Roger Liston is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA.



8. Pat McNairy. Pat McNairy is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA.

9. Jeff Nowlin. Jeff Nowlin is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA.

10. Lee Delano. Lee Delano is expected to testify as a fact witness regarding the layout of the VSSI facility and the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA and as an expert witness respecting her role in preparing the compliance documents submitted to the USEPA.

12. Janice Witul. Janice Witul is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with Yolo County and the USEPA.

**B. Expert Witnesses**

1. Kari Casey. Kari Casey is expected to testify as a fact witness regarding the layout of the VSSI facility and the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA and as an expert witness respecting her role in preparing the compliance documents submitted to the USEPA. Ms. Casey's curriculum vitae ("CV") is attached hereto as Exhibit A.

2. Lee Delano. Lee Delano is expected to testify as a fact witness regarding the layout of the VSSI facility and the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and

the USEPA and as an expert witness respecting her role in preparing the compliance documents submitted to the USEPA. Ms. Delano's CV is attached hereto as Exhibit B.

3. John Kastrinos. John Kastrinos is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and his role in preparing the compliance documents submitted to the USEPA. Mr. Kastrinos's CV is attached hereto as Exhibit C.

4. Craig R. Fletcher. Craig Fletcher is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the USEPA and his role in preparing the compliance documents submitted to the USEPA. Mr. Fletcher's CV is attached hereto as Exhibit D.

5. Michael Sears. Michael Sears is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with the Yolo County Environmental Health Department and the USEPA.

6. Janice Witul. Janice Witul is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint and VSSI's interactions with Yolo County and the USEPA.

7. Wes Greenwood. Wes Greenwood is expected to testify regarding the compliance of VSSI with the matters alleged in the complaint, VSSI's interactions with the USEPA, and the engagement of third-party professionals to assist in the analysis of the compliance options.

### **III. RESPONDENT'S DOCUMENTS & EXHIBITS**

Respondent includes with its Prehearing Exchange the following documents and exhibits it intends to introduce into evidence:

1. **RX 1:** June 25, 2013 Letter from Arlene Kabei to Mr. Jeffrey R. Reed
2. **RX 2:** August 23, 2013 Letter from Richard McNeil to Ms. Janice Witul
3. **RX 3:** August 23, 2013 Letter from Jeffrey R. Reed to Ms. Janice Witul
4. **RX 4:** January 29, 2014 Letter from Richard McNeil to Ms. Janice Witul
5. **RX 5:** April 21, 2014 Letter from Richard McNeil to J. Andrew Helmlinger
6. **RX 6:** May 22, 2014 Letter from David Wampler to Mr. Jeffrey R. Reed
7. **RX 7:** August 29, 2014 Email from Richard McNeil to Andrew Helmlinger
8. **RX 8:** September 10, 2014 Email from Bill Fox to Richard McNeil
9. **RX 9:** October 2, 2014 Letter from Richard J. McNeil to J. Andrew Helmlinger
10. **RX 10:** April 1, 2015 Email to Andrew Helmlinger to Richard McNeil
11. **RX 11:** April 1, 2015 Email from Andrew Helmlinger to Richard McNeil
12. **RX 12:** April 3, 2015 Email from Randy Tilford to Richard McNeil
13. **RX 13:** April 21, 2015 Email from Randy Tilford to Richard McNeil
14. **RX 14:** April 24, 2015 Email from Andrew Helmlinger to Janice Witul
15. **RX 15:** June 9, 2015 Email from Richard McNeil to Andrew Helmlinger
16. **RX 16:** April 22, 2015 Email from Randy Tilford to Richard McNeil
17. **RX 17:** June 10, 2015 Email from Kari Casey to Richard McNeil
18. **RX 18:** June 17, 2015 Email from Randy Tilford to Richard McNeil
19. **RX 19:** June 22, 2015 Email from Randy Tilford to Richard McNeil
20. **RX 20:** June 25, 2015 Email from Randy Tilford to Richard McNeil
21. **RX 21:** July 7, 2015 Letter from Richard McNeil to J. Andrew Helmlinger
22. **RX 22:** July 8, 2015 Email from Andrew Helmlinger to Sandi Martinez
23. **RX 23:** March 29, 2017 Email from Randy Tilford to Richard McNeil

- 24. **RX 24:** April 28, 2017 Email from Richard McNeil to Randy Tilford
- 25. **RX 25:** May 5, 2017 Email from Andrew Helmlinger to Richard McNeil
- 26. **RX 26:** May 5, 2017 Email from Andrew Helmlinger to Richard McNeil
- 27. **RX 27:** May 11, 2017 Email from Andrew Helmlinger to Richard McNeil
- 28. **RX 28:** May 11, 2017 Email from Andrew Helmlinger to Richard McNeil
- 29. **RX 29:** May 25, 2017 Email from Richard McNeil to Randy Tilford
- 30. **RX 30:** June 27, 2017 Email from Richard McNeil to Andrew Helmlinger
- 31. **RX 31:** July 18, 2017 Email from Andrew Helmlinger to Richard McNeil
- 32. **RX 32:** July 18, 2017 Email from Randy Tilford to Jeff Reed
- 33. **RX 33:** September 15, 2017 Email from Andrew Helmlinger to Richard McNeil
- 34. **RX 34:** September 18, 2017 Email from Richard McNeil to Richard McNeil

(Forwarding June 27, 2017 Email from Andrew Helmlinger to Richard McNeil)

- 35. **RX 35:** September 21, 2017 Email from Richard McNeil to Andrew Helmlinger
- 36. **RX 36:** October 9, 2017 Email from Richard McNeil to Richard McNeil

(forwarding Email from Andrew Helmlinger to Richard McNeil)

- 37. **RX 37:** July 22, 2013 Email from Randy Tilford to Richard McNeil forwarding VSSI's July 10, 2013, responses to EPA's June 25, 2013, Information Request

- 38. **RX 38:** April 23, 2015 email from Craig Fletcher to Richard McNeil
- 39. **RX 39:** September 30, 2016 Notice Of SPCC Inspection With Deficiencies
- 40. **RX 40:** April 6, 2012, Condor Earth Technologies letter executed by Wesley P.

Greenwood, PG and Robert J. Job, PE and forwarding April 6, 2012, Spill Prevention Control And Countermeasure (SPCC) Plan for VSS Emultech

- 41. **RX 41:** May 9, 2012 Email from Michael Sears to Randy Tilford

42. **RX 42:** May 30, 2012 Email from Michael Sears to Randy Tilford
43. **RX 43:** February 25, 2013 Email from Wesley Greenwood to Randy Tilford
44. **RX 44:** Office of the State Fire Marshal Aboveground Petroleum Storage Act Advisory Committee Draft Meeting Minutes dated July 11, 2013
45. **RX 45:** July 22, 2013 letter from Randy Tilford to Richard McNeil forwarding Tilford's affidavit of recollection of closing conference with EPA on November 27, 2013
46. **RX 46:** July 22, 2013 affidavit of Pat McNairy re EPA and Yolo County Health and Environmental inspection of VSSI
47. **RX 47:** July 30, 2013 Email from Randy Tilford to Richard McNeil and Wesley Greenwood forwarding inspection reports and notices of violation and return to compliance documents
48. **RX 48:** December 16, 2013 SPCC Guidance For Regional Inspectors, Chapter 6 Facility Diagram and Description
49. **RX 49:** March 21, 2013 SPCC Rule – Expectations and Tank Integrity Testing Requirements, CUPA Programs Workshop
50. **RX 50:** August 2013 Spill Prevention, Control and Countermeasure Plan (SPCC) Program, Bulk Storage Fact Sheet, USEPA, Office of Emergency Management
51. **RX 51:** April 19, 2015 letter from Fletcher Consultants, Inc. – Craig R. Fletcher, P.G., C.Hg. to Richard McNeil re Integrity Testing Requirements
52. **RX 52:** August 14, 2015 Email from Michael Sears to Randy Tilford
53. **RX 53:** October 6, 2015 Email from Michael Sears to Randy Tilford
54. **RX 54:** November 28, 2016 Tank 817 API 653 External Tank Inspection And Suitability For Service Evaluation

55. **RX 55:** November 28, 2016 Tank 818 API 653 External Tank Inspection And Suitability For Service Evaluation

56. **RX 56:** November 28, 2016 Tank 831 API 653 External Tank Inspection And Suitability For Service Evaluation

57. **RX 57:** November 28, 2016 Tank 832 API 653 External Tank Inspection And Suitability For Service Evaluation

58. **RX 58:** November 28, 2016 Tank 833 API 653 External Tank Inspection And Suitability For Service Evaluation

59. **RX 59:** November 28, 2016 Tank 834 API 653 External Tank Inspection And Suitability For Service Evaluation

60. **RX 60:** November 28, 2016 Tank 839 API 653 External Tank Inspection And Suitability For Service Evaluation

61. **RX 61:** November 28, 2016 Tank 848 API 653 External Tank Inspection And Suitability For Service Evaluation

62. **RX 62:** November 28, 2016 Tank 854 API 653 External Tank Inspection And Suitability For Service Evaluation

63. **RX 63:** November 28, 2016 Tank 878 API 653 External Tank Inspection And Suitability For Service Evaluation

64. **RX 64:** November 28, 2016 Tank 886 API 653 External Tank Inspection And Suitability For Service Evaluation

65. **RX 65:** June 1, 2016 Tank 854 API 653 Internal Tank Inspection And Suitability For Service Evaluation

66. **RX 66:** June 1, 2016 Tank 865 API 653 External Tank Inspection And Suitability For Service Evaluation
67. **RX 67:** June 1, 2016 Tank 881 API 653 External Tank Inspection And Suitability For Service Evaluation
68. **RX 68:** January 15, 2017 Emulsion Tank 882 API 653 Out Of Service/Internal Tank Inspection And Suitability For Service Evaluation
69. **RX 69:** November 15, 2007 drawings for Emultech Tank Details, 016” Center Column, Rafter Layout, and Orientation
70. **RX 70:** April 16, 2013 Email from Wesley Greenwood to Randy Tilford
71. **RX 71:** July 19, 2013 Email from Wesley Greenwood to Randy Tilford forwarding Hot-Mix Asphalt Exemption from 73 Fed. Reg. 74236
72. **RX 72:** June 1, 2016 Safety Data Sheet for Asphalt, PG 64-22, PG 64-16, PG 64-19, PG 58-22, PG 59-28
73. **RX 73:** 57 Fed. Reg. 36626, issued August 14, 1992, Proposed Rule for 50 CFR Part 226, Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon
74. **RX 74:** 50 C.F.R. § 226.204, Critical habitat for Sacramento winter-run chinook salmon
75. **RX 75:** Print-out of web pages for Endangered Species Act Critical Habitat:: NOAA Fisheries, West Coast Region, visited June 20, 2018, at [http://www.westcoast.fisheries.noaa.gov/maps\\_data/endangered\\_species\\_act\\_critical\\_habitat.html](http://www.westcoast.fisheries.noaa.gov/maps_data/endangered_species_act_critical_habitat.html)
76. **RX 76:** NOAA Fisheries Critical Habitat Sacramento River Winter-run Chinook Salmon map visited June 20, 2018 at

[http://www.westcoast.fisheries.noaa.gov/publications/gis\\_maps/salmon\\_steelhead/critical\\_habitat/chin/chinook\\_srwr.pdf](http://www.westcoast.fisheries.noaa.gov/publications/gis_maps/salmon_steelhead/critical_habitat/chin/chinook_srwr.pdf)

77. **RX 77:** 58 Fed. Reg. 33212 issued June 16, 1993, Final Rule for 50 CFR Part 226, Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon

78. **RX 78:** Federal Register Friday, September 2, 2005

79. **RX 79:** GIS Data (Sharefile) maps of Sacramento River Winter-run Chinook Salmon critical habitat provided by NOAA on its site at [http://www.westcoast.fisheries.noaa.gov/maps\\_data/endangered\\_species\\_act\\_critical\\_habitat.html](http://www.westcoast.fisheries.noaa.gov/maps_data/endangered_species_act_critical_habitat.html) and visited June 20, 2018

80. **RX 80:** 59 Fed. Reg. 14714, issued March 29, 1994, Guidance For Facility and Vessel Response Plans Fish and Wildlife and Sensitive Environments identifies the Sacramento River

81. **RX 81:** 70 Fed. Reg. 52488, issued September 2, 2005, Final Rule, Endangered and Threatened Species; Designation of Critical Habitat for Seven Evolutionarily Significant Units of Pacific Salmon and Steelhead in California

82. **RX 82:** 50 C.F.R. § 226.211, Critical habitat for Seven Evolutionarily Significant Units (ESUs) of Salmon (*Oncorhynchus* spp.) in California

83. **RX 83:** San Francisco Area Contingency Plan 2 – GRA 8, North Delta (§§ 9848.1-9848.4) at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=16226&inline=true> visited June 20, 2018

84. **RX 84:** 40 C.F.R. § 112.2, Definitions

85. **RX 85:** 40 C.F.R. § 112.20, Facility Response Plans



86. **RX 86:** 40 C.F.R. Pt. 112, App. C, Appendix C to Part 112 – Substantial Harm Criteria
87. **RX 87:** U.S. Environmental Response Planning, Compliance Assistance Guide at <https://www.epa.gov/sites/production/files/2014-04/documents/frpguide.pdf> visited June 20, 2018
88. **RX 88:** June 23, 2015 VSS Emultech/VSS International Substantial Harm Criteria Determination prepared by WHF, Inc.
89. **RX 89:** Report On Evaluation Of Containment Measures For Asphalt-Cement Above-Ground Storage Tanks Valley Slurry Seal International Facility West Sacramento, California
90. **RX 90:** NOAA map 18662, Sacramento River, Andrus Island to Sacramento
91. **RX 91:** May 4, 2018 Email from Andrew Helmlinger to Richard McNeil
92. **RX 92:** October 24, 2014 DRAFT Hazardous Materials Business Plan
93. **RX 93:** September 21, 2015 Hazardous Materials Business Plan
94. **RX 94:** January 9, 2017 Facility Response Plan
95. **RX 95:** May 1, 2017 Facility Response Plan
96. **RX 96:** May 1, 2017 Hazardous Materials Business Plan
97. **RX 97:** July 22, 2013 Email from Wesley Greenwood to Randy Tilford

**IV. RESPONDENT'S ESTIMATE OF TIME NEEDED TO PRESENT ITS CASE**

Respondent estimates it will take approximately 48 hours to present its case.

**V. TRANSLATION SERVICES**

Respondent does not anticipate any need for translation services.

**VI. DOCUMENTS IN SUPPORT OF ITS AFFIRMATIVE DEFENSE AND ARGUMENTS IN SUPPORT OF ITS AFFIRMATIVE DEFENSES**

Respondent did not allege any affirmative defenses in its Response To Administrative Complaint And Request For A Hearing (the “Response”). Respondent, however, intends to seek leave to amend its Response to assert an affirmative defense based on the statute of limitations. Specifically, Respondent contends that should any penalty be assessed against it, such penalty should be limited to only that time period not barred by the statute of limitations.

**VII. DETAILED NARRATIVE STATEMENT OF FACTUAL AND LEGAL BASES FOR RESPONDENT’S POSITION THAT THERE SHOULD BE NO PENALTY ASSESSED UPON IT**

The penalty sought by the USEPA in this matter – the maximum statutorily available – should be flatly rejected as it will without question be viewed by the regulated community as an extreme disincentive to seek to cooperate or voluntarily or proactively undertake interim or final steps to achieving compliance.

No penalty is warranted here for the further reason that the USEPA cannot establish violations of the SPCC or FRP regulations.

Under these circumstances, a respondent must somehow attempt to navigate the straits between Scylla and Charybdis in even proposing a reduced penalty, as Section 3(D) of the April 20, 2018, Prehearing Order suggests is advisable, lest in the absence thereof the maximum penalty be assessed.

Nonetheless, the USEPA’s rationale for the maximum penalty is too generalized, and so at variance with the facts of this case, that such a penalty amount cannot be seriously considered.

The types of facts (disregarding boilerplate recitations of the law) relied upon by the USEPA are those such as:

- The deep water channel is designated critical habitat for the winter run chinook salmon (incorrect);
- The SPCC Plan did not have management approval (incorrect);
- The SPCC Plan lacked a compliant facility diagram (incorrect); and
- The SPCC Plan was not certified by an engineer (incorrect).


Although the USEPA grudgingly admits that “Respondent made some effort to obtain an FRP, beginning with efforts in 2014,” it neglects to acknowledge that the USEPA committed to provide comments to Respondent so that the FRP could be finalized, and that the USEPA often let many months elapse before responding (while claiming simultaneously the urgency for an FRP to be in place).

Under these circumstances, Complainant’s gravity penalty calculations lack foundation and should be disregarded in their entirety. Nor was there any economic benefit because VSSI timely prepared and submitted multiple drafts and versions of the SPCC and the FRP (and engaged three professional engineering firms to analyze the FRP applicability question – all three of them concluding that no FRP was required).

In an abundance of caution, should this tribunal find a violation, Respondent respectfully requests the opportunity to present evidence as to the nature and amount of any such hypothetical penalty.

Dated: June 22, 2018

CROWELL & MORING LLP



Richard J. McNeil  
Christine E. Cwierth  
Attorneys for Respondent  
VSS INTERNATIONAL, INC.

# **EXHIBIT A**

**Kari L. Casey**

karicasey@whfinc.com

(209) 872-2168

**Education**

M.S. Environmental Management <i>University of San Francisco</i>	May 2009 <i>San Francisco, California</i>
B.S. Environmental Science Technology <i>Humboldt State University</i>	December 2004 <i>Arcata, California</i>
General Education <i>Modesto Junior College</i>	May 2000 <i>Modesto, California</i>

**Employment**

General Manager <i>WHF Inc. Environmental and Engineering Group</i> Oversight of day-to-day operations and administrative duties. Project management duties include ensuring compliance with regulatory guidelines for hazardous materials, hazardous waste, SPCC Plans, storm water, and air quality. Development of site specific training programs for spill response, hazardous materials, and waste management including OSHA Hazcom standards. Project management for site investigations and remediation activities for cleanup sites. Oversight of permitting and compliance activities including audits pertaining to air quality, water quality, storm water management, hazardous materials, and hazardous waste management and preparation of Phase I and Phase II Environmental Audits.	July 2008 - Present <i>Oakdale, California</i>
Senior Environmental Specialist <i>WHF Inc. Environmental and Engineering Group</i> Project management for site investigation and remediation activities of UST and AST sites. Assists in permitting and compliance activities pertaining to air quality, water quality, storm water management, hazardous materials, and hazardous waste management.	July 2006 – July 2008 <i>Oakdale, California</i>
Associate Environmental Specialist <i>WHF Inc. Environmental and Engineering Group</i> Assist in field work activities and report preparation for underground storage tank (UST), and Aboveground Storage Tank (AST) investigations. Assists in permitting and compliance activities pertaining to air quality, water quality, storm water management, hazardous materials, and hazardous waste management.	July 2004 – July 2006 <i>Oakdale, California</i>

**Certifications**

- Hazardous Waste Operations and Emergency Response 40 Hour Training
- Certified Hazardous Materials Manager (CHMM)

**Extracurricular Activities and Affiliations**

- Chair, Bicycle and Pedestrian Advisory Committee, Stanislaus County
- Member, Northern California Chapter of the Alliance of Hazardous Materials Professionals

**Relevant Projects**

- Assistance with preparation of Hazardous Materials, Spill Response, and Contingency Plans
- Development of site specific training programs for Hazardous Materials and Hazardous waste management including storage, handling, and spill response
- Preparation of Permit by Rule Tiered permits for onsite hazardous waste treatment
- Completion of Phase I and Phase II Environmental Audits
- Permit compliance oversight for Waste Discharge Requirements (non-15 and Title 27)
- Air permitting and preparation of Toxic Emissions Inventory Reports (TEIR)

# **EXHIBIT B**

**Lee DeLano, RCE, RAgE**

Principal Engineer with extensive project feasibility, design, construction and management experience in development of major projects based on original concepts and proven by mathematical models. Projects include water treatment plants, subdivisions, parcel maps, improvement plans, buildings, hydroelectric projects, gravity irrigation and drainage systems, high voltage steel transmission towers, tunnels, pumping plants and a variety of structures. California Licensed Civil and Agricultural Engineer.

**WHF, Inc., Environmental & Engineering Group, Oakdale 1993-Present**

Vice-President/Principal Engineer

Responsible for all civil engineering activities of the corporation. Project engineering includes the design and installation of water treatment facilities and structural engineering designs, such as the 100' tall ConAgra processing tower. Prepare subdivision plans and survey record maps for a variety of land developments. Installation of 150 GPM industrial water recycle treatment system for Colorado Sweet Gold. Preparation of feasibility studies, site plans, grading and drainage plans, improvement plans, and complex proposals.

**Diablo Engineering 2004-2010**

Vice-President/Principal Engineer

Provide clients with structural calculations through complex spreadsheet programs. These calculations include the vertical and lateral loadings required by the Uniform Building Code. Structures designed include greenhouses, residences, apartments, steel buildings, churches, and pole barns. Prepare land surveys including parcel maps and subdivision maps with the associated improvement plans.

**UMA Engineering, Inc., Waterford & El Centro 1990-1992**

Manager, California Water Resources

Responsible for the establishment of an office in the Central Valley and management of 15 individuals in El Centro. Provided civil engineering support for El Centro office and Project Manager for IID's Water Control Center, \$1.6MM, dedicated in 1994. Facilities included solar powered gates, weirs, reservoirs, and pumps. Represented South San Joaquin and Oakdale ID in the Bay/Delta Hearings.

**Dry Creek Engineering, Waterford 1989-2004**

Owner/Engineer

Provide clients with structural calculations through complex spreadsheet programs. These calculations include the vertical and lateral loadings required by the Uniform Building Code. Structures designed include greenhouses, residences, apartments, steel buildings, churches, and pole barns. Prepare land surveys including parcel maps and subdivision maps with the associated improvement plans. Designed water treatment plant for Country Western Mobile Home Park.

**Modesto Irrigation District, Modesto 1972-1989**

Chief-Water Operations Division 1985-1989

Directed and managed a staff of 70 along with the preparation and administration of a \$4.7MM budget for the operation, maintenance, repair, and security of the transmission and storage of waters to 3,500 customers. Project Manager for major water projects.

\* Conceived idea of building tunnel to replace two miles of surface canals which represented potential liability to the District. Validated conclusions with feasibility study and recommended to Board. Project Manager for \$13.8MM tunnel.

\* District's representative in the Bay/Delta Hearings. Testified at the SWRCB hearings on the drought. Wrote the Water Management Plan presented to ACWA.

- \* Conducted initial detailed water rights and feasibility studies for the proposed 30/60 MGD treatment plant to deliver surface water to the City of Modesto. Prepared environmental site study and initiated pilot studies of treatment trains for the proposed \$130MM project.

Power Resources Dept., Senior Civil Engineer 1981-1985

Responsible for conducting feasibility studies for the development and operation of power projects. Researched water rights and maintained existing permits for the storage and diversion of District's water. Validated study findings, made recommendations to the Board, and supervised construction of new projects. Negotiated contracts with other governmental entities and prepared construction contract documents for general contractors.

- \* Project engineer and manager for Stone Drop Ultra Low Head Hydro Project.
- \* Verified profitability assumptions for New Hogan Hydroelectric Project. Project manager for the design and construction.
- \* Lead staff engineer verifying extensive feasibility work of the Clavey-Wards Ferry Project (400MW).

Irrigation Division, Civil Engineer 1972-1981

Performed variety of assignments associated with the District operations including irrigation and power projects. Provided detailed design calculations and drawings for a variety of irrigation and electrical facilities. Performed land surveys and directed civil work for electrical substations, such as the McClure Gas Turbine, according to UBC and GO 95 requirements. Provided design review and right of way survey for 230KV transmission line.

Caltrans, Bridge Department, Sacramento 1970-1972

Junior Civil Engineer

Construction inspection for 4-level freeway interchange which included all major bridge types. Rotated into the design and geology sections for six months each.

**Civic/Professional Affiliations**

Member of SolarEverywhere non-profit group for public education, 2012  
 Former Committee member of the Yosemite College Bond EBuilding Committee, 2010-2012  
 Former President; currently a Board member of the Modesto Engineers Club; Project of the Year Award, 1997, ConAgra Tower  
 Commissioner, Oakdale Airport, 1998-2000  
 Former President; currently a Board member of the Experimental Aircraft Association, Chapter 90, Hangar Committee, 2002  
 Former President-Waterford Lions Club, LaGrange Rodeo Chairman, 1997  
 Former President, Board of Directors-Central Valley Credit Union, CVCU/MID merger  
 Former President-MID Employees Association

**Education/Licenses**

Fresno State University, Fresno, CA.  
 B.S. - Civil Engineering

Registered Civil Engineer: CA #22,339 (1973); Registered Agricultural Engineer: CA #489 (1991)

Private Pilot, #1877606; builder/maintenance repairman of N701LD



**Lee DeLano, RCE, RAgE**

Principal Engineer with extensive project feasibility, design, construction and management experience in development of major projects based on original concepts and proven by mathematical models. Projects include water treatment plants, subdivisions, parcel maps, improvement plans, buildings, hydroelectric projects, gravity irrigation and drainage systems, high voltage steel transmission towers, tunnels, pumping plants and a variety of structures. California Licensed Civil and Agricultural Engineer.

**WHF, Inc., Environmental & Engineering Group, Oakdale 1993-Present**  
Vice-President/Principal Engineer

Responsible for all civil engineering activities of the corporation. Project engineering includes the design and installation of water treatment facilities and structural engineering designs, such as the 100' tall ConAgra processing tower. Prepare subdivision plans and survey record maps for a variety of land developments. Installation of 150 GPM industrial water recycle treatment system for Colorado Sweet Gold. Preparation of feasibility studies, site plans, grading and drainage plans, improvement plans, and complex proposals.

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Vice-President/Principal Engineer

Provide clients with structural calculations through complex spreadsheet programs. These calculations include the vertical and lateral loadings required by the Uniform Building Code. Structures designed include greenhouses, residences, apartments, steel buildings, churches, and pole barns. Prepare land surveys including parcel maps and subdivision maps with the associated improvement plans.

**UMA Engineering, Inc., Waterford & El Centro 1990-1992**  
Manager, California Water Resources

Responsible for the establishment of an office in the Central Valley and management of 15 individuals in El Centro. Provided civil engineering support for El Centro office and Project Manager for IID's Water Control Center, \$1.6MM, dedicated in 1994. Facilities included solar powered gates, weirs, reservoirs, and pumps. Represented South San Joaquin and Oakdale ID in the Bay/Delta Hearings.

**Dry Creek Engineering, Waterford 1989-2004**  
Owner/Engineer

Provide clients with structural calculations through complex spreadsheet programs. These calculations include the vertical and lateral loadings required by the Uniform Building Code. Structures designed include greenhouses, residences, apartments, steel buildings, churches, and pole barns. Prepare land surveys including parcel maps and subdivision maps with the associated improvement plans. Designed water treatment plant for Country Western Mobile Home Park.

**Modesto Irrigation District, Modesto 1972-1989**  
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Directed and managed a staff of 70 along with the preparation and administration of a \$4.7MM budget for the operation, maintenance, repair, and security of the transmission and storage of waters to 3,500 customers. Project Manager for major water projects.

\* Conceived idea of building tunnel to replace two miles of surface canals which represented potential liability to the District. Validated conclusions with feasibility study and recommended to Board. Project Manager for \$13.8MM tunnel.

\* District's representative in the Bay/Delta Hearings. Testified at the SWRCB hearings on the drought. Wrote the Water Management Plan presented to ACWA.

- \* Conducted initial detailed water rights and feasibility studies for the proposed 30/60 MGD treatment plant to deliver surface water to the City of Modesto. Prepared environmental site study and initiated pilot studies of treatment trains for the proposed \$130MM project.

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- \* Lead staff engineer verifying extensive feasibility work of the Clavey-Wards Ferry Project (400MW).

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Caltrans, Bridge Department, Sacramento 1970-1972  
Junior Civil Engineer

Construction inspection for 4-level freeway interchange which included all major bridge types. Rotated into the design and geology sections for six months each.

**Civic/Professional Affiliations**

Member of SolarEverywhere non-profit group for public education, 2012  
Former Committee member of the Yosemite College Bond EBuilding Committee, 2010-2012  
Former President; currently a Board member of the Modesto Engineers Club; Project of the Year Award, 1997, ConAgra Tower  
Commissioner, Oakdale Airport, 1998-2000  
Former President; currently a Board member of the Experimental Aircraft Association, Chapter 90, Hangar Committee, 2002  
Former President-Waterford Lions Club, LaGrange Rodeo Chairman, 1997  
Former President, Board of Directors-Central Valley Credit Union, CVCU/MID merger  
Former President-MID Employees Association

**Education/Licenses**

Fresno State University, Fresno, CA.  
B.S. - Civil Engineering

Registered Civil Engineer: CA #22,339 (1973); Registered Agricultural Engineer: CA #489 (1991)

Private Pilot, #1877606; builder/maintenance repairman of N701LD

# **EXHIBIT C**



## JOHN R. KASTRINOS, P.G., L.S.P.

Lead Hydrogeologist

### EDUCATION

M.S., Environmental Pollution Control, Pennsylvania State University, 1985  
B.S., Geology, Dickinson College, 1983

### PROFESSIONAL REGISTRATIONS

1996/ MA: Licensed Site Professional (Reg. No. 9623)  
1996/Professional Hydrogeologist, American Institute of Hydrology (Reg. No. 96-HG-1145)  
1995/ PA: Professional Geologist (Reg. No. 001872G)

### PROFESSIONAL SOCIETIES

American Institute of Hydrology  
National Ground Water Association

### AWARDS

Staff Manager Excellence Award, 2002  
Harl Aldrich Excellence Award, 1993

In his 32 years of experience with Haley & Aldrich, Mr. Kastrinos has been involved in a broad range of hydrogeologic projects applied to contaminant fate and transport and underground construction. Much of his experience has applied well hydraulics, quantitative seepage analysis, and groundwater modeling, to predict remediation time-frames for pump-and-treat hydraulic-containment systems and monitored natural attenuation (MNA) projects.

Mr. Kastrinos prides himself on interpreting and presenting complex subsurface problems through simple clear conceptual models that are easily understood by the layperson. He has made many presentations to peer groups, clients, regulators, and the public as well, on issues including construction dewatering, the impacts of declining water levels on wood piles, watershed hydrology, and well hydraulics applied to remediation and ground-source heat pump systems. In numerous projects he has interacted with federal, state, and local regulatory agencies to discuss compliance goals and strategy with multiple stakeholders and to obtain permits and approvals for water-resources projects, wastewater disposal system, and waste-site cleanup and closure.

Mr. Kastrinos is an AIH-certified hydrogeologist and a registered Professional Geologist (State of Pennsylvania). He is also a Massachusetts Licensed Site Professional (LSP) who has worked in investigation and remediation of numerous oil-and-hazardous material sites, including federal CERCLA Superfund Sites in Massachusetts, Arizona, and California.

### RELEVANT PROJECT EXPERIENCE

**Litigation Support, Confidential Client, California** Retained as expert tasked with technical review of plaintiff's expert report, which is focused on numerical modeling of Methyl-tert Butyl Ether (MTBE) fate and transport from UST releases in a municipal water-supply aquifer.

**Litigation Support, Harvard University** Prepared expert report documenting fate-and-transport modeling that proved the likely migration period for chlorinated solvents from a former dry-cleaners facility. Case settled out of court.

**Litigation Support, T. F. Green Airport, Rhode Island.** Prepared an expert report documenting likely causes of failure of a construction-dewatering system installed in connection with support-of-excavation on a runway expansion project. Case settled out of court.

**Litigation Support, Confidential Client, New Hampshire** Consultant tasked with technical review of plaintiff's expert reports that were focused on the extent of site characterization, need for additional work, and associated costs, on sites with petroleum-contamination, including MTBE, in the State of New Hampshire.

**Litigation Support and Expert Witness Testimony, Town of Wolfeboro, New Hampshire.** Prepared an expert report and provided expert witness testimony for a case involving groundwater seepage and slope stability at the Town's wastewater treatment plant rapid infiltration basins (RIBs). The case centered on whether the project civil engineer met the standard of care in assessing the site hydrogeology and soil conditions for wastewater disposal. The assignment included preparing expert reports, attending depositions, assisting the legal team in deposing opposing witnesses, and providing testimony at a jury trial in New Hampshire.

**Litigation Support and Expert Witness Testimony, Emhart Stanley Black & Decker.** Expert Witness for Superfund Site in Rhode Island, where testimony was provided on sources, fate, and transport of dioxins, polychlorinated biphenyls (PCBs) and other contaminants that have affected an extensive area of river sediments. The assignment has included preparing multiple expert reports, at least six depositions, assisting the legal team in deposing opposing witnesses, and providing testimony at a jury trial at the Rhode Island Federal Courthouse.

**Litigation Support, Pheasant Lane Mall, Nashua, New Hampshire.** Project hydrogeologist for litigation support involving review of a groundwater remediation system design and associated costs with implementing and operating the system. The remediation system was installed to address a release of gasoline from USTs at an upgradient service station.

**Litigation Support and Expert Witness Testimony, Town of Wenham, MA.** Provided testimony pertaining to hydrogeology and induced infiltration, to challenge the Massachusetts Department of Environmental Protection's (DEP) proposed changes to the Water Management Act Permit. DEP attempted to impose streamflow-based restrictions on groundwater withdrawals that the Town believed were untenable. Mr. Kastrinos testified that the proposed restrictions would not achieve the desired effect (restoration or maintenance of streamflow in the Ipswich River under summer low-flow conditions) due to hydraulic "lag time" driven by the site geology and the distance between the wellfield and the River. Testimony was provided at an adjudicatory hearing in which Mr. Kastrinos was cross-examined by lawyers representing the DEP and the Ipswich River Watershed Association.

**Litigation Support, Water Management Act Permits, Massachusetts.** Supported three watershed associations in challenging MassDEP's failure to consider basin "safe yield" in granting permits to three users with water demands exceeding 100,000 gpd.

## **PUBLICATIONS AND PRESENTATIONS**

"Attenuation of a Chlorinated Solvent Plume Expedited by Construction," with O. Miles and J. Chu, poster presentation at the 2018 Battelle International Conference on Remediation of Chlorinated and Recalcitrant Compounds, Palm Springs, CA.

"Stressed Watersheds in a Rainfall-Rich Region," with O. Miles and N. Pickering, Ph.D., poster presentation at the American Geophysical Union Fall 2016 Conference, San Francisco, CA.

"Customized Vapor-Intrusion Mitigation Strategies in a Complex Urban Setting," with M. Cronan, D. Larson, T. Creamer, and K. McQueeney. Presented at the 2014 Battelle Ninth International Conference on Remediation of Chlorinated and Recalcitrant Compounds, Monterrey, CA.

"Innovative Design and Construction of Zero-Valent Iron (ZVI) Permeable Reactive Conduit and Injection Points to Reduce PCE Concentrations in Groundwater," with Mark D. Kelley, P.E. 8<sup>th</sup> International Conference on Remediation of Chlorinated and Recalcitrant Compounds, International Battelle Conference, 2/1-2/4 2012, Monterrey, CA.

JOHN R. KASTRINOS, P.G., L.S.P.

EX C

"Restoration of Leachate-Impacted Wetlands and Associated Mitigation at the University of Connecticut Landfill," with Richard P. Standish, Christopher O. Mason, Stephanie Marks, and James M. Pietrzak, P.E. 6<sup>th</sup> International Battelle Conference on Remediation of Contaminated Sediments, 7 through 10 February 2011, New Orleans, LA.

haleyaldrich.com

# **EXHIBIT D**

## Craig Fletcher • 3rd

Principal, Fletcher Consultants, Inc. CA Professional Geologist,  
Certified Hydrogeologist, STI Certified Tank Inspector  
San Francisco Bay Area

Connect   \*\*\*

24 years environmental services background  
Regulatory Compliance & Permitting  
Site Investigation/Assessments  
Soil and Groundwater Remediation  
SPCC Plan Preparation  
Steel Tank Certification  
Tank Inspections  
Geologist/Hydrogeologist  
Visit FCI at [www.fletcherconsultantsinc.com](http://www.fletcherconsultantsinc.com) for additional details regarding our capabilities

Specialties:  
RCRA Compliance, Permitting, Closure  
California Environmental Compliance  
Regulatory Agency Negotiations  
Power Generation Environmental Services  
SPCC Plan Preparation  
APSA Technical Support and Guidance  
STI Certified Tank Inspections/CA Hazardous Waste Tank Integrity Assessments

Committee Member: California Aboveground Petroleum Storage Act Advisory Committee

Show less

## Experience



**Principal/CEO**  
Fletcher Consultants, Inc.  
Jun 2002 – Present • 16 yrs 1 mo

Provide expert level technical environmental consulting services to industrial and commercial clients, specializing in environmental compliance, site characterization and remediation, and environmental management services. Successfully manage concurrent complex projects, and ensure complete client satisfaction with services. Responsible for business development and company profitability. Provide mentoring and guidance to company staff.

Visit our Website at [www.fletcherconsultantsinc.com](http://www.fletcherconsultantsinc.com) for details regarding our capabilities, experience, clients, and project descriptions.

Fletcher Consultants, Inc.  
University of California, Davis -  
Graduate School of  
Management

See contact info

99 connections

## People Also Viewed

Lynn (Bowe...  
Retired at N/A - Retired

Lynn Bowers  
Retired at NuVision Federal Credit  
Union

Do...

Kenneth Robertson  
Product support at Schneider Elec



Del Carey • 3rd  
Measurement Specialist at Par Ha  
Refining LLC

bria...

Donna Donna Ventura • 3rd  
IT Administrative Assistant at Alot  
Petroleum

Robert Buckley  
Environmental Services Profession

Shelli Wahlers • 3rd  
Site Safety at Tanco Engineering

Manny Tijamo  
Recreation Director at City and Co  
of Honolulu

## Learn the skills Craig has



**Leading Effectively**  
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Technology for Maxim  
Productivity**  
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**Tony Schwartz on  
Managing Your Energy  
Sustainable High  
Performance**



**Utility Environmental Program Manager**

Pacific Gas & Electric

2001 – 2002 • 1 yr

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Responsible for the Utility wide environmental program, serving as the single-point program contact and providing overall leadership. Developed and presented environmental program to the Utility Chief Financial Officer (CFO) and other Company Officers. Monitored financial results, tracked spending, and forecasted future needs. Developed and tracked appropriate benchmarks, metrics, initiatives, best management practices, and provided key strategic direction to Utility lines of business.

**Principal Program Manager Power Generation**

Pacific Gas & Electric

2000 – 2001 • 1 yr

Provided program management of over \$140 million in environmental liabilities for Power Generation Business Unit. Served as primary liaison with new generators/developers, California Energy Commission, and regulatory agencies for redevelopment related remedial issues. Directed and mentored project managers for former PG&E Power Generation Sites. Provide technical environmental services to PG&E Power Generation Business Unit for corrective action and regulatory compliance.

**Senior Environmental Engineer**

Pacific Gas and Electric Company

1996 – 2001 • 5 yrs

Provided environmental compliance and regulatory support to fossil, geothermal, and hydro generation power plants. Provided technical support and review for preparation of over seventy five Phase I and II environmental assessments and due diligence reports for generation facilities. Obtained air, waste, water quality and resource permits for industrial facilities. Negotiated cleanup levels, obtained appropriate discharge permits, and provide testimony and support of legal settlements for cost recovery. Reviewed, interpreted, and advised management on impacts of pending and proposed and Federal and State regulations.

**Environmental Coordinator**

Pacific Gas & Electric

1992 – 1996 • 4 yrs

Managed RCRA Part B TSD Hazardous Waste Facility Permit. Managed NPDES Waste Discharge Requirements for large discharger. Successfully negotiated favorable conditions for reauthorization of RCRA Permit. Responded to media inquiries regarding environmental issues at facility. Coordinated agency inspections and responded to agency notices. Negotiated cleanup levels and closure plans for RCRA Corrective Action Sites. Conducted environmental training for facility personnel.

Show more

**Education**

University of California, Davis - Graduate School of Management

Masters of Business Administration, Natural Resources and Environmental Management

1987 – 1989

University of Illinois at Urbana-Champaign

Bachelor of Science, Geology

1978 – 1982

**Skills & Endorsements**

Environmental Compliance • 12

Endorsed by Ralph McCullers, MPA, who is highly skilled at this

Endorsed by 3 of Craig's colleagues at Pacific Gas and Electric Company

Messaging

6 5

· 12

Endorsed by Ralph McCullers, MPA and 1 other  
who is highly skilled at this

Endorsed by 5 of Craig's colleagues at Pacific Gas  
and Electric Company

Environmental Consulting · 11

Endorsed by 4 of Craig's colleagues at Pacific Gas and Electric Company

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