

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  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF  
  
**VSS INTERNATIONAL, INC.**  
3785 Channel Drive  
West Sacramento, CA  
  
Respondent.

DOCKET NO. OPA 09-2018-0002  
  
**AMENDED RESPONDENT VSS  
INTERNATIONAL, INC.'S MOTION FOR  
RECONSIDERATION AND APPEAL (40 CFR  
Sections 22.16, 22.20, 22.27, 22.29, 22.30 and  
22.32)**

On December 26, 2018, Chief Administrative Law Judge Susan L. Biro issued an Order On Complainant's Motion For Accelerated Decision As To Liability ("Order").

Page 33 of the Order states in part:

"Complainant's Motion for Accelerated Decision is GRANTED with regard to liability for Count I ...."

Respondent respectfully seeks reconsideration or appeal of this order as to Count I.

*The Alleged SPCC Facility Diagram Depiction Items Of Non-Compliance Are Wholly Incorrect Or Inapplicable*

EPA acknowledges an SPCC Plan for the VSSI facility was prepared by Condor Earth Technologies Corporation on or about April 27, 2012 but asserts that the Facility Diagram accompanying that report did not comply with the SPCC regulations.

EPA's Administrative Complaint solely tracks the regulations, as follows:

“At the time of EPA’s inspection, Respondent’s SPCC plans failed to include a facility diagram with all regulated fixed containers, storage areas and connecting pipes, and stating the oil type and capacity for containers (40 CFR Section 112.7(a)(3)). At the time of EPA’s inspections, Respondent’s SPCC plans failed to include an containment or diversionary structures in the Facility Diagram for tanks not permanently closed (40 CFR Section 11.2(c))”

(Complaint, Pars. 31-32.)

Complainant’s Memorandum In Support Of Its Motion For Accelerated Decision (“Motion”) also lacks specific facts, alleging as follows:

“... the April 2012 Plan did not include all ASTs listed on Table 3 of the April 2012 SPCC Plan [and] the October 2104 SPCC/FRP Plan did not include piping details of the production storage and manufacturing areas [and t]he diagram, labeled as Site Plan, in the January 2016 SPCC Plan did not include detail regarding the rubberized asphalt plant and piping diagrams of the production storage and manufacturing area.”

(Motion, pp. 23 and 24).

However, these allegations are unsupported and untrue.

The April 2012 Condor report did in fact identify the Table 3 tanks, including, particularly, tanks 817, 818 and 848 (which were mentioned by the Court in its Order as to which VSSI seeks reconsideration). Cf. CX 6, 24 and CX 6, 29. The particular tanks in question were shown by location and outlined. The interior circular area was blacked out in order to distinguish these tanks as being Exempt Non-Oil ASTs, as the legend so states. This is good engineering practice, the regulations do not provide otherwise and there is no violation of this Count I in this regard.

Likewise, the assertion that the January 2016 SPCC Plan did not include detail regarding the rubberized asphalt plant also is incorrect. CX 17, 20 depicts the Rubberized Asphalt Plant Area in the southwestern portion of the figure (Figure 5). Due to space constraints, the figure includes a chart detailing the four materials with an arrow depicting that they are housed in the rubberized asphalt plant area. This also includes container type and quantity.

Similarly, piping diagrams of the production storage and manufacturing areas were referenced in the January 2016 plan (CX, 95: 145: “Note: Some Features And Piping Not Shown For Clarity”) and piping details were included in Figure 1 of the May 1, 2017 FRP (CX 21, 67).

Finally, as reiterated previously, both the EPA 2012 SPCC and the May 2017 SPCC were determined to be compliant insofar as these issues are concerned, thus, there is no violation. See RX 47, 1; Complaint, pp. 34, 43, 56 and 65.

Respondent appreciates that this Motion may be deemed by the Court or the Environmental Appeals Board to be premature, and respectfully apologizes therefor, in view of the fact that a hearing is scheduled for this matter on January 29, 2019.

Respondent of course will promptly request reconsideration of Count I before Judge Biro at the hearing but, as a protective measure, Respondent is filing this motion at this time in view of potentially applicable time periods set forth in 40 CFR Part 22.

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Notice of this amended motion was provided in advance to filing to Rebekah Reynolds,  
counsel of record to EPA in this matter.

Dated: January 10, 2019

CROWELL & MORING LLP



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Richard J. McNeil  
Christine E. Cwiertny

Attorneys for Respondent  
VSS INTERNATIONAL, INC.


**CERTIFICATE OF SERVICE**

I, Richard J. McNeil, hereby certify that on January 10, 2019, I caused to be served via overnight delivery the foregoing **AMENDED RESPONDENT VSS INTERNATIONAL, INC.'S MOTION FOR RECONSIDERATION AND APPEAL (40 CFR Sections 22.16, 22.20, 22.27, 22.29, 22.30 and 22.32)** with the Clerk of the Office of Administrative Law Judges, attention Mary Angeles at the Ronald Reagan Building, Room M1200, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Additionally, I, Richard J. McNeil, hereby certify that on January 10, 2019, I served a true and correct copy of the foregoing via electronic mail to Rebekah Reynolds, attorney for Complainant, at [Reynolds.Rebekah@epa.gov](mailto:Reynolds.Rebekah@epa.gov).

Dated: January 10, 2019

Respectfully Submitted,

  
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Richard J. McNeil  
Crowell & Moring LLP  
3 Park Plaza, 20<sup>th</sup> Floor  
Irvine, CA 92614  
Telephone Number: (949) 263-8400