

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)	
)	
VSS International, Inc.)	DOCKET NO. OPA 09-2018-0002
)	
Respondent.)	
)	
)	
)	

COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE

COMPLAINANT, the United States Environmental Protection Agency, Region 9 (EPA), by and through its counsel, in response to the Chief Administrative Law Judge’s April 20, 2018 PREHEARING ORDER, and pursuant to Title 40 of the Code of Federal Regulations (40 C.F.R.) § 22.19(a), respectfully submits this COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE as follows:

I. Complainant’s List of Witnesses to Rebut Respondent’s Prehearing Exchange

EPA may call the following witnesses at hearing. EPA may not call some witnesses if, at the time of hearing, the substance of their testimony is undisputed or stipulated, if they are otherwise determined to be unnecessary, or if they are unavailable. EPA reserves the right to supplement this list of witnesses to the extent allowed by 40 C.F.R. Part 22, or by order of the tribunal.

i. Janice Witul (Fact Witness)

In addition to the general matters noted in Complainant’s Prehearing Exchange, Janice Witul also may testify regarding the implementation of the Oil Pollution Prevention Enforcement Program at EPA, her role as an inspector in that program, her role as an EPA inspector in providing compliance assistance to Respondent during the investigation of Respondent’s facility,

her use of tank standards to evaluate the Facility's compliance with the Oil Pollution Prevention regulations at 40 C.F.R. Part 112, and her review of documents to determine that there are fish or wildlife in the Sacramento River Deep Water Ship Channel.

ii. Daniel Meer (Fact Witness)

Daniel Meer is the Assistant Director of the Emergency Response, Preparedness and Prevention Branch in the Superfund Division at EPA, Region 9. Mr. Meer is also the Co-Chair of the Regional Area committee, responsible for the development of the Area Contingency Plan (ACP) for California. Mr. Meer may testify about the development of the ACP and the significance of the inclusion of the Sacramento River Deep Water Ship Channel in the ACP as a location of fish and wildlife and sensitive environment.

II. Complainant's Documents and Exhibits to Rebut Respondent's Prehearing Exchange

EPA includes with this Rebuttal Prehearing Exchange the documents and exhibits it intends to introduce into evidence to rebut Respondent's Prehearing Exchange. These are:

- i. CX 25: American Petroleum Institute (API) Standard 653: Tank Inspection, Repair, Alternation and Reconstruction, Third Edition (December 2001), Addendum 1 (September 2003).
- ii. CX 26: Steel Tank Institute (STI) Standard for the Inspection of Aboveground Storage Tank SP001 (Issued September 2011, 5th Edition).
- iii. CX 27: EPA Headquarters Delegation of Authority 2-29, Spill Prevention Control and Countermeasure Plan (Apr. 16, 1984, administrative update Dec. 15, 2015).
- iv. CX 28: EPA Headquarters Delegation of Authority 2-86, Facility Response Plans (Jan. 19, 1993).
- v. CX 29: EPA Headquarters Delegation of Authority 2-13, Inspections and Information

- Gathering (Jan. 18, 2017).
- vi. CX 30: EPA Region 9 Delegation of Authority R9-1200 TN 100, R9-2-29, Spill Prevention Control and Countermeasure Plan (February 11, 2013).
 - vii. CX 31: EPA R9 Delegation of Authority R9 1250.28A, CWA Facility Response Plans (May 27, 2003).
 - viii. CX 32: EPA R9 Delegation of Authority R9-12—TM 2-17-01, R9 2-13, Inspections and Information Gathering (Mar. 8, 2017).

III. No Comments to Public Notice of Proposed Penalty

Pursuant to 40 C.F.R. § 22.45(b), Complainant provided public notice on May 21, 2018. The 30-day public comment period closed on June 21, 2018. By email dated July 2, 2018, Regional Hearing Clerk, Steven Armsey, communicated that no public comments were received. A copy of the email is submitted with Complainant's Rebuttal Prehearing Exchange documents and marked as PE 7.

Dated: July 5, 2018

Respectfully Submitted,

/s/ Rebekah Reynolds

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

CERTIFICATE OF SERVICE

I, Rebekah Reynolds, hereby certify that on July 3, 2018, I caused to be filed electronically the foregoing **COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE** 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 July 3, 2018, I served a true and correct copy of the foregoing **COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE** via electronic mail to Richard McNeil, attorney for Respondent, at RMcNeil@crowell.com.

Dated: July 5, 2018

Respectfully Submitted,

/s/ Rebekah Reynolds

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