

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
)	DOCKET NO. OPA 09-2018-0002
VSS International, Inc.)	
)	Complainant's Supplement to the Prehearing
)	Exchange
Respondent.)	

On February 15, 2019, Chief Administrative Law Judge Susan Biro issued an Order on Complainant's Motion to Supplement and Correct the Prehearing Exchange ("Order"). In the Order, Chief Judge Biro directed Complainant to submit a Supplemental Prehearing Exchange no later than March 15, 2019, adhering to the directives of the Prehearing Order. With this filing, Complainant submits its Supplemental Prehearing Exchange in compliance with the Order, relabeling as Complainant's Exhibits ("CX") 33 through 48 certain documents already provided. In addition, pursuant to 40 C.F.R. §§ 22.19(f) and 22.22(a), Complainant hereby supplements its Prehearing Exchange as provided below, adding Complainant's Exhibits CX 49 through CX 55. The rules favor the admission of all relevant and material evidence, and only prohibits inclusion of such evidence if it has not been provided to all parties at least fifteen days prior to hearing. This Supplemental Prehearing Exchange is filed more than 60 days prior to the hearing scheduled for May 16, 2019.

I. Updates to List of Witnesses to be called at Hearing

EPA is adding curricula vitae and updating the descriptions for existing witnesses.

Daniel Meer (Fact Witness) Curriculum Vitae (CX 49)

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 his experience on behalf of Complainant with 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. Mr. Meer is also expected to testify regarding his experience with the requirements for submitting Facility Response Plans (FRPs) to the Region and EPA Region 9's oversight of such activity.

Janice Witul (Fact and Expert Witness) Curriculum Vitae (CX 50)

Ms. Witul is an Oil Program Inspector in the Enforcement Division. Ms. Witul is expected to testify about conditions at Respondent's facility, including at the time of EPA's 2012 and 2016 inspections, and her subsequent investigation, including review of Respondent's Spill Prevention Control and Countermeasures and Facility Response plans for compliance with the Oil Pollution Prevention regulations at 40 C.F.R. Part 112. As an expert based on her training, education and experience, Ms. Witul is expected to testify regarding the SPCC tank inspection and testing requirements, and her calculation of a proposed penalty for the Oil Pollution Prevention violations at the Facility.

Troy Swackhammer (Fact and Expert Witness) Curriculum Vitae (CX 51)

Mr. Swackhammer is a chemical engineer in EPA's Office of Enforcement and Compliance Assistance in Washington, D.C. Mr. Swackhammer is expected to testify about the

economic benefit Respondent received from non-compliance with the Oil Pollution Prevention regulations, and authentication of public records regarding the costs of compliance with the Oil Pollution Prevention regulations. As an expert based on his training, education and experience in EPA's FRP program, Mr. Swackhammer is expected to testify regarding the application of EPA's regulations, tank testing and integrity requirements and the use of the "substantial harm" criteria for determining applicability of 40 C.F.R. § 112.20 to Respondent's facility.

II. Additional Documents and Exhibits

There are additional documents that have more recently become relevant in response to Respondent's assertions in this matter. EPA anticipates introducing the following additional documents and exhibits into evidence:

CX 52: Aerial Photos of VSS facility

Attached as CX 52 are aerial photos obtained from Google Earth Pro showing the VSS facility in May and October 2012, October 2016, and February 2018. Janice Witul obtained these images from Google Earth Pro and will be available at hearing for cross-examination.

CX 53: 40 C.F.R. Part 112 Appendix C Figure C-1

Attached as CX 53 is Figure C-1 from Appendix C to Part 112 of 40 C.F.R., titled "Distance that Shall Be Considered to Determine the Planning Distance."

CX 54: Clean Water Act Penalty Factors

Attached as CX 54 is the text from Section 311(b)(8) of the Clean Water Act listing factors for determining penalty.

CX 55: Second Declaration of William R. Michaud

Attached as CX 55 is the Second Declaration of William R. Michaud.

For ease of reference, below is a table outlining all Complainant's Exchange Exhibits filed to date, including the exhibits relabeled or added today. Complainant's Exhibits labeled as CX 1 through CX 36 were previously filed and labeled correctly and are not being refiled in the OALJ E-Filing System today. Documents CX 37 to CX 47, although previously filed in the OALJ E-Filing System, were not labeled with a CX designation and are today being refiled with the respective numeric, sequential exhibit number in accordance with the Order. Documents CX 48 to CX 55 are being filed today.

CX Exhibit No.	Document
CX 1	<i>Google Map of Sacramento Deepwater Channel area</i>
CX 2	<i>Area Contingency Plan Site Strategy (Excerpt) - Sacramento River Deep Water Ship Channel, 2-859-B (October 1, 2014).</i>
CX 3	<i>NOAA Fisheries Critical Habitat Sacramento River Winter-run Chinook Salmon map</i>
CX 4	<i>SPCC Field Inspection and Plan Review Checklist for VSS Emultech November 27, 2012 Inspection, dated September 23, 2013</i>
CX 5	<i>Photolog- November 27, 2012 Inspection Report/checklist</i>
CX 6	<i>Notice of SPPCC and FRP Inspection for September 30, 2016 signed by Randy Tilford.</i>
CX 7	<i>Summary of SPCC Deficiencies, September 30, 2016</i>
CX 8	<i>September 2016 Inspection Report/checklist, November 28, 2016</i>
CX 9	<i>Photolog - September 2016 Inspection Report/checklist</i>
CX 10	<i>EPA Request for Information pursuant to CWA § 308, June 25, 2013</i>
CX 11	<i>See RX 2, below.</i>
CX 12	<i>January 20, 2017 FRP Review Checklist</i>
CX 13	<i>EPA requests for additional training records, June 27, 2017</i>
CX 14	<i>Review of FRP Applicability, William R. Michaud, P.E., August 23, 2016</i>
CX 15	<i>Report on Evaluation of Containment Measures, Haley & Aldritch, January 2014</i>
CX 16	<i>VSS International SPCC Plan, April 2012</i>
CX 17	<i>VSS International Consolidated Plan, October 2014-(SPCC & FRP)</i>
CX 18	<i>VSS International Hazardous Materials, Environmental Compliance, and Contingency Business Plans, January 15, 2016 (SPCC)</i>
CX 19	<i>Valley Slurry Seal Response Plan, January 9, 2017</i>

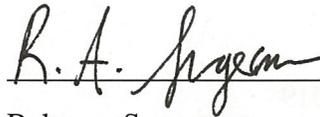
CX 20	<i>VSS International Consolidated Plan, May 2017 (SPCC) (note that the VSS International Facility Response Plan, May 1, 2017 was filed instead of the SPCC Plan)</i>
CX 21	<i>VSS International Facility Response Plan, May 1, 2017</i>
CX 22	<i>Renewal of Information Collection Request for the Implementation of the Oil Pollution Act Facility Response Plan Requirements (40 C.F.R. Part 112), February 2018</i>
CX 23	<i>VSS Emultech/VSS International Substantial Harm Criteria Determination, June 23, 2015</i>
CX 24	<i>U.S. Environmental Protection Agency Facility Response Plan (FRP) Plan Review Checklist September 18, 2017</i>
CX 25	<i>API 653: Tank Inspection, Repair, Alteration, and Reconstruction</i>
CX 26	<i>Standard for the Inspection of Aboveground Storage Tanks, Steel Tank Institute, SP001 Issued September 2011, 5th Edition</i>
CX 27	<i>EPA Headquarters Delegation of Authority, Spill Prevention Control and Countermeasure Plan</i>
CX 28	<i>EPA Headquarters Delegation of Authority, Facility Response Plans</i>
CX 29	<i>EPA Headquarters Delegation of Authority 2-13, Inspections and Information Gathering</i>
CX 30	<i>EPA Region 9 Delegation of Authority, Spill Prevention Control and Countermeasure Plan</i>
CX 31	<i>EPA Region 9 Delegation of Authority, CWA Facility Response Plan</i>
CX 32	<i>EPA Region 9 Delegation of Authority, Clean Water Act, Inspections and Information Gathering</i>
CX 33	<i>Area Contingency Plan (filed electronically with OALJ E-Filing System on January 11, 2019)</i>
CX 34	<i>SPCC Guidance for Regional Inspectors (filed electronically with OALJ E-Filing System on January 11, 2019)</i>
CX 35	<i>Reference USA for VSS International (filed electronically with OALJ E-Filing System on January 11, 2019)</i>
CX 36	<i>D&B Market Identifiers for VSS International (filed electronically with OALJ E-Filing System on January 11, 2019)</i>
CX 37	<i>Complainant Certified Mail Receipt (Green Card) (previously filed as PE 1)</i>
CX 38	<i>Public Notice: VSS International Inc., West Sacramento, California: Administrative Complaint and Opportunity to Request a Hearing, published May 21, 2018 (previously electronically filed with OALJ E-Filing System as PE 2)</i>
CX 39	<i>Policy on Civil Penalties, EPA General Enforcement Policy GM-21, Effective Date: February 16, 1984 and A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties, EPA General Enforcement</i>

	Policy GM-22, Effective Date: February 16, 1984 (previously electronically filed with OALJ E-Filing System as PE 3)
CX 40	Civil Penalty Policy For Section 311(b)(3) and Section 311(j) of the Clean Water Act, August 1998 (previously electronically filed with OALJ E-Filing System as PE 4)
CX 41	Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190 (January 10, 2018) (previously electronically filed with OALJ E-Filing System as PE 5)
CX 42	EPA Memorandum re Amendments to the EPA's Civil Penalty Policies to Account for Inflation (Jan 11, 2018) (previously electronically filed with OALJ E-Filing System as PE 6)
CX 43	<i>Curriculum Vitae</i> , William R. Michaud (previously electronically filed with OALJ E-Filing System as PE 7[A])
CX 44	Public Comment Email to RHC (previously electronically filed with OALJ E-Filing System as PE 7[B] and then as PE 8)
CX 45	VSS Int'l Consolidated Plan May 2017 (SPCC) (Previously filed electronically with OALJ E-Filing System on January 11, 2019 as CX 20R)
CX 46	2018 proposed ICR (Previously filed electronically with OALJ E-Filing System on January 11, 2019 as CX 22R-A)
CX 47	2018 final ICR (Previously filed electronically with OALJ E-Filing System on January 11, 2019 as CX 22R-B)
CX 48	Complainant's Prehearing Exchange (Including Complainant's Explanation of the Proposed Penalty Assessment) (Previously filed electronically with OALJ E-Filing System in June 2018)
CX 49	Daniel Meer Curriculum Vitae
CX 50	Janice Witul Curriculum Vitae
CX 51	Troy Swackhammer Curriculum Vitae
CX 52	Aerial Photos of VSS facility 2012, 2016, 2018
CX 53	40 C.F.R. Part 112 Appendix C, Figure C-1
CX 54	Clean Water Act Section 311(b)(8), Statutory Penalty Factors
CX 55	Second Declaration of William R. Michaud

For Complainant United States Environmental Protection Agency:

Dated: March 14, 2019

Respectfully Submitted,



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

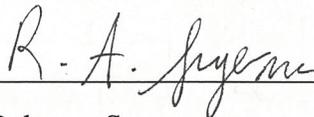
CERTIFICATE OF SERVICE

I, Rebecca Sugerman, hereby certify that on March 14, 2019, I caused to be filed electronically the foregoing Complainant's March 14, 2019 Supplement to the 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, Rebecca Sugerman, hereby certify that on March 14, 2019, I served a true and correct copy of the foregoing Complainant's Supplement to the Prehearing Exchange via electronic mail to Richard McNeil, attorney for Respondent, at RMcNeil@crowell.com.

Dated: March 14, 2019

Respectfully Submitted,



Rebecca Sugerman
Assistant Regional Counsel,
U.S. EPA, Region IX