

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

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

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**JOINT MOTION FOR CONDITIONAL EXTENSION OF TIME**

Chief Judge Biro’s July 20, 2018, Notice of Hearing Order set deadlines for prehearing filings and the hearing. The following deadlines are still pending: (1) second Status Report shall be filed on or before December 28, 2018; (2) Joint Stipulations shall be filed on or before January 4, 2019; (3) prehearing briefs shall be filed on or before January 11, 2019; and (4) the hearing is scheduled to begin on Tuesday, January 29, 2019 and shall continue as necessary through February 8, 2019. In addition, a prehearing conference is scheduled with Ms. Amanda Priest, Staff Attorney for the Office of Administrative Law Judges on Tuesday, January 8, 2019.

At the end of the day on December 21, 2018, the appropriation act that has been funding the Federal government expired, appropriations lapsed for portions of the Federal government, and the United States began a shutdown. EPA had funding to remain open the week of December 24, 2018. On December 28, 2018, EPA Acting Administer Andrew Wheeler sent an email to all EPA employees stating that in the event an appropriation is not passed by midnight Friday, December 28, 2018, EPA will begin shutdown procedures and employees will be placed on furlough. The parties do not know when funding will be restored by Congress.

Absent an appropriation, EPA attorneys and employees are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 41 U.S.C. § 1342.

On December 26, 2018, Mr. Michael Wright, Supervisory Attorney-Advisor in the Office of Administrative Law Judge sent an email regarding possible U.S. EPA Shutdown stating the following:

Please be advised that if the U.S. Environmental Protection Agency shuts down due to an appropriations lapse, the Office of Administrative Law Judges will be closed. We will continue to abide by all hearing dates and deadlines as currently set in each case. For

cases in which any document is due during a shutdown, parties may, after the shutdown ends, file a motion for leave to file the document out of time. The presiding ALJ will consider such motions based on the reasons presented therein.

This temporary notice has also been posted on the Office of Administrative Law Judges website at <https://www.epa.gov/alj>.

EPA has issued a contingency plan for a possible shutdown, dated December 17, 2018, available at [https://www.epa.gov/sites/production/files/2018-12/documents/epa\\_contingency\\_plan\\_december\\_18\\_2018\\_508.pdf](https://www.epa.gov/sites/production/files/2018-12/documents/epa_contingency_plan_december_18_2018_508.pdf). While this plan does not specifically address administrative litigation, it does provide some guidance for legal counseling, litigation and law enforcement activities. Regarding judicial cases, the guidance states that in EPA's April 2011 and April 2013 shutdowns, EPA was expected to "continue to provide legal or technical support necessary to meet any court deadlines or orders, including but not limited to court appearances and response to discovery requests" but that DOJ would request stays of some litigation and court ordered deadlines for the duration of the shutdown.

Without a clear direction on whether motions to file the document out of time based on the shutdown will be granted by Chief Judge Biro, the parties must prepare to meet the current deadlines in the Notice of Hearing Order. However, applying the same approach EPA and DOJ have used in past shutdowns for judicial litigation discussed in the contingency plan, and since the Office of Administrative Law Judges will be closed during the shutdown, in the advance of closure, the parties request a conditional stay which would apply if there were a shutdown and be commensurate with the circumstances presented.

Specifically, the parties request that the prehearing filing deadlines be extended at least the length of the shutdown and, should EPA be closed for longer than five business days, that the hearing date would be postponed two weeks to start February 12, 2019. Should the EPA be closed longer than three weeks, the parties would file a motion as soon as the EPA reopens proposing a revised schedule for any remaining prehearing filings and the hearing that is commensurate with the duration of the lapse in appropriations and the circumstances presented.

Although we greatly regret any disruptions caused to the court, in light of the foregoing, the parties respectfully request that in advance of any EPA closure, Chief Judge Biro agree to extend the prehearing filing deadlines by at least the duration of the lapse in EPA's appropriations, and, if EPA is closed for longer than five days, agree to postpone the start date of the hearing to February 13, 2018, or longer if the EPA is closed longer than three weeks.

In the Matter of VSS International, Inc.

Docket No. OPA 09-2018-0002

Dated: December 28, 2018

Respectfully submitted,

*/s/ Rebekah Reynolds*

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

*/s/ Rebekah Reynolds for Richard J. McNeil*

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Richard J. McNeil  
Crowell & Morning LLP  
Attorney for Respondent  
VSS International, Inc.

**CERTIFICATE OF SERVICE**

I, Rebekah Reynolds, hereby certify that on December 28, 2018, I caused to be filed electronically the foregoing JOINT MOTION FOR CONDITIONAL EXTENSION OF TIME 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 December 28, 2018, I served a true and correct copy of the foregoing JOINT MOTION FOR CONDITIONAL EXTENSION OF TIME via electronic mail to Richard McNeil, attorney for Respondent, at RMcNeil@crowell.com.

Dated: December 28, 2018

Respectfully Submitted,

*/s/ Rebekah Reynolds*

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Rebekah Reynolds  
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