

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

IN THE MATTER OF:)	
)	DOCKET NO. OPA 09-2018-0002
)	
VSS International, Inc.,)	Complainant's Response to Respondent's
)	Motion to Compel Attendance and
)	Testimony of, and Production of Documents
Respondent.)	by, Michael Sears at Hearing

Complainant files this Response to Respondent's Motion to Compel Attendance and Testimony of, and Production of Documents by, Michael Sears at Hearing ("Motion") to keep a clear record regarding certain assertions contained in the Motion. Complainant does not oppose Respondent's request to subpoena Mr. Sears. As stated in Complainant's pending Motion in Limine, however, it is our contention that Mr. Sears' testimony should be limited to relevant and material percipient testimony and evidence based on the corrections below. Beyond any such fact-based testimony, Mr. Sears' input in this matter is simply not relevant.

Complainant acknowledges that the Consolidated Rules of Practice at 40 C.F.R. § 22.21(b) provide that "[t]he Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act [at issue in the proceeding], upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced." Complainant further acknowledges the Act in this matter, the Clean Water Act, provides the necessary authority for the issuance of a subpoena. *See* 33 U.S.C. §1319(g)(10). But, with respect to the relevance and materiality of Mr Sears' testimony and

documentation, Respondent repeatedly misstates his role and thus his importance to this proceeding.

The violations in this matter are violations of the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, specifically the Oil Pollution Act, and its implementing regulations at 40 C.F.R. Part 112 (Oil Pollution Prevention (“OPP”) regulations). Mr. Sears is an inspector for the Yolo County Environmental Health Division, a California Certified Unified Program Agency,¹ and any inspections that he conducted at Respondent’s facility, he performed to determine Respondent’s compliance with California’s Aboveground Petroleum Storage Act (“APSA”). To the extent that Mr. Sears looked at an SPCC Plan during his inspections, he did so to evaluate Respondent’s compliance with state, not federal, law. In addition, the federal OPP program is not a program that is delegated to the states. Consequently, the State of California does not have authority to implement or enforce the federal OPP regulations. CX 34 at 50. Accordingly, Respondent has no basis for its contentions that Mr. Sears “initially inspected VSSI’s SPCC Plan under a program administered by the EPA” or “was working as an agent of EPA.” Motion at 7 and 8.

¹ In California, the “Unified Program” consolidates the administration, permit, inspection, and enforcement activities of multiple environmental and emergency management programs, including the Aboveground Petroleum Storage Act (APSA) program. California EPA oversees the statewide implementation of the Unified Program and its 81 certified local government agencies, known as Certified Unified Program Agencies (CUPAs), which apply the regulatory standards established by several different state agencies. <https://calepa.ca.gov/cupa/>

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Based on the foregoing information, Complainant requests that the Motion be evaluated in light of the limited context of Mr. Sears' actual role.

Respectfully Submitted,

Rebecca Sugerman

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

CERTIFICATE OF SERVICE

I, Rebecca Sugerman, hereby certify that on March 28, 2019, I caused to be filed electronically the foregoing Complainant's Response to Respondent's Motion to Compel Attendance and Testimony of, and Production of Documents by, Michael Sears at Hearing 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 28, 2019, I served a true and correct copy of the foregoing Complainant's Response to Respondent's Motion to Compel Attendance and Testimony of, and Production of Documents by, Michael Sears at Hearing via electronic mail to Richard McNeil, attorney for Respondent, at RMcNeil@crowell.com.

Dated: March 28, 2019

Respectfully Submitted,

RA Sugerman

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