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** FILED **
21MAR2018 - 08:45PM
U.S.EPA - Region 09

Attorneys for VSS INTERNATIONAL, INC.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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

Respondent.

**RESPONSE TO ADMINISTRATIVE
COMPLAINT AND REQUEST FOR A
HEARING**

Proceeding to Assess Class II Civil Penalty Under
Clean Water Act Section 311

Docket No. OPA 09-2018-00002

PRELIMINARY OBJECTIONS

VSS International, Inc. (“Respondent”) makes the following preliminary statements and general objections, which are incorporated into each and every individual response to the allegations in the Administrative Complaint. The assertion of additional specific objections to the matters raised in the Administrative Complaint shall not be construed as waiving these preliminary statements and general objections.

Respondent has not completed its investigation of the facts relating to this case, has not completed discovery in this action, and has not completed preparation for the hearing of this matter. All the responses contained herein are based only upon such information and documents that are presently available to and specifically known to Respondent. It is anticipated that further investigation, legal research, and analysis will supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the responses herein set forth. The following responses are given without prejudice to Respondent's right to produce evidence of a subsequently discovered fact or facts that Respondent may later discover.

Respondent does not, in any way, waive, or intend to waive, but rather intends to preserve and is preserving, without limitation: (a) the right to raise all questions of authenticity, foundation, relevancy, materiality, privilege, and admissibility as evidence of any information identified in response to the matters alleged in the Administrative Complaint, or used in any motions or evidentiary hearing, in this or any subsequent proceeding; (b) the right to object on any ground to the use of these responses in any subsequent proceeding, including motions in, or the hearing of, this or any other action; and (c) the right to object to the introduction into evidence of these responses.

Respondent objects to each allegation in the Administrative Complaint herein to the extent that each seeks privileged or confidential information, including information encompassed by the attorney-client privilege, the work-product doctrine, and/or any other judicially recognized privilege or protection, including, but not limited to, the thoughts or mental impressions of Respondent's attorneys in connection with the preparation, prosecution, avoidance, or defense of any claim by or against Respondent. To the extent that any

information that is properly the subject of any such privilege or protection is inadvertently disclosed in response to the allegations in the Administrative Complaint, such disclosure is not intended, and should not be construed, as a waiver of any such privilege or protection.

Respondent objects to each allegation contained in the Administrative Complaint herein to the extent that each calls for a legal conclusion, or requests premature expert discovery or information provided to and/or obtained from any expert witness. To the extent that Respondent supplies responses that are related to and/or resulting from consultation with expert(s), Respondent does not waive any rights, privileges, or designation appurtenant thereto, including but not limited to the attorney work-product doctrine, reserving all rights and objections attendant to further discovery pertaining to the product of such expert witness(es).

RESPONSES

1. In response to Paragraph 1, VSSI responds as follows: This paragraph provides a description of the USEPA's interpretation of its enforcement and attendant delegation authority pursuant to the federal Clean Water Act and thus calls for information solely in the possession of the Complainant and, for this reason, Respondent cannot admit or deny these allegations.

2. In response to Paragraph 2, VSSI responds as follows: This paragraph provides a description of the USEPA's interpretation of its enforcement and attendant delegation authority pursuant to the federal Clean Water Act and thus calls for information solely in the possession of the Complainant and, for this reason, Respondent cannot admit or deny these allegations, however, Respondent acknowledges the USEPA's assertion that it is providing the described notice to Respondent.

3. In response to Paragraph 3, VSSI responds as follows: This paragraph describes statutory provisions that provide as stated therein and accordingly, Respondent neither admits nor denies these allegations.

4. Paragraph 4 provides a description of the USEPA's interpretation of its rulemaking and attendant delegation authority pursuant to the federal Clean Water Act and thus calls for information solely in the possession of the Complainant and, for this reason, Respondent cannot admit or deny these allegations.

5. Paragraph 5 provides a description of the USEPA's interpretation of its rulemaking and attendant delegation authority pursuant to the federal Clean Water Act and thus calls for information solely in the possession of the Complainant and, for this reason, Respondent cannot admit or deny these allegations.

6. In response to Paragraph 6, VSSI responds as follows: This paragraph provides a description of the USEPA's interpretation of its enforcement authority pursuant to the federal Clean Water Act and thus calls for information solely in the possession of the Complainant and, for this reason, Respondent cannot admit or deny these allegations.

7. In response to Paragraph 7, VSSI responds as follows: Admit.

8. In response to Paragraph 8, VSSI responds as follows: Admit.

9. In response to Paragraph 9, VSSI responds as follows: Admit.

10. In response to Paragraph 10, VSSI responds as follows: Admit.

11. In response to Paragraph 11, VSSI responds as follows: Admit.

12. In response to Paragraph 12, VSSI responds as follows: This paragraph is vague and ambiguous and overbroad and, for that reason, Respondent lacks sufficient information upon which to admit or deny these allegations.

13. In response to Paragraph 13, VSSI responds as follows: Admit.

14. In response to Paragraph 14, VSSI responds as follows: Deny inasmuch as the total oil storage capacity for bulk containers was less than one million gallons during a portion of the time relevant to the Complaint and, in particular, prior to the dates Tank Numbers 2001 and 2002 were placed into service.

15. In response to Paragraph 15, VSSI responds as follows: Admit.

16. In response to Paragraph 16, VSSI responds as follows: Admit.

17. In response to Paragraph 17, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous. Notwithstanding this objection, Respondent lacks sufficient information to admit or deny this allegation.

18. In response to Paragraph 18, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous. Notwithstanding this objection, Respondent denies these allegations. In this regard, Respondent relied upon, and submitted to the USEPA, analyses of the Substantial Harm Criteria prepared by engineering professionals that concluded that, pursuant to Section 5.0 of Appendix C, the flowchart provided in Attachment C-1, and for other reasons, Respondent's facility was not subject to 40 CFR Part 112. Respondent voluntarily elected to prepare an FRP with the consent of the USEPA as an accommodation to resolve any uncertainty related to this question.

19. In response to Paragraph 19, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is overbroad. Notwithstanding this objection, Respondent admits that it stores oil or oil products located at the Facility.

20. In response to Paragraph 20, VSSI responds as follows: Admit.

21. In response to Paragraph 21, VSSI responds as follows: Respondent admits that it is an “onshore facility” pursuant to Section 311(a)(1) of the Act and a “facility” pursuant to 40 CFR Section 112.2.

22. In response to Paragraph 22, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it contains a legal conclusion and constitutes an incomplete hypothetical.

23. In response to Paragraph 23, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it incorporates the definition previously objected to with respect to Paragraph 22.

24. In response to Paragraph 24, VSSI responds as follows: Admit.

25. In response to Paragraph 25, VSSI responds as follows: Respondent objects to this paragraph on the ground that it calls for information in the possession of the Complainant and Respondent therefore neither admits nor denies this allegation.

26. In response to Paragraph 26, VSSI responds as follows: Respondent objects to this paragraph on the ground that it calls for information in the possession of the Complainant and Respondent therefore neither admits nor denies this allegation.

27. In response to Paragraph 27, VSSI responds as follows: Respondent objects to this paragraph on the ground that it calls for information in the possession of the Complainant and Respondent therefore neither admits nor denies these allegations, however, Respondent acknowledges that Complainant alleges as stated in the Administrative Complaint.

28. In response to Paragraph 28, VSSI responds as follows: Paragraph 28 does not call for a response.

29. In response to Paragraph 29, VSSI responds as follows: 40 CFR Sections 112.3, 112.7 and any other applicable section of 40 CFR Part 112 provide as stated therein.

30. In response to Paragraph 30, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Notwithstanding these objections, Respondent denies this allegation and alleges that its SPCC plan included management approval.

31. In response to Paragraph 31, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Notwithstanding these objections, Respondent denies these allegations and alleges that its SPCC plan included a facility diagram with all regulated fixed containers, storage areas, transfer station connecting pipes, as applicable and as authorized by Chapter 6 of the inspector's guide, and, further, that the plan addressed the type of oil in each fixed container and its storage capacity.

32. In response to Paragraph 32, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Notwithstanding these objections, Respondent denies this allegation as the Facility Diagram includes containment/diversionary structures.

33. In response to Paragraph 33, VSSI responds as follows: Deny.

34. In response to Paragraph 34, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Notwithstanding these objections, Respondent admits these allegations without prejudice to establishing that prior plans likewise were in compliance and/or were drafts exchanged with Complainant for the purpose of cooperatively developing said plans.

35. In response to Paragraph 35, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Notwithstanding these objections, Respondent denies these allegations.

36. In response to Paragraph 36, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad.

37. In response to Paragraph 37, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is alleged on information and belief and thus does not require a response. Respondent otherwise denies these allegations and expressly denies that there was any modest violation that presented a significant impact on the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

38. In response to Paragraph 38, VSSI responds as follows: Deny.

39. In response to Paragraph 39, VSSI responds as follows: Paragraph 39 does not call for a response.

40. In response to Paragraph 40, VSSI responds as follows: 40 CFR 112.3 provides as stated therein.

41. In response to Paragraph 41, VSSI responds as follows: Respondent objects to this paragraph on the ground that it calls for information in the possession of the Complainant and therefore neither admits nor denies this allegation.

42. In response to Paragraph 42, VSSI responds as follows: Deny.

43. In response to Paragraph 43, Respondent responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Notwithstanding these objections, Respondent admits this allegation without prejudice to establishing that prior plans likewise were in compliance with the PE certification requirement.

44. In response to Paragraph 44, VSSI responds as follows: Deny.

45. In response to Paragraph 45, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Respondent otherwise denies these allegations and expressly denies that there was any modest violation that presented a significant impact on the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

46. In response to Paragraph 46, VSSI responds as follows: Deny.

47. In response to Paragraph 47, VSSI responds as follows: Paragraph 47 does not call for a response.

48. In response to Paragraph 48, VSSI responds as follows: 40 CFR 112.5 and 40 CFR 112.7 and such other provisions as are referenced in this paragraph provide as stated therein.

49. In response to Paragraph 49, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad, especially as to the phrase “putting into service,” and on that basis denies this allegation.

50. In response to Paragraph 50, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Notwithstanding these objections, Respondent alleges that the Facility SPCC Plan stated (in Section 17.0) as follows (and on this basis denies this allegation): “Due to its location and design, the Facility cannot reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters. See also Figures 2 and 3).”

51. In response to Paragraph 51, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous, overbroad, argumentative and compound, and on these bases denies this allegation.

52. In response to Paragraph 52, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous and overbroad and calls for information in the possession of the Complainant. Notwithstanding the foregoing, Respondent acknowledges receipt of a Notice Of SPCC Inspection With Deficiencies dated September 30, 2016 that identifies an alleged deficiency pursuant to 40 CFR 112.5(a) (“No plan amendment(s) after change in: design, construction, operation, or maintenance”).

53. In response to Paragraph 53, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous, especially as to the phrase “addition into service.” Notwithstanding the foregoing, Respondent denies this allegation.

54. In response to Paragraph 54, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous, overbroad and incomplete. Notwithstanding the foregoing, Respondent acknowledges that the updated version of the SPCC plan dated October 2014 referenced Tank 2001 as well as Respondent’s analysis of the substantial harm criteria (included as Appendix C).

55. In response to Paragraph 55, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous, especially as to the phrase “addition into service.” Notwithstanding the foregoing, Respondent denies this allegation.

56. In response to Paragraph 56, VSSI responds as follows: In response to Paragraph 54, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and

ambiguous, overbroad and incomplete. Notwithstanding the foregoing, Respondent acknowledges that the May 2017 SPCC plan references Tank 2002.

57. In response to Paragraph 57, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous. Notwithstanding the foregoing, Respondent denies this allegation.

58. In response to Paragraph 58, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is alleged on information and belief and thus does not require a response. Respondent further objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies these allegations.

59. In response to Paragraph 59, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Respondent otherwise denies these allegations and expressly denies that there was any major violation that essentially undermined the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

60. In response to Paragraph 60, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous and overbroad. Notwithstanding the foregoing, Respondent denies this allegation.

61. In response to Paragraph 61, VSSI responds as follows: Paragraph 61 does not call for a response.

62. In response to Paragraph 62, VSSI responds as follows: 40 CFR Section 112.7 provides as stated therein.

63. In response to Paragraph 63, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous and overbroad. Notwithstanding the foregoing, Respondent denies this allegation.

64. In response to Paragraph 64, VSSI responds as follows: Respondent objects to this paragraph inasmuch as it is vague and ambiguous and overbroad. Notwithstanding the foregoing, Respondent denies this allegation.

65. In response to Paragraph 65, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is alleged in part on information and belief and thus does not require a response. Respondent further objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies these allegations.

66. In response to Paragraph 66, Respondent further objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies these allegations.

67. In response to Paragraph 67, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Respondent otherwise denies these allegations and expressly denies that there was any major violation that essentially undermined the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

68. In response to Paragraph 68, VSSI responds as follows: Paragraph 68 does not call for a response.

69. In response to Paragraph 69, VSSI responds as follows: 40 CFR Section 112.20(a)(2), (a)(2)(ii), (f)(1) and Appendix F provide as stated therein.

70. In response to Paragraph 70, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies this allegation.

71. In response to Paragraph 71, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies this allegation.

72. In response to Paragraph 72, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it is vague and ambiguous, overbroad, argumentative and compound. Notwithstanding the foregoing objections, Respondent admits that it submitted several draft and final versions of FRP's , including on or about October 24, 2014 and January 9, 2017, based on its prior arrangement with the USEPA in that regard.

73. In response to Paragraph 73, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies that is submitted an FRP that was not compliant with 40 CFR Part 112.

74. In response to Paragraph 74, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies that is submitted an FRP that was not compliant with 40 CFR Part 112.

75. In response to Paragraph 75, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies this allegation.

76. In response to Paragraph 76, VSSI responds as follows: Respondent objects to this paragraph on the grounds that it is vague and ambiguous and overbroad. Notwithstanding the foregoing objections, Respondent denies this allegation.

77. In response to Paragraph 77, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Respondent otherwise denies these allegations and expressly denies that there was any major violation that essentially undermined the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

78. In response to Paragraph 78, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Respondent otherwise denies this allegation.

79. In response to Paragraph 79, VSSI responds as follows: Respondent objects to this paragraph on the ground that it is vague and ambiguous and overbroad. Respondent further objects to Complainant's proposal that the Administrator issue a Final Order assessing administrative penalties in any amount. Respondent further objects that the proposed penalties are excessive, not authorized and violate Respondent's due process rights inasmuch as, among other things, Complainant has not provided prior notice of a number of the alleged violations contained in the Administrative Complaint. Respondent otherwise denies these allegations and expressly denies that there was any significant violation of the Act that significantly undermined the ability of Respondent to prevent or respond to releases of oil at the Facility and/or that, cumulatively, the alleged violations indicate a lack of attention to response planning and implementation obligations required in the Oil Pollution Prevention regulations, and /or that the

alleged violations increased the likelihood that a release of oil from the Facility may significantly impact the public health or welfare or the environment.

80. Respondent expressly requests a hearing on the matters alleged in the Administrative Complaint.

81. In response to Paragraph 81, VSSI responds as follows: Respondent acknowledges the matters set forth in Paragraph 81.

82. In response to Paragraph 82, VSSI responds as follows: Respondent acknowledges the matters set forth in Paragraph 82 and will comply therewith.

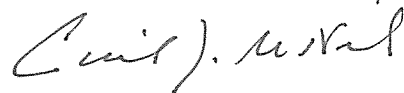
83. In response to Paragraph 83, VSSI responds as follows: Respondent acknowledges the matters set forth in Paragraph 83.

84. In response to Paragraph 84, VSSI responds as follows: Respondent acknowledges the matters set forth in Paragraph 84.

85. In response to Paragraph 85, VSSI responds as follows: Respondent acknowledges the matters set forth in Paragraph 85.

Dated: March 20, 2018

CROWELL & MORING LLP



Richard J. McNeil
Attorneys for Respondent
VSS INTERNATIONAL, INC.

PROOF OF SERVICE

I, Enia A. Castillo, state:

My business address is 3 Park Plaza, 20th Floor, Irvine, CA 92614-8505. I am over the age of eighteen years and not a party to this action.

On the date set forth below, I served the foregoing document(s) described as:

**RESPONSE TO ADMINISTRATIVE COMPLAINT AND
REQUEST FOR A HEARING**

on the following person(s) in this action:

**Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, California 94105**

Received Original and Copy

**J. Andrew Helmlinger
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-3)
San Francisco, California 94105**

Received Copy

- BY FIRST CLASS MAIL: I am employed in the County of Orange County where the mailing occurred. I enclosed the document(s) identified above in a sealed envelope or package addressed to the person(s) listed above, with postage fully paid. I placed the envelope or package for collection and mailing, following our ordinary business practice. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
- BY MESSENGER SERVICE: I served the document(s) identified above by placing them in an envelope or package addressed to the person(s) listed above and providing them to a professional messenger service for service. A declaration of personal service by the messenger is attached.
- BY OVERNIGHT DELIVERY: I enclosed the document(s) identified above in a sealed envelope or package addressed to the person(s) listed above, in an envelope or package designated by the overnight delivery carrier with delivery fees paid or provided for. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier, or by delivering to a courier or driver authorized by the overnight delivery carrier to receive documents.
- BY FACSIMILE: Based on an agreement of the parties to accept service by facsimile transmission, I faxed the document(s) identified above to the person(s) at the fax number(s) listed above. The transmission was reported complete and without error. I have attached a copy of the transmission report that was issued by the facsimile machine.

- BY ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept service by electronic mail, I caused the document(s) identified above to be transmitted electronically to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on **March 21, 2018**, at Irvine, California.



Enia A. Castillo