

**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 Continue Hearing Date**
)
)
Respondent.

On February 8, 2019, Chief Administrative Law Judge Susan Biro issued an Order on Joint Motion for Conditional Extension of Time and Rescheduling Hearing (Order). In that Order, Chief Judge Biro rescheduled the hearing in the above-captioned case to June 18, 2019 through 28, 2019, in San Francisco, California. On February 15, 2019, Respondent filed a motion to Continue Hearing Date to on or after August 20, 2019.

Although Complainant does not oppose Respondent's motion, Complainant offers the following additional detail to explain certain limitations after August 20, 2019:

- Between September 9-13, 2019, EPA's witness Troy Swackhammer will be teaching a 40-hour oil inspector training course in New York, New York;
- Between September 24-26, 2019, Mr. Swackhammer will be teaching a one-day Facility Response Plan (FRP) course in Washington, DC (exact date still to be determined based on venue ability);
- Between September 29 and October 1, 2019, counsel Rebekah Reynolds and Rebecca Sugerman will be observing Rosh Hashanah (from September 27, 2019 through October 2, 2019, counsel Rebekah Reynolds plans to travel to Washington, DC to spend the holiday with her extended family);
- Between October 8-9, 2019, Ms. Reynolds and Ms. Sugerman will be observing Yom Kippur; and
- Between October 14-17, 2019, Mr. Swackhammer will be attending the annual American Petroleum Institute (API) Storage Tank Conference in Denver, Colorado where he will be teaching an FRP course.

Based on these dates of unavailability, Complainant's preferred dates for a hearing would be as follows:

- Between August 20 and September 6, 2019;

- Between September 16 and 26, 2019 (provided that the tribunal can be flexible with scheduling Mr. Swackhammer's order of appearance, given his conflict the week of September 23, 2019); and
- October 21, 2019 or later.

Complainant previously provided information to Ms. Andrea Priest, staff attorney, on why its availability for a hearing prior to August 20, 2019 is limited. Since Respondent's motion requests a hearing date only on or after August 20, 2019, prior dates, other than the currently scheduled dates of June 18 through 28, 2019, do not appear to be under consideration.

Should this tribunal not be inclined to grant Respondent's motion to Continue Hearing Date to a date after August 20, 2019, Complainant requests that the tribunal consider beginning the hearing on Monday, June 18, 2019, and/or continue the hearing through the weekend of Saturday, June 23 and Sunday, 24, 2019, as needed, to allow time for Respondent's counsel, Mr. Richard McNeil, to attend his mediation.

Complainant appreciates the opportunity to provide this additional information regarding its availability to this tribunal.

Dated: February 25, 2019

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I, Rebekah Reynolds, hereby certify that on February 25, 2019, I caused to be filed electronically the foregoing Complainant's Response to Respondent's Motion to Continue Hearing Date 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 February 25, 2019, I served a true and correct copy of the foregoing Complainant's Motion to Supplement and Correct the Prehearing Exchange via electronic mail to Richard McNeil, attorney for Respondent, at RMcNeil@crowell.com.

Dated: February 25, 2019

Respectfully Submitted,



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