

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

IN THE MATTER OF

VSS INTERNATIONAL, INC.

3785 Channel Drive
West Sacramento, CA

Respondent.

**ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING**

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

Docket No. OPA 09-2018-00002

LEGAL AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 9, who in turn has delegated it to the Enforcement Division Director of EPA, Region 9 ("Complainant").
2. Pursuant to Section 311(b)(6)(B)(ii) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 CFR Part 22 ("Part 22"), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against VSS International, Inc. ("Respondent") for failing to comply with Spill Prevention Control and Countermeasure ("SPCC") and Facility Response Plan ("FRP") regulations set forth at 40 CFR Part 112 under the authority of Section 311(j) and other

provisions of the Clean Water Act, 33 U.S.C., §§ 1251 *et seq.* (collectively the “Oil Pollution Prevention” regulations), and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment.

ALLEGATIONS

3. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges” Sections 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters [or] adjoining shorelines” to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.”
4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities. By Section 2(d)(1) of Executive Order 12777, the President delegated to EPA the authority to issue such Section 311(j)(5) regulations to govern owners and operators of such onshore facilities that are non-transportation-related.
5. EPA subsequently promulgated the Oil Pollution Prevention regulations pursuant to these

delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

6. For purposes of Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that a discharge of harmful quantities includes discharges of oil that cause either (1) a violation of applicable water quality standards, (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
7. Respondent is a corporation organized under the laws of California with a place of business located at 3785 Channel Drive, in West Sacramento, California (the “Facility”).
8. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.
9. Respondent is the owner and operator of the Facility within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2.
10. Respondent operates a bulk storage and aggregation facility for petroleum surfacing materials, including asphaltic cement at the Facility.
11. The Facility covers approximately 10.5 acres and lies approximately 200 feet north of the

Sacramento Deep Water Ship Channel.

12. The Sacramento Deep Water Ship Channel connects directly into the San Francisco Bay Delta, and then to Suisun Bay, San Pablo Bay, San Francisco Bay and the Pacific Ocean.
13. The Facility has an aggregate above-ground storage capacity, including the capacity of any bunkered or partially buried tank (as defined in 40 CFR § 122.2), greater than 1320 gallons of oil in containers that each have a shell capacity of at least 55 gallons.
14. At all times relevant to this Complaint, the total oil storage capacity for bulk containers at the Facility exceeds one million gallons
15. As of December 2017, the current total oil storage capacity at the Facility exceeds 4.5 million gallons.
16. The Sacramento Deep Water Ship Channel is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).
17. The Sacramento Deep Water Ship Channel is classified as an Evolutionarily Significant Unit for Chinook Salmon.
18. The Facility is located at a distance (as calculated pursuant to 40 CFR Part 112 Appendix C or comparable formula) such that a discharge from the Facility could cause injury to fish and wildlife and sensitive environments.
19. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.
20. The Facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

21. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.
22. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).
23. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the Oil Pollution Prevention regulations.
24. Respondent or its corporate predecessors began operating the Facility prior to August 16, 2002.
25. On November 27, 2012 and September 30, 2016, EPA conducted inspections of Respondent’s Facility for compliance with the Oil Pollution Prevention regulations.
26. In the course of these inspections, EPA reviewed SPCC plans for the Facility dated April 2012, October 2014, January 2016, and May 2017.
27. Based on EPA’s observations and information provided to EPA by Respondent, EPA alleges the following violations of the Oil Pollution Prevention regulations.

COUNT I – 40 CFR § 112.3

28. Paragraphs 3 through 26 above are hereby incorporated by reference.
29. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.
30. At the time of EPA’s inspections, Respondent’s SPCC plans failed to include

management approval of the SPCC plan (40 CFR § 112.7(a)).

31. At the time of EPA's inspections, Respondent's SPCC plans failed to include a facility diagram with all regulated fixed containers, storage areas and connecting pipes, and stating the oil type and capacity for containers (40 CFR § 112.7(a)(3)).
32. At the time of EPA's inspections, Respondent's SPCC plans failed to include an containment or diversionary structures in Facility Diagram for tanks not permanently closed (40 CFR § 112.7(c)).
33. Respondent's failure to prepare an SPCC plan for the Facility in accordance with 40 CFR §§ 112.3, 112.5, and 112.7 violated 40 CFR § 112.3.
34. Respondent prepared SPCC plans for the Facility with a discussion of management approval of the SPCC plan, a facility diagram with all regulated fixed containers, storage areas and connecting pipes, and containment or diversionary structures in Facility Diagram for tanks not permanently closed (40 CFR § 112.7(c)) by May 1, 2017.
35. Respondent's failure to prepare a complete SPCC plan for the Facility in violation of 40 CFR § 112.3 continued for each day from at least November 27, 2012 to May 1, 2017.
36. Each day that Respondent failed to prepare a complete SPCC plan for the Facility is a separate day of violation.
37. On information and belief, Respondent has violated these requirements for each day during the period from November 27, 2012 to May 1, 2017, for a total of at least 1,614 days in violation of 40 CFR § 112.3. This is a moderate violation that presented a significant impact on the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

38. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day that the violation continues, up to a maximum of \$230,958.

COUNT II – 40 CFR § 112.3(d)

39. Paragraphs 3 through 26 above are hereby incorporated by reference.
40. 40 CFR § 112.3(d) requires that the owner or operator of an SPCC-regulated facility have a licensed Professional Engineer (“PE”) who is familiar with the SPCC regulations and through a visit and personal examination or through a visit and examination by his agent is also familiar with the facility review and certify any SPCC plan as having been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and in accordance with the requirements of the SPCC regulations.
41. In the course of EPA’s inspections, EPA determined that Respondent had failed to have a PE certify, pursuant to 40 CFR § 112.3(d), that the facility's SPCC plan had been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and in accordance with the requirements of the SPCC regulations that the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan.
42. Respondent=s failure to have a PE certify, pursuant to 40 CFR § 112.3(d), that the Facility's SPCC plan had been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and in accordance with the requirements of the SPCC regulations, and certify the procedures and frequency for required

inspections, maintenance and testing established and described in the Plan, violated 40 CFR § 112.3(d).

43. Respondent obtained a PE certification of the Facility SPCC plan on January 15, 2016.
44. Respondent violated 40 CR § 112.3(d) each day during the period from October 24, 2014, to January 15, 2016.
45. Respondent's violation of 40 CFR § 112.3(d) is a moderate violation that presented a significant impact on the ability of Respondent to prevent or respond to a worst-case spill at the Facility.
46. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day that the violation continues, up to a maximum of \$230,958.

COUNT III – 40 CFR 112.5(a)

47. Paragraphs 3 through 26 above are hereby incorporated by reference.
48. 40 CFR § 112.5(a) requires the owner or operator of an SPCC-regulated facility to amend the SPCC plan in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the SPCC regulations applicable to the facility within six months following a change in the facility's design, construction, operation or maintenance which materially affects its potential for a discharge as described in 40 CFR § 112.1(b).
49. In or about March 2012, Respondent changed the Facility's design, construction, operation in a manner that materially affected its potential for a discharge as described in 40 CFR § 112.1(b) by putting into service the 2,348,000 gallon Tank #2001.

50. Tank #2001 was not included in the Facility SPCC plan provide to EPA by the Facility in the course of EPA's November 27, 2012 inspection.
51. In or about July 2015, Respondent again changed the Facility's design, construction, operation in a manner that materially affected its potential for a discharge as described in 40 CFR § 112.1(b) by putting into service the 2,348,000 gallon Tank #2002.
52. Tank #2002 was not included in the Facility SPCC plan provided to EPA by the Facility in the course of EPA's September 30, 2016 inspection.
53. Respondent failed to amend the SPCC plan in 2012 in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the Oil Pollution Prevention regulations applicable to the Facility within six months following the addition into service of Tank #2001.
54. Respondent amended the SPCC plan in October 2014 to reflect the addition into service of Tank 2001.
55. Respondent failed to amend the SPCC plan in 2016 in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the Oil Pollution Prevention regulations applicable to the Facility within six months following the addition into service of Tank #2002.
56. Respondent amended the SPCC plan in May 2017 to reflect the addition into service of Tank #2002.
57. Respondent=s failure to amend the SPCC plan in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the Oil Pollution Prevention

regulations applicable to the facility within six months following this change violated 40 CFR § 112.5(a).

58. On information and belief, Respondent has violated these requirements for each day following the respective 2012 and 2016 inspections until the subsequent amendment of the applicable SPCC plans (October 2014 and May 2017), for a total of at least 905 days in violation of 40 CFR § 112.5(a).
59. Respondent's failure to amend the SPCC plans each represent a major violation that essentially undermined the ability of Respondent to prevent or respond to a worst-case spill at the Facility.
60. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day during that the violation continues, up to a maximum of \$230,958.

COUNT IV – 40 CFR § 112.7(e)

61. Paragraphs 3 through 26 above are hereby incorporated by reference.
62. 40 CFR §112.7(e) requires the owner or operator of an SPCC-regulated facility to keep written procedures developed for inspections and tests of the facility, as well as the records of such inspections and tests, signed by the appropriate supervisor or inspector, for a period of three years.
63. At the time of EPA's inspections, Respondent had failed to keep records of inspections and tests of the Facility for a period of three years in accordance with 40 CFR §112.7(e).
64. Specifically, Respondent lacked documentation of external tank and internal tank

inspections and tests that were due in 2014 based on the schedule in Respondent's applicable SPCC plan.

65. Respondent's failure to keep records of inspections and tests of the Facility for a period of three years violated 40 CFR §112.7(e). On information and belief, Respondent has violated these requirements for each day during the period from January 1, 2015, for a total of at least 1,095 days in violation of 40 CFR § 112.7(e).
66. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day during that the violation continues, up to a maximum of \$230,958.
67. This is a major violation that essentially undermined the ability of Respondent to prevent or respond to a worst-case spill at the Facility.

COUNT V – 40 CFR § 112.20

68. Paragraphs 3 through 26 above are hereby incorporated by reference.
69. Pursuant to 40 CFR § 112.20(a)(2) and (a)(2)(ii), the owner or operator of the Facility must submit to the Regional Administrator a facility response plan ("FRP") based on the criteria in 40 CFR §112.20(f)(1), along with a completed version of the response plan cover sheet contained in Appendix F to 40 CFR Part 112 prior to the start of operations at the Facility.
70. Because the Facility exceeded 1,000,000 gallons in oil storage capacity following installation of Tank #2001 in or about March 21, 2012, and because the Facility is located at such a distance from the Sacramento Deep Water Ship Channel that a discharge could cause

injury to fish and wildlife and sensitive environments, Respondent was required to prepare and submit an FRP and the response plan cover sheet on or about March 21, 2012.

71. Respondent failed to timely submit such an FRP, along with such a completed response plan cover sheet.
72. After notice from EPA, Respondent submitted FRPs on or about October 24, 2014, and January 9, 2017.
73. The 2014 FRP was not based on the criteria in 40 CFR § 112.20(f)(1) and did not address each element required under 40 CFR § 112.20(h).
74. The 2017 FRP was not based on the criteria in 40 CFR § 112.20(f)(1) and did not address each element required under 40 CFR § 112.20(h).
75. Respondent's failure to timely prepare submit a compliant FRP violated 40 CFR § 112.20(a)(2) and(a)(2)(ii).
76. Respondent has failed to meet this requirement for each day during the five year period up to the date of filing this Complaint, for a total of 1,825 days in violation of 40 CFR § 112.20(a)(2) and (a)(2)(ii).
77. Respondent's failure to timely submit and implement a compliant FRP is a major violation that essentially undermines the ability of Respondent to prevent or respond to a worst-case spill at the Facility.
78. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day that the violation continues, up to a maximum of \$230,958.

PROPOSED PENALTY

79. Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Complainant proposes that the Administrator, after considering the statutory penalty factors set forth at Section 311(b)(8) of the Act, issue a Final Order assessing administrative penalties against the Respondent in an amount not to exceed \$18,477 per day for each day during which the violation continues, up to a maximum of \$230,958. The violations alleged in Paragraphs 28 through 78 represent a significant violation of the Act because they significantly undermine the ability of the Respondent to prevent and respond to releases of oil at the Facility. Cumulatively, the violations indicate a lack of attention to response planning and implementation obligations required in the Oil Pollution Prevention regulations, and increase the likelihood that a release of oil from the Facility may significantly impact the public health or welfare or the environment.

OPPORTUNITY TO REQUEST A HEARING

80. In its answer to this Complaint, Respondent may, pursuant to Section 311(b)(6) of the Act and 40 CFR § 22.15(c), request a hearing on any material fact alleged in this Complaint, or on the appropriateness of any penalty it proposes. Even if Respondent does not explicitly request a hearing in your Answer, a Presiding Officer may hold such a hearing if the Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in 40 CFR Part 22, a copy of which is enclosed with this

Complaint.

81. Default constitutes an admission of all facts alleged in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. To avoid default in this matter, Respondent must within 30 days after receipt of this Complaint either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint with:

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

82. Respondent also is required, pursuant to § 22.5(b) of the enclosed Consolidated Rules of Practice, to provide a contemporaneous copy of any Answer to the Complainant. Complainant's counsel, who is authorized to receive service on behalf of the Complainant, shall be served at the following address:

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

83. Pursuant to 40 CFR § 22.15, the Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If the Answer states that Respondent has no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, Respondent's failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer shall also state the circumstances or arguments for any defense that

Respondent wishes to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complainant's proposed penalty.

84. Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of the assignment, and shall notify the parties of the time and place of further proceedings in the case.

PUBLIC NOTICE

85. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311 (b)(6)(C) of the Act to be heard and present evidence at the hearing.

Date: February 12, 2018

_____/S/_____
Kathleen Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105