

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

**VSS International, Inc.,
3785 Channel Dr.,
West Sacramento, California**

Respondent.

**CWA SECTION 311
CLASS II ADMINISTRATIVE PENALTY
CONSENT AGREEMENT
AND FINAL ORDER PURSUANT TO
40 C.F.R. §§ 22.13 AND 22.18**

Docket No. **CWA-09-2021-0008**

CONSENT AGREEMENT

A. Preliminary Statement

1. This Consent Agreement and Final Order (“CA/FO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 311(b)(6)(A) and (B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(A), (b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX, pursuant to Delegation 2-52A 1200 TN 350 (January 18, 2017), who has in turn delegated them to the Director of the Enforcement Division (now the “Enforcement and Compliance Assurance Division”) (“Complainant”), pursuant to Delegation R9-2-52A (March 8, 2017).
2. Complainant initiates this proceeding against VSS International, Inc. (“Respondent”) for alleged violations of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). Complainant and Respondent are hereinafter collectively referred to as the “Parties.”
3. This CA/FO simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b).
4. The Parties agree that settlement of this matter is consistent with the Act’s objectives, in the public interest, and the most appropriate means of resolving this matter.

B. Statutory and Regulatory Framework

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits “[t]he discharge of oil or hazardous substances into or upon the navigable waters of the United States [and] adjoining shorelines...in such quantities as may be harmful....”
6. “Discharge” is defined in Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, “any spilling, leaking, pumping, pouring, emitting, emptying, or dumping....”
7. “Oil” is defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), to include, in pertinent part, “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge....”
8. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
9. In accordance with Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, the quantities of oil that may be harmful to the public health or welfare or the environment of the United States. Executive Order No. 11735, 38 Fed. Reg. 21243 (August 3, 1973). Discharges of oil in such quantities as may be harmful include discharges of oil that “[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” 40 C.F.R. § 110.3. *See also* Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991).
10. Pursuant to Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil is discharged in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.
11. “Owner or operator” is defined in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), in pertinent part, as “in the case of an onshore facility, ... any person owning or operating such onshore facility....”
12. According to Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), “person” includes an individual, firm, corporation, association, and a partnership.
13. “Onshore facility” is defined in Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.”

C. General Allegations

14. EPA alleges VSS International, Inc. is a road pavement maintenance and emulsion manufacturing company incorporated in California with a principal place of business at 3785 Channel Drive, West Sacramento, California, 95691. 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), 1362(5).
15. EPA alleges Respondent is or was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a tanker truck that was carrying asphalt emulsion (“Styraflex”) on Alpine Road in San Mateo County, California on September 30, 2019 when it overturned into a tributary of Alpine Creek. The tanker truck was damaged and released asphalt emulsion into the tributary of Alpine Creek.
16. EPA alleges the tanker truck is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10). The asphalt emulsion that the tanker truck was transporting when it overturned was “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
17. EPA alleges Alpine Creek, which flows into San Gregorio Creek and ultimately the Pacific Ocean, is a “navigable water of the United States,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
18. EPA alleges that on September 30, 2019, Respondent’s overturned tanker truck discharged oil in such quantities as “may be harmful,” as defined in 40 C.F.R. § 110.3(b), into or upon the navigable waters of the United States and adjoining shorelines in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

D. Civil Penalty

19. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation, the administrative assessment of civil penalties may not exceed \$19,277 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$240,960. *See also* Civil Monetary Penalty Inflation Adjustment, 85 Fed. Reg. 1753 (Jan. 13, 2020).
20. Respondent consents to the assessment of and agrees to pay a civil penalty of SIXTY THOUSAND DOLLARS (\$60,000) in full settlement of the federal civil penalty claims set

forth in this CA/FO. The penalty was calculated based on the nature, circumstances, extent, and gravity of the alleged violations, Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.

E. Parties Bound

21. This CA/FO shall apply to and be binding upon Respondent, its successors, and assigns. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.
22. Respondent's signatory to this CA/FO certifies that they are fully authorized to enter into and bind Respondent to the terms of the CA/FO.

F. Payment of Civil Penalty

23. Respondent shall submit payment of the SIXTY THOUSAND DOLLARS (\$60,000) within thirty (30) days of the Effective Date as specified in Paragraphs 24 and 25 of this CA/FO.
24. The payment shall indicate the name of the Facility, Respondent's name and address and the EPA docket number of this action. Payment shall be made by corporate, certified or cashier's check payable to "United States Environmental Protection Agency" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency
Government Lock Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Alternatively, payment may be made by electronic transfer as provided below:

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Wire Transfers:

Wire transfers must be sent to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = US Environmental Protection Agency

ACH (also known as REX or remittance express):

ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006
Environmental Protection Agency
CTX Format Transaction Code 22-checking

Physical Location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

On-Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter "sfol.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact Craig Steffen at (513) 487-2091 or steffen.craig@epa.gov.

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25. **Notification.** Within thirty (30) days after the due date of the payment, a copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent via electronic mail with a transmittal letter, indicating Respondent's name, the case title, and docket number, to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 9
R9HearingClerk@epa.gov

and to:

Janice Witul
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 9
witul.janice@epa.gov

26. If payment is not received within thirty (30) days of the Effective Date, interest on any overdue amount will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date, as described in 40 C.F.R. § 13.11(c). Payment of any interest shall be made in accordance with Paragraphs 24 and 25 above.
27. Respondent's failure to make the payment in full within thirty days (30) days of the Effective Date may subject Respondent to a civil action to collect the assessed penalties, plus interest, attorneys' fees, costs, and additional quarterly nonpayment penalties pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.
28. The civil penalty and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondent's or any other person or entity's federal, state, or local taxes.

G. Admissions and Waivers of Rights

29. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding in Docket No. CWA-09-2021-0008, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual

allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section D of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

H. Reservation of Rights

30. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the specific CWA violations alleged herein. Full compliance with this CA/FO shall constitute full settlement only of Respondent's federal civil penalty liability for the CWA violations specifically alleged herein.
31. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's civil liability for the violations and facts alleged in this Consent Agreement.
32. This CA/FO shall in no way affect the right of EPA or the United States against any third party or the right of any third party against Respondent. This CA/FO does not create any right in or grant any cause of action to any third party.

I. Miscellaneous

33. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
34. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
35. The CA/FO may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.
36. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

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37. EPA and Respondent consent to entry of this CA/FO without further notice.

J. Effective and Termination Dates

38. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall take effect on the date the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (“Effective Date”).

39. This CA/FO shall terminate when Respondent has fully complied with its terms.

K. Public Notice

40. Pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order.

41. The petition and consent-withdrawal provisions of 40 C.F.R. § 22.45(c)(4) shall apply.

IT IS SO AGREED.

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For Respondent VSS International, Inc.:

_____/s/_____
Jeffrey R. Reed
President

Date: ____11/02/2020____

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For Complainant U.S. Environmental Protection Agency Region IX:

_____/s/____ 12/02/2020_____

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

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FINAL ORDER

It Is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. CWA-09-2021-0008) be entered and that Respondent shall pay a civil penalty in the amount of SIXTY THOUSAND DOLLARS (\$60,000) in accordance with the terms of this Consent Agreement and Final Order.

Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX