

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

New Prime, Inc.
3720 West 800 South
Salt Lake City, Utah

Respondent.

Proceedings under Section 3008(a) of the Solid Waste Disposal Act, as amended by, inter alia, the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)

Docket No. RCRA-08-2020-0007

THIRD SUPPLEMENT TO
COMPLAINANT'S PREHEARING
EXCHANGE

Complainant, United States Environmental Protection Agency, Region 8 (EPA), by and through the undersigned, pursuant to section 22.19(f) of the Consolidated Rules of Practice (40 C.F. R. 40 C.F.R. § 22.19(f)), hereby supplements its Prehearing Exchange with the addition of two witnesses and Complainant's Exhibits CX68-CX77. A revised comprehensive list of Complainant's Exhibits is attached as Attachment A (Complainant's Updated Exhibit Index List, Version 3).

I. Complainant's Additional Witnesses

Brad W. Miller (Expert Witness)

Dr. Miller is a physical scientist in the EPA's National Enforcement Investigations Center (NEIC) in Lakewood, Colorado. Dr. Miller holds a Ph.D. in Forestry from Virginia Polytechnic Institute and State University, with a focus on soil chemistry. At NEIC, Dr. Miller works as a principal analytical chemist and project manager supervising the characterization of waste samples. Dr. Miller also selects analytical methods for the analysis of waste materials and ensures this analysis is performed within required quality control guidelines. Finally, Dr. Miller prepares expert reports and presents expert witness testimony. Dr. Miller has worked for the

EPA over 13 years. Dr. Miller started his work at the EPA as a post doctorate contractor and then joined NEIC in 2013. Dr. Miller will provide testimony in support of the EPA's determination that at least 20 of the drums of waste at Respondent's Salt Lake City Facility, at the time of the NEIC inspection, contained hazardous waste. Dr. Miller's expert report, entitled Hazardous Waste Characteristic of Yellow Primer Drums (August 5, 2022), is identified as CX75 on Complainant's Updated Exhibit List. Dr. Miller's curriculum vitae is identified as Appendix A to CX75.

Marc Callaghan (Fact Witness)

Mr. Callaghan is a Special Agent in the EPA's Criminal Investigation Division (EPA CID) in Idaho. Mr. Callaghan has been a special agent with the EPA for 14 years. Mr. Callaghan's current job title is National Forensics Coordinator. Mr. Callaghan is expected to testify about information gathered during his investigation of Respondent's compliance with RCRA regulations. Mr. Callaghan's testimony will include his review of the investigative activity reports in the Prime, Inc., criminal investigation.

Mr. Callaghan is also expected to provide a foundation for authentication of Agency records he created, maintained and/or reviewed in his role as Special Agent and custodian of EPA CID records to the extent that admissibility of such records remains in dispute at hearing. Mr. Callaghan's affidavit is identified as CX76 on Complainant's Updated Exhibit List. Mr. Callaghan's resume is identified as CX77 on Complainant's Updated Exhibit List.

Complainant also reserves the right to call any of Respondent's witnesses listed in Respondent's Prehearing Exchange, on rebuttal.

II. Complaint's Additional Exhibits

Complainant is adding exhibits CX68-77 in response to certain assertions in Respondent's Prehearing Exchange and the Response to Motion for Accelerated Decision; and to address an issue raised sua sponte by the Court in the Order on the Motion for Accelerated Decision, dated April 4, 2022.

Exhibit #	Document Title/Description	Date	Pages
CX68	Affidavit of Mr. Greg Archuleta, Stormwater Quality Program Manager, Salt Lake Corporation, Department of Public Utilities addressing the foundational elements of admissibility of CX69-CX72.	August 2, 2022	3
CX69	Letter to Prime, Inc. Attn: Mark A. Piley from Dustin White, Storm Water Quality Coordinator, SLC Department of Public Utilities, Re: Salt Lake City Industrial Inspection and Issuance of Industrial Storm Sewer Discharge Permit (SSID000105).	October 27, 2017	10
CX70	Emails between Mark Piley, Prime Inc. to Dustin White, Storm Water Quality Coordinator, SCL Department of Public Utilities, Re: New Prime Inc. Storm Water Pollution Prevention Plan inspections.	October 30, 2017	2
CX71	Stormwater Pollution Prevention Plan for Prime, Inc., prepared for New Prime, Inc., 2740 North Mayfair, Springfield, Missouri 65803.	May 2018, as revised on June 28, 2018	118
CX72	Map (aerial photograph with additional information) of the New Prime, Inc., facility located at 3720 West and 800 South, Salt Lake City, Utah 84104.		1
CX73	Notice of Intent for Stormwater Discharges Associated with Construction Activity for the Prime Salt Lake City facility located at 3720 West and 800 South.	August 27, 2015, received July 18, 2018	2
CX74	Google Earth Images of the New Prime, Inc., facility located at 3720 West and 800 South, Salt Lake City, Utah 84104, prepared by Kristen McNeill, RCRA Enforcement Officer.	June 24, 2022	40
CX75	Dr. Brad Miller, Expert Opinion Report, Hazardous Waste Characteristic of Yellow Primer Drums (Prime, Inc. Hazardous Drums) and Appendix A: Curriculum Vitae	August 5, 2022	38

Exhibit #	Document Title/Description	Date	Pages
CX76	Affidavit of Marc Callaghan, EPA Criminal Investigation Division	August 12, 2022	5
CX77	Resume of Marc Callaghan	August 12, 2022	1

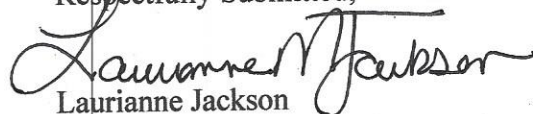
III. Facts and Policy Relevant to Complainant's Assessment of a Penalty

In addition to the EPA guidance documents and/or policies provided in Complainant's previous Prehearing Exchange submittals, Complainant intends to rely on the following:

Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the January 12, 2022, Civil Monetary Penalty Inflation Adjustment Rule, dated January 12, 2022, available at <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>.

Dated: August 22, 2022

Respectfully Submitted,



Laurianne Jackson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 8

CERTIFICATE OF SERVICE

The undersigned certifies that on August 22, 2022, I filed electronically the foregoing the **THIRD SUPPLEMENT TO COMPLAINANT’S PREHEARING EXCHANGE** with the Clerk of the Office of Administrative Law Judges using the OALJ E-Filing System and sent by electronic mail to Mark Ryan, attorney for Respondent, at mr@ryankuehler.com and Scott McKay, attorney for Respondent, at smckay@nbmlaw.com.

8/22/2022
Date

By: /s/ Kate Tribbett
Kate Tribbett
Paralegal