

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
New Prime, Inc.,) **Docket No. RCRA-08-2020-0007**
)
Respondent.)

JOINT SET OF STIPULATED FACTS AND EXHIBITS

Pursuant to the Presiding Officer’s May 9, 2022, Order, Complainant U.S. Environmental Protection Agency, Region 8 and Respondent New Prime, Inc., submit the following stipulations.

I. EXHIBITS

Complainant and Respondent stipulate to the authenticity and admissibility of the following exhibits, reserving the right to argue the relevance, meaning, effect and/or weight of such at hearing:

Exhibit #	Document Title/Description	Date	Pages
CX01	EPA’s Unit Cost Compendium, Data and Algorithms for Estimating Costs Associated with “Cradle to Grave” Management of RCRA Solid and Hazardous Waste	9/30/2000	121
CX02	Utah Department of Environmental Quality Rules R315-1 through 9, 12 through 14, 50, 101, and 102	9/15/2003	162
CX06	Invoice and Bill of Lading	9/28/2015	2
CX08	Check from Prime, Inc. to PPG Industries, Inc.	1/9/2016	1
CX13	Prime Trailer Disposal Records (Invoice and Manifest)	11/21/2016	6
CX15	Standard Form for Presentation of Loss and Damage Claims		1
CX32	PPG Safety Data Sheets, provided as part of 3/7/16 IAR	6/23/2015	80
CX33	Email from Beth McDonald to Thomas Casey Re: 143320 - Trailer fire - Permission to dispose Prime#1335454 Dispose	9/28/2015	2

Exhibit #	Document Title/Description	Date	Pages
CX34	Email from Jill Buatte to Erika Duckworth Re: 143320 - Trailer fire - Permission to Dispose Prime#1335454	9/28/2015	2
CX35	Email from Marc Lowe to Keith McCoy Re: 143320 -Trailer fire - Permission to Dispose Prime#1335454	10/21/2015	3
CX36	Email from Marc Lowe to Joseph Frank Re: Truck fire - shipment from Springdale to Bushnell's	10/21/2015	4
CX37	Email from Marc Lowe to Bill Gallagher Re: Follow-up - truck fire in Hammett, ID	11/4/2015	3
CX38	Email from Marc Lowe to David White Re: Fire dept report - Prime claim #116457	11/10/2015	2
CX39	Email from Marc Lowe to David White Re: 143320 - Trailer fire - Permission to Dispose Prime#1335454	11/25/2015	66
CX40	Email from Marc Lowe to Joann Black Re: Claim against Prime for truck fire - CAP00709220/1335454	12/1/2015	11
CX41	Email from Marc Lowe to Steve Faeth Re: Prime Truck fire- September 2015 (PPG Personnel)	2/2/2016	1
CX42	Email chain from Joann Black to Marc Lowe Re: Claim against Prime for truck fire - CAP00709220/1335454	12/4/2016	10
CX43	NEIC Operating Procedure - Container Sampling	4/27/2010	11
CX44	NEIC Operating Procedure - X-ray Fluorescence Spectrometry Using the Niton Model 792 XLt Field Portable X-ray Fluorescence Spectrometer	3/28/2011	14
CX45	NEIC Operating Procedure - Elemental Analysis	7/9/2013	41
CX46	NEIC Operating Procedure - Water Content Determination by Coulometric Karl Fischer Titration	2/19/2014	16
CX47	NEIC Operating Procedure - Setaflash Method for Determining Ignitability of Liquids	12/11/2014	14
CX49	Complaint Certificate of Service	9/21/2020	1
CX50	Complaint Green Card (Signed)	9/24/2020	1
CX64Cor	Curriculum Vitae for John J. Reschl	2/22/2021	6
CX67	Resume of Kristin McNeill	4/14/2022	4
RX01	Prime Presence		1
RX02	Prime Network		1
RX03	Idaho State CC Hazmat	9/27/2015	4
RX04	Boise Fire Department, Regional Response Team		8
RX05	King Hill Rural Fire District		22

Exhibit #	Document Title/Description	Date	Pages
RX06	Resume of Kelly O'Neill		3
RX16	Prime Paint Disposal Records (Invoice and Manifest)	9/23/2016	3
RX19	Weather Data SLC		15

Complainant and Respondent stipulate to the authenticity of the following exhibits, reserving the right to argue the admissibility, relevance, meaning, effect, and/or weight of such at hearing:

Exhibit #	Document Title/Description	Date	Pages
CX04Cor	EPA's Explanation of the Proposed Penalty Assessment in the Matter of New Prime, Inc.	2/22/2021	20

II. JOINT STIPULATIONS OF FACT

Complainant and Respondent stipulate to the following facts:

1. Respondent is a Nebraska corporation licensed to do business and doing business in Utah.
2. Respondent owns and operates the facility located at 3720 West 800 South, Salt Lake City, Utah 84104 (Facility).
3. Basic functions performed at, or from, the Facility include storage, maintenance, and repair of trucking equipment.
4. On or around September 24, 2015, Respondent was hired to ship four types of paint and primer products for Pittsburgh Paint and Glass (PPG) from Springdale, Pennsylvania, to Portland, Oregon.
5. The shipment contained 36 drums of "UN 1263 paint 3 PGIII," weighing 19,945 pounds; two pails of "UN 1263 paint 3 PGIII," weighing 106 pounds; four drums of unregulated paint; and 32 drums of PPG's Universal Urethane Yellow Primer, product code BY1Y100B, weighing 17,683 pounds.

6. Each type of paint and primer, in the shipment, has an associated Safety Data Sheet (SDS) that sets out the content of the material and the safety precautions that are recommended for that product.
7. On September 27, 2015, Respondent's trailer and its contents caught fire in rural Idaho. Some drums fell out of the trailer; paint and primer were released onto the road and the roadside.
8. On or about September 27, 2015, Respondent hired B&W Wrecker Services (B&W) to remove the burned trailer and 32 burned drums of paint and primer from the site of the fire.
9. On or about October 1, 2015, Respondent hired Brett's Towing of Ogden, Utah, to transport the burned trailer and approximately 32 55-gallon burned drums of paint waste from B&W's Lot in Idaho to Respondent's Facility in Salt Lake City, Utah.
10. Respondent did not prepare a hazardous waste manifest for transport of hazardous waste to the Facility.
11. On August 2, 2016, Special Agents from the EPA-Criminal Investigation Division (CID) conducted an initial inspection on consent of the Facility (EPA-CID Inspection).
12. Prime employees were cooperative and assisted the EPA investigators with the EPA-CID Inspection.
13. At the time of the EPA-CID Inspection, there was no evidence of leakage from the trailer or evidence of paint waste contaminating soil or groundwater.
14. At the time of the EPA-CID Inspection, the trailer and 32 drums of paint and primer waste were stored outside at the Facility and covered by tarps.

15. During the EPA-CID Inspection, the EPA-CID agents documented that “the drums of paint waste did not have labels.”
16. During the EPA-CID Inspection, at least some of the burned drums on the trailer were missing covers known as bung caps.
17. On August 3, 2016, EPA-CID sent a letter to Respondent requesting Prime not move or manipulate the burned trailer or the burned drums of paint waste at the Facility (EPA-CID Preservation Letter).
18. Prime complied with the EPA-CID Preservation Letter request.
19. On August 24, 2016, the EPA National Enforcement Investigation Center (NEIC) inspected the Facility.
20. NEIC investigators conducted x-ray fluorescence spectrometry tests on all 32 drums during the field inspection. The results demonstrated that the contents of 20 drums contained materials consistent with strontium chromate primer.
21. PPG’s Universal Urethane Yellow Primer contains strontium chromate.
22. NEIC analysis performed on or about August 24, 2016, on the samples of eight of the 20 burned drums of paint waste, documented that the flashpoint ranged between 109- and 113-degrees Fahrenheit (43 and 45 degrees Celsius).
23. The NEIC TCLP analysis performed on or about August 24, 2016, on the samples of eight of the 20 burned drums of paint waste, documented levels of chromium above 35.0 mg/L for all eight drums.
24. Between October 1, 2015, and August 2, 2016, the trailer and drums of paint waste from the fire remained at the Facility.

25. As a result of the CID Preservation Letter, the trailer and drums remained at the Facility until September 19, 2016.
26. On or about September 19, 2016, after receipt of EPA authorization, Respondent properly disposed of all of the waste materials.
27. Respondent did not have a RCRA permit authorizing the storage of hazardous waste at the Facility when the drums of hazardous waste were stored at the Facility.
28. Between October 1, 2015, and August 3, 2016, drums of waste and hazardous waste were stored outside at the Facility.
29. This Facility is located in an industrial park in Salt Lake City with no adjacent residential neighborhoods.
30. The area where the drums were stored is paved with asphalt.
31. On or about September 19, 2016, after receiving the sampling results from NEIC, Respondent created a hazardous waste manifest.
32. Respondent provided the generator name and address as Prime, Inc., 2740 North Mayfair Avenue, Springfield, Missouri 65803, on the hazardous waste manifest.
33. Respondent provided the generator's site address as Prime, Inc., 3720 West 800 South, Salt Lake City, Utah 84104, on the hazardous waste manifest.
34. Respondent provided the EPA Facility Identification Number MOD050188407, using a Missouri facility generator id number, on the hazardous waste manifest.
35. The hazardous waste manifest lists the 32 drums of burned of paint waste with the following waste codes: D001 (ignitibility); D007 (chromium); and D035 (methyl ethyl ketone).

36. On or about September 19, 2016, Respondent arranged for the transportation of the 32 burned drums of paint waste by a licensed hazardous waste transporter, H2O Environmental.
37. On or about September 19, 2016, Respondent arranged for the disposal of the 32 burned drums of paint waste as hazardous waste at Heritage Environmental, a permitted hazardous waste treatment, storage, and disposal facility located at 284 East Storey Road, Coolidge, Arizona.
38. Around April 2020, Respondent received an EPA Facility Identification Number UTP000001644, for the Facility.
39. Respondent's trucks travel hundreds of millions of miles each year and between 2015 and 2020, traveled over four billion miles.

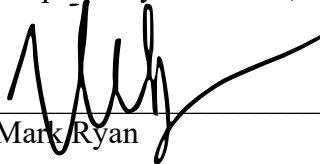
WHEREFORE, the undersigned submit and aver that the foregoing stipulations regarding facts and exhibits are accurate and truthful.

Respectfully submitted,

Dated: September 30, 2022

Laurianne Jackson
Senior Assistant Regional Counsel
Environmental Protection Agency Region 8

Respectfully submitted,



Mark Ryan

September 28, 2022

Date

CERTIFICATE OF SERVICE

The undersigned certifies that on September 30, 2022, I filed electronically the foregoing **JOINT SET OF STIPULATED FACTS AND EXHIBITS**, 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.

Date

By: /s/ Kate Tribbett

Kate Tribbett
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