

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

COMPLAINANT'S REBUTTAL
PREHEARING EXCHANGE

Complainant, U.S. Environmental Protection Agency, Region 8 (EPA), by and through its counsel, in response to the Presiding Officer's Prehearing Order of November 2, 2020 (Prehearing Order), and pursuant to Title 40 of the Code of Federal Regulations (40 C.F.R.) § 22.19(a), respectfully submits this Complainant's Rebuttal Prehearing Exchange as follows:

I. Complainant's List of Witnesses to Rebut Respondent's Prehearing Exchange

Complainant may call the following witnesses at hearing. Complainant may not call these witnesses if, at the time of hearing, the substance of his or her testimony is undisputed or stipulated, if he or she is otherwise determined to be unnecessary, or if he or she is unavailable.

Kristen Keteles (Expert Witness)

Dr. Keteles is a toxicologist in the EPA's National Enforcement Investigations Center (NEIC) in Lakewood, Colorado. Dr. Keteles holds a Ph.D. in zoology from Louisiana State University with an emphasis in environmental toxicology. At NEIC, Dr. Keteles provides toxicology technical assistance in support of environmental investigations, prepares expert opinion reports, and presents expert witness testimony at trials and sentencings. Dr. Keteles has

worked for the EPA for more than 12 years, including 7 years as a regional toxicologist and risk assessor, routinely conducting both human health and ecological risk assessments at “Superfund” hazardous waste sites and provided technical assistance to the pesticides and toxics program. Dr. Keteles will testify in rebuttal to Respondent’s proposed expert testimony related to the potential harms Respondent created by the violations. Dr. Keteles curriculum vitae is included in the list of Rebuttal Exhibits as CX63. In response to Respondent’s expert report (RX 20), and to the extent it appears Respondent’s expert’s testimony and/or RX 20 may be introduced at hearing, Complainant may move to supplement its prehearing exchange with a rebuttal expert report from Dr. Keteles.

John Reschl (Expert Witness)

Complainant’s Prehearing Exchange, dated December 18, 2020, listed Mr. Reschl as a potential fact witness to testify to his analysis of the samples of the paint waste obtained during NEIC’s inspection of the Facility. Complainant may introduce additional expert testimony by Mr. Reschl to rebut assertions made, or arguments alluded to, in Respondent’s Prehearing Exchange. For example, if necessary, Mr. Reschl may also testify to the Toxicity Characteristic Leaching Procedure regulatory limits in general and the significance of the flashpoint of the samples from the drums at the Facility. Mr. Reschl’s curriculum vitae is included in the list of Rebuttal Exhibits as CX64. At present, a rebuttal report from Mr. Reschl does not appear to be necessary because his opinion on matters put before the court by Respondent will be elicited during his testimony during the hearing.

Complainant respectfully reserves the right to supplement this list of witnesses to the extent allowed by 40 C.F.R. Part 22, or by order of the tribunal.

II. Complainant’s Exhibits to Rebut Respondent’s Prehearing Exchange

Respondent’s Prehearing Exchange dated January 8, 2021, includes numerous documents solely related to the emergency response to the fire that occurred on September 27, 2015.

Complainant did not include documents related to the September 27, 2015, emergency response to the fire in Complainant’s Prehearing Exchange, dated December 18, 2020, because

information relating to the emergency response to the fire is not probative to either (i)

Respondent’s liability for the violations alleged in the Complaint (and admitted by Respondent in Respondent’s Prehearing Exchange), or (ii) the assessment of the penalty proposed for the

violations. In the event Respondent presents evidence of the emergency response to the fire at hearing to support its argument for a reduction of the proposed penalty, Complainant may

introduce the following additional evidence in rebuttal.

Exhibit Number	Document Description	Date	Pages
CX52	IAR: Receipt of Allegations from IDEQ	12/18/2015	24
CX53	IAR: Interview and Invoice Receipt of FC Janousek, KHRFD	2/23/2016	5
CX54	IAR: Interview of ITD Employees Vaughn, Myers, and Bowden	2/24/2016	4
CX55	IAR: Summary of Recorded Interview of Stephan Drake, Prime Truck Driver	3/15/2016	6
CX56	IAR: Summary of Recorded Interview of Darren Buys, B&W	5/20/2016	6
CX57	IAR: Interview-Photos of David McCallum, Corder Trucking	6/28/2016	6
CX58	IAR: Interview of Joni Stewart, Prime	7/20/2016	3
CX59	IAR: 7-19-16 Transcript of Recorded Interview of Gary Broderick, Prime	11/1/2016	57
CX60	IAR: Interview of Thomas Lehman, J.B. Hunt	2/28/2017	5
CX61	IAR: 4-14-16 Recorded Interview of Rick Lee, B&W	5/20/2020	5
CX62	IAR: 3-31-16 Recorded Interview of David McCallum, Corder Trucking	5/20/2020	6
CX63	Curriculum Vitae for Kristen A. Keteles, Ph. D.	1/20/2021	9
CX64	Curriculum Vitae for John J. Reschl	1/21/2021	6
CX65	IAR: National Response Center Inquiry	6/3/2016	1

III. Additional Information Relevant to Complainant's Assessment of Penalty

The Prehearing Order requires Complainant to file a copy or statement of the internet address (URL) of any EPA guidance documents and/or policies that Complainant has relied upon with regard to the allegations set forth in the Complaint. Respondent's Prehearing Exchange at Section E.5 asserts that EPA provides little to no analysis of how Complainant arrived at an economic benefit figure of \$10,000. As part of the penalty justification for Count 1 in the Complaint, EPA explained that it utilized EPA's Unit Cost Compendium, Data, and Algorithms for Estimating Costs Associated with "Cradle to Grave" Management of RCRA Solid and Hazardous Waste, September 30, 2020 (CX 1). Complainant, however, did not provide a link to the online U.S. inflation calculator in its Prehearing Exchange. The calculator is found at <https://www.usinflationcalculator.com>.

Dated: January 22, 2021

Respectfully Submitted,

LAURIANNE
JACKSON

 Digitally signed by LAURIANNE
JACKSON
Date: 2021.01.22 10:07:30 -0700'

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

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 22, 2021, I filed electronically the foregoing **COMPLAINANT'S REBUTTAL 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.

1/22/2021
Date

By: /s/ Kate Tribbett
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