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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

IN THE MATTER OF:)	
)	Docket No. RCRA-08-2020-0007
New Prime, Inc.)	
)	
Respondent.)	RESPONDENT'S PREHEARING
)	EXCHANGE
_____)	

Pursuant to the Presiding Officer's Prehearing Order dated November 2, 2020, Respondent New Prime, Inc., through its attorneys, Mark Ryan of Ryan & Kuehler PLLC and Scott McKay of Nevin, Benjamin, McKay & Bartlett LLP, submits the following Prehearing Exchange.

A. Fact Witnesses

Set forth below are the fact witnesses that the Respondent intends to call at

hearing together with a brief narrative summary of each witness' expected testimony.

Respondent reserves the right to call any of Complainant's witness during its defense.

1. Steve Field. Mr. Field is the Director of Safety for Prime at its Springfield, Missouri headquarters. Mr. Field has worked for Prime since 1996, and has worked nearly 25 years for the company in safety. Mr. Field will testify regarding his responsibilities as the Director of Safety and the operation of different personnel and departments at Prime particularly as they existed at the time of the trailer fire at issue here which occurred in Idaho during the early morning hours of September 27, 2015. Mr. Field will testify regarding his actions after being notified of the fire and the events associated with managing the aftermath of the accident including the clean-up, transportation and storage of the remnants of the trailer. Mr. Field will discuss Prime's reliance on local authorities in Idaho including confusion regarding the nature of the clean-up. He will testify Prime also relied on the representations of the tow truck company concerning their capacity to handle the clean-up from the fire. He will also discuss the company's experience with such matters, its safety program and its corporate philosophy. Mr. Field will also address lessons learned from this matter including processes implemented to ensure this situation is not repeated. Mr. Field is expected to testify that this was an isolated incident, that Prime trucks cover millions of miles each year and that Prime had not had an experience like this prior to the 2015 fire, or since the 2015 fire.
2. Kelly O'Neill. Mr. O'Neill is a private investigator and consultant with White Rock Associates, LLC in Boise, Idaho. He previously worked for the U.S. Environmental Protection Agency, Criminal Investigation Division for over 20 years before retiring in 2014. Among his posts at EPA were serving as the Assistant Special Agent in Charge at the EPA offices in Seattle and Denver from 1997 to 2000 and from 2010 through 2014, and the Resident Agent in Charge from 1993 through 1997 in Portland and from 2000 through 2008 in Boise. Mr. O'Neill's extensive work for EPA and other federal agencies is described in his resume which is submitted as an exhibit and referenced below. Mr. O'Neill was retained by counsel for Prime in September 2016, and conducted an investigation which included interviews and visits to the area at issue in Idaho and Utah. Mr. O'Neill also visited the company headquarters in Springfield, Missouri. He is expected to testify regarding the results of his investigation, as informed by his own training and experience with EPA, including his interviews of witnesses and key individuals involved in the matter. Reports or summaries of reports prepared by Mr. O'Neill are submitted as exhibits herein and described below RX06-RX12.
3. William Sprague. Mr. Sprague is a Safety Supervisor at Prime's Springfield, Missouri Headquarters, where he has worked in the Safety Department since 2014. He previously worked five years in the citation department. Mr. Sprague is a former law enforcement officer with ten years of law enforcement experience. Mr. Sprague will address Prime's corporate philosophy and commitment to safety including technology utilized by Prime and the training and monitoring of Prime drivers. He will discuss the limited experience Prime has had with incidents of this nature involving hazardous materials and that the

2015 incident in Idaho was unique. Mr. Sprague will discuss the processes Prime employs should such a situation arise.

4. Brian Singleton. Mr. Singleton is the Salt Lake City Terminal Operations Manager at Prime. Mr. Singleton has worked for Prime since 2006, and at the Salt Lake City facility since 2010. Mr. Singleton is familiar with all aspects of the terminal in Salt Lake City and he will testify regarding the operation of this facility, its physical characteristics and the security employed at this facility, particularly with respect to the time period when the wrecked trailer stored at the terminal after the fire. Mr. Singleton will testify that the trailer and barrels were at all times stored at the terminal in a locked yard, with restricted access and on an impermeable surface. He will testify that he believed the trailer was at the facility because a legal hold had been placed on it by Prime counsel. Mr. Singleton will also testify regarding the location of the Salt Lake City terminal and the industrial and commercial nature of the surrounding area. Mr. Singleton will testify regarding his and Prime's efforts to cooperate with EPA when they visited the facility in 2016, and that his charge from the company is to do the right thing every time a decision needs to be made.
5. Lance Curtis. Mr. Curtis is the Shop Manager for Prime at its Salt Lake City Terminal. He has worked in that capacity for over ten years and prior to that, he worked as a truck mechanic for Prime. Mr. Curtis supervises approximately 75 employees at the terminal that handle truck repair, trailer repair, tire repair and a wash bay. His duty is to coordinate all of these operations. In his experience, trailers involved in fires such as the one at issue here are often sent to storage facilities so they can be examined for fire causation by experts. Mr. Curtis will testify that when he inquired about the contents of the barrels on the burned trailers, he was provided the bills of lading for the load, and that he later called and left a message with a local environmental clean-up company that he would have used to manage the disposal. Mr. Curtis does not believe he received a return call from this company and he did not get back to coordinating the disposal of the barrels prior to being visited by EPA later in 2016. He will testify that when EPA visited, Prime cooperated with EPA including in its sampling efforts. He will testify that at all times, the trailer and barrels were stored on an impermeable surface in a locked yard with controlled access. He will testify regarding what he understands to be the company's philosophy to do things the right way, a philosophy that is preached by the company's owner and which he attempts to follow in the discharge of his duties at Prime.
6. Steven Drake. Mr. Drake is an over-the-road Owner Operator for Prime. He was the driver of the Prime semi-truck hauling a trailer that caught fire during the early morning hours of September 27, 2015 in Idaho. Mr. Drake was traveling at the time with his spouse who also drives for Prime. Mr. Drake will testify regarding the location and scope of the fire and the events following the fire. He will testify regarding the numerous emergency, law enforcement and other personnel who responded to the scene and his interactions with those on scene including the Idaho State Police. He will testify regarding his interactions with Prime representative in Springfield. He will also testify that state personnel on scene discussed B&W Wrecker Service's qualification to perform the clean-up of the scene and allowed them to perform this clean-up.

B. Expert Witnesses

Set forth below is the expert witness Respondent intends to call at hearing together with a brief narrative summary of her expected testimony:

1. Elizabeth Walker. Ms. Walker is a PhD environmental toxicologist and will testify regarding the nature of the potential harm posed by a theoretical release of paint or paint fumes from the stored trailer in Salt Lake City. Ms. Walker's CV is included in the list of exhibits as Exhibit RX18. Her expert report is included as Exhibit RX20.

C. Documentary Evidence

Set forth below are documents that the Respondent intends to introduce into evidence at hearing (marked as "RX__," etc., for "Respondent's Exhibit"):

- RX01 Prime Presence
- RX02 Prime Network
- RX03 Idaho State CC Hazmat
- RX04 Boise Fire Department
- RX05 King Hill Rural Fire District
- RX06 Resume of Kelly O'Neill
- RX07 IAR Chief Janousek 09082016
- RX08 IAR Chief Janousek 10072016
- RX09 IAR B&W
- RX10 IAR Corder
- RX11 IAR Vaughn
- RX12 IAR Gillerman
- RX13 Google Overhead, SLC Terminal Area
- RX14 Google Overhead, SLC Terminal Neighborhood
- RX15 Google Overhead, SLC Terminal
- RX16 Paint Disposal
- RX17 Trailer Disposal
- RX18 Walker CV
- RX19 Weather Data SLC
- RX20 Expert Report of Dr. Elizabeth Walker

D. Estimate of Time Needed to Present Case

Respondent estimates that it should take approximately one to one and half days to put on its defense, depending on the extent of cross examination by Complainant.

E. **Factual Information Relevant to Assessment of a Penalty**

Respondent admits liability in the present case but contests the amount of the proposed penalty. Respondent submits below, as required by 40 C.F.R. § 22.19(a)(3) and as set out at page 3 of the Prehearing Order, an outline of the factual information relevant to the assessment of a penalty.

At the hearing, Respondent intends to put on witnesses, as identified in this Prehearing Exchange, who will present facts relating to the statutory penalty factors in Section 3008(a)(3) of the Solid Waste Disposal Act, 42 U.S.C. § 6928(a)(3). To the extent that the Presiding Officer is required to consider, but is not bound by, the EPA RCRA Penalty Policy (2003), Respondent will offer evidence to refute EPA's characterization of the potential for harm and extent of deviation from the RCRA requirements. *See* 40 C.F.R. § 22.27(b); *In re A.Y. McDonald Industries, Inc.*, 2 E.A.D. 402, 1987 WL 109674 at *7 (E.A.B. 1987). Complainant's characterization of most of the five causes of action as Major/Major under the RCRA Penalty policy is not supported by the facts. The appropriateness of the penalty is a mixed question of law and fact and, therefore, should be based on the evidence entered into the record at the close of the hearing.

1. **Nature, circumstances, extent and gravity of the violations**

In accordance with 40 C.F.R. § 22.19(a)(3), Respondent sets out the following facts and arguments "why the proposed penalty should be reduced or eliminated."

The unexpected fire, which destroyed Respondent's trailer during the early morning hours of September 27, 2015, occurred on a remote portion of Interstate 84 near Hammett, Idaho. Middle-of-the-night communications between Respondent's Springfield, Missouri headquarters and multiple state, federal and local responders, including the local fire department, Elmore County Dispatch, Idaho State Patrol, Idaho Department of Transportation and Idaho Department of Environmental Quality, resulted in miscommunications on how to best deal with the aftermath

of the trailer fire. Ultimately, the on-scene fire chief and incident commander concluded: “It was our determination that it went from a haz-mat scene to a clean up scene. We released Region IV Haz Mat after that discussion. B&W Wrecker was on scene when we left, they were going to be in charge of the clean up.” For its part, Respondent did everything asked of it by the local authorities and regulators and relied on B&W to perform the clean-up and disposal of the materials destroyed by the fire.

Respondent arranged to have the damaged trailer and its remaining contents including the intact barrels of paint moved to its Salt Lake City (SLC), Utah facility in October 2015. This facility is located in an industrial area of SLC. Once the damaged trailer and intact barrels of paint arrived in SLC, they were securely placed on an impervious concrete slab in an area of the truck yard of Respondent’s facility and covered with a tarp.

The area where the trailer was stored was in a secure fenced-off area, not accessible to the public, and had little to no foot traffic by Prime employees. No discharges from the trailer to the environment occurred. No ground or drinking water resources have been impacted. The area surrounding the truck yard is industrial, and borders on the railroad tracks. The nearest residences to the facility are approximately three miles away. It is highly improbable that air emissions, if any, from the intact paint drums impacted human health or the environment.

When EPA notified Respondent in early August, 2016 of its intent to investigate the trailer, Respondent complied fully with all EPA requests, and gave EPA investigators unfettered access to the Facility. Respondent’s staff assisted the EPA investigators with a forklift and driver to assist in sampling drums. EPA sent a letter to Respondent on August 3, 2016, instructing Respondent to not move or manipulate the paint drums stored on site. Respondent complied.

After an extended investigation by EPA, and after consultation with the U.S. Attorney’s

Offices in Idaho and Utah, the government declined a criminal prosecution and this civil administrative action ensued.

On September 19, 2016, Respondent disposed of the trailer and its contents as hazardous waste at significant expense to Respondent. Respondent complied with all requests from EPA to rectify any paperwork problems that may have existed dating from the original 2015 fire.

This matter arising out of the 2015 trailer fire was an isolated incident and Respondent does not have a history of regulatory environmental violations either prior to this incident or since this incident. While this fire was unique in nature, Respondent including its Safety Department has nevertheless reexamined how it will handle future events such as this to ensure any such events are handled appropriately. Respondent is committed to safety and compliance with the law.

2. Ability to Pay

Respondent is not raising ability to pay as a defense to the proposed penalty.

3. Prior History of Such Violations

Respondent has no prior history of violations of RCRA or any other environment statute.

4. Degree of Culpability

Prime prides itself on adhering to the core values established by its founder, Mr. Low, and it endeavors to be a good corporate citizen through its focus on safety, charitable giving, the responsible operation of its business and adherence with the law. Prime does not regularly deal with hazardous waste although its drivers and necessary personnel receive hazardous waste training. In the event a situation arises that necessitates the handling and disposal of hazardous waste, Prime hires third party contractors with subject matter expertise to manage and oversee these processes.

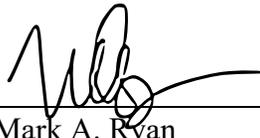
With respect to the trailer fire which occurred during the early morning hours along rural Interstate 84 in Idaho and is at issue here, the testimony and exhibits will show that significant confusion existed among the various emergency personnel managing the scene and Prime. This confusion affected the clean-up, transportation and ultimately the storage and disposal of the remnants of the trailer fire. Prime, for its part, admits it made mistakes in this process which it has learned from and committed to not let happen again. Indeed, this was a one-time occurrence for Prime and Prime feels confident in its ability to better manage a similar situation should this unusual occurrence happen again.

5. Economic Benefit or Savings

In its December 18, 2020 Initial Prehearing Exchange, EPA argues that Respondent enjoyed an economic benefit of \$10,000 but provides little to no analysis of how it arrived at that figure. Respondent disagrees with EPA's conclusion and will establish that it enjoyed no economic benefit of noncompliance as a result of the violations.

DATED this 8th day of January 2021.

RYAN & KUEHLER PLLC



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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January 2021, I filed Respondent's Prehearing Exchange via the OALJ E-filing system and via email to:

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